



Citation: *BD v Minister of Employment and Social Development*, 2021 SST 542

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: B. D.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 18, 2020 (issued
by Service Canada)

Tribunal member: Pierre Vanderhout

Type of hearing: Questions and answers

Decision date: August 11, 2021

File number: GP-20-856

Decision

[1] The appeal is dismissed.

[2] The Claimant, B. D., wasn't eligible for the Guaranteed Income Supplement ("GIS") after reaching her 65th birthday in July 2016. I make no finding for her GIS after June 2020. She was only eligible for the Allowance for the Survivor ("ALWS") benefit for the month of July 2016, but the Minister already paid her that benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant is currently 70 years old. Her 65th birthday was on July 2, 2016. She married her husband, G. D., in 1972. While they separated in 2006, they remained in contact until he died on July 3, 2011. The Claimant only received the ALWS benefit for one month (July 2016). Since August 2016, she has received a full Old Age Security ("OAS") pension, but she has not received the GIS. On January 18, 2020, the Minister decided that she was not entitled to the GIS or to any other ALWS benefits.¹ The Claimant appealed that decision to the Tribunal.

[4] The Claimant says she should receive the ALWS and the GIS because her son's family has little income and she helps support them. She said her son's family is unable to meet their financial obligations as they become due.

[5] The Minister says the Claimant is no longer entitled to the ALWS because that benefit is only payable until age 65. The Minister adds that the Claimant's high income disqualified her from receiving the ALWS before July 2016. The Minister says the Claimant was not entitled to the GIS because it is only payable to low-income recipients of the OAS pension. The Claimant's income was above the minimum GIS threshold for the years in question. The Minister also says that the financial status of the Claimant's son is not relevant to her GIS entitlement.

¹ GD2-16

What the Claimant must prove

[6] For the Claimant to succeed, she must prove she meets the age, residency, and income requirements for the ALWS and the GIS.

Reasons for my decision

[7] I will first decide if the Claimant has any additional entitlement to the ALWS.

The Claimant is not entitled to more ALWS benefits

[8] The ALWS is a monthly benefit that may be payable to a “survivor”.² A “survivor” is a person whose spouse has died “and who has not thereafter become the spouse or common-law partner or another person”.³ In this case, the Claimant married G. D. in 1972. While they separated in 2006, I see no evidence that the Claimant later became the spouse or common-law partner of another person.⁴ As a result, the Claimant is considered a “survivor” for the purposes of the ALWS.

[9] The Minister received the Claimant’s application for the ALWS on February 20, 2017.⁵ This means she was potentially eligible for the ALWS 11 months before that, which would have been in March 2016.⁶

[10] However, to get the ALWS, the Claimant must also meet the residency, age, and income requirements. As she legally resided in Canada for more than 20 years after her 18th birthday, she meets the residency requirements.⁷ A survivor can only receive the ALWS between the ages of 60 and 64.⁸ This means that the Claimant only met the age requirements between July 2, 2011, and July 1, 2016.

[11] The ALWS is not payable to everyone who meets the age and residency requirements. The Claimant must also meet income requirements.⁹ For each payment

² Subsection 21(1) of the *Old Age Security Act*.

³ Section 2 of the *Old Age Security Act*.

⁴ GD2-4, GD2-33, GD2-34, and GD2-48 to GD2-49.

⁵ GD2-3

⁶ Paragraph 21(9)(a) of the *Old Age Security Act*.

⁷ Paragraph 21(1)(b) and subsection 21(2) of the *Old Age Security Act*.

⁸ Paragraph 21(1)(a) and subsection 21(8) of the *Old Age Security Act*.

⁹ Subsection 22(4) of the *Old Age Security Act*.

year (July to the following June), the ALWS is based on the survivor's income for the preceding calendar year. This means that the ALWS for March 2016 to June 2016 is based on the Claimant's 2014 income. The ALWS for July 2016 is based on the Claimant's 2015 income.

[12] The Claimant's 2014 income was \$55,617.00.¹⁰ For that income year, no ALWS was payable for survivors with an income of \$23,327.99 or more.¹¹ This means that the Claimant was not entitled to the ALWS from March 2016 to June 2016.

[13] The Claimant's 2015 income was \$18,354.00.¹² This was below the maximum income threshold. As a result, she was entitled to an ALWS benefit of \$211.98 for the month of July 2016. The Claimant's ALWS could not continue beyond July 2016 because she turned 65 that month.

[14] I find that the Claimant was entitled to an ALWS benefit of \$211.98 for the month of July 2016. However, the Minister already paid her that benefit. The Claimant is not entitled to any other ALWS benefits because her potential entitlement only started in March 2016 and ended in July 2016. For the payment period between March 2016 and June 2016, her income was too high.

[15] I will now consider whether the Claimant was entitled to the GIS starting in August 2016.

The Claimant is not entitled to the GIS

[16] The Minister said the Claimant's income from 2015 to 2018 was too high for her to get the GIS. This would cover the payment periods from July 2016 to June 2020.¹³

[17] I accept that the Claimant has been potentially eligible for the GIS since her 65th birthday. She receives the OAS pension.¹⁴ She resides in Canada. The Minister accepts

¹⁰ GD2-7

¹¹ The calculations are in s. 22(4) of the *Old Age Security Act*.

¹² GD2-7, GD2-17, and GD7-4

¹³ GD2-16

¹⁴ Her approved application is at pages GD2-55 to GD2-58.

that she was a potential GIS recipient as of August 2016.¹⁵ This means the Claimant could receive the GIS if her income does not exceed the applicable annual threshold.¹⁶

[18] However, the Claimant's income for the calendar years 2015 through 2018 exceeds the maximum annual threshold for each of those years. The following chart summarizes her income and the annual threshold:¹⁷

Year	Maximum Income to Receive GIS	Claimant's Income
2015	\$17,376.00	\$18,354.00
2016	\$17,688.00	\$52,660.00
2017	\$18,096.00	\$54,865.00
2018	\$18,408.00	\$45,292.00

[19] The Claimant accepted these income amounts as correct.¹⁸

[20] As the Claimant's income in each of these years exceeded the maximum threshold, she is not entitled to receive any GIS for the period from August 2016 to June 2020. No income information beyond 2018 has been filed with the Tribunal. This means I cannot make any findings with about the GIS for July 2020 or later. I will now address the Claimant's submissions about her son's financial situation.

The financial concerns of the Claimant's son are not relevant

[21] The Claimant made many references to her son's dire financial situation. Both her son and daughter-in-law appear to receive disability pensions, and have difficulty making ends meet.¹⁹ However, the Claimant's GIS entitlement is not based on the financial needs of other family members. For a single person like the Claimant, her GIS entitlement is based only on her own income.²⁰ The same applies to her ALWS entitlement.²¹

¹⁵ See GD4-12.

¹⁶ Subsections 11(1), (3) and (7) of the *Old Age Security Act*.

¹⁷ See GD7-4 and GD2-17. The GIS calculations are in s. 12 of the *Old Age Security Act*.

¹⁸ GD2-17 and GD7-4.

¹⁹ GD5-4

²⁰ See sections 12 and 13 of the *Old Age Security Act*.

²¹ See subsection 22(4) of the *Old Age Security Act*.

[22] As shown in the above chart, the Claimant's income usually exceeds the annual GIS threshold by a substantial amount. In 2017, her income was more than triple the annual GIS threshold. The Federal Court of Appeal has said that the purpose of the GIS is to supplement the monthly OAS pension for seniors with limited income.²² For the calendar years 2015 through 2018, the Claimant did not meet that test. Similarly, her income for the 2014 calendar year (which would dictate her ALWS entitlement from March 2016 to June 2016) far exceeded the annual ALWS threshold.

[23] I accept that the Claimant's son has financial difficulties. He said he would need to use a food bank, if the Claimant were unable to help him out. However, the Social Security Tribunal is a statutory tribunal. It only has the authority granted by the statute that created it. This authority does not include the ability to make decisions based on compassion or extenuating circumstances. As a result, the financial situation of the Claimant's son does not create any GIS entitlement for the Claimant.

Conclusion

[24] I find that the Claimant is not eligible for an ALWS benefit, other than for July 2016. However, the Minister already paid that benefit to the Claimant.

[25] I further find that the Claimant is not eligible for the GIS in connection with the income years of 2015 through 2018. This means that she is not entitled to the GIS from August 2016 to June 2020. I make no finding about her GIS for July 2020 forward.

[26] The appeal is dismissed.

Pierre Vanderhout
Member, General Division – Income Security Section

²² This is explained in a decision called *Gaisford v. Canada (Attorney General)*, 2011 FCA 28, at paragraph 3.