

[TRANSLATION]

Citation: *G. T. v. Minister of Human Resources and Skills Development*, 2013 SSTGDIS 2

Appeal No: 118090

BETWEEN:

**G. T.**

Appellant

and

**Minister of Human Resources and Skills Development**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security – Summary Dismissal**

---

SOCIAL SECURITY TRIBUNAL MEMBER: Shane Parker

DATE OF DECISION: August 23, 2013

## **DECISION**

[1] The Tribunal finds that the appeal has no reasonable chance of success. Consequently, the appeal is summarily dismissed.

## **INTRODUCTION**

[2] The Appellant submitted an application under the *Old Age Security Act* (OAS Act) to receive the Guaranteed Income Supplement (GIS) as a single person. The Respondent determined that the Appellant received a GIS overpayment for the period from March 2007 to January 2011 because she started cohabitating with someone as of March 1, 2006. The Respondent claimed the overpayment from her. The Appellant appealed to the Office of the Commissioner of Review Tribunals (OCRT) on December 20, 2011, because the Respondent upheld its initial decision when it reviewed the decision on October 4, 2011.

## **ISSUE**

[3] The Tribunal must decide whether the appeal must be summarily dismissed.

## **APPLICABLE LAW**

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 stipulates that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[5] Subsection 53(1) of the *Department of Human Resources and Skills Development Act* (DHRSD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[6] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the appellant and allow the appellant a reasonable period of time to make submissions.

[7] Section 12 of the OAS Act states that the GIS amount payable to a common-law partner is lower than the amount paid to a single person:

Amount of Supplement

Amounts on April 1, 2005

**12.** (1) The amount of the supplement that may be paid to a pensioner for any month in the payment quarter commencing on April 1, 2005 is,

(a) in the case of a person other than a person described in paragraph (b), five hundred and sixty-two dollars and ninety-three cents, and;

(b) in the case of a person who, on the day immediately before that payment quarter, had a spouse or common-law partner to whom a pension may be paid for any month in that payment quarter,

(i) in respect of any month in that payment quarter before the first month for which a pension may be paid to the spouse or common-law partner, five hundred and sixty-two dollars and ninety-three cents, and

(ii) in respect of any month in that payment quarter commencing with the first month for which a pension may be paid to the spouse or common-law partner, three hundred and sixty-six dollars and sixty-seven cents,

minus one dollar for each full two dollars of the pensioner's monthly base income.

[8] Subsection 15(1) of the OAS Act stipulates that every person by whom an application for a supplement in respect of a payment period is made shall, in the application, state whether the person has or had a spouse or common-law partner at any time during the payment period or in the month before the first month of the payment period, and, if so, the name and address of the spouse or common-law partner and whether, to the person's knowledge, the spouse or common-law partner is a pensioner.

[9] Subsection 15(9) of the OAS Act stipulates that every applicant shall inform the Minister without delay if they had a spouse or common-law partner at the beginning of a month, not having had a spouse or common-law partner at the beginning of the previous month.

[10] Section 2 of the OAS Act defines “common-law partner” and “Minister” as follows:

“common-law partner”, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year. For greater certainty, in the case of an individual’s death, the “relevant time” means the time of the individual’s death.

“Minister” means the Minister of Human Resources and Skills Development.

[11] Subsection 37(1) of the OAS Act concerns the return of an overpayment and reads as follows:

Return of benefit where recipient not entitled

**37.** (1) A person who has received or obtained by cheque or otherwise a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, shall forthwith return the cheque or the amount of the benefit payment, or the excess amount, as the case may be.

## **EVIDENCE**

[12] The Appellant submitted an application to receive the GIS. The application was approved in May 2003. She received the payment on the basis of her single marital status. In 2007, she informed the Canada Revenue Agency (CRA) of her change in marital status because she became the common-law partner of someone one year after the start of their cohabitation on March 1, 2006. The Minister was informed of the change when her spouse came to the office to complete his GIS application in January 2011 (page 21 of the appeal file). In light of this information, the Respondent determined that the Appellant received a GIS overpayment for the period from March 2007 to January 2011. Consequently, the Respondent claims the overpayment issued in that period.

## **SUBMISSIONS**

[13] The Appellant stated the following:

- a) She acted transparently by informing the CRA of her change in marital status without delay;
- b) The CRA should have informed the Minister, and the Minister should have been informed of the change immediately.

[14] The Respondent stated the following:

- a) The Appellant failed to fulfill her duty to inform the Minister of her change in marital status from single person to common-law partner as soon as the change took place;
- b) The Appellant erroneously received a higher GIS amount on the basis of her single marital status for the period from March 2007 to January 2011;
- c) The overpayment must be repaid to the Minister.

## **ANALYSIS**

[15] In accordance with section 22 of the *Social Security Tribunal Regulations*, the Appellant was given notice in writing of the General Division's intention to summarily dismiss the appeal and was allowed a reasonable period of time to make her submissions. The Appellant did not make any additional submissions before the deadline set out in the notice.

[16] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the OAS Act.

[17] In this case, the Appellant's file indicates that she became a common-law partner in March 2007, after one year of cohabitating with someone. She did not inform the Minister of this change without delay. The legislation is clear. The Appellant should have received a GIS amount on the basis of her status of common-law partner for the period from March 2007 to January 2011. The Respondent is therefore entitled to claim the overpayment for that period.

[18] Concerning the submission that the Appellant informed the CRA of her change in marital status in 2007, the CRA is not the Minister according to the OAS Act. The OAS Act specifies that the Appellant must inform the Minister without delay. The Act does not provide that she can rely on the CRA to fulfill this duty on her behalf.

[19] Given the key facts and the relevant legislation, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[20] The appeal is summarily dismissed.

*Shane Parker*

Member, General Division