



Citation: *FG v Minister of Employment and Social Development and VG*, 2023 SST 396

**Social Security Tribunal of Canada  
General Division – Income Security Section**

## Decision

**Appellant:** F. G.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Regina Barron

**Added Party:** V. G.

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated October 19, 2020 (issued  
by Service Canada)

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**Tribunal member:** George Tsakalis

**Type of hearing:** Teleconference

**Hearing date:** January 18, 2022 and February 22, 2023

**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative  
Added Party  
Albanian interpreter

**Decision date:** March 20, 2023

**File number:** GP-20-1863

## Decision

[1] The appeal is allowed.

[2] The Appellant, F. G., is eligible for the Allowance (ALW) benefits she received from April 2017 to November 2018. This decision explains why I am allowing the appeal.

## Overview

[3] The Appellant was born in 1955. She applied for the ALW benefit in March 2015. The Minister of Employment and Social Development (the Minister) approved her ALW application. The Appellant began receiving the ALW in April 2015.

[4] The Minister says the Appellant and her spouse telephoned them in November 2018. They told the Minister that they had been separated since November 2016 and that their divorce was nearly finalized.<sup>1</sup>

[5] The Appellant completed a questionnaire and statutory declaration in December 2018. She said she lived separately from her spouse since December 2016. She said that her divorce was to take effect in December 2018.<sup>2</sup>

[6] The Minister wrote to the Appellant in January 2019. The Minister told the Appellant that her ALW entitlement was based on her marital status. The Minister said that she was no longer entitled to the ALW as of April 2017 and that she was overpaid \$20,954.76 for ALW benefits she received from April 2017 to November 2018.<sup>3</sup>

[7] The Appellant asked the Minister to reconsider its decision. The Minister issued its reconsideration decision on October 19, 2020. The Minister maintained its position that the Appellant owed \$20,954.76 for ALW benefits she received from April 2017 to

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<sup>1</sup> See GD3-3.

<sup>2</sup> See GD2R-76-77 and 80.

<sup>3</sup> See GD2R-83.

November 2018.<sup>4</sup> The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal of Canada.

[8] The Appellant, through her daughter, argued that the separation took place in July or August 2018, and not December 2016. If the separation took place in July or August 2018 that would mean the Appellant would have been entitled to the ALW benefits she received from April 2017 to November 2018.

### **Matters I have to consider first**

[9] The appeal originally listed the Appellant and Minister as the only parties to the appeal. The hearing proceeded on January 18, 2022. The Appellant's daughter was listed as the Appellant's representative. I decided to hear evidence from her, rather than the Appellant. This is because the Appellant's daughter was concerned about the Appellant's health. The medical evidence shows that the Appellant suffered from schizophrenia, and psychosis.<sup>5</sup> The Appellant's daughter said that the Appellant does not live in reality. She suffers from hallucinations. The Appellant told me that she felt drowsy at the hearing. I decided to receive evidence from the Appellant's daughter because she spoke to the Appellant regularly and was familiar with the issues on the appeal.

[10] I decided to not finish a decision after the January 18, 2022 hearing. If I made a finding that the Appellant separated from her former spouse in December 2016, as requested by the Minister, it might have an affect on the former spouse's entitlement to Guaranteed Income Supplement (GIS). A finding of a decision of a separation in December 2016 would mean that the former spouse might have been entitled to the GIS at a higher single rate.

[11] If I made a finding that the Appellant did not separate from her former spouse until July or August 2018, as requested by the Appellant, the former spouse might have been entitled to the GIS at a lower married rate.

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<sup>4</sup> See GD2R-46.

<sup>5</sup> See GD1-14 and GD2R-34-35.

[12] The *Social Security Tribunal Regulations* in place at the time of the original hearing date said the Tribunal could add any person as a party to the proceeding if the person had a direct interest in the decision.<sup>6</sup>

[13] I asked the Appellant and the Respondent if they believed that the former spouse should be added as a party to the appeal.<sup>7</sup> They both agreed the former spouse should be added as a party to the appeal.<sup>8</sup> The hearing proceeded on February 22, 2023, with the Appellant's former spouse participating as the Added Party to the appeal.

## **What the Appellant must prove**

[14] For the Appellant to succeed, she must prove she was not separated from the Added Party while collecting ALW benefits.

[15] The *Old Age Security Act* (OAS Act) says that in order to be eligible for ALW benefits, the person must:

- be a spouse or partner of a pensioner who is receiving the GIS;
- be between 60 and 64;
- have an annual income that does not exceed certain limits;
- meet Canadian residency requirements (10 years);
- meet legal residency status; and
- apply annually.<sup>9</sup>

[16] The Appellant received ALW benefits because she met the above criteria, which including being married to the Added Party who was receiving an OAS pension and the GIS.

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<sup>6</sup> See subsection 10(1) of the *Social Security Tribunal Regulations*.

<sup>7</sup> See GD6.

<sup>8</sup> See GD7 and GD8.

<sup>9</sup> Section 19 of the *Old Age Security Act*.

[17] The OAS Act provides for the payment of a GIS benefit to low-income OAS pensioners. GIS benefits are based on the pensioner's current marital status and income received in the previous calendar year. Pensioners who are not married or living in a common-law relationship are considered single and have their GIS eligibility assessed on the basis of their own income. Pensioners who have spouses or common-law partners are assessed on the basis of their joint income.<sup>10</sup> Generally, single pensioners receive higher GIS benefits than those who are married or are in a common-law relationship.

[18] ALW payments are suspended following the third month of separation.<sup>11</sup> The Minister says that the Appellant stopped being entitled to the ALW in April 2017, which followed the third month after the date it says the separation took place in December 2016.

## Reasons for my decision

[19] I find that the Appellant separated from her spouse in July 2018. This means that the Appellant was entitled to receive ALW benefits from April 2017 to November 2018. This is because the November 2018 follows the third month after the July 2018 separation date.

[20] Here are the reasons for my decision

## What “separated” means

[21] The OAS Act does not define “separated” There are not any court decisions that set out the factors to consider when deciding if a married couple is separated under the OAS Act.<sup>12</sup>

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<sup>10</sup> See section 12 of the Old Age Security Act.

<sup>11</sup> See paragraph 19(1)(a) of the *Old Age Security Act*.

<sup>12</sup> One decision discusses this, but it applied a provision in the *Old Age Security Regulations* that explained when parties were separated. That provision was repealed in 2000. See *Canada (Minister of Human Resources Development) v. Neron*, 2004 FC 101. I also considered *Kombargi v. Canada (Minister of Social Development)*, 2006 FC 1511. In *Kombargi*, the Federal Court discussed how difficult it can be to show a separation when the parties lived under the same roof.

[22] To decide what “separated” means for the appeal, I have to look at the ordinary meaning of the word and consider how it fits in with the purpose of the OAS Act and the intention of Parliament.<sup>13</sup>

[23] “Separated” generally describes people or things that are apart. But when we talk about married people being separated, we usually mean more than that. We mean they are apart because at least one of them has decided they no longer want to live or be seen as a married couple, and has acted on that decision.

[24] I find that Parliament intended the OAS Act to mean this as well. I reached this conclusion by considering a similar rule for common-law partners.<sup>14</sup> Like a married spouse, a common-law partner cannot collect an ALW if they are separated for more than three months.

[25] I find that Parliament intended to treat common-law partners the same way in the OAS Act. This means that factors that show two people have stopped being common-law partners are the same ones that show a married couple is separated.<sup>15</sup>

[26] The OAS Act says a common-law partner is “person who is cohabiting with [an] individual in a conjugal relationship”.<sup>16</sup> By extension, spouses are not separated if they are cohabiting in a conjugal relationship.

### **What “cohabiting in a conjugal relationship” means**

[27] Several court decisions explain what cohabiting in a conjugal relationship means. Although some of these decisions were about the *Canada Pension Plan*, they are relevant because the *Canada Pension Plan* defines “common law partner” the same way as in the OAS Act.<sup>17</sup>

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<sup>13</sup> See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

<sup>14</sup> See paragraph 19(1)(a.1) of the *Old Age Security Act*.

<sup>15</sup> See *SS v. Minister of Employment and Social Development and PS*, 2022 SST 713.

<sup>16</sup> See section 2 of the OAS Act.

<sup>17</sup> See section 2 of the *Canada Pension Plan*.

[28] When I am deciding whether the Appellant and the Added Party cohabited in a conjugal relationship, I do not judge the quality of their relationship. Instead, I have to look at factors such as:

- their living and sleeping arrangements
- their financial arrangements
- their behaviour towards each other privately and in public
- what help they gave each other in the home
- how their family and community view their relationship<sup>18</sup>

[29] Not all of these factors are required for there to be a conjugal relationship. They can also be present in varying degrees. I have to take a flexible approach in deciding whether there is a conjugal relationship.<sup>19</sup> Common-law relationships end when either party regards it as being finished and demonstrates by their conduct, that the decision to end it is a settled one.<sup>20</sup>

[30] I will now explain why I decided that the Appellant and Added Party cohabited in a conjugal relationship until July 2018.

### **The Appellant and Added Party cohabited in a conjugal relationship until July 2018**

[31] I find that the Appellant and Added Party cohabited in a conjugal relationship until July 2018. This means they were not separated, and the Added Party could continue to receive ALW benefits until November 2018. This also means that the Appellant does not owe the Minister money for the ALW benefits she received from April 2017 to November 2018.

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<sup>18</sup> See *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

<sup>19</sup> See *M. v. H.*, 1999 CanLII 686 (SCC) at paragraphs 59 to 60.

<sup>20</sup> See *Hodge v. Canada (Minister of Human Resources Development)*, 2004 SCC 65 at paragraph 42.

[32] The Minister relied heavily on the questionnaire and statutory declaration that the Appellant completed in December 2018, where the Appellant said that she and the Added Party separated in December 2016.<sup>21</sup> The Appellant completed another questionnaire in September 2020, where she said she became separated in December 2016.<sup>22</sup> The Appellant and the Added Party informed the Minister in November 2016 that they had been separated since November 2016 and that their divorce was nearly finalized.<sup>23</sup> The Added Party also completed a questionnaire and statutory declaration in December 2018, where he said that he and the Appellant separated in December 2016.<sup>24</sup>

[33] However, I do not place much weight on the questionnaires and declarations provided by the Appellant and the Added Party. I place greater weight on the hearing evidence provided by the Appellant's daughter and the Added Party. I find that their evidence showed that the Appellant and Added Party began having short periods of separation in December 2016, followed by periods of reconciliation, and the relationship did not end until July 2018, when the Appellant and Added Party decided to file for divorce.

### **How the Appellant and Added Party lived and treated each other**

[34] The Appellant's and Added Party's living and sleeping arrangements did not suggest they stopped cohabiting in a conjugal relationship in December 2016.

[35] The Tribunal file contains a Certificate of Divorce from an Ontario Court. The Certificate of Divorce says the marriage was dissolved by court order on November 6, 2018 and the divorce took effect on December 7, 2018.<sup>25</sup>

[36] The Appellant completed a questionnaire and statutory declaration where she said the separation took place in September 2016. She said the divorce took place in

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<sup>21</sup> See GD2R-76 to 77 and 80.

<sup>22</sup> See GD2R-48 to 49.

<sup>23</sup> See GD3-3.

<sup>24</sup> See GD14-5 to 8.

<sup>25</sup> See GD2R-13



November 2018. She continued to live with the Added Party because she could not afford an apartment of her own. She explained that she had her own room.<sup>26</sup>

[37] However, the Appellant clarified her living arrangements in a letter dated April 25, 2019. She said that she frequently argued with the Added Party in 2016. She said that they would separate for short periods and then reconcile. They would reconcile and then separate again. She said that divorcing was a shameful event in their culture. She said that her fights and separated periods with the Added Party were not known by their family and friends. Their children were aware of the disagreements, but they were not aware that they would go for weeks and even months without talking to each other. In August 2018, she and the Added Party decided that they needed to divorce. Their divorce became official in November 2018.<sup>27</sup>

[38] The Appellant's daughter testified that she did not live with her mother and father from December 2016 to November 2018. But she would visit them once a week. She would speak to the Appellant almost everyday. She said her parent's marriage was troubled because of the Appellant's health. The Appellant hallucinated and cried all the time. The Appellant's daughter said that the Appellant and the Added Party began having periods of separation in December 2016. They always lived in the same apartment. They would keep separate rooms. But they would often reconcile and start staying in the same room. They would share meals when they reconciled, but would not do so when they separated. They did not decide to end their marriage until August 2018. She said the Appellant and Added Party never lived separate and apart.

[39] The Added Party told me that he began arguing with the Appellant in December 2016. They would go through periods of separation and reconciliation from December 2016 to July 2018, when he told the Appellant that divorce was the only solution. He told me they continued living together in the same apartment. They would sleep in the same room when they were reconciling, and would sleep in separate rooms when they were

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<sup>26</sup> See GD2R-76-77

<sup>27</sup> See GD2R-30

not speaking to each other. There was some sexual intimacy with the Appellant from December 2016 to July 2018.

[40] The Added Party told me that he and the Appellant were still husband and wife from December 2016 to July 2018, but he said the marriage was stormy. He said they would eat together when they got along. They have not shared a bedroom since July 2018. He said that he made an honest mistake telling the Minister that a separation took place in December 2016. He was not familiar with the legal meaning of the word separation.

### **The Appellant's and Added Party's financial arrangements**

[41] I am satisfied that the Appellant and Added Party shared a financial life until at least July 2018.

[42] The Appellant completed a questionnaire that the Minister received in September 2020, where she outlined the financial arrangements between herself and the Added Party. She again said that she and the Added Party separated in December 2016. However, she did not get her own bank account until October 2018. She said that she paid \$605.00 a month in rent in 2019, while the Added Party paid \$663.50 per month in rent.<sup>28</sup> They split the cable television, and telephone bills equally. The Added Party would purchase his own clothes in 2019. The Appellant used public transportation, while the Added Party had his own car.<sup>29</sup>

[43] The Appellant's daughter told me that the Appellant and Added Party kept the same bank account until November 2018. The Appellant and Added Party paid rent and utilities out of a joint bank account before November 2018. The Appellant and Added Party shared expenses before November 2018. The Added Party managed the finances because of the Appellant's health. She said they stopped sharing expenses after they

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<sup>28</sup> The Appellant's daughter explained the Added Party paid a little bit more because of parking.

<sup>29</sup> See GD2R-48 to 49.

finalized their divorce. The Appellant's daughter and her sister began taking care of the Appellant's finances after the divorce was finalized in November 2018.

[44] The Added Party told me that he held a joint bank account with the Appellant from December 2016 to July 2018. The rent was paid through an automatic withdrawal from the joint bank account. He said utilities were included in the rent. The cable bill was paid through an automatic withdrawal from the joint bank account. He said that he owned a car and all expenses associated with that vehicle would be paid out of that joint account. He said that all their income went into their joint bank account and their expenses would be paid out of that joint bank account. He said that he and the Appellant have had their own bank accounts since July 2018.

### **The behaviour of the Appellant and Added Party towards each other privately and in public**

[45] I am satisfied that the behaviour of the Appellant and Added Party towards each other privately and in public showed that they lived in a conjugal relationship until July 2018.

[46] The Appellant's daughter told me that the Added Party used to drive the Appellant around. That stopped after they finalized their divorce in 2018. The Appellant now relies on public transportation.

[47] The Added Party told me that he and the Appellant had health problems. He provided the Appellant with care before July 2018. She provided him with moral support before July 2018. He took the Appellant to medical appointments. They have had little to do with each other since July 2018. They did not buy each other many gifts before July 2018 because of their limited income. But they socialized outside the home before July 2018. They ate together when they got along before July 2018. But they have lived separate lives since July 2018, even though they live in the same apartment. They do not communicate with each other much. They have not shared meals since July 2018. His daughters now provide the care to the Appellant that he provided before July 2018.

### **What help did the Appellant and Added Party give each other in the home**

[48] The Appellant's daughter told me that the Appellant's health affected her ability to perform housekeeping tasks even before December 2016. She says that she and her sister helped with the housecleaning.

[49] The Added Party told me that he cooked before July 2018, while the Appellant did as much of the housework as her health allowed. He did the shopping because he would not let the Appellant go out of the house on her own because of her health problems. Their daughters would come to the apartment on weekend to help with housecleaning. Their daughters also did the laundry.

### **How the Appellant's and Added Party's family and community viewed their relationship**

[50] I am satisfied that the Appellant and the Added Party presented themselves as a married couple to the community and that they were recognized as a married couple until July 2018.

[51] The Appellant's daughter told me that people treated the Appellant and the Added Party as a married couple from December 2016 to July 2018. They kept up the appearance of being together because divorce was frowned upon in their culture. She told me that she thought her parents separated in July or August 2018, after the Added Party initiated divorce proceedings.

[52] The Added Party told me that he did not tell his children everything about his marital problems with the Appellant. He said that his family recognized them as a married couple before July 2018. He said that the Appellant's family recognized them as a married couple before July 2018. He also said that his property manager recognized them as a married couple.

## Final comments about the evidence

[53] I find that the Appellant and the Added Party lived in a conjugal relationship until July 2018. This means that Appellant was eligible to receive the ALW benefits she received from April 2017 to November 2018. Since the Added Party and Appellant separated in July 2018, the Appellant was still entitled to receive ALW benefits until November 2018. This is because the OAS Act says that in order to receive the ALW, the Appellant must not be separated from her spouse for more than three months following the month of separation.

[54] The Appellant's daughter said her parents separated in July or August 2018. I selected July 2018 as the separation date because the Added Party said that was the month they decided to divorce. I believe the Added Party would have greater knowledge of the separation date than the Appellant's daughter. There were also some mild discrepancies between the evidence of the Appellant's daughter and the Added Party. For example, the Appellant's daughter said the Appellant got her own bank account in November 2018. While the Added Party said this happened in July 2018. In any event, I found that the substance of their evidence was very similar. The Appellant and Added Party had a difficult marriage. There were short periods of separation from December 2016 to July 2018. But the conjugal relationship continued until July 2018.

[55] The Appellant and Added Party represented themselves as having separated in December 2016 in questionnaires and statutory declarations that they provided to the Minister. However, I am not bound to accept the statements they provided to the Minister. I am satisfied that the Appellant's daughter and the Added Party's testimony explained the nature of the relationship. I am satisfied that the Appellant and Added Party began having short periods of separation in December 2016, followed by periods of reconciliation. But I do not see evidence that either party, by their conduct, clearly decided to end the relationship in December 2016. I am satisfied that the Appellant and Added Party continued to live in a conjugal relationship until July 2018 because:

- They continued to live together.

- They shared a financial life together until July 2018.
- Their private and public behaviour showed they lived in a conjugal relationship until July 2018.
- They performed housekeeping services for each other until July 2018.
- They presented themselves as a married couple to the community and they were recognized as a married couple until July 2018.

## **Conclusion**

[56] I find that the Appellant is eligible to receive ALW benefits from April 2017 to November 2018.

[57] This means the appeal is allowed.

George Tsakalis  
Member, General Division – Income Security Section