



Citation: *MS v Minister of Employment and Social Development*, 2025 SST 53

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

## Decision

**Appellant:** M. S.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 19, 2024 (issued by  
Service Canada)

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**Tribunal member:** Virginia Saunders

**Type of hearing:** Teleconference

**Hearing date:** January 8, 2025

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** January 22, 2025

**File number:** GP-24-1523

## **Decision**

[1] The appeal is dismissed.

[2] The Appellant, M. S., isn't eligible for a Canada Pension Plan (CPP) survivor's pension in respect of the deceased CPP contributor, D. S. (D. S.). This decision explains why I am dismissing the appeal.

## **Overview**

[3] The Appellant and D. S. were in a common-law relationship from 1989 until 1994, when they got married. They divorced in 2013. They reunited in 2021 and started living together in June 2022. They remarried on January 8, 2023. Sadly, D. S. passed away from cancer on January 14, 2023.

[4] The Appellant applied for a CPP survivor's pension later that month. The Minister denied the application. The Appellant appealed to the Social Security Tribunal's General Division.

[5] The Minister says the Appellant isn't eligible for a survivor's pension because, at the time of the marriage, D. S. did not expect to live for at least one year.

[6] The Appellant says that he and D. S. were committed to each other and intended to marry once she was through a rough patch with her cancer treatment. Until January 4, 2023, they believed she had one to two years to live.

## **What I have to decide**

[7] I have to decide if the Appellant is eligible for a CPP survivor's pension in respect of D. S.

## **Reasons for my decision**

[8] I find that the Appellant is not eligible for a survivor's pension. Although he is a "survivor" as defined by the law, he doesn't qualify. This is because D. S. died less than

one year after they got married and, when they got married, she did not expect to survive for at least one year.

## **What the law says**

[9] The survivor of a deceased CPP contributor is usually entitled to a survivor's pension.<sup>1</sup> The *Canada Pension Plan* defines "survivor" as the contributor's common-law partner or (if there is no common-law partner) the person who was married to the contributor when the contributor died.<sup>2</sup>

[10] However, if a contributor dies within one year after the marriage, a survivor's pension can't be paid if, at the time of the marriage, the contributor's health condition was such that they would not be justified in expecting to survive for at least one year.<sup>3</sup>

[11] The only exception to this rule is if the spouses lived together in a common-law relationship immediately before the marriage, and the total of the period when they were common-law and the period when they were married is at least one year.<sup>4</sup>

## **Why the Appellant doesn't qualify for the survivor's pension**

[12] D. S. did not have a common-law partner when she died. She was married to the Appellant. So, the Appellant was her survivor. But, because of the circumstances surrounding their marriage, he can't get a survivor's pension.

### **– The Appellant's evidence**

[13] I believe what the Appellant told me about his relationship with D. S. He was sincere and candid in giving his evidence. He offered information that he knew would not help his case.

[14] The Appellant told me that D. S. was diagnosed with cancer in October 2022. On November 23, 2022, her doctor told her she had one to two years to live. Right after

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<sup>1</sup> See section 44(1)(d) of the *Canada Pension Plan*. The deceased must also have contributed to the CPP for a minimum period of time, but that isn't an issue here.

<sup>2</sup> See section 42(1) of the *Canada Pension Plan*.

<sup>3</sup> See section 63(7) of the *Canada Pension Plan*.

<sup>4</sup> See section 63(7.1) of the *Canada Pension Plan*.

that, the Appellant and D. S. decided they would get married so they would be together for the rest of D. S.'s life. They told their daughters and D. S.'s sister about their decision.

[15] The couple wanted to take their time and plan a good wedding. They did not feel rushed. They decided to wait until D. S.'s radiation treatment was over, expecting that she would feel better. They also wanted to wait until after the Christmas holidays, when people wouldn't be so busy.

[16] Unfortunately, D. S.'s condition soon got worse. On January 4, 2023, her prognosis was changed. A doctor came into her hospital room and told them that D. S. had one to two months to live. At that point, she and the Appellant hadn't made any concrete plans for the wedding. They decided to do something very quickly. They decided to get married on January 10, 2023, which would give their daughter time to get to Canada from where she was living overseas. Then they moved the date up by two days at the suggestion of D. S.'s doctor.

[17] The marriage took place in D. S.'s hospital room on January 8, 2023. The hospital staff worked hard to make the wedding happen, and the Appellant thought it was nice even considering the circumstances.

[18] D. S. died a week later, on January 14, 2023.

[19] The Appellant told me he didn't know anything about the survivor's pension until the funeral home staff gave him an application. He argued that the marriage was genuine and that the 24 years that he and D. S. were together from 1989 to 2013 should count for something.

– **How the law applies to this appeal**

[20] The Appellant told me that D. S. understood what the doctor told her about her prognosis. She did not expect to live for one year or more when she married the Appellant. Even if she did expect to, she would not have been justified in having such a belief.

[21] The Appellant agrees that the second period when they lived common-law (from July 2022 to January 7, 2023) and the second period when they were married (January 8 to 14, 2023), does not add up to one year.

[22] Unfortunately, this means the Appellant isn't eligible for a survivor's pension. I accept that the marriage was genuine and didn't happen sooner for legitimate reasons. But the law doesn't look at the couple's intentions, their motivation, or their particular circumstances. It only looks at when the marriage took place, when the contributor died, and what the contributor was justified in believing about their life expectancy at the time of the marriage.

## **Conclusion**

[23] I find that the Appellant isn't eligible for a CPP survivor's pension.

[24] This means the appeal is dismissed.

Virginia Saunders  
Member, General Division – Income Security Section