



Citation: *LK v Minister of Employment and Social Development and BC*, 2025 SST 1309

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

Decision

Appellant: L. K.

Respondent: Minister of Employment and Social Development

Added Party: B. C.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated January 21, 2025 (issued by Service Canada)

Tribunal member: Dawn Kershaw

Type of hearing: In person

Hearing date: November 20, 2025

Hearing participants: Appellant
Appellant's witness
Respondent's representative
Added Party

Decision date: December 11, 2025

File number: GP-25-699

Decision

[1] The appeal is dismissed. The Appellant, L. K., separated from her spouse on August 31, 2022. This means she wasn't eligible to be paid a Guaranteed Income Supplement (GIS) at the rate for a married person as of December 2022. She has to be paid GIS as a single person.

[2] This decision explains why I am dismissing this appeal.

Overview

[3] The GIS is paid to people who are receiving an Old Age Security (OAS) pension if they have little or no other income. The amount of GIS they receive depends on their income and whether they are single, married, or have a common law partner.

[4] If a pensioner is separated from their spouse for a continuous period of at least three months, their GIS eligibility is calculated as if they were single.¹

[5] The Appellant began getting an OAS pension in 2018. In March 2020, the Appellant she applied for GIS as a married person. At that time, she was married to the Added Party. She was approved for GIS in July 2020.

[6] In February 2023, the Added Party applied for GIS as a single person. He wrote that he and the Appellant separated in August 2022.

[7] In April 2023 the Added Party sent the Minister a statutory declaration of separation from the Appellant and a copy of an agreement that said they separated on August 31, 2022.

[8] The Minister decided the Appellant's GIS should be calculated at the rate for a single person as of December 2022 (three months after she and the Added Party

¹ See sections 15(4.1) of the *Old Age Security Act* (OAS Act).

separated on August 31, 2022). The Minister said the Appellant had to repay \$2123 she received for GIS from December 2022 to July 2023, when it stopped paying her.²

[9] The Appellant says she and the Added Party didn't separate until April 9, 2023, when they finalized their separation agreement and division of property and the Added Party moved out of their shared home.

[10] The Appellant says she picked the August 31, 2022, separation date because she was upset at the Added Party. She said once she picked that date, she didn't know how to undo it.

[11] The Minister says the Appellant and Added Party separated in August 2022 and were living separate and apart under one roof from that date on.

[12] Because the Minister refused to change its decision, the Appellant appealed to the Social Security's General Division.

What the Appellant must prove

[13] For the Appellant to succeed in this appeal, she has to prove that she and the Added Party were not separated during the period in question – that is, from August 31, 2022, to April 9, 2023.

[14] The Appellant has to prove this on a balance of probabilities. This means she has to show that it is more likely than not that she wasn't separated under the OAS Act.

Reasons for my decision

[15] I find that the Appellant and the Added Party separated on August 31, 2022. Even though they lived under the same roof until April 9, 2023, they were separated. So, as of August 31, 2022, the Appellant was single.

[16] Here are the reasons for my decision.

² See GD2-5 to 7.

What “separated” means

[17] There isn’t much law in this area, but I was persuaded by another case from this Tribunal.³ The facts in that case are a bit different, but it was helpful anyway.

[18] The OAS Act doesn’t say what “separated” means. There aren’t any court decisions that define it for OAS purposes. So, I have to look at its ordinary meaning and how it fits in with the purpose of the OAS Act and what Parliament intended.⁴

[19] Being “separated” usually means being apart. But when talking about married people being separated, it means more than that. It means they are apart because at least one of them has decided not to live as a married couple and has acted on that decision.⁵

[20] I find that Parliament intended for the OAS Act to mean this as well. I reached this conclusion by looking at a similar rule for common-law partners in the OAS Act.⁶ Like married spouses, their GIS is based on both their incomes. If they stop being common-law partners for more than three months, their GIS is calculated at the single rate.

[21] I think Parliament intended to treat common-law couples and married couples the same way. In other words, the factors that show two people have stopped being common-law partners are the same ones that show a married couple is separated.

[22] The OAS Act says a common-law partner is “a person who is cohabiting with [an appellant] in a conjugal relationship.”⁷ This means spouses aren’t separated if they are cohabiting in a conjugal relationship.

³ See *CL v Minister of Employment and Social Development*, 2024 SST 390.

⁴ See *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27.

⁵ This understanding is supported by the Supreme Court of Canada in *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65 at paragraph 42, and by the Tribunal’s Appeal Division in *CT v Minister (Employment and Social Development) and EM*, 2024 SST 1350 at paragraph 34.

⁶ See section 15(4.2) of the OAS Act.

⁷ See section 2 of the OAS Act.

[23] I will now explain why I decided that the Appellant wasn't in a conjugal relationship with the Added Party during the relevant period.

What cohabiting in a conjugal relationship means

[24] Several court decisions explain what "cohabiting in a conjugal relationship" means. Although some of these decisions are about the *Canada Pension Plan*, they are relevant because the *Canada Pension Plan* defines "common-law partner" the same way as the OAS Act.⁸

[25] These decisions tell us that two people can cohabit even if they don't live under the same roof.⁹ They also say it's possible to be separated yet still live in the same household.¹⁰

[26] When I am deciding whether the Appellant and the Added Party were cohabiting in a conjugal relationship, I have to look at factors like:

- their living and sleeping arrangements
- their financial arrangements
- their behaviour toward each other privately and in public
- the help they gave each other in the home
- how the community viewed their relationship¹¹

[27] A couple doesn't have to meet all of these factors. And they may meet them to varying degrees. I have to take a flexible approach in deciding whether there was a conjugal relationship.¹²

⁸ See section 2 of the OAS Act and section 2 of the *Canada Pension Plan*.

⁹ See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65 at paragraph 42.

¹⁰ See *Kombargi v Canada (Minister of Social Development)*, 2006 FC 1511.

¹¹ See *McLaughlin v Canada (Attorney General)*, 2012 FC 556.

¹² See *M v H*, [1999] 2 SCR 3 at paragraphs 59-60.

[28] A relationship ends “when either party regards it as being at an end and, by his or her conduct, has demonstrated in a convincing manner that this particular state of mind is a settled one”.¹³

– **The Appellant and Added Party separated in August 2022**

[29] This case is complicated because not only did the parties still live together under the same roof, but they also remained friends who helped each other. They are still friends. They still get together sometimes for family gatherings. As their daughter said at the hearing, in some ways their relationship is better now than it was before.

[30] The Appellant and Added Party married in 1983.¹⁴ They divorced once before in 2000.¹⁵ They remarried in July 2002.¹⁶

[31] The Appellant’s and Added Party’s lives have been complicated by illness and financial difficulties. The Appellant said she remarried the Added Party in 2002 because she was worried about her health.¹⁷

[32] The Appellant said she moved to a separate bedroom in 2008, and the parties never slept together again after this.¹⁸ The Appellant later said this was for medical reasons and not because they didn’t have a marital relationship.¹⁹ But in the earlier letter the Appellant also said they lived as separated for years.²⁰ I prefer the earlier evidence to the later evidence because it was more detailed. I believe the earlier evidence more closely reflected the reality of why the parties slept separately, though it may also have been for medical reasons.

¹³ See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65. Even though this case was about whether a common-law couple was separated, it applies here because the test for married couples and common-law couples is the same.

¹⁴ See civil marriage statement at GD2-4.

¹⁵ See Appellant’s September 21, 2023, letter to Service Canada at GD2-14.

¹⁶ See Appellant’s September 21, 2023, letter to Service Canada at GD2-14.

¹⁷ See Appellant’s September 21, 2023, letter to Service Canada at GD2-14.

¹⁸ See Appellant’s September 21, 2023, letter to Service Canada at GD2-14.

¹⁹ See Appellant’s August 12, 2025, submissions at GD29-3.

²⁰ See Appellant’s September 21, 2023, letter to Service Canada at GD2-14.

[33] The Added Party moved out for a month or two in about February 2016. He moved out again for a short time in about March 2017. The Appellant said they could not split up because of their finances. She said the Added Party had not worked since 2012 despite being in good health.²¹

[34] In 2019 when they sold their house, the Appellant planned to move to Calgary. She said the Added Party decided at the last minute he would move there, too. She described this as being uncomfortable but said they could not separate until they could afford to. They moved to a condo where they had their own rooms.²²

[35] The Appellant also said she lived and ate in her own room. She said she and the Added Party were married in name only, simply sharing the same address. She further said on most days there wasn't any conversation between them.²³

[36] The Appellant later said she was emotional when she wrote this, but I prefer the Appellant's earlier evidence because it is closer in time to the events she was writing about and is more likely to be more accurate than her later recollections.

[37] The Appellant said her goal was to pay off their debts, which they did as of July 2022, and then move to a separation.²⁴ This is consistent with the overall goal of an intent to separate as of August 31, 2022.

[38] The Appellant chose August 31, 2022, as their separation date. She prepared a list of assets. She said she wanted to have a date at which she would not be financially responsible for the Added Party anymore.²⁵ This supports that the Appellant intended to separate as of August 31, 2022.

²¹ See Appellant's September 21, 2023, letter to Service Canada at GD2-14.

²² See Appellant's September 21, 2023, letter to Service Canada at GD2-14.

²³ See Appellant's September 21, 2023, letter to Service Canada at GD2-15.

²⁴ See Appellant's September 21, 2023, letter to Service Canada at GD2-14.

²⁵ See Appellant's September 21, 2023, letter to Service Canada at GD2-14.

[39] The Appellant's daughter said that she thought in her mother's (the Appellant's) mind, the parties' separation took place in August 2022.²⁶ This supports that the Appellant was separated in August 2022.

[40] The Appellant also told the Canada Revenue Agency (CRA) that she and the Added Party separated in August 2022. She didn't tell the Minister then because she thought CRA and the Minister were connected.²⁷ This supports a separation date of August 31, 2022.

[41] The Appellant later asked the CRA to change the date of separation²⁸, but this doesn't change the rest of the evidence that shows the Appellant's intention to divide assets and separate as of August 31, 2022. Asking CRA to change the separation date doesn't change the rest of the evidence that shows the Appellant's intention to separate as of August 31, 2022.

[42] The parties also signed a separation agreement²⁹ and a statutory declaration³⁰ that said the parties separated on August 31, 2022.

[43] The Appellant said neither she nor the Appellant is dating anyone else and they don't intend to divorce. The Appellant said she considers herself married. However, this doesn't mean she and the Added Party aren't separated. I find they are separated, despite their ongoing friendship.

[44] In summary, the Appellant and the Added Party have a mutual respect and continue to sometimes do things together. But the overall evidence shows that the Appellant and Added Party separated in August 2022. This is the date which the Appellant chose for their marriage to end after many years of living separate and apart under the same roof, even if they aren't planning to divorce.

²⁶ See Appellant's daughter's letter at GD2-31. The Appellant's daughter said this at the hearing, too.

²⁷ See Appellant's September 21, 2023, letter to Service Canada at GD2-14.

²⁸ See Appellant's February 5, 2025, letter to CRA at GD36-5.

²⁹ See separation agreement at GD2-23.

³⁰ See Appellant's statutory declaration of separation at GD2-9.

Conclusion

[45] The Appellant and Added Party separated in August 2022. As a result, the Appellant has to be paid GIS as a single person as of December 2022.

[46] This means the appeal is dismissed.

Dawn Kershaw
Member, General Division – Income Security Section