[TRANSLATION]

Citation: *DV v Minister of Employment and Social Development*, 2022 SST 176

Social Security Tribunal of Canada
General Division – Income Security

Decision

Appellant:	D. V.
Representative:	Louiselle Luneau
Respondent:	Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated November 24, 2020 (issued by Service Canada)

Tribunal member:	François Guérin
Type of hearing:	Teleconference
Hearing date:	February 8, 2022
Hearing participants:	Appellant Appellant's representative Respondent
Decision date:	February 16, 2022
File number:	GP-20-1886

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. V., isn't eligible for an Allowance for the Survivor (ALWS). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was born on November 30, 1957, and applied for the ALWS under the Old Age Security (OAS) program on December 7, 2017,[1] after the death of E. P. (deceased spouse).[2]

[4] The Respondent (Minister) refused the Appellant's application on April 30, 2018,[3] saying that the Appellant didn't meet the definition of "survivor" since the Appellant became the spouse or common-law partner of another person after the deceased spouse's death.

[5] On May 25, 2018, the Appellant requested a reconsideration of that decision[4] and the Minister upheld its final decision on March 5, 2019.[5] The Appellant appealed this decision to the Social Security Tribunal (Tribunal) on August 22, 2019.[6]

Issue

[6] There is only one issue in this appeal. I have to decide whether the Appellant became the spouse or common-law partner of another person after the deceased spouse's death on August 28, 1990.

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[1] GD2-3 to 6
[2] GD2-9
[3] GD2-23 to 24
[4] GD2-25
[5] GD2-41 to 43
[6] GD1-1 to 6

What is the Minister's position?

[7] The Minister says that the Appellant didn't meet the definition of "survivor" because the Appellant became the spouse or common-law partner of another person after the deceased spouse's death.

[8] The Minister says that the Appellant admitted that she was in a common-law relationship after the death of E. P., the deceased spouse.[7]

What is the Appellant's position?

[9] The Appellant says that the Minister accepted her ALWS application on April 27, 2018, that it sent her a letter confirming that it accepted the application, and that the Minister can't reverse its decision and that it must pay her the ALWS.

[10] The Appellant says that she was in a common-law relationship with E. P. from October 1, 1973, until the day of his death on August 28, 1990, and that she was in a common-law relationship with F. B. from April 1, 1991, for about three years. She says that this relationship was difficult and that she had thrown him out several times during this period.

What the Claimant has to prove

[11] For the Appellant to succeed, she must prove that she meets the definition of survivor[8] under the *Old Age Security Act* (OAS Act) and that she didn't enter a common-law relationship[9] after the death of her first common-law partner on August 28, 1990.

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[7] GD3-1, paragraph 2
[8] See the definition of "survivor" in section 2 of the *Old Age Security Act* (OAS Act).
[9] See the definition of "common-law partner" in section 2 of the OAS Act.

Matters I have to consider first

Referral from the Appeal Division

[12] The Appellant initially filed a notice of appeal to the Tribunal's General Division under file number GP-19-1362. The General Division summarily dismissed the appeal on July 14, 2020, and the Appellant appealed that decision to the Tribunal's Appeal Division under file number AD-20-797. Then, the matter was returned to the General Division for a new hearing with a different member. This decision is about that appeal.

The Appellant had a representative at the hearing

[13] At the hearing, Loiselle Luneau [*sic*], Coordinator at Chômage Action Abitibi-Témiscamingue et Nord-du-Québec, represented the Appellant. The Tribunal reminded the parties that hearings are informal.

Does the Minister have jurisdiction to decide again whether the Appellant is eligible for the ALWS?

[14] Reviewing a decision that was first made by the Minister is an extraordinary remedy. Still, it may be necessary to use it to meet the objectives of the Act. In this case, the Appellant doesn't want the Minister to reverse its decision sent on April 27, 2018.

[15] In this case, the Appellant says that she received a decision from the Minister dated April 27, 2018, granting her the ALWS and that the Minister can't change its decision. She also says, through her counsel at the time,[10] that she received a call from the Minister telling her to disregard the decision letter dated Friday, April 27, 2018, and to destroy it. She also says she was told another decision letter, the one dated Monday, April 30, 2018, would be sent to her.[11] The Appellant, with her wording and without legal knowledge of the *Old Age Security Regulations* (Regulations), appears to refer to

[10] GD2-44 to 45
[11] GD2-23 to 24

section 23 of the Regulations, which doesn't specifically authorize the Minister to change its initial eligibility decisions.[12]

[16] However, the Tribunal finds that, based on the Appellant's testimony and the parties' submissions,[13] the Appellant was told to disregard the letter dated April 27, 2018, before she had received it.

[17] During its testimony, the Minister said that the application had indeed been approved by the Minister,[14] and that a letter had been prepared and sent on Friday, April 27, 2018. However, the following business day, Monday, April 30, 2018, a senior public servant reviewed the decision and cancelled the approval.[15] It said the Appellant was contacted the same day, and that she confirmed having a common-law partner for three years after the deceased's death,[16] and that the amounts that should have been paid had been intercepted and withheld.[17] In other words, the Minister made no payments to the Appellant under the ALWS.

[18] In its submissions, the Minister also referred to section 23 of the Regulations, and its right to investigate the eligibility for a benefit.[18]

[19] In *RS*, the General Division dismissed the notion that the Minister's powers to determine eligibility are extraordinary and inconsistent with a broad interpretation of the OAS Act.[19] The Tribunal agrees with this reasoning behind this decision, especially paragraphs 32 to 38. The Minister's powers are broad and appropriately balance its objectives of paying OAS pensions, GIS benefits, and by extension, the ALWS, and doing so quickly while protecting the public purse.

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[12] GD14-5, paragraph 16 and GD14-7, paragraphs 30 and 31
[13] GD2-44 to 45
[14] GD2-29 and GD2-36, 2018-04-27 08:00:51
[15] GD2-29 and GD2-36, 2018-04-30 09:30:26
[16] GD2-29 and GD2-36, 2018-04-30 11:28:34
[17] GD2-29 and GD2-36, 2018-05-03 07:20:11
[18] GD3-11
[19] *RS v Minister of Employment and Social Development*, 2018 SST 1350

[20] The Federal Court highlighted the OAS Act's objective, including its altruistic nature, in a decision:[20]

> I would describe the OAS regime as altruistic in purpose. Unlike the *Canada Pension Plan* […], OAS benefits are universal and non-contributory, based exclusively on residence in Canada. This type of legislation fulfills a broad-minded social goal, one that might even be described as typical of the Canadian social landscape. It should therefore be construed liberally, and persons should not be lightly disentitled to OAS benefits.

[21] This interpretation from the Federal Court seems to consider the fact that a person may be denied an OAS pension, and by extension, the ALWS and GIS benefits. However, it should not be done lightly. Also, this interpretation from the Federal Court emphasizes the differences between OAS benefits, which are universal and non-contributory, and the Canada Pension Plan (CPP), to which a beneficiary must contribute. So, it would be a mistake to compare the wording used in the OAS Act to the wording in the CPP and the *Employment Insurance Act*. The very nature of these plans' foundations is different. The first has universal and non-contributory benefits, and the other two meet the needs of their contributors. By using the words "[u]nlike the *Canada Pension Plan*" in the quote above, the Federal Court shows that these programs should be treated differently.

[22] As mentioned in *RS*, legislation intended to suspend a benefit or to stop the payment of benefits first assumes that the benefit was payable in the first place. Cases where claimants didn't meet the eligibility criteria for a pension or benefit, such as the ALWS, are entirely different. In this case, according to the Minister, the Appellant wasn't eligible for the ALWS because she admitted herself to having had entered into a new common-law relationship after the death of her deceased common-law partner.

[23] I believe that Parliament was clear when it gave the Minister the power to reconsider eligibility decisions. Though the Government of Canada is the one that pays OAS pensions and ALWS and GIS benefits, it is taxpayers who fund them. These powers from the Regulations are necessary since they allow the Minister to pay out

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[20] *Canada (Minister of Human Resources Development) v Stiel*, 2006 FC 466 at para 28

benefits quickly while ensuring reasonable processing times and protecting the public purse by refusing to pay pensions and benefits, like the ALWS, to applicants who aren't eligible to receive them.

[24] I find that the Minister has the jurisdiction to revisit an eligibility decision without alleging or proving fraud or false statements. That means the Minister could retract its letter from Friday, April 27, 2018, tell the Appellant to disregard it, and send her a new decision on Monday, April 30, 2018.

Reasons for my decision

What is a survivor under the Act?

[25] Section 2 of the 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**."

[26] Section 2 of the OAS Act defines a "common-law partner" as "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 greater certainty, in the case of an individual's death, the 'relevant time' means the time of the individual's death."

[27] 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.

The Appellant's submissions

[28] When filing her ALWS application, the Appellant responded that she had lived in a common-law relationship since her deceased common-law partner's death.[21] In her request for a reconsideration of the Minister's decision, the Appellant said that [translation] "you [Minister] knew through Service Canada that I lived with someone, and

[21] GD2-4, question 9f

I have documents (drafted in Timmins by the lawyer, Michèle Rocheleau) to show that he was never responsible for my son and me."[22]

[29] In a letter dated January 28, 2019, the Appellant wrote [translation] "you [Minister] were aware that I had lived with someone who wasn't in any way responsible for myself or my child. I never held him responsible before or after."[23]

The Appellant's testimony

[30] During her testimony, the Appellant didn't dispute the fact that she had lived in a common-law relationship with F. B. from April 1, 1991 for about three years. However, she wanted to clarify that this relationship had been very toxic.

[31] The Appellant is of the view that, since the Minister had initially approved her application, it can't reverse a decision.

[32] The Appellant is also of the view that, since the end of this second common-law relationship in 1994, she hasn't had any other common-law relationships and that she should not be penalized for that.

[33] The Appellant testified that she never received $2,782.37 under the ALWS for the period from December 2017 to April 2018, as indicated in the letter from April 27, 2018. At the hearing, the Minister confirmed that this amount hadn't been paid because it had been withheld before it could even be deposited on May 3, 2018.

[34] The Appellant confirmed the information from the Statutory Declaration of Common-law Union from December 7, 2017.[24] When the common-law partner died, they lived in X because the deceased worked at X.

[35] The Appellant testified that she entered into a common-law relationship with F. B. on April 1, 1991. He had a drinking problem. They met after he had gone through alcohol addiction treatment. However, when they moved in together, he was sober. The

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[22] GD2-25 and 28
[23] GD2-27
[24] GD2-10

Appellant testified that, if he hadn't been, they would not have started living together. She testified that she fell in love with a sober F. B. The Appellant and F. B. moved to X, since it would put some distance between him and certain temptations. They were in the same house. They lived together for about three years.

[36] The Appellant testified that, after about six months of having lived together in X in the same house, she had to send him sleep off his hangover outside of their home. So, he went to a friend's home or the mine. She described this three-year relationship as a relationship that didn't actually last three years. He would leave the house to go drink and see his disreputable friends with whom he could drink and partake in other activities.

[37] This house was in both of their names, and the Appellant testified having had to make an additional payment of $10,000. She also lent him money, about $7,800, so that he could pay off his debts, but he only partially paid her back. They were also both responsible for paying the mortgage, but the Appellant testified that she was usually the one who would pay it. The same was true for other expenses and his debts. The accounts were in both of their names, and the Appellant said she had to pay twice for some things.

[38] When he left home around 1994, they were no longer on good terms, but, despite that, she helped him move. She kept the house because she didn't hold him responsible for herself or her son. The Appellant testified she drafted documents about this with Michèle Rocheleau, counsel, at X. The house remained her property but the bank would not take F. B.'s name off of the bank guarantees. After a few years, they became friends again, but it took some time.

[39] The Appellant said that members from the community in X were aware of her relationship with F. B. However, she initially hid his drinking problem but stopped doing so after a while. He was a bad influence on the Appellant's son, who was 8 to 11 years old during this relationship.

[40] Concerning the Appellant's civil statuses declared to the Canada Revenue Agency (CRA), which indicated she was either single or widowed, the Appellant testified that she didn't pay attention to that information and that it had been reported by her accountant.[25] The Tribunal accepts the Appellant's explanation.

Analysis

[41] The Appellant was pleasant and answered the questions the Tribunal asked her clearly and honestly.

[42] At the hearing, the Appellant didn't dispute that she had been in a common-law relationship with F. B. from April 1, 1991, for about three years. However, she wanted to clarify that this relationship was very toxic. She also testified that the relationship didn't last three years, since F. B. was often not at home and had even left for six months to X to study mechanics. However, as she stated, they had the same address but he wasn't home often.

[43] The Tribunal also understands why the Appellant insists it was a relationship that lasted less than three years since, under Ontario's *Family Law Act*, two people have to live together continuously for at least three years to be considered spouses[26] and the Appellant and F. B. lived in Ontario during this period. However, under 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**."

[44] The Appellant pointed out that the ALWS application should be reviewed taking into account the situation she was in when she filed the application in 2017, when she was 60 years old and not in a common-law relationship. She had been living alone for 23 years, since 1994. She should not be refused the ALWS because she had a short relationship for less than three years over 23 years before filing the application.

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[25] GD5-4
[26] R.S.O. 1990, c. F.3, section 29

Conclusion

[45] I am sympathetic to the Appellant's arguments and her personal situation. However, the Tribunal is a legislative entity that has only the powers that the law gives it. The Tribunal interprets and applies the legislative provisions as they are set out in the OAS Act.

[46] Since the Appellant has herself admitted that she was in a common-law relationship from 1991 to 1994 after the death of her first common-law partner, and she has indicated this in submissions and testimony, and even if she defines the relationship as toxic, the Appellant doesn't meet the definition of a "survivor" under the OAS Act.

[47] I find that the Appellant isn't eligible for the ALWS because she became the common-law partner of another person after the death of her first common-law partner.

[48] Therefore, the appeal is dismissed.

François Guérin
Member, General Division – Income Security Section