Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *JM v Minister of Employment and Social Development*, 2021 SST 813

Tribunal File Number: GP-20-740

BETWEEN:

J. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: François Guérin

HEARD ON: June 3, 2021

DATE OF DECISION: June 8, 2021

REASONS AND DECISION

OVERVIEW

[1] The Appellant was born on September 24, 1956, and applied for the Allowance for the Survivor (Allowance for the Survivor) under the Old Age Security (OAS) program on May 13, 2019,[1] after the death of Y. B. (the deceased).[2]

[2] On August 23, 2019, the Respondent refused the Appellant's application,[3] saying that the Appellant had stopped being the deceased's spouse on April 30, 2004, when the Superior Court of Québec issued a divorce judgment.[4]

[3] On August 30, 2019, the Appellant requested a reconsideration of this decision.[5] On March 17, 2020, the Respondent upheld its final decision.[6] On April 29, 2020, the Appellant appealed this decision to the Social Security Tribunal (Tribunal).[7]

ISSUE

[4] There is only one issue in this appeal. I have to decide whether the Appellant was the deceased's spouse or common-law partner and, if so, determine the dates of their relationship.

ACT AND REGULATIONS

[5] Section 2 of the *Old Age Security Act* (OAS Act) [defines] a "survivor" as "a person whose spouse or common-law partner has died and who has not thereafter become the spouse or common-law partner of another person."

[6] Under section 2 of the OAS Act, a "common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year. For

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[1] GD2-3 to 6.
[2] GD2-25.
[3] GD2-45 to 47.
[4] GD2-13 to 17.
[5] GD2-37 to 44.
[6] GD2-51 and 52.
[7] GD1-1 to 6.

greater certainty, in the case of an individual's death, the 'relevant time' means the time of the individual's death."

[7] Section 21 of the OAS Act says that an allowance may be paid to an eligible survivor subject to the Act and its regulations. The Allowance for the Survivor may not be paid unless an eligible survivor applies for it. Section 21(9)(a) of the OAS Act adds that no allowance may be paid to a survivor for any month more than 11 months before the month in which the application is received.

WHAT IS THE RESPONDENT'S POSITION?

[8] The Respondent says that the Appellant was divorced from the deceased following a Superior Court of Québec decision dated April 30, 2004, which means that she does not meet the eligibility requirements for the Allowance for the Survivor.[8]

WHAT IS THE APPELLANT'S POSITION?

[9] The Appellant says that she still considers herself a married woman, that she never signed a consent to divorce, whether in Canada or in France, and that she is married in France under the community of property regime. She is asking the Tribunal to set aside the Superior Court of Québec's April 30, 2004, divorce judgment and approve her application for the Allowance for the Survivor.[9] However, she testified that she was not seeking to set aside the separation judgment or agreement.

TESTIMONY

[10] When she testified, the Appellant maintained that she still considered herself a married woman, that she had never signed a consent to divorce, whether in Canada or in France, and that she was married in France under the community of property regime. The Appellant explained the French family law system.[10] The Appellant explained that, during their marriage and when they

[8] GD3-2, paragraphs 1 and 2.
[9] GD1-3 to 15.
[10] GD1-26.

were in Canada, her spouse left the family home around 1999 and that, without her consent, he had started separation from bed and board proceedings, then divorce proceedings.

[11] The Appellant testified that, based on her efforts and the information she had obtained, she was still married under French law. She considers that the divorce judgment undermines her actual marital status and that, according to French law, divorce is only by agreement and the courts intervene only in cases of *force majeure*.

[12] The Appellant testified that she had lived at the same address for approximately 35 years. She testified that she had always lived there alone. She never lived with the deceased after he left in 1999.

[13] The Tribunal asked the Appellant why she had selected multiple marital statuses on her application forms for the Allowance for the Survivor[11] and on her income statement forms.[12] She explained that, because she had dual French and Canadian citizenship, she had not known what her actual marital status was, or that she had to tick only one box. So, she decided to let the Respondent determine her status.

[14] The Respondent sent the Appellant a questionnaire[13] to clarify her marital status answer on her application for the Allowance for the Survivor. In her response to the questionnaire dated July 16, 2019, the Appellant answered that she was married. The Tribunal asked the Appellant why she had answered that way, knowing the Superior Court of Québec's 2004 decision and given there was also a "divorced" option. The Appellant replied that she had answered that way given the information she had obtained from the Régie des rentes du Québec [Quebec pension board] and the Ministère du Travail, de l'Emploi et de la Solidarité sociale [Quebec's ministry of labour, employment, and social solidarity]. She also testified that, to get the deceased's death certificate from Quebec's registrar of civil status for the Respondent, she had to prove that she was married to the deceased. When questioned by the Tribunal, she confirmed that she had informed the registrar of civil status of the 2004 divorce judgment and that Quebec's registrar of civil status had all the documents. So, she selected "married" on the Respondent's questionnaire

[11] GD2-4, question 9.
[12] GD2-7 and 8.
[13] GD2-29.

because Quebec's registrar of civil status had accepted that she was married to give her the deceased's death certificate. She would do the same thing today, regardless of where she goes in the French system, because she has checked the records, which say that she is married, and that she soon has to declare the deceased dead under French law given that she did not sign a consent to the divorce and that she is still considered married there.

[15] The Appellant testified that she had never consented to the divorce [judgment] of the Superior Court of Québec. When the Tribunal asked her whether she had started proceedings with the Superior Court of Québec to set aside the divorce judgment, the Appellant testified that she had not taken any steps; she did not have the means, since she was broke because of her daughter's health situation and her own financial situation. She simply could not afford it.

[16] The Appellant testified that, after the Superior Court of Québec's divorce judgment, she had never married anyone or been anyone's common-law partner.

[17] She also testified that the deceased started a relationship with a woman from the Trois-Rivières area about a year after leaving the family home in 1999 and that he moved there about two years later to live with the woman. The deceased was in a relationship with the woman up until about two years before his death. Although he died in Montréal, he was still living in Trois-Rivières. She testified that she had not had any contact with the deceased but that she had learned of this situation through her son, who kept her informed of the deceased's life.

ANALYSIS

Were the Appellant and the deceased spouses or common-law partners under the OAS Act at the time of the deceased's death on August 23, 2018?

[18] The Appellant does not dispute that there is a divorce judgment between her and the deceased that the Superior Court of Québec issued on April 30, 2004. Instead, she is asking the Tribunal to set it aside, which is why the Tribunal does not have jurisdiction.

[19] The Appellant admits that she did not take any steps with the Superior Court of Québec after the judgment because she could not afford it. Given that she did not act to follow up and

[have] the proper authorities change the divorce judgment, the Tribunal finds that the divorce judgment is still valid, which means that the Appellant is divorced under Canadian law.

[20] The Tribunal also asked the Appellant questions to find out whether, after the divorce was finalized, she and the deceased had been able to resume a conjugal relationship. However, the Appellant testified that she and the deceased had never developed a conjugal relationship as common-law partners after the Superior Court of Québec's April 30, 2004, divorce judgment. The Tribunal can only conclude that the Appellant and the deceased were not in a conjugal relationship as common-law partners at the time of the deceased's death.

CONCLUSION

[21] I am sympathetic to the Appellant's arguments and her personal situation. However, given that the Appellant was no longer the deceased's spouse under the [OAS] Act and that she did not develop a conjugal relationship with him as common-law partners after the Superior Court of Québec's April 30, 2004, divorce judgment and before the deceased's death, the Appellant does not meet the definition of "survivor" under the OAS Act.

[22] The appeal is dismissed.

François Guérin
Member, General Division – Income Security