



Citation: *The Estate of SP v Minister of Employment and Social Development*, 2022 SST 650

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	The Estate of S. P.
Respondent:	Minister of Employment and Social Development
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Decision under appeal:	General Division decision dated March 28, 2022 (GP-21-59)
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Tribunal member:	Neil Nawaz
Decision date:	July 16, 2022
File number:	AD-22-402

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Applicant is the executor of his late mother's estate. S. P. was born in India in 1928 and first came to Canada in 1986. In 2016, the Minister awarded her an Old Age Security (OAS) pension based on 12 years of Canadian residence. Later, the Minister also awarded her the Guaranteed Income Supplement (GIS).

[3] In December 2018, she travelled to India. There, she became severely ill and was hospitalized, passing away in September 2019.

[4] The Minister decided that the deceased was not entitled to OAS and GIS benefits that she received from July 2019 to September 2019. The Minister asked the Applicant to pay back more than \$1,500 in OAS and GIS benefits that the deceased had received during that period.

[5] The Applicant appealed the Minister's decision to the Social Security Tribunal. He said that his mother intended to return to Canada but could not do so because of her declining health. The General Division held a hearing by teleconference and dismissed appeal. It found that the Applicant's mother was ineligible to receive OAS and GIS benefits after June 2019 because she had ceased to reside in Canada. It said that it had no choice but to follow the rules set out in the *Old Age Security Act*.

[6] The Applicant is now asking for permission to appeal the General Division's decision. He says that the General Division should have addressed his letter dated December 3, 2019, which outlined his position in detail. He argues that the General Division should have waived the rules allowing the Minister to reassess and reclaim his mother's benefits. He maintains that the General Division should have considered his mother's age and illness and allowed his appeal on compassionate and humanitarian grounds.

[7] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant's appeal does not have a reasonable chance of success.

Issue

[8] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.² At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.³ This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.⁴

[9] I have to decide whether the Applicant has an arguable case.

Analysis

[10] The Applicant comes to the Appeal Division making some of the same arguments that he made at the General Division. He insists that his mother wanted to come back to Canada but had no choice but to remain in India after she became ill. He argues that the Minister should not have terminated his mother's benefits and sought repayment for the period between July and September 2019.

[10] I don't see a reasonable chance of success for these arguments.

[11] To succeed at the Appeal Division, an applicant must do more than simply disagree with the General Division's decision. An applicant must also identify specific

¹ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

² See DESDA, sections 56(1) and 58(3).

³ See DESDA, section 58(2).

⁴ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law.

[12] In this case, I don't see any indication that the General Division committed an error in arriving at its decision. The General Division reviewed the law and the evidence and made the following findings:

- The *Old Age Security Act* says that someone with less than 20 years of Canadian residence cannot receive OAS benefits outside Canada for more than six months after they leave the country;⁵
- The deceased left Canada in December 2018 and remained outside the country until her death in September 2019; and
- The legislation makes no exception for those with serious illnesses while visiting a country outside Canada.

[13] Based on these findings, the General Division concluded that the Minister appropriately terminated the Applicant's OAS and GIS benefits as of June 2019 and had the right to assess an overpayment for the three months preceding her death. I see no reason to second-guess the General Division's conclusion, which it reached after what strikes me as a careful assessment of the evidence and applicable law.

[14] The Applicant also alleges that the General Division overlooked his letter to the Minister dated December 3, 2019.⁶ However, when I look at this letter, I see that it does little more than detail the Applicant's medical crises during her final trip to India. An administrative decision-maker such as the General Division is presumed to have considered all the evidence before it.⁷ In any case, it is clear from its decision that the General Division was aware of the circumstances surrounding the deceased's illness.⁸ Moreover, the General Division made it clear that it didn't matter if the Applicant's

⁵ See General Division decision, paragraphs 11, 12, 18, and 19, referring to sections 3(2), 9(1), and 11(7) of the *Old Age Security Act*.

⁶ See GD2R-4.

⁷ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁸ See General Division decision, paragraph 15.

mother was prevented from returning to Canada because of circumstances beyond her control. Instead, the thing that mattered for the General Division was the fact that she was absent from Canada for more than six months. I don't see how the General Division committed an error in making this analysis.

[15] Finally, the Applicant criticizes the General Division for failing to recognize that his mother's illness made it impossible for her to return to Canada. He says that it is unfair to expect her estate to return money to which she would have otherwise been entitled.

[16] I can understand the Applicant's frustration, but the General Division was bound to follow the letter of the law and so am I. This Tribunal is not a court but a statutory decision-maker, and it cannot simply order the Minister to waive its demand for repayment on compassionate or humanitarian grounds.⁹ Nor can I simply ignore the explicit terms of the *Old Age Security Act* and give him what he wants, no matter how much I might sympathize with him.¹⁰

Conclusion

[17] The Applicant has not identified any grounds of appeal that have a reasonable chance of success.

[18] Permission to appeal is therefore refused.



Member, Appeal Division

⁹ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

¹⁰ There is one option left for the Applicant: He can formally ask the Minister to forgive the estate's debt under section 37(4) of the *Old Age Security Act*. However, the Minister would first have to be satisfied that (i) the debt is uncollectable; (ii) the costs of collecting the debt exceed the amount likely to be recovered; (iii) repayment of the debt would cause undue hardship; or (iv) the debt was the result of the Minister's erroneous advice or administrative error.