



Citation: *TL v Minister of Employment and Social Development and The Estate of WP*, 2025 SST 382

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: T. L.

Respondent: Minister of Employment and Social Development

Added Party: The Estate of W. P.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 27, 2024 (issued
by Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Teleconference

Hearing date: February 26, 2025

Hearing participant: Appellant

Decision date: March 18, 2025

File number: GP-24-700

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. L., isn't eligible for all the benefits she received under the Old Age Security (OAS) program from September 2004 to June 2016.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant is an 80-year-old woman whose common-law partner (W. P.) passed away in August 2019. Soon after her partner's death, the Appellant applied for a Canada Pension Plan (CPP) survivor's pension. In her application, she said she was in a common-law relationship with W. P. at the time that he died.¹

[5] The common-law relationship was important information to the Minister of Employment and Social Development (Minister). This is because the Minister began paying the Appellant benefits under the OAS program in 2004 as if she had never remarried or began a common-law relationship after her husband passed away in 1978.

[6] In November 2020, the Minister wrote to the Appellant and told her she wasn't eligible for all the OAS benefits she received from September 2004 to June 2016. The Minister told the Appellant she would have to repay the benefits she wasn't entitled to, an amount totalling almost \$36,000.²

[7] The Appellant asked the Minister to reconsider its decision.³ The Minister reconsidered and decided to maintain the decision of November 2020.⁴

[8] The Appellant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

¹ See pages GD2-81 and GD2-82.

² See page GD2-100.

³ See pages GD2-112 to GD2-113.

⁴ See pages GD2-124 to GD2-126.

[9] The Appellant has provided conflicting information about when her common-law relationship began. At the hearing, however, she acknowledged the common-law relationship was in existence by September 2004. She also acknowledged the common-law relationship continued until August 2019.

[10] The Minister says the Appellant was in a common-law relationship from February 1979 to August 14, 2019. As such, the Appellant wasn't eligible for the Allowance for the Survivor that she received from September 2004 to August 2009, or the Guaranteed Income Supplement (GIS) benefits she received as a single pensioner from September 2009 to June 2016 (when the couple began to live apart for reasons beyond their control). Instead, she was eligible for the Allowance and the GIS paid at the married rate based on the combined income of both common-law partners.

What the Appellant must prove

[11] To succeed with her appeal, the Appellant must show she wasn't in a common-law relationship with W. P. in and after September 2004.

[12] The OAS Act defines common-law partner this way:⁵

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

[13] When I am deciding if two people were cohabiting in a conjugal relationship, I have to look at factors like:⁶

- their living and sleeping arrangements
- their financial arrangements
- their behaviour toward each other privately and in public

⁵ See section 2 of the *Old Age Security Act*.

⁶ See *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

- the help they gave each other in the home
- how the community viewed their relationship

Procedural Matters

Neither the Minister nor the Added Party were represented at the hearing

[14] The Appellant was the only party at the hearing. I decided to go ahead with the hearing in the absence of a Minister's representative and the Added Party's representative.

[15] A hearing can go ahead without a party if that party got the notice of hearing.⁷ I decided that the Minister and the Added Party got the notice of hearing.

[16] The notice of hearing was sent by email to the Minister and to the Added Party's representative on January 13, 2025. The *Social Security Tribunal Rules of Procedure* say that when the Tribunal sends a document to a party by email, the document is considered received on the next business day.⁸ This means the Minister and the Added Party are deemed to have received the notice of hearing on January 14, 2025.

Reasons for my decision

– Why a person's marital status is important

[17] The Allowance for the Survivor is a benefit paid to a person who is 60 to 64 years of age and whose spouse or common-law partner has died and who has **not** become the spouse or common-law partner of someone else.⁹

⁷ See section 58 of the *Social Security Tribunal Rules of Procedure*.

⁸ See section 22(3) of the *Social Security Tribunal Rules of Procedure*.

⁹ See the definition of "survivor" in section 2 of the *Old Age Security Act* and see sections 21(1) and (8) of the *Old Age Security Act*.

[18] The GIS is paid to a person who receives the OAS pension and who has little or no other income.¹⁰ If the pensioner is married or in a common-law relationship, then their entitlement to the GIS is based on the couple's combined income.¹¹

– **The Appellant acknowledged that she was in a common-law relationship by 2004**

[19] During the hearing, the Appellant acknowledged that she was in a common-law relationship with W. P. by at least 2004. She also acknowledged that the common-law relationship continued until W. P. passed away in August 2019.

[20] There is evidence on file that supports a finding the common-law relationship was in existence by 2004.

[21] For example, the Appellant signed a Declaration of Common-Law Union in February 2018. In that document, she solemnly declared that she began living with W. P. in a common-law relationship on February 14, 1979.¹²

[22] Given what the Appellant told me at the hearing and given the existence of some supporting evidence on file, I decided it was not necessary for me to hear testimony about when (before 2004) the common-law relationship began. This is because the Appellant wasn't receiving any OAS benefits before 2004.

– **The law says that excess benefits must be repaid to the government**

[23] The law says that if a person receives a benefit payment that they aren't entitled to, or if a person receives a benefit payment that is more than what they are entitled to, then the person must repay that money to the government.¹³

¹⁰ There are other requirements, but they aren't an issue in this appeal.

¹¹ See section 12 of the *Old Age Security Act*.

¹² See page GD2-53.

¹³ See section 37(1) of the *Old Age Security Act*.

– **I can't cancel or reduce an overpayment**

[24] During the hearing, the Appellant spoke of the stress and financial hardship the overpayment has caused.

[25] I am sympathetic to the Appellant's circumstances. However, I can't make decisions based on compassion.¹⁴ The Minister has discretion, in certain circumstances, to forgive (cancel) all or part of an overpayment.¹⁵ However, I don't have the same discretion. This means that only the Minister (and not this Tribunal) can cancel or reduce an overpayment for reasons like undue hardship.

Conclusion

[26] The Appellant was in a common-law relationship with W. P. by September 2004. That relationship continued until W. P. passed away in August 2019.

[27] This means the Appellant wasn't eligible for the Allowance for the Survivor from September 2004 to August 2009. She also wasn't eligible for the GIS as a single pensioner from September 2009 to June 2016.

[28] The appeal is dismissed.

Shannon Russell

Member, General Division – Income Security Section

¹⁴ See *Canada (Minister of Human Resources Development) v. Esler*, 2004 FC 1567.

¹⁵ See section 37(4) of the *Old Age Security Act*.