Citation: *CS v Minister of Employment and Social Development and SM*, 2025 SST 92

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	C. S.
Respondent:	Minister of Employment and Social Development
Added Party:	S. M.
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated June 19, 2024 (issued by Service Canada)
Tribunal member:	Virginia Saunders
Type of hearing:	Teleconference
Hearing date:	January 9, 2025
Hearing participants:	Appellant Appellant's witness Added Party Added Party's witness
Decision date:	February 4, 2025
File number:	GP-24-1200

Decision

[1] The appeal is allowed in part.

[2] The Appellant, C. S., is eligible for a Canada Pension Plan (CPP) credit split for the period January 1, 2015, through December 31, 2021.

[3] This decision explains why I am allowing the appeal in part.

Overview

[4] The CPP provides for an equal division of CPP contributions between two parties during the time they were married or in a common-law relationship. This is called a credit split or a division of unadjusted pensionable earnings.[1]

[5] For several years, the Appellant and the Added Party lived together at the Added Party's home in X. The Appellant moved out on July 31, 2023.

[6] The Appellant applied for a credit split in December 2023. In her application, she said that she and the Added Party were in a common-law relationship from May 5, 2012, to July 10, 2022.[2]

[7] The Minister of Employment and Social Development (Minister) wrote to the Added Party to ask if he agreed with the dates the Appellant gave.[3] He did not.[4] The Minister accepted his claim that he and the Appellant began living together in September 2015 and separated on November 29, 2018. The Minister denied the Appellant's application because she had applied too late.[5]

[8] The Appellant asked the Minister to reconsider. On reconsideration, the Minister decided the Appellant and the Added Party separated in September 2020. This meant

---

[1] See section 55.1(1) of the *Canada Pension Plan*.
[2] See GD2-109-113.
[3] See GD2-93-94.
[4] See GD12-10.
[5] See GD2-63. A former common-law partner must apply for a credit split within four years of separation, unless both parties agree in writing. See section 55.1(1)(c)(ii) of the *Canada Pension Plan*.

that the Appellant had applied in time. The Minister approved the credit split for the period January 1, 2015, to December 31, 2019.[6]

[9] The Appellant appealed to the Social Security Tribunal's General Division. She says the credit split should be applied to a longer period, because the common-law relationship began in May 2012 and ended just after Thanksgiving in 2022.[7]

[10] The Added Party says the common-law relationship began in September 2015 and ended in November 2018.[8]

[11] The Minister says the parties signed and agreed to minutes of settlement that state the common-law relationship began in September 2015 and ended in September 2020. The Minister says the evidence doesn't support changing these dates.[9]

What the Appellant or Added Party must prove

[12] For the Appellant to succeed, she must prove that her common-law relationship with the Added Party began and ended on the dates she claims.

[13] For the Added Party to succeed, he must prove that the common-law relationship ended earlier than what the Minister has recognized.

Matters I have to consider first

I allowed the parties' witnesses to testify

[14] If a party wants to have a witness testify at the hearing, they must file a notice with the Tribunal by their filing deadline. The notice must include the witness's name, their relationship to the party, and the language they will use to testify.[10] But I can decide that a party doesn't have to follow these rules if it is in the interest of justice.[11]

---

[6] See GD2-29.
[7] The Appellant said this at the hearing.
[8] The Added Party said this at the hearing.
[9] See GD12-5.
[10] See section 41(1) of the *Social Security Tribunal Rules of Procedure* (Rules).
[11] See section 8(4) of the Rules.

[15] The Appellant filed a notice with the Tribunal the day before the hearing, which was after her initial filing deadline.[12] In my view, the "filing deadline" in section 41 means a party's initial filing deadline, not the reply deadline. In any case, the Appellant's notice came after the end of her reply period.

[16] The Added Party didn't file a notice. At the hearing, he told me that he thought his witness would not be allowed to testify because he hadn't filed a notice in time. However, his witness was available to testify if I would let him.

[17] I allowed both witnesses to testify. I decided that neither party had to file a witness notice, because it was in the interest of justice.

[18] Neither the Appellant nor the Added Party had a professional representative. They were relying on the Tribunal to help them prepare for the hearing. I reviewed the letters they got from the Tribunal. I am satisfied that the need to file the notice by the filing deadline was not explained to them clearly, and they may have been led to believe they could file much later in the process.

Reasons for my decision

[19] I find that the Appellant and the Added Party started cohabiting in a conjugal relationship in July 2015. Although they lived in the same house until July 2023, I find that they began living separate and apart (meaning they stopped cohabiting in a conjugal relationship) in October 2022.

[20] As a result, I find that the credit split is for the period January 1, 2015, to December 31, 2021.

What is cohabiting in a conjugal relationship?

[21] A common-law partner is a person who is **cohabiting in a conjugal relationship** with a CPP contributor.[13]

---

[12] See GD18-3.
[13] See section 2 of the *Canada Pension Plan*.

[22] The period that is subject to a credit split starts in January of the year in which the former partners began cohabiting in the conjugal relationship. It ends in December of the year before they started to live **separate and apart**.[14]

[23] When I am deciding whether the Appellant and the Added Party were cohabiting in a conjugal relationship, 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 give each other in the home
- how the community views their relationship[15]

[24] 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 was a conjugal relationship, when it started, and when it ended.[16]

[25] In addition to looking at the above factors, I must consider that:

- cohabiting is not the same thing as co-residence; two people can cohabit even if they don't live under the same roof, as long as they both intend to continue the common-law relationship.[17]
- it is possible to be separated yet still live in the same household.[18]
- a common-law relationship ends when either party regards it as being at an end and, by their conduct, has shown in a convincing manner that their mind is settled about this.[19]

---

[14] See section 55.1(4) of the *Canada Pension Plan* and section 78.1(1) of the *Canada Pension Plan Regulations*.
[15] See *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.
[16] See *M v H*, [1999] 2 SCR 3 at paragraphs 59-60.
[17] See *Hodge v Canada*, 2004 SCC 65 at paragraph 42.
[18] See *Kombargi v Canada (MSDC)*, 2006 FC 1511.
[19] See *Hodge v Canada*, 2004 SCC 65 at paragraph 42.

Background

[26] The Appellant was living in a rental home in X, when she met the Added Party. He owned a house in X. At some point she moved in with him. They shared a bedroom and had a sexual relationship.

[27] Throughout the time they lived together, the Appellant and the Added Party declared themselves as single on their income tax returns. (The Appellant says she didn't want to do this, but the Added Party insisted on it and threatened her. The Added Party says this is not true.) They kept their finances separate. They both contributed to household expenses, although they disagree on how much and how often.

[28] Friends, neighbours, and family members viewed them as a couple. The Appellant got on well with the Added Party's family and often spent weekends and vacations with them at their cottages.

[29] The relationship broke down after several years. The Added Party says they stopped having sex in November 2018, and the Appellant moved into a separate bedroom.

[30] The Appellant says they shared a bedroom, and their sexual relationship continued until just before Thanksgiving 2022. Soon after that, she moved into the basement because she had nowhere else to go. A few months after that, she moved back upstairs on her doctor's orders. She slept in the spare bedroom.

[31] In early 2023, the Added Party went to a lawyer to get the Appellant to move out.[20] Eventually, they reached an agreement about property and spousal support. They signed minutes of settlement on July 20, 2023.[21] One of the terms was that the Appellant move out of the Added Party's house, which she did on July 31, 2023.

[20] See GD12-7.
[21] See GD12-14-17.

The July 2023 agreement isn't binding on the Minister or the Tribunal

[32] The preamble to the July 2023 agreement said, "Whereas the [Added Party] and the [Appellant] were in a common law relationship commencing September 2015 and ending September 2020…"[22]

[33] It's arguable that the preamble was not an agreement about the dates of the common-law relationship. But even if it was, the agreement would not apply to the credit split. An agreement or court order is not binding on the Minister for the purposes of a credit split except in certain circumstances, none of which apply here.

[34] For example, for an agreement to be binding on the Minister, it must:

- say there is to be **no** credit split, not just limit it to certain dates
- expressly mention the *Canada Pension Plan*
- be permitted under the provincial law that governs the agreement[23]

[35] The agreement in this appeal doesn't meet the first two requirements. And Ontario law, which governs the agreement, doesn't allow former spouses or common-law partners to opt out of credit splits.

[36] The fact that the Appellant and the Added Party agreed in writing to the document that contains these dates is just one piece of evidence for me to consider, along with all the other evidence.

The Appellant and Added Party started cohabiting in July 2015

[37] I find that the Appellant and the Added Party started cohabiting in a conjugal relationship in July 2015.

---

[22] See GD12-14.
[23] See section 55.2(2) and (3) of the *Canada Pension Plan*.

- **What the Appellant and the Added Party said**

[38] In her application, the Appellant said that she and the Added Party started their common-law relationship on May 5, 2012.[24] She also signed a statutory declaration that said they started living together on that date.[25] She gave the same date when she filed an earlier credit split application in June 2023.[26]

[39] But at the hearing, she gave a different date. She told me that she and the Added Party met in May 2012, and she moved into his house in X sometime in mid-2013. She knew this because her brother died on February 13, 2013. The Added Party went to the memorial service with her, but they weren't living together at that time. She recalled that she moved in with the Added Party a few months after that.

[40] The Added Party has a different recollection. He agreed that he was at the memorial service for the Appellant's brother, but he said the Appellant must be wrong about when he died. He has consistently said that he met the Appellant on a dating app in August 2014. He remembers this because at the time he was working in London, Ontario, for a company called Aecon.

[41] The Added Party remembers he and the Appellant weren't living together until after the summer of 2015, because he was expecting to be called back to start working for Aecon again that spring, but they didn't call. He remembers being on the Appellant's couch at her home in X, looking for work. He was hired by another company and started around the end of the summer. The Appellant moved in with him around the same time.

- **Letters filed by the Appellant and Added Party aren't reliable evidence**

[42] The Appellant and the Added Party both provided letters to support their positions. I didn't put much weight on any of the letters. Although the writers seemed confident that they recalled correctly, they can't all be right. I had no reason to believe one person over another. None of them provided documents to back up what they said.

---

[24] See GD2-111.
[25] See GD2-96.
[26] See GD2-122-125.

I don't think they are reliable evidence of when the common-law relationship began or when it ended.

[43] Furthermore, some of the letters contradicted what the Appellant and the Added Party said.

[44] The Appellant's ex-landlord said she moved out of his rental house in X in March 2012 and moved in with the Added Party.[27] But that isn't what the Appellant said. According to her, she moved out of the house in May 2012 (if I believe what she said in her application) or mid-2013 (if I believe what she said at the hearing). When I asked her to explain the difference in dates, she couldn't. She didn't provide copies of bank statements that might show when she stopped paying rent in X.

[45] The Appellant's mother said the Appellant and the Added Party moved in together "2012-2013." But she also said they separated in 2020.[28] The Appellant sent a revised version of this letter much later, and said her mother must have put in the wrong separation date, because it ought to have been 2022.[29] This doesn't inspire confidence in how accurate her memory is.

[46] The Added Party's brother-in-law said the Added Party "let [the Appellant] move in in the spring of 2015," which is earlier than what the Added Party claimed.[30]

- **There is no objective evidence to support any of the claimed dates**

[47] Neither the Appellant nor the Added Party provided objective evidence to support when they claim to have met or moved in together.

[48] The Added Party told me he wrote the date he met the Appellant in a calendar so he wouldn't forget it. Even if he could satisfy me that the date was added in or around August 2014, he didn't produce the calendar.

---

[27] See GD9-4.
[28] See GD2-85.
[29] See GD7-89.
[30] See GD15-12.

[49] The Appellant didn't provide her brother's death certificate, or an invoice or death notice to show when the memorial service took place.

[50] The Appellant said the Added Party put her on his benefits plan in 2014, about one year after she moved in with him. But she didn't provide any documents to prove this. Her benefits cards don't say when her coverage started.[31] There are no statements showing she had coverage before 2017.[32]

[51] On the other hand, the Added Party didn't produce any documents to show the Appellant was added to his benefits plan in or after September 2015, as he claimed.

[52] A Record of Employment for a pay period starting May 13, 2015, is addressed to the Appellant at the Added Party's home. However, it was issued in July 2016, so it doesn't prove the Appellant was living there in May 2015.[33]

[53] Similarly, tax documents for 2014 were sent to the Appellant at the Added Party's home.[34] However, they are marked as duplicates. They aren't the originals. It is reasonable to conclude that they were sent to the Appellant when she was filing her 2014 tax return, which she didn't do until 2016, when there is no dispute that she was living with the Added Party.[35]

[54] The internet account was in the Appellant's name, but there are no invoices before February 2021.[36]

[55] Cannabis licences authorizing the Appellant to grow cannabis at the Added Party's home are for 2017 and later.[37]

---

[31] See GD13-92-97.
[32] For example, see GD2-52, 82, 102; GD4-5.
[33] See GD2-78.
[34] See GD13-123.
[35] See GD2-74.
[36] See GD13-64-65.
[37] See GD2-54-59 and GD3-106 and 108.

[56] The Appellant's driver's licences show she lived at the Added Party's address in 2016 and 2019, but not in any of the years from 2012 to 2015.[38]

[57] Highway toll accounts show the Added Party drove the Appellant's vehicle from July 2016 to June 2023.[39] Again, there's no dispute that the Appellant was living with the Added Party during this period.

[58] The Appellant claimed she and the Added Party bought new furniture and kitchen appliances soon after she moved in, but she didn't provide any invoices.

[59] The Appellant filed many photos. She said they were of fishing trips and other occasions she shared with the Added Party. The Added Party is in many of the photos. He agreed that they were taken on trips that happened while they were together, but he disputed the dates on some of them and argued that the photos simply show that he and the Appellant were in a relationship.

[60] I agree with the Added Party. Most of the photos are dated October 2014 and later.[40] There is no dispute that he and the Appellant were in a relationship by then. They don't prove that she was living with him when they were taken.

[61] There are some photos dated January 2014.[41] They are significant because they suggest the Added Party and the Appellant met and started their relationship long before the Added Party claimed. This calls into question how reliable his memory is.

[62] However, even the Appellant agreed that the dates on the photos can't be right. They show summer weather and light at 7:30 pm in January. They don't show winter activities. The Appellant didn't know how her camera or her computer dated any photos that she took or uploaded. As a result, I am not prepared to say these photos show a relationship in January 2014.

---

[38] See GD2-67.
[39] See GD14-2-3 and GD4-6-7.
[40] See GD13-18-33, GD13-41-56, GD13-67-68, GD13-71, GD13-73-76, GD13-120-121, GD13-44-145.
[41] See GD13-34-40.

[63] I didn't base my decision on anything the Appellant or the Added Party remembered, unless there was reliable, objective evidence to support it.

- **What the objective evidence shows**

[64] I find that the Appellant and the Added Party started cohabiting in a conjugal relationship in July 2015.

[65] I don't agree with the Added Party's September 2015 date, which the Minister accepted. There is no other evidence to support it, except that it was included in the preamble of the agreement they reached in July 2023. The terms of the agreement didn't depend on that date being correct.

[66] However, in a February 2020 text, the Appellant said that she had lived "here" for five years.[42] There is no dispute that she was referring to the Added Party's house. I am not prepared to say this means she moved in in February 2015. But it suggests she moved in around five years before she sent the text—so, not in 2012 or 2013, as she claimed.

[67] The most reliable evidence is a pay stub issued on July 30, 2015. It shows the Appellant's address as the Added Party's home.[43] Therefore, I find that the Appellant moved in with the Added Party in July 2015.

[68] Moving in together meant the Appellant and the Added Party began cohabiting in a conjugal relationship. Although they kept their finances separate, many couples do. In all other respects, they shared their lives, and they were regarded as a common-law couple by others.

The Appellant and Added Party separated in October 2022

[69] I find that the Appellant and the Added Party started living separate and apart in October 2022. That is when their common-law relationship ended.

---

[42] See GD15-3.
[43] See GD2-131.

[70] First, I will explain why I don't accept the separation dates claimed by the Added Party (November 2018) or the Minister (September 2020). Then I will explain why I decided they separated in October 2022.

[71] There is little evidence to support a **September 2020** separation date. It was one of the premises of the July 2023 agreement. But neither the Appellant nor the Added Party remember why that date was chosen.[44] The Added Party's lawyer had suggested it in an offer letter, but didn't say why. The same letter stated the Added Party's belief that the separation was in November 2018.[45]

[72] The only other evidence that the separation happened in 2020 came from the Appellant's mother.[46] But she didn't say which month, and she didn't explain why she believed it was that year. The Appellant believes she made a mistake.[47]

[73] The Added Party said he believes that **November 29, 2018**, is the separation date because that is when the sexual relationship ended, and the Appellant moved into a separate bedroom. After that, he tolerated her living in his home because she had nowhere else to go.

[74] The Appellant disagrees with this date. She says she and the Added Party continued to share a bedroom and had sex regularly until Thanksgiving 2022. But she has also said the relationship ended in July 2022.[48] As discussed above, she has been uncertain about other important dates. So, I placed little weight on what she remembered, unless there was other evidence to support it.

[75] The Added Party's brother-in-law supports his view.[49] He didn't explain why, nor did he provide any objective evidence to back up what he remembers.

---

[44] They both said this at the hearing.
[45] See GD12-8-9.
[46] See GD2-85.
[47] See GD7-89.
[48] See GD2-96, GD2-111.
[49] See GD15-12.

[76] However, there is other evidence that supports what the Added Party said. In November 2020, the Appellant wrote an email to the Added Party and said “we don’t even sleep in the same room…no sex for 2 years…” It is apparent from the email that the relationship was in trouble. The Appellant was upset that they barely spoke, did not do anything together, and she only saw him four times a month.[50] She repeated these concerns in another email one week later, and again at the end of January 2021.[51]

[77] The Appellant told me she didn’t remember sending these emails. She may or may not have written them. If she did, they were written impulsively during an argument. They weren’t accurate.

[78] I find that the Appellant did write and send the emails. She did not seriously dispute the Added Party’s contention that they came from her. In addition, their wording, sentence structure, and tone is similar to other letters and submissions that she wrote.

[79] The emails may have been written on impulse, but I don’t accept that the statements in them weren’t true. They confirm exactly what the Added Party said. So, I accept that the Appellant and the Added Party stopped having sex and started sleeping in separate bedrooms in November 2018, two years before the first email. This was still the situation in January 2021.

[80] However, that isn’t enough for me to decide that the couple had separated or that the conjugal relationship had ended. The emails show that the Appellant believed there was still a bond between the two, but it needed to be repaired. She talked about working on the relationship, gave hints about what the Added Party could get her for Christmas, and bought him a ring as a token of her love. The Added Party may not have shared her opinion. But he didn’t communicate that to her. There is no objective evidence that he told anyone else, either.

[81] In determining when the period that is subject to a credit split ends, the views of one person aren’t enough. That person must show that they lived apart and had the

---

[50] See GD12-11.
[51] See GD12-12-13.

intention to live separate and apart from the other.[52] They must also show, by their conduct and in a convincing manner, that their state of mind in ending the common-law relationship is a settled one.[53] The Added Party didn't do this.

[82] After November 2018, the Appellant continued living with the Added Party. He said he didn't ask her to leave because he felt sorry for her, and she had nowhere else to go. But she also had nowhere else to go in early 2023, when he finally did see a lawyer to get her to leave.[54]

[83] Their household and financial arrangements didn't change after November 2018. The Appellant looked after the house, yard, and garden. She shopped and prepared meals. She didn't pay rent. The Added Party continued giving her money to cover some household expenses. He kept using her car. She stayed on his benefits plan. He named her as an emergency contact and described her as his girlfriend on a form he filled out in March 2021.[55]

[84] The Appellant continued to have a close relationship with the Added Party's family. She shared vacations with them. She drove the Added Party's parents to the cottage. Texts between her and the Added Party's sister in 2021 and 2022 show no animosity or awkwardness. They sound like family members helping each other and enjoying being together.[56]

[85] In addition, many texts between the Appellant and the Added Party at various times from June 2019 through July 2022 contain expressions of love, care, and concern for each other.[57] None of them suggest their relationship had changed from what it had been.

[86] The Added Party argued that he continued to treat the Appellant with kindness and affection, and continued to support her financially, because he didn't want to make

---

[52] See section 55.1(2)(a) of the *Canada Pension Plan*.
[53] See *Hodge v Canada*, 2004 SCC 65 at paragraph 42.
[54] See GD12-7.
[55] See GD15-54.
[56] See GD7-6-25.
[57] See GD1-22-25; GD7-36-87; GD16-10-31; GD16-53.

things worse for himself. His lawyer told him to keep her on his benefits plan for the same reason.

[87] I don't accept this. There's no evidence the Added Party got legal advice until after the separation. More importantly, the texts contain frequent, sincere expressions of love and the strong implication that the Appellant and the Added Party were a couple. They are not one-sided declarations by the Appellant. There is no evidence to support that the Added Party was so afraid of the Appellant that he felt he had to humour her for four years by pretending their relationship wasn't over.

[88] As a result, I find that the separation happened on October 23, 2022. This was when the Appellant moved into the Added Party's basement. It had been three months since her last friendly text exchange with the Added Party. On October 23, she texted the Added Party to tell him she was moving into the basement, and said "you don't want nothing to do with us." His response was polite and kind but did not indicate in any way that he wanted to revive the relationship.[58]

[89] Although the intentions and actions of only one person are required to end a common-law relationship, I find that, on October 23, 2022, both the Appellant and the Added Party demonstrated in a convincing manner that they regarded the common-law relationship as over for good.

Conclusion

[90] The Appellant and the Added Party cohabited in a conjugal relationship starting in July 2015. They started living separate and apart in October 2022.

[91] The period that is subject to a credit split starts in January of the year in which the former partners began cohabiting in the conjugal relationship. It ends in December of the year before they started to live separate and apart.[59]

---

[58] See GD15-7.
[59] See section 55.1(4) of the *Canada Pension Plan* and section 78.1(1) of the *Canada Pension Plan Regulations*.

[92] Therefore, I find that the Appellant is eligible for a CPP credit split for the period January 1, 2015, to December 31, 2021.

[93] This means the appeal is allowed, in part.

Virginia Saunders
Member, General Division – Income Security Section