



Citation: *LD v Minister of Employment and Social Development and DD*, 2025 SST 178

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: L. D.

Respondent: Minister of Employment and Social Development
Representative: Andrew Kirk

Added Party: D. D.

Decision under appeal: General Division decision dated December 7, 2023
(GP-23-660)

Tribunal member: Pierre Vanderhout

Type of hearing: Teleconference

Hearing date: February 13, 2025

Hearing participants: Appellant
Respondent's representative
Added Party

Decision date: February 28, 2025

File number: AD-24-200

Decision

[1] The appeal is dismissed. The Appellant remains entitled to a Division of Unadjusted Pensionable Earnings (DUPE) under the Canada Pension Plan (CPP) for the years 1999 to 2011. She is not entitled to have any additional years included in the DUPE.

Overview

[2] In this decision, I will refer to the Appellant, L. D., as the “Claimant.” I will refer to the Minister of Employment and Social Development as the “Minister.” Finally, I will refer to the Added Party, D. D., as the “Added Party.”

[3] The Claimant and the Added Party began a common-law relationship in 1989. However, in early 1994, the common-law relationship ended.¹

[4] The Claimant and the Added Party reconciled in 1999.² They married on August 6, 1999.³ The marriage eventually broke down. The Added Party said they separated in September 2012. The Claimant has given several different dates for their separation, ranging from 2012 to 2015.

[5] The Claimant applied for a DUPE (also known as a CPP credit split) in March 2022.⁴ The Minister granted a DUPE for the period from January 1, 1999, to December 31, 2011. The Minister based this decision on an August 1999 marriage and a 2012 separation date. However, the Minister did not grant a DUPE for the common-law relationship that ended in 1994. The Minister said the Claimant applied too late to receive the DUPE for the period from 1989 to 1994.

¹ See GD2R-20, GD2R-27, GD2R-30, and GD3-1. It is immaterial whether January or February was the end of that relationship.

² See GD2R-30.

³ See GD2R-23.

⁴ See GD2R-25.

[6] The Claimant asked the Minister to reconsider that decision. But the Minister upheld its decision. The Claimant then appealed to the Social Security Tribunal (Tribunal).

[7] On December 7, 2023, the Tribunal's General Division dismissed the Claimant's appeal. The General Division found that the dates for the second cohabitation period were likely April 1999 to September 2012. These findings did not change the DUPE period. The General Division also found that the Claimant did not apply for the DUPE within four years of their first cohabitation period (1989-1994). This means the DUPE could not apply to that period.

[8] The Claimant has now appealed to the Tribunal's Appeal Division. She maintains that the final separation was after 2012. Her appeal materials did not speak to the cohabitation period from 1989 to 1994.

[9] The Claimant and the Added Party agreed that the first period of cohabitation lasted from 1989 to 1994. The Claimant also said she was not advancing an incapacity claim for the period following that cohabitation. The Added Party said he was not waiving the four-year limitation period applicable to DUPEs for common-law relationships. Finally, the parties also agreed that the second period of cohabitation began in 1999.⁵

[10] I must decide whether the Claimant is entitled to a DUPE for the first period of cohabitation (1989-1994) with the Added Party. This issue is easy to resolve, as the parties agree on the underlying facts.

[11] However, I must also decide when, after their 1999 marriage, the Claimant and the Added Party separated. This was the focus of the hearing.

[12] I find that the Claimant is not entitled to a DUPE for the first period of cohabitation between 1989 and 1994.

⁵ See also AD26-2.

[13] I also find that the second separation date for the Claimant and the Added Party was September 2012. This means that the DUPE applies to the years 1999 to 2011, inclusive.

[14] I will now explain how I made these findings.

Issues

[15] The issues in this appeal are:

- a) Is the Claimant entitled to a DUPE for the 1989-1994 common-law relationship with the Added Party?
- b) When did the Claimant and the Added Party separate after their 1999 marriage?
- c) For that separation date, to which years does the DUPE apply?

Analysis

[16] The key date for a DUPE is when the two people begin to live separate and apart. They are deemed to live separate and apart for any period during which they lived apart and **either of them** had the intention to live separate and apart from the other.⁶

[17] I can only consider the months during which the two people cohabited.⁷ A DUPE is only possible if the cohabitation lasted for a continuous period of at least one year.⁸

Is the Claimant entitled to a DUPE for the 1989-1994 common-law relationship with the Added Party?

[18] The Claimant is not entitled to a DUPE for the 1989-1994 common-law period. I will now explain why.

⁶ See section 55.1(2) of the *Canada Pension Plan*.

⁷ See section 55.1(4) of the *Canada Pension Plan*.

⁸ See section 55.1(3) of the *Canada Pension Plan*.

[19] The Claimant and the Added Party agree that their common-law relationship started in 1989 and ended in 1994. The documentary evidence is also consistent with this.⁹ As that period of cohabitation lasted for more than one year, a DUPE is potentially available for that period.

[20] However, eligibility for a DUPE is slightly different for common-law relationships. Unlike married spouses, a former common-law partner must apply for a DUPE within four years after the day on which they began to live separate and apart. The only exception is when both former common-law partners agree in writing to waive that four-year limitation period.¹⁰

[21] In this case, the Added Party never agreed in writing to waive the four-year limitation period. He affirmed that position verbally at both the General Division and Appeal Division hearings. This means that the only potential exception to the four-year rule does not apply.

[22] As the common-law relationship ended in 1994, and the Claimant did not apply for the DUPE until March 2022, she clearly missed the four-year limitation period. This means no DUPE applies to the common-law relationship that ended in 1994.

[23] A further argument was explored at the General Division. The General Division discussed the possibility that the Claimant did not apply for a DUPE for the 1989-1994 common-law period because she lacked the necessary capacity.¹¹ However, at the Appeal Division, the Claimant did not advance that argument. The only issue argued was the separation date after the 1999 marriage.¹²

⁹ See GD2R-27, GD2R-33, GD2R-37, and GD3-2.

¹⁰ See section 55.1(1)(c) of the *Canada Pension Plan*.

¹¹ Section 55.3 of the *Canada Pension Plan* makes it possible to adjust the application date due to incapacity.

¹² See AD26-2. The Claimant's Leave to Appeal materials also made no mention of any incapacity: see AD1-9 to AD1-16. Those materials also focused on the separation date after the 1999 marriage.

When did the Claimant and the Added Party separate after their 1999 marriage?

[24] The Claimant and the Added Party separated in September 2012. I will now explain the basis for that finding.

[25] The Claimant and the Added Party have given different versions of the separation. The Claimant said it flowed from an incident of physical abuse by the Added Party. The Added Party said it flowed from other incidents between them, most notably events at his nephew's wedding. For this appeal, the date of separation is more important than the reasons behind it.

[26] The Claimant and the Added Party do not agree on the separation date. The Added Party says it was in September 2012. The Claimant says it was later.

– The Added Party's position

[27] The Added Party has consistently stated that the separation date was September 2012. He first gave this date in October 2014.¹³

[28] The Added Party affirmed the September 2012 separation date at both Tribunal levels. He said that the family attended his nephew's wedding on the September 2012 Labour Day weekend, just before their daughter started Grade 8. He and the Claimant had arguments. That was when he decided that he had to leave the house on X, which I will call the "Matrimonial Home". He then rented a seasonal cottage until some point in October 2012. His daughter went with him.¹⁴

[29] The Added Party said he then stayed in two different units on X. He was at the first one from October 2012 to April 2013. He was at the other one from April 2013 to the autumn of 2013. He then lived in a unit on X to the summer of 2014. He then bought the first unit he rented on X.¹⁵

¹³ See AD1C-11.

¹⁴ See the recording of the General Division hearing (November 17, 2023), at 0:51:40 to 0:56:57 and 0:59:29 to 1:00:21. Also see the recording of the Appeal Division hearing.

¹⁵ The Added Party said this at the Appeal Division hearing.

[30] The Added Party admitted that he and the Claimant “dated” each other occasionally after September 2012. They spent a couple of nights together. These were either in his home or on a single 2014 weekend in Niagara Falls. They had sexual relations from time to time. But he said they never reconciled.¹⁶

– **The Claimant’s Position**

[31] The Claimant has given many different separation dates. The following chart, which I will call the Separation Chart, summarizes those dates in chronological order:

<u>Date of Statement</u>	<u>Source of Statement</u>	<u>Separation Date</u>
October 3, 2014	Document signed by both spouses	September 2012 ¹⁷
August 12, 2019	Claimant letter to Dr. Yim-Lee	September 2012 ¹⁸
February 7, 2022	Application for CPP Credit Split	2012 ¹⁹
February 7, 2022	Statutory Declaration	2012 ²⁰
March 10, 2022	Application for CPP Credit Split	January 2013 ²¹
March 10, 2022	Statutory Declaration	January 2013 ²²
November 14, 2022	Reconsideration Request	June 10, 2013 ²³
September 28, 2023	General Division Hearing	January 2013 ²⁴

¹⁶ See the recording of the General Division hearing (November 17, 2023), at 1:00:49 to 1:03:30 and 1:03:39 to 1:06:42. Also see the recording of the Appeal Division hearing.

¹⁷ See AD1C-11. The document focuses on their daughter’s living arrangements. However, it indicates that the Added Party and Claimant did not live in the same place from September 2012 onward.

¹⁸ See AD1B-5, AD1E-14, and AD1F-10. This also focuses on their daughter’s living arrangements. But it indicates that the Added Party and Claimant did not live in the same place from September 2012 onward.

¹⁹ See GD2R-33.

²⁰ See GD2R-38.

²¹ See GD2R-27.

²² See GD2R-30.

²³ See GD2R-20.

²⁴ See the recording of the General Division hearing (September 28, 2023), at 1:38:58 to 1:39:32.

September 28, 2023	General Division Hearing	August 2015 ²⁵
November 17, 2023	General Division Hearing	November 2015 ²⁶
November 17, 2023	General Division Hearing	January 2013 ²⁷
March 8, 2024	Submissions to SST	January 2013 ²⁸
April 2, 2024	Submissions to SST	2013 ²⁹
April 24, 2024	Letter to Canada Revenue Agency	January 2013 ³⁰
December 27, 2024	Submissions to SST	late 2012 ³¹
December 28, 2024	Submissions to SST	November 2015 ³²
February 13, 2025	Appeal Division Hearing	January 2013
February 13, 2025	Appeal Division Hearing	November 2015

[32] The Claimant acknowledges that she has given many different separation dates. The February 2025 hearing was her last opportunity to clarify her position. At that time, she said she offered several dates because she was not sure what the law said. She said they initially separated in January 2013, but she believed the law could delay the separation date in abusive relationships. She also suggested that she chose November 2015 as the separation date as that was when she had finally had enough of the Added Party.

²⁵ See the recording of the General Division hearing (September 28, 2023), at 1:37:48 to 1:38:58 and 1:39:52 to 1:41:20.

²⁶ See the recording of the General Division hearing (November 17, 2023), at 0:16:57 to 0:17:12 and 0:33:59 to 0:35:40.

²⁷ See the recording of the General Division hearing (November 17, 2023), at 0:45:24 to 0:47:29 and 0:50:16 to 0:50:37.

²⁸ See AD1B-8.

²⁹ See AD1E-11.

³⁰ See AD25-8, AD25-10, and AD25-14.

³¹ See AD22-40.

³² See AD22-48.

[33] In my view, the Claimant's confusion arises in part because she blended legal arguments and her version of the facts. I will first focus on the underlying facts.

– **When the Claimant and the Added Party initially separate, after their marriage?**

[34] While I will make a finding on the exact date in the next section of this decision, I first find that the Claimant and the Added Party initially separated by no later than January 2013. Any subsequent dates refer to potential reconciliation. I will now explain why.

[35] The Added Party's evidence consistently points to a separation date in September 2012. The Claimant's evidence mostly points to a separation date in 2012 or January 2013. She did identify later dates at each of the three hearing dates and in some of her written materials. However, the later dates were almost always combined with a second date in or before January 2013.

[36] The Separation Chart shows that whenever the Claimant identified a 2015 separation date at a hearing, she also identified an earlier separation date at some point during that hearing. This happened at the September 2023 hearing, the November 2023 hearing, and the February 2025 hearing.

[37] The Separation Chart shows that this also happened in the Claimant's December 2024 written submissions. On one document, she identified a late 2012 separation date. However, in the same batch of submissions, she identified a November 2015 separation date. She explained this by saying they "were still working on being a couple again" up to that date.³³ This suggests, as she stated at the February 2025 hearing, that the 2015 dates refer to possible reconciliation attempts rather than the initial separation date.

[38] The lone exception is the June 2013 separation date the Claimant advanced in November 2022. She said they separated on that date because of the Added Party's

³³ See AD22-48.

abuse.³⁴ This contradicts her other statements placing that abuse in January 2023. She also suggested that she was unable to put her mind to the correct date at that time.³⁵

[39] I also note that the Claimant wrote a letter to the Added Party in June 2013 that says a separation agreement, financial issues, and child visitation scheduled were all outstanding issues between them. She also wondered whether reconciliation was possible, as she had seen “little improvement in the last few months.”³⁶

[40] Almost all of the evidence points to separation in either 2012 or January 2013. Evidence suggesting a date after January 2013 likely refers to potential periods of reconciliation. I will consider reconciliation efforts separately. But I will first take a closer look at the separation date and determine whether it was in 2012 or January 2013.

– **Did the Claimant and the Added Party separate in 2012 or January 2013?**

[41] For the reasons set out in the following paragraphs, I find that the Claimant and the Added Party likely separated in 2012.

The Added Party’s position

[42] As noted above, the Added Party has consistently advanced a September 2012 separation date. While he did not file any documentary evidence supporting this date, he described a plausible scenario flowing from a Labour Day wedding gathering. He also described a sequence of moves, starting in September 2012, that took place after he left the Matrimonial Home.

[43] I need to weigh this against the Claimant’s position that they separated in January 2013.

The Claimant’s position

[44] Even if I disregard the purported reconciliation attempts, the Separation Chart shows that the Claimant has not been consistent about the initial separation date. In

³⁴ See GD2R-20.

³⁵ See AD22-48.

³⁶ See AD13-2.

2014, she signed a document saying that they separated in September 2012. Her family doctor (Dr. Yim-Lee) saw that document, and said she had no “reason to doubt what has been claimed in this document.” Her doctor said the dates seemed to “correlate with what is in the charts.”³⁷

[45] The Claimant also produced two versions of an August 2019 letter to her family doctor. Each letter clearly referred to a separation by September 2012. Her initial DUPE application materials in February 2022 both referred to a 2012 separation too. It was only in March 2022 that she began describing a January 2013 separation date.

[46] However, the Claimant did not consistently hold that position either. In November 2022, as noted, she advanced a separation date of June 2013. She later said she could not put her mind to the correct date at that time, even though she previously gave a separation date of January 2013. In December 2024, she said her daughter received a November 2012 letter “soon after [Added Party] and I split.”³⁸ This points to a 2012 separation as well.

[47] I will now look at the Claimant’s explanations for the discrepancies.

The Claimant’s explanations for the separation date discrepancies

[48] The Claimant has often said that the discrepancies are due to a lesion on her temporal lobe. This related to a prior stroke and her periodic seizures. She also referred to memory loss on several occasions.

[49] For example, in November 2022, the Claimant said medication for her medical conditions created more communication difficulties, sleep issues, and memory and problem-solving issues.³⁹

[50] At the September 2023 hearing, the Claimant said she had filled out forms when she was incapacitated by her stroke and/or manipulated by the Added Party. However,

³⁷ See AD1C-11.

³⁸ See AD22-40.

³⁹ See GD2R-21.

this referred to the forms completed by the Claimant in February 2022. She also said anything signed in 2013 was out of fear due to an abusive situation. However, she signed many documents, including the document cited by Dr. Yim-Lee, after 2013.⁴⁰

[51] At the November 2023 hearing, the Claimant said her medication made it hard for her to find the correct dates.⁴¹ She also said she only signed a document confirming a 2012 separation date to avoid conflict.⁴²

[52] In April 2024, the Claimant said her memory and reasoning skills were improving over time. She said she submitted four dates of separation because over time she “could remember pertinent facts in my relationship with my husband”. However, she said memory loss was an issue due to a stroke, and medication also affected her memory. She said stress and seizures also affected her memory.⁴³

[53] At the February 2025 hearing, the Claimant said she gave too many separation dates because she had a stroke that affected her memory. She said her medication also affected her memory and made it hard for her to concentrate. She said she was no longer on that medication. She also said that, when she first applied for the DUPE, she did not know some of the dates. However, the Ministry staff said she could “fix it later.” But she also said that, even now, she had a hard time remembering dates.

[54] Also at the February 2025 hearing, the Claimant said she signed a document giving a 2012 separation date because they were working on being a couple again. For this reason, she thought it did not matter what she signed. However, upon questioning by the Minister, she said she had a seizure in late 2013 which made it hard to remember things. She also mentioned an allergy to medication, and that a lot of things were impacting her memory. Finally, she said that the Added Party's repeated statements about a 2012 separation started to make her think that maybe he was right.

⁴⁰ See the recording of the General Division hearing (September 28, 2023), at 1:33:15 to 1:35:21.

⁴¹ See the recording of the General Division hearing (November 17, 2023), at 0:11:30 to 0:13:48.

⁴² See the recording of the General Division hearing (November 17, 2023), at 1:07:01 to 1:08:10.

⁴³ See AD1E-12, AD1F-6, and AD1F-8.

[55] In her written Appeal Division materials, the Claimant also said the Added Party manipulated her into signing the letter held by Dr. Yim-Lee. She said his behaviour made her question her own knowledge and she became confused. She thought it would not matter if she signed the letter, so she did not care about its accuracy. She said she was more concerned about her children and her well-being.⁴⁴

[56] I see only one medical report on file that delves into the Claimant's medical conditions. This is the August 2015 report from Dr. Moghal (Neurologist). Dr. Moghal saw the Claimant about recent seizures, but I saw nothing in that report about any memory loss or memory difficulties. Dr. Moghal's only functional concerns were that the Claimant should not work with heavy machinery and was not ready to return to driving.⁴⁵

[57] When a party alleges that an inconsistency arose from a medical condition, medical evidence should support that allegation. Dr. Moghal's report does identify medical conditions (epilepsy, secondary to a left temporal lobe lesion). But Dr. Moghal's functional concerns had nothing to do with memory. The concerns were with operating dangerous equipment. Dr. Moghal thought she could work at Shoppers Drug Mart despite her medical conditions.⁴⁶

[58] The timing of the medical report may also be important. The Separation Chart shows that the Claimant changed the separation date from 2012 to January 2013 between February and March of 2022. This was about 6½ years after Dr. Moghal's report. I see no medical evidence around this time, nor do I see any evidence that the Added Party was exerting control over the Claimant at that time. As noted, the Claimant also gave an inconsistent separation date (June 2013) in November 2022.

[59] I further note that, even if I fully accepted the Claimant's memory loss explanation for the inconsistencies, that same explanation necessarily reduces the weight I can assign to her evidence about the separation date. In other words, if she

⁴⁴ See AD1E-8, AD1E-13, AD1F-7, and AD1F-9.

⁴⁵ See GD11-22 and GD11-23. Dr. Yim-Lee (family doctor) wrote a letter at AD1C-11, but it was not really a medical report. It was in support of the Claimant's Child Tax Benefit, and spoke only to the residence of the Claimant's daughter at various times.

⁴⁶ See GD11-23.

does indeed have significant memory issues, it is hard to assign a lot of weight to evidence she gives now about past events. And even if those memory issues resolved in 2022 or 2024, she still pointed to a 2012 separation date in late December 2024.⁴⁷

[60] Finally, the Claimant also struggled with dates that should not have been contentious. For example, she said she conceived her daughter in January 1998. In the same paragraph, she said her daughter was born in October 1999.⁴⁸ An October 1999 birth is consistent with conception in January 1999, not January 1998. At the September 2023 hearing, the Claimant affirmed twice that she conceived her daughter in January 1998.⁴⁹ However, the objective evidence points to an October 1999 birth.⁵⁰

Criminal activity and abuse by the Added Party

[61] I have considered that the Added Party was involved with the criminal justice system on at least two occasions due to his actions toward the Claimant. The 1994 assault ended their (first) common-law relationship. The second criminal incident took place in 2002 and appears to have been an assault too.⁵¹ The Claimant alleged that a further assault led to their final separation. She also said that he used illicit drugs. There may have been other abusive or criminal acts.

[62] This evidence is troubling, to say the least. However, the Added Party's abusive and/or criminal acts do not completely negate the consistent evidence he gave about the separation date. He said some of the Claimant's evidence was "libellous and slanderous," but did not completely deny that abusive and/or criminal acts took place.⁵² He also gave other evidence, such as evidence of post-separation sexual relations with the Claimant, that did not help his case.

⁴⁷ See AD22-40. But at AD20-2, the Claimant said she was taking care of her son in 2012 as well. This could also indirectly suggest a 2012 separation date, especially when combined with the Claimant's evidence about this document at the Appeal Division hearing. However, I do not need to rely on this.

⁴⁸ See GD5-11.

⁴⁹ See the recording of the General Division hearing (September 28, 2023), at 0:40:36 to 0:41:15 and 1:30:35 to 1:31:02.

⁵⁰ See AD1D-13.

⁵¹ See GD3-2, GD10-14, GD10-16, and GD10-39 to GD10-41.

⁵² See the recording of the General Division hearing (September 28, 2023), at 0:33:23 to 0:34:22.

[63] I further note that Dr. Yim-Lee independently verified the September 2012 separation date, based on medical charts in her possession.

[64] I find the Added Party's evidence about the separation date more compelling than the Claimant's evidence on that issue. However, nothing in this decision should be taken to condone any abusive or criminal acts by the Added Party.

Conclusion on the separation date

[65] I do not think that the Claimant was deliberately misleading the Minister or the Tribunal about the separation date. She has struggled with pinpointing past dates. At the Appeal Division hearing, she alleged a January 2013 separation date. However, I prefer the preponderance of evidence that points to a September 2012 separation. Some of that evidence came from the Claimant herself. She mentioned a 2012 separation as recently as December 27, 2024.⁵³

Cohabitation following abuse

[66] The Claimant suggested that the law deemed cohabitation to continue in an abusive relationship. She did not provide any statutory authority for this, nor did she provide any case law. The only "authority" I saw for the Claimant's proposition was part of an undated form letter that appears to be from the Canada Revenue Agency. That letter said an involuntary separation can occur when spouses occupy separate residences for medical reasons, or when one of them was incarcerated.⁵⁴

[67] I cannot base my decision on this proposition. The letter is incomplete and appears to deal with taxation, not the *Canada Pension Plan*. In any event, for an involuntary separation, **both** spouses must want to cohabit but be unable to do so for reasons beyond their control. I am not persuaded that the Added Party wished to cohabit after their September 2012 separation.

⁵³ See AD22-39 to AD22-40.

⁵⁴ See the partial letter at AD25-20.

Erroneous Advice

[68] The Claimant implied that part of the separation date problem may be the fault of the Minister's employees. They apparently suggested that any errors about the separation date could be fixed later. If true, they may have given her erroneous advice. However, the Tribunal cannot assist with this. She must raise allegations of erroneous advice directly with the Minister. Beyond that, her remedy is an application to the Federal Court.⁵⁵

– **Did the Claimant and the Added Party have any material periods of reconciliation after the 2012 separation?**

[69] I find the Claimant and the Added Party had no material periods of reconciliation after the September 2012 separation. I will now explain why,

[70] At the Appeal Division hearing, the Claimant said she did not treat the relationship as truly over until November 2015. This raises the possibility of a reconciliation period before then. That could extend the period to which a DUPE could apply.

[71] As noted, people continue to live separate and apart if **either one of them** intended to live separate and apart from the other. However, the *Canada Pension Plan* considers that reconciliation may be attempted. A period of separation is not interrupted if the two people resume cohabitation for no more than 90 days and reconciliation was the primary purpose.⁵⁶ This means that if the Claimant and Added Party resumed cohabitation for more than 90 days, the period of separation would be interrupted.

[72] The problem for the Claimant is that I see no cohabitation period after September 2012 that lasted for more than 90 days. The only periods of "cohabitation" appear to be a couple of nights at the Added Party's house and a weekend in Niagara Falls. The Added Party admitted these events. But the nights at his house appeared to be solely

⁵⁵ See section 66(4) of the *Canada Pension Plan*, and *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278, at paragraphs 9-12.

⁵⁶ See section 55.1(2) of the *Canada Pension Plan*.

for sexual relations. I see no suggestion that any of these periods lasted more than one or two nights.

[73] The Claimant did not point to any specific dates of cohabitation. At best, there was a weekend in Niagara Falls sometime in 2014.⁵⁷ She also mentioned the sexual relations, but these did not seem to form part of a cohabitation.⁵⁸

[74] The Claimant suggested that other events or evidence imply reconciliation. For example, she said that she attended marriage counselling with the Added Party in 2013.⁵⁹ She produced some third-party correspondence suggesting that they both were living in the Matrimonial Home after September 2012.⁶⁰ She also pointed to evidence about two dinners hosted by their daughter in November 2012 and December 2012, to which both she and the Added Party had been invited.⁶¹

[75] The Claimant said she met the Added Party “a number of times” after the January 2013 separation and even looked for houses together.⁶² She suggested that he went to her new residence a few times, asked for a copy of a photo with their son, and told her that he still “liked” her.⁶³ She said the counselling led to going on a date at some point around August 2013.⁶⁴

[76] The Claimant also pointed to the renovations done by the Added Party on the Matrimonial Home before it was sold in October 2013.⁶⁵

[77] I must decide whether any of this shows that neither one of them intended to live separate and apart from the other. If it does, I must decide whether that cohabitation continued for more than 90 days.

⁵⁷ See the recording of the General Division hearing (November 17, 2023), at 1:04:44 to 1:05:52.

⁵⁸ See the recording of the General Division hearing (November 17, 2023), at 0:13:48 to 0:14:59 and 0:34:02 to 0:35:40.

⁵⁹ See the recording of the General Division hearing (November 17, 2023), at 0:24:14 to 0:26:00.

⁶⁰ See, for example, AD22-2.

⁶¹ See AD22-24, AD22-26, AD22-28, AD22-30, AD22-32, AD22-34, AD22-38, AD22-40

⁶² See the recording of the General Division hearing (November 17, 2023), at 0:13:48 to 0:14:59.

⁶³ See the recording of the General Division hearing (November 17, 2023), at 0:15:03 to 0:16:57.

⁶⁴ See the recording of the General Division hearing (November 17, 2023), at 0:27:14 to 0:28:43.

⁶⁵ See the recording of the General Division hearing (November 17, 2023), at 0:47:29 to 0:48:09.

[78] I find that these events, individually or together with other evidence, make such an extended cohabitation unlikely. Competing evidence and interpretations are equally or more compelling.

[79] I do not find mail addressed to the Claimant and the Added Party at the same address after September 2012 to be compelling evidence of cohabitation. The Added Party said he moved frequently after he left the Matrimonial Home. He lived in three different places in the first year after the separation. He then lived in a fourth location until the summer of 2014, when he bought a home. It would not have been reasonable to update his address constantly with every conceivable contact, particularly in that very unsettled first year.

[80] Similarly, the Added Party's renovation work on the Matrimonial Home has little persuasive value. It was in his financial interests to increase the value of the Matrimonial Home, as they would be dividing the net sale proceeds. In any case, preparing to sell the Matrimonial Home after separation is also consistent with proving that the relationship had broken down. At the Appeal Division hearing, the Added Party said he never slept in the Matrimonial Home after they separated.

[81] The Added Party may have attended dinners hosted by his daughter in November or December of 2012, although he said he could not recall any. Even if he attended, however, this is equally consistent with trying to manage the separation's impact on the children. Periodic activities, and even occasional dating, do not necessarily establish cohabitation.

[82] Regarding the alleged marriage counselling, the Added Party said the service provided at "X" was actually the mediation of a separation agreement. And the Claimant herself wrote in June 2013 that the purpose of mediation at "X" was to get a written separation agreement into place. The Added Party said a separate instance of counselling was only to help lessen the impact on their children.⁶⁶

⁶⁶ See AD13-2 and the recording of the General Division hearing (November 17, 2023), at 0:55:42 to 0:56:57. See also GD11-13 and the Appeal Division hearing.

[83] Also, in June 2013, the Claimant wrote that she and the Added Party were no further ahead in resolving their issues. She was adamant that a separation agreement was necessary. While she still wanted to reunite, she also admitted that any possibility of that “remains to be seen.”⁶⁷

[84] Finally, the Claimant’s perception of any reconciliation is only half of the story. If the Added Party intended to live separate and apart from her, there is no cohabitation. The Added Party said there was no discussion of reconciliation after September 2012. In his words, “I was done.” He affirmed that the mediation was to get a separation agreement. He said the counselling was merely to help their children through the separation. He denied any mutual house hunting.⁶⁸

[85] The Claimant and the Added Party clearly had contact after their separation. I also accept that the Claimant held out some hope for reconciliation until late 2015. However, I find it unlikely that the Claimant and the Added Party cohabited for at least 90 consecutive days after their separation.

For a separation date of September 2012, to which years does the DUPE apply?

[86] I find that the DUPE applies to the years 1999 to 2011. I will now explain why.

[87] The *Canada Pension Plan* says that the DUPE applies only to the period of cohabitation. But the DUPE can only apply to full calendar years. Parties are deemed to start cohabiting in January of the year that they married or started living in a conjugal relationship. But they are deemed not to have cohabited at all for the year in which they began to live separate and apart.⁶⁹

⁶⁷ See AD13-2.

⁶⁸ See the recording of the General Division hearing (November 17, 2023), at 1:02:09 to 1:03:30. See also the Appeal Division hearing.

⁶⁹ See section 55.1(4) of the *Canada Pension Plan* and section 78.1(1) of the *Canada Pension Plan Regulations*.

[88] In this case, the Claimant and the Added Party started living again in a conjugal relationship in 1999. This happened shortly before they married in August 1999. But both dates were in 1999. This means that 1999 is included in the DUPE process.

[89] I found that the Claimant and the Added Party began to live separate and apart in September 2012. This means that 2011 is included in the DUPE process, but 2012 is not.

[90] The total period of the DUPE must be from 1999 to 2011, inclusive. This is the same period granted by the Minister in the reconsideration decision. It is also the same period granted by the Tribunal's General Division.

Conclusion

[91] The appeal is dismissed. The Claimant is entitled to a DUPE covering the calendar years of 1999 to 2011 only.

Pierre Vanderhout
Member, Appeal Division