



Citation: *RC v Minister of Employment and Social Development*, 2021 SST 539

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant:	R. C.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated December 5, 2019 (issued by Service Canada)
Tribunal member:	George Tsakalis
Type of hearing:	Teleconference
Hearing date:	May 25, 2021
Hearing participant:	R. C., Appellant Ian McRobbie, Legal representative for the Respondent Zachary Hennessy, Articling Student (Observing for the Respondent)
Decision date:	August 17, 2021
File number:	GP-20-347

Decision

[1] The appeal is dismissed.

[2] The Claimant, R. C., isn't eligible for a Guaranteed Income Supplement (GIS) benefit from February 2016 to November 2017. This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant was born in Jamaica in 1943. He came to Canada in 1972 and he later attained Canadian citizenship. The Claimant began receiving an Old Age Security (OAS) pension in 2008.

[4] The Claimant applied for the GIS in January 2017 for the 2014 and 2015 taxation years. But the Claimant did not complete the residence statement section of his GIS application.¹

[5] The Minister of Employment and Social Development (the Minister) asked the Claimant to complete his GIS application and also sent him a questionnaire to complete in February 2017.² The Claimant did not respond to the Minister. In March 2017, the Minister told the Claimant he would have to reapply for the GIS.³

[6] The Claimant submitted GIS benefit applications in June 2017 for the years 2014, 2015, and 2016. The Claimant advised the Minister that he had never been absent from Canada for a period greater than six consecutive months in the previous 18 months.⁴

[7] The Minister wrote to the Claimant in September 2017. The Minister told him that he had been approved for the GIS as of February 2016.⁵

[8] But the Minister later changed its mind.

¹ See GD2-93-94

² See GD2-91-92

³ See GD2-89-90

⁴ See GD2-86-88

⁵ See GD2-83-85

[9] The Minister learned in October 2017 that the Claimant's GIS approval letter could not be delivered to his Canadian mailing address. The Minister sent the Claimant a letter asking him to confirm his mailing address.⁶

[10] The Minister advised the Claimant in November 2017 that his file was under review. The Minister requested information about the Claimant's marital and residence status in November and December 2017. But the Claimant did not send a response.⁷

[11] The Minister wrote to the Claimant in April 2018 and advised him that he was not entitled to the GIS he received from February 2016 to November 2017.⁸

[12] The Claimant asked the Minister to reconsider its decision. However, the Minister would not do so after receiving further information and documentation from the Claimant. The Minister maintained its decision that the Claimant could not receive the GIS from February 2016 to November 2017. But it did agree that the Claimant started residing in Canada in November 2018. However, the Claimant still owed the Minister \$1,173.48 for the GIS benefits he received from February 2016 to November 2017.

[13] The Minister sent the Claimant its reconsideration decision on December 5, 2019.⁹ The Claimant appealed the Minister's decision to the General Division of the Social Security Tribunal of Canada.

[14] The Minister argues that the Claimant could not receive the GIS from February 2016 to November 2017 because he did not reside in Canada at that time.

[15] The Minister reached its conclusion after receiving further information from the Claimant and after investigating the Claimant's travel history.

⁶ See GD2-82

⁷ See GD2-80-81

⁸ See GD2-78-79

⁹ See GD2-3-5

[16] The Claimant's travel history showed that the Claimant spent significant time outside of Canada from October 2013 to November 2018:

In Canada		Duration (in days)	Outside Canada		Duration (in days)
From	To		From	To	
			2013-10-26	2016-06-02	950
2016-06-02	2016-06-21	20	2016-06-21	2016-09-29	100
2016-09-29	2016-10-13	15	2016-10-13	2017-01-18	97
2017-01-18	2017-01-27	10	2017-01-27	2017-06-08	132
2017-06-08	2017-07-15	38	2017-07-15	2018-04-19	278
2018-04-19	2018-05-08	20	2018-05-08	2018-07-21	74
2018-07-21	2018-08-11	22	2018-08-11	2018-11-15	96
2018-11-15	2019-07-30	258			

[17] The Claimant takes the position that he resided in Canada and he is eligible for the GIS from February 2016 to November 2017.

What the Claimant must prove

[18] For the Claimant to succeed, he must prove that it is more likely than not that he resided in Canada when he collected the GIS from February 2016 to November 2017.¹⁰

¹⁰ See *De Carolis v. Canada (Attorney General)*, 2013 FC 366

[19] The GIS benefit is a monthly benefit payable to an OAS pension recipient who has little or no income.¹¹

[20] In order to be eligible to receive the GIS, claimants:

- Must be receiving an OAS pension;
- Must apply for the GIS every year;
- Must be a resident of Canada:
- Must have an actual income that does not exceed certain limits.¹²

[21] The Minister argues that the Claimant is not eligible to receive the GIS from February 2016 to November 2017 because he did not reside in Canada at that time.

[22] According to the OAS Act and Regulations, a person resides in Canada if they make their home and ordinarily live in any part of Canada. Residence is different from presence under the OAS Act. A person is present in Canada when they are physically present in any part of Canada.¹³ A person can be present in Canada without being resident in Canada.

[23] To decide whether the Claimant resided in Canada, I must weight all the facts of the case and the Claimant's circumstances. The Claimant's intention to live in Canada is not enough to demonstrate residence. Some of the factors I look to determine residence are:

- Ties in the form of personal property (e.g. furniture, automobile, bank accounts and credit cards);
- Social ties (memberships in social or professional organizations);

¹¹ Section 11 *Old Age Security Act* and see the Federal Court's decision in *Langlois v. Canada (Attorney General)*, 2018 FC 1108

¹² See subsections 11(1)(2)(4) and (7) *Old Age Security Act* and section of the *Old Age Security Act Regulations*

¹³ See subsection 21(1) *OAS Regulations*

- Other ties in Canada (e.g. health coverage, driver's licence, rental or mortgage agreements, immigration and passport records, income tax records);
- Ties in another country;
- Regularity and stays in Canada, and frequency and length of absences from Canada; and
- The Claimant's mode of living (whether the Claimant's life in Canada is substantially deep-rooted and settled).¹⁴

Matters I have to consider first

[24] The Minister had initially awarded the Claimant the GIS for February 2016 to November, but later changed its mind.

[25] In *B.R. v. Minister of Employment and Social Development*, 2018 SST 844, the Tribunal's Appeal Division ruled that the Minister does not have the power to change its initial eligibility decision in OAS cases in certain circumstances. In *R.S. v. Minister of Employment and Social Development*, 2018 SST 1350, a member of the Tribunal's General Division did not follow the Appeal Division's decision in *B.R.*

[26] I asked the parties to make submissions on the issue of whether the *B.R.* decision applied to this case.¹⁵ The GIS is a benefit under the OAS Act and if the *B.R.* decision applied to this case that would mean the Minister might not have been able to change its initial eligibility decision that the Claimant was entitled to the GIS from February 2016 to November 2017.

[27] I did not receive submissions from the Claimant on this issue. He wanted to proceed with his hearing, where he argued that he should have received the GIS from February 2016 to November 2017 because he resided in Canada during that time.

¹⁴ See *Canada (MHRD) v. Ding*, 2005 FC 76

¹⁵ See GD4

[28] I received submissions from the Minister on the issue of whether it could change its initial decision that the Claimant was entitled to GIS from February 2016 to November 2017.¹⁶

[29] The Minister made three main arguments in their submissions:

- I did not have jurisdiction to raise an issue concerning the Minister's authority to investigate and reassess claimants' entitlements to OAS benefits.¹⁷
- The *B.R.* decision was wrongly decided and the Minister has jurisdiction to investigate and reassess claimants' eligibility for OAS benefits.¹⁸
- The Appeal Division's decision in *M.R. v. Minister of Employment and Social Development*, 2020 SST 93 ruled that the Minister still retains authority to revisit and reassess claimants' eligibility for GIS benefits.¹⁹

– **I have jurisdiction to raise an issue concerning the Minister's authority to investigate and reassess claimants' entitlements to OAS benefits**

[30] The Minister argued that I should not have raised the issue of whether it could change its initial decision awarding the Claimant the GIS from February 2016 to November 2017.

[31] The Minister argued that the Claimant did not raise this issue and did not dispute that the Minister had the authority to reassess his eligibility for the benefit. The Minister argued that I could only raise a new issue in rare and exceptional circumstances. The Supreme Court has cautioned that in exercising the discretion to raise a new issue, decision-makers cannot go in search of a wrong to right and must always maintain their role as an independent, impartial adjudicator.²⁰

¹⁶ The Minister's submissions can be found at GD5

¹⁷ See GD5-14-15

¹⁸ See GD5-14 and 26-29

¹⁹ See GD5-14 and 29-30

²⁰ See *R. v. Mian*, 2014 SCC 54

[32] I disagree with the Minister's arguments. The Minister relied on a Supreme Court of Canada decision from 2014 to argue that I did not have jurisdiction to raise a new issue on this appeal. However, in 2017, the Supreme Court of Canada endorsed the *Statement of Principles on Self-represented Litigants and Accused Persons* established by the Canadian Judicial Council.²¹

[33] The Claimant represented himself on the appeal. *The Statement of Principles on Self-represented Litigants and Accused Persons* states that decision-makers should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons. Depending on the circumstances and nature of the case, decision-makers may provide information about the law and evidentiary requirements.

[34] I believe that it is part of my duty in providing a fair and impartial process and to prevent an unfair disadvantage to the self-represented Claimant to raise a legal issue that I would have to deal with this on this appeal, which is whether the *B.R.* decision applied to this case. If it did the Claimant could succeed on this appeal and I thought it appropriate to inform all parties about this issue before the hearing.

[35] In addition, I note that the Supreme Court of Canada case cited by the Minister says that I have discretion to raise a new issue and I can raise an issue before or during a hearing.²² This Supreme Court of Canada case says that I must give enough information to the parties to respond to a new issue²³, which I did by providing both parties an opportunity to make written submissions before the hearing. Therefore, no party was prejudiced by my raising the issue of the Minister's jurisdiction to change its initial decision in this appeal.

²¹ See *Pintea v. Johns*, 2017 SCC 23

²² See *R. v. Mian*, 2014 SCC 54 at paragraphs 51, 52 and 57

²³ See *R. v. Mian*, 2014 SCC 54 at paragraph 58

– **The B.R. decision does not apply to GIS applications**

[36] I agree with the Appeal Division's decision in *M.R. v. Minister of Employment and Social Development* that the reasons in *B.R.* do not apply to cases concerning the GIS.

[37] The Appeal Division in *M.R.* found that *B.R.* challenges the Minister's authority to revisit initial decisions for OAS pensions in certain circumstances. I agree with the Appeal Division's reasoning in *M.R.* that the GIS is different than an OAS pension. An OAS pension is intended to be a lifetime pension initiated by a single application that is focused on a claimant's past residence. The GIS application is a temporary benefit that is renewed by an annual application that focuses on a claimant's current and not past residence.²⁴

[38] I agree with the Appeal Division in *M.R.* that the Minister cannot be expected to continuously monitor a claimant to ensure their continuing annual eligibility for the GIS.²⁵

[39] I find that the Minister had the jurisdiction to change its mind on whether the Claimant was entitled to the GIS from February 2016 to November 2017.

[40] I will now turn my attention to the central issue on this appeal, which is whether the Claimant is eligible to receive the GIS from February 2016 to November 2017.

Reasons for my decision

[41] I find that the Claimant is not eligible to receive the GIS from February 2016 to November 2017. I reached this decision by considering the following issues:

- Was the Claimant a resident of Canada from February 2016 to November 2017?

²⁴ See *M.R. v. Minister of Employment and Social Development*, 2020 SST 93 at paragraph 22

²⁵ See *M.R. v. Minister of Employment and Social Development*, 2020 SST 93 at paragraph 25

Was the Claimant a resident of Canada from February 2016 to November 2017?

[42] The Claimant did not reside in Canada from February 2016 to November 2017. I reached this finding by considering several factors. I explain these factors below.

– The Claimant ties to Canada in the form of personal property

[43] The Claimant did not have much ties in the form of personal property in Canada from February 2016 to November 2017.

[44] The Claimant said he did not own property in Canada. He testified that he lived in an apartment in Toronto from October 2013 to June 2016 with his common-law partner and son. He then lived in another apartment with someone else from June 2016 and into 2017.

[45] The Claimant said he kept his furniture and belongings in Canada and he had no furniture and belongings in Jamaica. He is not sure if he owned a car in 2016 and 2017. He had a Canadian bank account in 2016 and 2017. He did not hold a Jamaican bank account in 2016 and 2017.

[46] The Claimant insisted that he rented an apartment in Canada. However, his hearing testimony is different from the information he provided to the Minister while they investigated his claim for the GIS. The Claimant completed a questionnaire for the Minister in September 2019, where the Minister asked him where he had lived since January 2008. He had the option of telling the Minister that he rented an apartment in Canada, but he instead checked off that he lived with relatives and friends in Canada.²⁶ In another letter to the Minister dated September 18, 2018, the Claimant described himself as being homeless.²⁷

[47] I find the Claimant did not have deep rooted or settled ties to Canada based on his personal property.

²⁶ See GD2-33

²⁷ See GD2-43

– **Social ties**

[48] The Claimant did not provide evidence to show that he had ties to Canada in terms of memberships with social or professional organizations from February 2016 to November 2017.

– **The Claimant's other ties in Canada (e.g. health coverage, driver's licence)**

[49] When I review the Claimant's testimony and the documents he provided, I agree with the Minister that the Claimant was present in Canada at certain times in 2016 and 2017. But the Claimant's other ties in Canada do not support Canadian residence from February 2016 to November 2017.

[50] The Claimant said he had health coverage in Canada. He did not use the Jamaican medical system. He did not provide any rental agreements, but he testified that he rented an apartment in Canada during this time period.

[51] The Claimant provided documents that showed he held a Canadian passport from October 2013 to October 2018.²⁸ He provided mail box rental receipts from May and November 2016, and February 2017.²⁹ He said he rented a mail box because he would either not get mail at his apartment or it would come late.

[52] The Claimant told the Minister in a questionnaire that he held a Canadian driver's licence that he had lost.³⁰

[53] The Claimant did not provide copies of his income tax returns, but he said he filed tax returns in Canada from 2013 to 2016.

[54] The Claimant provided letters from a doctor that showed he visited a medical clinic on five occasions from June 2016 to July 2017, and that he had blood work done in June 2016 and 2017.³¹ But I agree with the Minister that the documents provided by

²⁸ See GD2-24

²⁹ See GD2-50-52

³⁰ See GD2-65

³¹ See GD2-44-49

the Claimant showed that he was present in Canada at certain times in 2016 and 2017. They do not show that he ordinarily resided in Canada.

– **The Claimant's ties in another country**

[55] The Claimant's ties in another country do not support Canadian residence from February 2016 to November 2017.

[56] The Claimant's travel history showed he spent most of his time outside Canada from October 2013.

[57] The Claimant said he was not a Jamaican citizen and he did not hold a Jamaican passport. Three of his four children live in Canada. He does not own property in Jamaica. He would only stay with friends and his son when he visited Jamaica. He only vacationed and went to his son's wedding in Jamaica in 2016 and 2017. He denied living in Jamaica.

[58] The Claimant's testimony was contradicted by information he previously provided to the Minister. The Claimant's said he lived common-law at his hearing. But he has given different information about his marital status. He said he was single when he applied for the GIS in 2017.³² He denied that he had ever been in a common-law relationship when he completed a questionnaire for the Minister in April 2018.³³ He denied living in a common-law relationship when he completed another questionnaire in September 2019.³⁴

[59] Although the Claimant denied that he had significant ties to Jamaica, he has a son who lives there and he spent a significant time in Jamaica from October 2013 to November 2018.

³² See GD2-86, 87 and 94

³³ See GD2-61

³⁴ See GD2-34

– **The frequency and length of absences from Canada**

[60] The frequency and length of the Claimant's absences from Canada do not support Canadian residency from February 2016 to November 2017.

[61] The Claimant's travel history showed the Claimant spent most of his time outside Canada from October 2013 to November 2018.

[62] The Minister asked the Claimant if he disputed the dates he was outside Canada in a November 2019 questionnaire. The Claimant did not respond to the question.³⁵

[63] The Claimant testified that the travel history was inaccurate. He said he worked in Canada in 2013 and 2014. He argued that the documents he provided showed Canadian residence.

[64] I disagree with the Claimant's argument. The Claimant's Canadian passport information matches the travel history that the Minister obtained from the Canada Border Services Agency (CBSA).

[65] The Claimant's passport showed that he entered Jamaica on October 26, 2013.³⁶ His travel history from the CBSA shows that he returned to Canada on June 2, 2016 and left Canada on June 21, 2016.³⁷ The Claimant's passport showed he entered Jamaica on June 21, 2016.³⁸

[66] The Claimant's passport contains stamps that show he arrived in Jamaica on October 13, 2016, January 27, 2017, July 15, 2017, which is consistent with the CBSA travel history.³⁹

³⁵ See GD2-7

³⁶ See GD2-27

³⁷ See GD2-38

³⁸ See GD2-25

³⁹ These passport entries can be found at GD2-74-75

[67] I did not see anything in the documentary evidence that the contradicted the CBSA travel history, which showed that the Claimant spent 1,727 days outside Canada and only 125 days inside Canada from October 26, 2013 to November 15, 2018.

[68] Not only was the Claimant frequently absent from Canada, but these absences were for long periods that ranged from 97 to 950 days. Meanwhile, his stays in Canada were for short periods that ranged from 10 to 38 days before he re-established Canadian residence in November 2018.

[69] I find that the Claimant's stays in Canada were irregular and short, while his absences were frequent and lengthy. This is a factor that does not support Canadian residency from February 2016 to November 2017.

– **The Claimant's mode of living**

[70] I agree with the Minister that the Claimant's life in Canada was not substantially deep-rooted and settled.

[71] The Claimant did not own personal property in Canada. He testified that he rented property in Canada, while at other times he said he stayed with friends and relatives. He testified that he lived common-law in Canada, but at other times he said he was not in a common-law relationship. I accept that he was present in Canada for short periods of time and used the Canadian medical system. But the CBSA travel history confirmed frequent and lengthy absences from Canada.

[72] The Claimant wrote to the Minister on September 18, 2019. He said that he had moved back and forth for the last three years between Canada and Jamaica. But he changed his mind and had decided to stay in Canada since August 2019.⁴⁰ This letter confirms the Claimant spent time outside Canada.

[73] When I look at the Claimant's overall circumstances and mode of living, I find that the Claimant did not reside in Canada from February 2016 to November 2017, which means that he could not receive the GIS for that time period. He had few ties to Canada

⁴⁰ See GD2-42

in terms of personal property. The evidence did not show significant social ties in Canada. The evidence showed that the Claimant spent most of his time in Jamaica. The Claimant's residence in Canada also did not appear to be stable and permanent, which was shown by comments that he stayed with friends and relatives in Canada.

I do not have jurisdiction to waive the Claimant's overpayment on compassionate grounds

[74] The Minister accepted that the Claimant returned to Canada in November 2018. The Minister awarded the Claimant a GIS starting in November 2018. The Claimant still owes the Minister \$1,173.48 for GIS benefits he received from February 2016 to November 2017.⁴¹

[75] I feel sorry for the Claimant. He finds himself in difficult financial circumstances. But the law says that the Tribunal must interpret and apply the provisions as they appear in the OAS Act. I cannot waive or change them on compassionate grounds. The Tribunal does not have jurisdiction to consider the issue of whether repayment would cause undue hardship to a claimant. The Tribunal also does not have the power to forgive overpayments, only the Minister can do that.⁴²

Conclusion

[76] I find that the Claimant isn't eligible for the GIS from February 2016 to November 2017 because he did not reside in Canada during that time period.

[77] This means the appeal is dismissed.

George Tsakalis
Member, General Division – Income Security Section

⁴¹ See GD1-6

⁴² See subsection 37(4) *Old Age Security Act* and *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278