Citation: ***S. B. v. Minister of Employment and Social Development,*** **2015 SSTGDIS 141**

Date: December 21, 2015

File number: GT-123807

GENERAL DIVISION - Income Security Section

Between:

S. B.

Appellant

and

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

Respondent

and

K. A.

Added Party

Decision by: Virginia Saunders, Member, General Division - Income Security Section

Heard in person on November 12, 2015, Vancouver, British Columbia

REASONS AND DECISION

PERSONS IN ATTENDANCE

S. B.	Appellant
Bavand Zanjani	Appellant's Representative
K. A.	Added Party
Farzan Sojoodi	Interpreter (Farsi)

INTRODUCTION

[1] The Appellant applied for and received a Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OAS Act) beginning in September 2001. The amount of the GIS was based on his status as a married pensioner.

[2] In November 2011 the Appellant submitted a request to be considered single for GIS purposes. The Respondent denied the request initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and this appeal was transferred to the Social Security Tribunal (Tribunal) in April 2013.

[3] This appeal was heard in person for the following reasons:

a) The form of hearing provides for the accommodations required by the parties or participants;

b) the form of hearing is the most appropriate to address inconsistencies in the evidence; and

c) 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.

THE LAW

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Tribunal.

[5] The GIS is payable to recipients of an OAS pension who reside in Canada, depending on their income and marital status. A spouse's income is included in determining the financial threshold for entitlement, and a single person generally receives a slightly higher GIS than a married person. Thus, it is often beneficial for someone to be considered single for GIS purposes.

[6] Subsection 15(4.1) of the OAS Act states:

> Where an application for a supplement in respect of a payment period that commences after June 30, 1999 has been made by a person, the Minister, if satisfied that the person is separated from the person's spouse, having been so separated for a continuous period of at least three months, exclusive of the month in which the spouses became separated, shall direct that the application be considered and dealt with as though the person had ceased to have a spouse at the end of the third such month.

[7] Subsection 15(9) of the OAS Act requires applicants for the GIS to notify the Minister without delay if they separate from a spouse or common-law partner.

ISSUE

[8] The Tribunal must decide if the Appellant has been separated from the Added Party for a continuous period of at least three months pursuant to the legislation.

EVIDENCE

[9] The Appellant was born in Iran in 1933; the Added Party was born there in 1945. They married in Iran on July 9, 1980. The Appellant testified that he immigrated to Canada from Germany in 1991, and in 1993 he sponsored the Added Party to immigrate as his wife. The Appellant's children from his first marriage live in Ontario, as does the adopted child of the Appellant and the Added Party.

[10] The Appellant testified that after moving to Canada he and the Added Party lived together on X Street in Vancouver. Around 2000 they moved to X Vancouver where they continued to live together in a number of different apartments in succession.

[11] The Appellant testified that he and the Added Party stopped having sexual relations around 2002. The Added Party began sleeping in the living room, and the Appellant slept in the bedroom. Their marriage deteriorated over the years so that by January 2010 it was in a state where they would have divorced. He testified that they discussed their differences with each other and decided to remain living together as room-mates for financial and cultural reasons.

[12] The Appellant testified that he and the Added Party have always used separate bank accounts, even when they were living in Iran. They have one joint account that they do not use. As part of their new arrangement in 2010, they began splitting the cost of groceries, rent, utilities and other household costs equally. At the end of each month they reconcile accounts. They do not keep receipts because they trust each other. He testified that the Added Party usually buys the groceries, but they usually prepare their own food and do not sit down together to eat. He testified that they do not feel close enough to share meals, as they are just room-mates.

[13] The Appellant applied for GIS for the payment period July 2010 to June 2011 on July 8, 2010. The application form contained several boxes to indicate marital status, including "Married" and "Separated." The Appellant checked off the "Married" box and named the Added Party as his spouse. The application was approved and the Appellant was notified on August 18, 2010. The decision letter stated: "You need to tell us immediately if you move, if you change your marital status, or if you leave Canada."

[14] On November 15, 2011, and January 20, 2012, the Appellant submitted statutory declarations in which he stated that he had separated from his spouse, the Added Party, as of January 1, 2010. The Appellant testified that he failed to notify the Respondent of the change in his marital status until November 2011 due to an omission on his part.

[15] The Appellant completed a questionnaire in May 2012 in which he provided information about the living arrangements that was substantially the same as his testimony at the hearing. He also stated that he and the Added Party helped each other out financially if necessary, and that they have both had surgery and rely on each other's support as friends in these situations. He stated that they continued to live together because in their Iranian culture people do not divorce, and because they want to keep face in front of their children, friends and relatives. He stated "We keep our presence together as a couple but in reality we live separate and apart. We

have no marital relationship whatsoever." At the hearing he testified that by "marital relationship" he meant "sexual relationship."

[16] The Appellant testified that he and the Added Party have not told the children; other relatives; their neighbours or most of their friends about their situation. With the exception of one or two of the Appellant's friends, the community and the world at large do not know that they have separated.

[17] The Appellant testified that several years ago the Added Party had brain surgery from which she has had a slow recovery. She needed constant care while in the hospital, and she continues to be physically slow and will ask the Appellant to help her with tasks sometimes. He had surgery that same year, and the Added Party provided him with support as well. They continue to support each other by accompanying each other to medical appointments. The Added Party does not drive, so the Appellant will occasionally drive her places if he has time. She usually takes the bus. They do not go on vacations alone or together, except last summer when their son took both of them on a day trip to Niagara Falls. If he remembers to, he will buy the Added Party flowers or a birthday gift. This year on her birthday he suggested that they go out for dinner, but she declined.

[18] The Appellant testified that his sister is named as an emergency contact on any medical forms he has filled out, as she used to be a nurse. This has always been the case, except when he was in Ontario when he named his children. He has never named the Added Party as an emergency contact even before 2010. He does not have a will or a life insurance policy, and he has not made any funeral arrangements. He does not attend religious services.

[19] The Appellant testified that their arrangement of sleeping in separate rooms and splitting household costs equally has persisted since January 2010, including after he and the Added Party moved to X, Ontario in February 2015, hoping to be closer to the children. He signed the lease on a one-bedroom apartment, where they both lived, with the Added Party on the couch and the Appellant in the bedroom.

[20] The Appellant testified that he found that his children had their own lives and were not paying attention to him or to the Added Party. He also found the weather was too cold and he

decided to return to B.C. after two months. He told the Added Party that she could stay in Ontario if she wanted to. As it turned out, the Appellant had to remain in Ontario because his health deteriorated and he had to go on dialysis. The Added Party remained with him, keeping him company and bringing him blankets and water while he was at his appointments. They returned to Vancouver on the same flight in September 2015, and they moved into a different apartment in their old building, where they continue to reside.

[21] The Added Party also testified at the hearing. She testified that she has always used her own surname, and that she regarded the Appellant as her husband "from a public viewpoint". She does not view herself as his wife, but she does not want to be divorced because she does not want to live alone. She testified that the Appellant is a public figure in the Iranian community and that it would be unacceptable within the community if it was known that they had separated. She stated that they would be looked down on, and their children would not be accepted if their parents were divorced. She testified that she has close friends who do not know of their arrangement.

[22] The Added Party's evidence of her relationship with the Appellant and their living arrangements over the years generally confirmed that given by the Appellant, except that she indicated that she does most of the housekeeping and cooking, and that sometimes she and the Appellant sit together to eat.

SUBMISSIONS

[23] The Appellant submitted that, although he and the Added Party live in the same apartment, they pursue their own separate, independent lives and should be considered to have separated as of January 2010. He submitted that they are only together because of strong cultural pressure and financial considerations.

[24] The Respondent submitted that the Appellant does not qualify for a disability pension because the facts do not establish that they live separate and apart.

ANALYSIS

[25] The Appellant gave evidence through a Farsi interpreter. He was concerned that the fact that he referred to the Added Party as his wife in his testimony might be used as evidence that

he did not consider that they were separated. The interpreter explained that it was difficult to use any other descriptive term for the Added Party. The Tribunal advised the parties that in these circumstances the Appellant's use of the word "wife" would not be regarded as any admission on his part.

[26] Although the Appellant did not argue this point, the Tribunal considered whether, in the circumstances he described in his evidence, the Added Party continued to be the Appellant's "spouse." That term is not defined in the legislation; but its common meaning is that of a partner to whom one is legally married. That is particularly so where, as is the case in the OAS Act, the term "common-law partner" is used to describe other relationships. In *Canada (Minister of Human Resources Development) v. Leavitt*, 2005 FC 664, the Court stated that the lack of a definition for the term "spouse" in the OAS Act does not mean that the term's commonly-understood meaning is extended to include emotional ties or other measures of strength of the relationship.

[27] The Tribunal finds that, because they continued to be legally married, the Appellant and the Added Party were spouses for the purposes of the OAS Act. As a result, in order to be considered single for the purposes of his GIS application, the Appellant must prove on a balance of probabilities that he has been separated from the Added Party for a continuous period of at least three months.

[28] Subsection 34(l) of the OAS Act provides that the Governor in Council may make regulations prescribing the circumstances in which a pensioner shall be deemed to be separated from his or her spouse for the purposes of subsection 15(4.1). Such a regulation was repealed in 2000 and nothing replaces it.

[29] In *Canada (Minister of Human Resources Development) v. Néron*, 2004 FC 101 the Court stated that as the word "separate" is not defined in the OAS Act, it must be given its ordinary meaning, that is, "the fact of no longer living together." In *Kombargi v. Canada (Minister of Social Development)*, 2006 FC 1511 the Court stated that "[w]hile there are certainly examples of separated spouses living under the same roof, such arrangements are probably not the norm and when they do occur, the task of proving a separation is made all the more difficult."

[30] The Appellant and the Added Party continue to live under the same roof, and to present themselves publicly as a married couple. They have not told the Appellant's children or their neighbours that they no longer consider themselves husband and wife, and they do not intend to do so. They maintain separate bank accounts, each for their own use, but they have always done so, as do many married couples. The Added Party uses her own surname, but has always done so. The Appellant had not named the Added Party as an emergency medical contact, but did not do so before January 2010 either. They no longer have a sexual relationship, but they have not had one for many years. While they pay for items separately and then split expenses, they also share meals on occasion and provide companionship and support to each other. They trust each other when reconciling their accounts.

[31] There is simply not enough evidence to satisfy the Tribunal that the Appellant and the Added Party are in fact living separate and apart. The evidence that they no longer share a bedroom; do not have a sexual relationship; regard themselves as friends or room-mates; and have a somewhat business-like approach to household expenses, cannot overcome the fact that they have chosen to remain legally married and to present themselves as such to almost everyone they know, and to occupy the same premises and provide mutual support and friendship.

[32] The Tribunal finds that the Appellant is not and has not been separated from his spouse as contemplated by the OAS Act.

CONCLUSION

[33] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security