

Citation: *J. C. v. Minister of Employment and Social Development*, 2015 SSTGDIS 138

Date: December 15, 2015

File number: GP-14-1244

GENERAL DIVISION - Income Security Section

Between:

J. C.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Jane Galbraith, Member, General Division - Income Security Section

Decided on the record on December 15, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Appellant's application for Old Age Security pension was date stamped by the Respondent on March 8, 2013. He was advised his application was approved for a full pension in a letter dated April 4, 2013. The Appellant requested to defer his OAS benefit and the Respondent indicated his request was over the 6 month timeframe from the time of his first payment, to make this request. He asked for a reconsideration, which was denied by letter dated February 3, 2014. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on March 19, 2014.

[2] The hearing of this appeal was on the basis of the documents and submissions filed for the following reasons:

- The member has decided that a further hearing is not required.
- The method of proceeding provided for the accommodations required by the parties or participants.
- The issues under appeal are not complex.
- There are no gaps in the information in the file and/or a need for clarification.
- Credibility is not a prevailing issue.
- The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[3] The Tribunal sent the Notice of Hearing to be decided on the basis of the documents and submissions to both parties on October 26, 2015. The Tribunal requested from the Respondent on October 28, 2015 that they provide evidence of the date the Respondent received the Appellant's letter dated September 30, 2013. The Tribunal indicated that a copy of this letter with the Respondent's date stamp was not contained in the hearing file. It was requested that this information be provided to the Tribunal by November 27, 2015.

[4] As the Tribunal did not receive the requested information from the Respondent by November 27, 2015 a reminder email was sent to the Respondent on December 3, 2015 requesting they send the information as soon as possible. As of December 14, 2015 the Tribunal had not received the requested information.

THE LAW

[5] The forms for applications is outlined in *OAS Regulations Section 3 (1)*:

3 (1) Where required by the Minister, an application for a benefit shall be made on an application form.

(2) Subject to subsections 5(2) and 11(3) of the Act, an application is deemed to have been made only when an application form completed by or on behalf of an applicant is received by the Minister.

[6] The cancellation of a pension is outlined in *OAS Regulations Section 26.1 (1)*:

26.1 (1) For the purposes of subsection 9.3(1) of the Act, a request for cancellation of a pension shall be made to the Minister in writing no later than six months after the day on which payment of the pension begins.

[7] The request to cancel pensions is outlined in the *Old Age Security Act 9.3 (1)* and *9.3(2)*:

9.3 (1) A pensioner may, in the prescribed manner and within the prescribed time after payment of a pension has commenced, request cancellation of that pension.

(2) If the request is granted and the amount of any pension and related supplement and allowance is repaid within the prescribed time,

a) the application for that pension is deemed never to have been made; and

b) the pension is deemed for the purposes of this Act not to have been payable during the period in question.

ISSUE

[8] The Tribunal must decide if the Appellant can cancel his application to receive OAS benefits.

EVIDENCE

[9] The Appellant's date of birth is March 4, 1948. He turned 65 years of age on March 4, 2013.

[10] The Appellant initially applied for OAS benefits on March 8, 2013. He was advised his application was approved for a full pension in a letter dated April 4, 2013. His first payment was on April 26, 2013. (GD2-2)

[11] The Respondent informed the Appellant by letter that all or part of his OAS pension would be recovered as a monthly recovery tax. This was based on his income on his 2011 tax return.

[12] The Appellant received a form letter dated June 26, 2013 informing the Appellant about the voluntary deferral of the OAS pension.

[13] In a letter dated September 30, 2013 the Appellant requested that his OAS pension be cancelled and deferred. He requested more information regarding the deferral provisions. (GD1-7)

[14] The Respondent wrote to the Appellant on January 10, 2014 indicating his letter, dated September 30, 2013, asking to cancel his pension was received on October 31, 2013, more than 6 months after the day of his first payment. The date of the first payment was April 26, 2013 so the Appellant was required to advise the Respondent of his request to cancel his pension by October 26, 2013.

[15] The Appellant explained that he believed his wife mailed the letter to the Respondent sometime no later than October 19, 2013, which was the day he returned from a business trip. He assumed the letter had been mailed because it was not in the outgoing mail area on their hall desk.

[16] He noted the letter was written and sent in a timeline that within reason should have reached the Respondent's offices prior to the 6-month period. He asked for a reconsideration of their decision.

[17] In his Notice of Appeal the Appellant indicated that there is a credible possibility that his letter dated September 30, 2013 could have been caught up in the mail system, which would explain the delay. (GD1-2)

SUBMISSIONS

[18] The Appellant did not make a submission.

[19] The Respondent did not make a submission.

ANALYSIS

[20] The Tribunal is aware that the onus of proof in the case is on the Appellant. The Appellant must establish the claim on a balance of probabilities, i.e. it must be more likely than not that the claimant meets the minimum statutory requirements and that the cancellation request was received less than 6 months after the day of his first payment.

[21] The Tribunal finds the Appellant is relying on his memory to indicate when the Respondent would have received his request to cancel his OAS benefit until a future date. He indicated that the letter was sent in a timeline that within reason should have reached the Respondent's offices prior to the 6-month period.

[22] There is no evidence before the Tribunal to determine the actual date of receipt of the letter by the Respondent. The Respondent was initially asked for evidence of the document with their date stamp on October 28, 2015 and given a deadline of a month to respond. No response was received. A reminder email was sent from the Tribunal on December 3, 2015 indicating they were past the deadline requested and asked that they respond to the request as soon as possible. The Tribunal did not receive a response to this reminder email. The Tribunal waited more than a week after the second request, which seemed a reasonable timeframe to respond, as they had initially been given 4 weeks to respond to the first request.

[23] The Respondent is the only party that can provide the Tribunal with concrete evidence of the date of receipt of the letter requesting cancellation of the Appellant's OAS pension. In this case this document is a pivotal piece of evidence.

[24] The Tribunal accepts the Appellant's assertion that it is possible the letter he sent requesting his pension be cancelled could have been delayed by the postal service. The Tribunal finds it is a reasonable explanation to a delay, if that did indeed occur. It also seems possible to the Tribunal that the letter may have been received within the appropriate timeline. In reviewing the evidence the Tribunal has no definitive evidence for confirmation that the letter was received later than the 6-month deadline.

[25] In this case, the fact of the matter is that there is no evidence that supports the Respondent's position that the Appellant's letter was received later than 6 months after the day of his first payment. The Tribunal has provided the Respondent with a very reasonable and adequate amount of time to produce the crucial piece of evidence that would assist the Tribunal in making a decision in this case. There has been no response to this repeated request by the Respondent.

[26] The Tribunal finds it is entirely plausible that the Appellant's letter did reach the Respondent by the deadline. As such the Tribunal finds the Appellant has established, on a balance of probabilities, that he met the minimum statutory requirements and that the cancellation request was received less than 6 months after the day of his first payment.

CONCLUSION

[27] The Tribunal finds the evidence has shown on the balance of probabilities that the Appellant cancelled his OAS benefit within the statutory requirements.

[28] The appeal is allowed.

Jane Galbraith
Member, General Division - Income Security