



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. L. v Minister of Employment and Social Development*, 2019 SST 1475

Tribunal File Number: GP-19-884

BETWEEN:

**M. L.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Antoinette Cardillo

Teleconference hearing on: September 19, 2019

Date of decision: October 30, 2019

## **DECISION**

The Appellant has not provided sufficient information in order to confirm his eligibility for the Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS).

## **OVERVIEW**

[1] The Appellant's application for the OAS pension was date stamped by the Minister on January 8, 2016<sup>1</sup>. On January 17, 2017, the Minister approved the Appellant's OAS pension at the rate of 10/40 effective in January 2017. He was also approved for the GIS. After a review, the Minister determined that the Appellant was a non-resident of Canada and consequently a reimbursement of all benefits received was requested in the amount of \$ \$29,739.82. The Minister explained in a letter to the Appellant dated December 4, 2018 that in order to qualify for the OAS pension as a non-resident of Canada, a minimum of 20 years of Canadian residence was required. He had not met the requirements, therefore he was not eligible to receive the OAS pension nor the GIS. The Appellant requested a reconsideration of the Minister's decision. The Minister denied the reconsideration request and the Appellant appealed the reconsideration decision to the Social Security Tribunal.

## **ISSUE**

[2] The issue in this appeal is whether the Appellant provided sufficient information to the Minister in order to confirm his eligibility for the OAS pension.

## **ANALYSIS**

### *i. OAS Act and Regulations*

[3] Subsection 3(2) of the *Old Age Security Act (OAS Act)* provides:

3(2) Payment of partial pension - Subject to this Act and the Regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and

(a) has attained sixty-five years of age; and

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<sup>1</sup> GD2-10

(b) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

[4] Subsections 11 (7)(c)(d) of the *OAS Act* provide that no supplement may be paid to a pensioner for

(c) any month throughout which the pensioner is absent from Canada having commenced to be absent from Canada either before or after becoming a pensioner and having remained outside Canada before that month for six consecutive months, exclusive of the month in which the pensioner left Canada; and

(d) any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month.

[5] Subsections 9(3)(4) of the *OAS Act* provide:

9(3) Where a pensioner ceases to reside in Canada, whether before or after becoming a pensioner, payment of the pension shall be suspended six months after the end of the month in which the pensioner ceased to reside in Canada, but payment may be resumed with the month in which the pensioner resumes residence in Canada.

9(4) In the circumstances described in subsection (3), payment of the pension may be continued without suspension if the pensioner establishes that at the time the pensioner ceased to reside in Canada, the pensioner had resided in Canada for at least twenty years after attaining the age of eighteen years.

[6] The definition of residence is set out in subsection 21(1) of the *Old Age Security Regulations (OAS Regulations)* and provides that a person resides in Canada if he makes his

home and ordinarily lives in any part of Canada and a person is present in Canada when he is physically present in any part of Canada.

[7] Pursuant to section 23 of the *OAS Regulations*, the Minister can ask, at any time, for additional information needed to show that a person receiving a benefit is entitled to it and should the Minister conclude that a person received a benefit to which he or she was not entitled, section 37 of the *OAS Act* authorizes the Minister to recover any overpayments that might have been made.

*ii. Documentary evidence and testimony*

[8] Pursuant to the case law, the residence analysis involves a fluid approach, with each case determined on its own facts. In *Ding*<sup>2</sup>, the court set out factors to be taken into account in determining whether a person makes his or her home in and ordinarily lives in Canada. They are as follows:

- a) ties in the form of personal property (bank accounts, business, furniture, automobile, credit card);
- b) social ties (membership with organizations or associations, professional membership);
- c) other fiscal ties to Canada (hospital and medical insurance coverage, driver's license, property tax statements, public records, immigration and passport records, federal and provincial income tax records);
- d) ties in another country;
- e) regularity and length of stay in Canada and the frequency and length of absences from Canada;
- f) the lifestyle of the person or his/her establishment in Canada.

[9] The Appellant provided the following evidence to support his years of residency in Canada:

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<sup>2</sup> *Canada (Minister of Human Resources and Development) v. Ding*, 2005 FC 76 (“*Ding*”)

- a rental agreement<sup>3</sup> listing his name as an occupant of the unit where family members were the tenants and the rental agreement was from June 1<sup>st</sup> 2013 to May 31<sup>st</sup> 2014;
- anonymous cheque deposit receipts<sup>4</sup> for rent for the months of December 2014, October 2015, December 2015, January 2016, April 2017, November 2017 and March 2018;
- a questionnaire dated October 16, 2018<sup>5</sup>, stating that he resides with his children while in Canada; in Pakistan, he resides in a home that he owns; he indicated that he planned to return to Pakistan from January 22, 2019 to June 2019;
- a letter dated December 21, 2018<sup>6</sup> stating that after his substantial absence from Canada (between 1980 and February 2011.), he returned to Toronto to permanently settle with family and he was not visiting Canada. Regarding living in Canada for ten years after his 18th birthday, those requirements were fulfilled as of December 2016 as he lived in Canada from 1976 to 1980 and from February 2011 to December 2016. He added that he and his wife had gone on vacation in April 2018 visiting several countries, he returned to Canada in September 2018 and found a letter from Service Canada dated July 2018 informing him that they had determined he was entitled to the GIS benefits for the period of July 2018 to June 2019. As his wife decided to stay abroad for more than six (6) month, he informed Service Canada. He then received a letter dated October 9, 2018 advising him of changes to his monthly entitlement;
- two Canadian passports, the first valid from June 2009 to June 2014 issued in Islamabad<sup>7</sup> and the second<sup>8</sup> valid from June 2014 to June 2024 issued in North York (Canada); the second passport had many pages missing;
- flight itineraries showing a departure from Toronto on April 16, 2018 and an arrival in Pakistan on May 1<sup>st</sup>, 2018, a departure from Abu Dhabi on September 26, 2018 and an arrival in Toronto on September 27, 2018 and a departure from Toronto on January 21, 2019<sup>9</sup>; and

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<sup>3</sup> GD2-47

<sup>4</sup> GD2-20

<sup>5</sup> GD2-57

<sup>6</sup> GD2-5

<sup>7</sup> GD2-73

<sup>8</sup> GD2-23

<sup>9</sup> GD2-49 to GD2-56

- an email dated August 5, 2019<sup>10</sup> providing an overview timeline of the letters he received from Service Canada and his objections to these letters.

[10] In addition, based on the evidence on file, the Appellant had a telephone conversation with Service Canada<sup>11</sup> wherein he stated that some questions on the questionnaire provided by Service Canada were unethical and too private.

[11] During the hearing, the Appellant testified that he always intended to return to Canada on a permanent basis since his children were living in Canada. He returned in 2011. He explained that he had worked in Canada since 2011 but not on a full time basis. He explained that in 2018, he spend several months abroad and therefore worked less than usual. I asked the Appellant several times to provide specific details on the number of days worked. He responded that it varied. He provided a vague recount of his employment history. He stated that at times he would work every day and other times, he would work only one day per week or two to three days. He worked as a security guard. He lived with his children and they shared expenses, there was no fix amount for the rent. He added that he had a Canadian driver's licence but sold his car in 2013. He and his wife travelled to the US for a few days in 2011, they also travelled to Pakistan for up to four (4) months between 2012 and 2017. Finally, in 2018, they returned to Canada in September 2018 and in 2019, they were away on vacation for 20 days. He also referred me to a document<sup>12</sup> claiming it would provide a detailed account of his residency in Canada.

[12] The Minister submitted that as the Appellant was only approved for his OAS pension at an aggregate of 10/40, it was critical to investigate whether he had accumulated sufficient years of residence to receive his pension while residing abroad. If, through this standard review process, the Appellant failed to provide reasonable explanations for the discrepancies on file, then all relevant documentation would be gathered to determine his eligibility. The Appellant declined to submit all of the requested documents and also declined to complete a questionnaire.

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<sup>10</sup> GD5-1

<sup>11</sup> GD2-31

<sup>12</sup> GD5

As a result, the Minister is unable to assess the Appellant's residence and determine whether he continues to qualify for the OAS pension.

[13] The Minister added that the Appellant was given the opportunity to provide the necessary documents and information on three occasions in order for the Minister to proceed with the review of his case. As a result, there is no information on when the Appellant re-entered Canada.

### *iii. Residence*

[14] Based on the evidence, the Appellant was approved to receive the OAS pension at the rate of 10/40 in January 2017. However, in 2018, when his wife spent more than six months abroad, the Minister informed the Appellant that his GIS benefit had been recalculated and the Appellant was also asked to provide information and documents as proof that he still resided in Canada.

[15] Pursuant to the *OAS Regulations*<sup>13</sup>, the Minister can ask, at any time, for additional information needed to show that a person receiving a benefit is entitled to it and should the Minister conclude that a person received a benefit to which he or she was not entitled and the *OAS Act*<sup>14</sup> authorizes the Minister to recover any overpayments that might have been made. Also, pursuant to the *OAS Act*, where a pensioner ceases to reside in Canada, whether before or after becoming a pensioner, payment of the pension shall be suspended six months after the end of the month in which the pensioner ceased to reside in Canada, but payment may be resumed with the month in which the pensioner resumes residence in Canada and a pensioner must have a minimum of 20 years of residence in Canada after the age of 18 in order to qualify to receive pension payments outside of Canada.

[16] In this case, a doubt was raised regarding the Appellant's residency in Canada after his OAS pension was approved at the rate of 10/40 and he was asked to provide information and documents to prove that he still resided in Canada.

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<sup>13</sup> Section 23 of the *OAS Regulations*

<sup>14</sup> Section 37 of the *OAS Act*

[17] Unfortunately, I am unable to make a determination on the Appellant's residency given the limited documentary information he provided and the lack of details during the hearing. The Appellant was asked more than once during the hearing to provide information on his employment history. He gave a very vague recount of days he worked. He also gave a very vague recount of his travels. In addition, the document he referred me too was a list of all the letters he received from the Minister requesting information and his objections to provide the information. The document did not provide any evidence on the Appellant's residency in Canada. It is unfortunate that the Appellant was reluctant to be more precise and more forthcoming with the evidence to support his claim that he has resided in Canada, especially since he claimed he returned on a permanent basis in 2011.

[18] I cannot make a determination based on one rental agreement<sup>15</sup> listing the Appellant's name as an occupant of an apartment from June 1<sup>st</sup> 2013 to May 31<sup>st</sup> 2014, anonymous cheque deposit receipts<sup>16</sup> for rent for only seven months from December 2014 to March 2018, a passport with missing pages, another passport renewed abroad and two flight itineraries for 2018/2019. If the Appellant is no longer residing in Canada, he is not entitled to receive payments of his OAS pension abroad as he has not met the eligibility requirements of 20 years of residency as required by the *OAS Act*.

[19] The evidence does not demonstrate the Appellant's ties to Canada and it is unclear how long he stays in Canada and the frequency and length of absences from Canada. Therefore, given the lack of evidence, I find that the Appellant is not entitled to the OAS pension and the GIS benefits.

## **CONCLUSION**

[20] The appeal is dismissed.

Antoinette Cardillo  
Member, General Division - Income Security

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<sup>15</sup> GD2-47

<sup>16</sup> GD2-20