



[TRANSLATION]

Citation: *C. K. v Minister of Employment and Social Development*, 2019 SST 1551

Tribunal File Number: GP-19-967

BETWEEN:

C. K.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

DATE OF DECISION: August 29, 2019

DECISION

I find that the Minister exercised its discretion judicially for the reasons stated below.

OVERVIEW

[1] The Minister received an application for the Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) on June 12, 2003.¹ The Minister approved the Appellant's application for the pension and GIS benefits on June 15, 2004. After reassessing the file in 2017, the Minister determined that the Appellant had not accumulated 20 years of residence in Canada. The Appellant had received overpayments of the OAS pension for the months of May 2004 to February 2017 and overpayments of the GIS benefits for the months of May 2004 to June 2016. A notice dated December 18, 2017,² was sent to the Appellant's address in Haiti. The Minister received a request for reconsideration on November 20, 2018, and it denied that request. The Appellant appealed the decision refusing to grant an extension of time to request reconsideration to the Social Security Tribunal.

THE LAW

[2] According to the *Old Age Security Act* (OAS Act),³ a person who is dissatisfied with a decision or determination made under this Act that no benefit may be paid, may, within ninety days after the day on which the person is notified in writing of the decision or determination, or within any longer period that the Minister may, either before or after the expiration of those ninety days, allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or determination.

[3] According to the *Old Age Security Regulations* (OAS Regulations),⁴ the Minister may allow a longer period to make a request for reconsideration of a decision or determination if the Minister is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.

¹ GD2-3.

² GD2-374.

³ Section 27.1(1).

⁴ Section 29.1(1)(2).

ISSUE

[4] I must determine whether the Minister exercised its discretion judicially when it refused to grant the Appellant an extension of time to request a reconsideration of the December 18, 2017, decision.

ANALYSIS

[5] The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. The Minister must exercise its discretion judicially or judiciously.⁵

[6] Discretionary power is not exercised "judicially" if it can be established that the decision-maker:⁶ acted in bad faith; acted for an improper purpose or motive; took into account an irrelevant factor; ignored a relevant factor; or acted in a discriminatory manner.

[7] Therefore, I must determine not whether the Minister made the correct determination, but rather whether it exercised its discretion judicially. The Appellant has the burden of proving that the Minister did not exercise its discretion properly.

[8] Based on the evidence on file, the Minister determined that the Appellant was eligible for an OAS pension and GIS benefits effective May 2004. On March 2, 2017, OAS Integrity Services requested a verification of the Appellant's marital status and residence. Payment of OAS pension benefits was suspended in March 2017. The Appellant also stopped receiving GIS benefits in July 2016.

[9] On December 18, 2017,⁷ the Minister determined that the Appellant had not accumulated 20 years of residence in Canada. The Appellant had received overpayments of the OAS pension for the months of May 2004 to February 2017, and overpayments of the GIS benefits for the months of May 2004 to June 2016. A notice was sent to the Appellant's address in Haiti on December 21, 2017.

⁵ *Canada (Attorney General) v Uppal*, [2008] FCA 388.

⁶ *Canada (Attorney General) v Purcell*, [1995] 3558 (FCA) and [1996] 1 FC 644.

⁷ GD2-374.

[10] On June 14, 2018,⁸ the Appellant contacted the Minister's office to inform it that he does not live more than six months per year in Haiti. Therefore, he does not understand why the address in his file is in Haiti.

[11] On July 3, 2018,⁹ the Appellant contacted the Minister's office again to confirm receipt of the details of his income from the Canada Revenue Agency. The Appellant also confirmed that he lives in Montréal, Québec, and asked for a copy of the letter the Minister sent him in December 2017.

[12] On October 24, 2018,¹⁰ the Minister sent a copy of the December 18, 2017, notice of decision to the Appellant's address in Montréal. The letter stated that, if the Appellant wished to have his file reviewed, he had to submit a request for reconsideration and indicate the reasons for his delay. The Appellant was also invited to provide additional documents if he wanted to.

[13] On October 29, 2018,¹¹ the Appellant contacted the Minister's office to inform it that he had filed the requested documents.

[14] On November 15, 2018, the Appellant filed a request for reconsideration and additional documents to confirm that he lives in Canada. The Minister's Québec regional office received the reconsideration request and documents on November 20, 2018.¹² In that letter, the Appellant indicated that he sent a letter to the Minister's office on March 15, 2018, after the December 2017 decision. He did not follow up because he was discouraged and depressed after his separation and the sale of his house. He adds that the documents provided would allow the Minister to see that he lives in Canada, even though he leaves during the winter because of his health condition.

[15] The Minister's decision to suspend the OAS pension and GIS benefits was sent in December 2017. The Appellant apparently received the decision and contacted the Minister's office in March 2018. He had therefore received the decision but did not request a

⁸ GD3-11.

⁹ GD3-11.

¹⁰ GD3-11.

¹¹ GD3-11.

¹² GD2-539.

reconsideration of the December 2017 decision until November 2018. He also did not follow up between March 2018 and July 2018.

[16] As mentioned above, I must determine not whether the Minister made the correct determination, but rather whether it exercised its discretion judicially.

[17] It follows that the evidence on file does not show a continuing intention to make a request for reconsideration after the December 18, 2017 decision. Also, the Appellant did not give a reasonable explanation for requesting a longer period. Therefore, I find that the Minister did not act in bad faith, did not act for an improper purpose or motive, did not take into account an irrelevant factor, did not ignore a relevant factor, and did not act in a discriminatory manner. The Minister considered the Appellant's efforts between December 18, 2017 (date of the decision), and the request for reconsideration in November 2018, but he did not make a request for reconsideration of the decision before November 2018. The Minister also considered the fact that the Appellant did not give a reasonable explanation for submitting a request for reconsideration beyond the 90-day deadline.

[18] For these reasons, after reviewing all of the evidence on file, I find that the Minister exercised its discretion judicially.

CONCLUSION

[19] The appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security