

[TRANSLATION]

Citation: *J. R. E. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 10

Appeal No.: GT-120744

BETWEEN:

J. R. E.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

SOCIAL SECURITY TRIBUNAL MEMBER: Shane Parker

TYPE OF HEARING: Written questions and answers

DATE OF DECISION: May 8, 2014

DECISION

[1] The Tribunal finds that the Appellant did not live in Canada between May 2009 and July 2011.

INTRODUCTION

[2] The Respondent stamped the Appellant's Old Age Security (OAS) application on May 12, 2005. The Respondent initially approved the application at a rate of 40/40 and subsequently at 21/40. The Appellant then submitted Guaranteed Income Supplement (GIS) applications for income years 2008 and 2009. The applications received April 29, 2010, were denied by the Respondent on June 20, 2011. The Appellant requested a reconsideration of this decision. The Respondent denied the request for reconsideration on May 23, 2012, and the Appellant appealed from this decision to the Office of the Commissioner of Review Tribunals (the OCRT) on June 12, 2012.

[3] On June 10, 2013, the Appellant submitted his Notice of Readiness to the Social Security Tribunal (the Tribunal). The Respondent in turn submitted its Notice on August 16, 2013.

TYPE OF HEARING

[4] This appeal proceeded by means of written questions and answers for the reasons set out in the notice of hearing dated January 13, 2014.

APPLICABLE LAW

[5] In this case, the relevant legislative and regulatory provisions are as follows.

[6] 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.

[7] Part II of the *Old Age Security Act* (the OAS Act) deals with the Guaranteed Income Supplement (GIS). Subsection 11(7) of the OAS Act lists the limitations on payment of the GIS as the following:

Limitations on payment of supplement

(7) No supplement may be paid to a pensioner for

(a) any month that is more than eleven months before the month in which the application is received or is deemed to have been made or in which the requirement for an application has been waived, as the case may be;

(b) any month for which no pension may be paid to the pensioner;

(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;

(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; or

(e) any month during which the pensioner is

(i) a specially qualified individual, and

(ii) a person in respect of whom an undertaking by a sponsor is in effect as provided under the *Immigration and Refugee Protection Act*.

[8] Section 21 of the *Old Age Security Regulations* (the OAS Regulations) is important. It makes the distinction between “residing” and “being present” as follows:

21. (1) For the purposes of the Act and these Regulations,

(a) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada; and

(b) a person is present in Canada when he is physically present in any part of Canada.

ISSUE

[9] In this case, the parties agree and the Tribunal finds that the issue to be resolved is as follows: Did the appellant reside or was he present in Canada between May 2009 and July 2011, namely, during the period that is the subject of the GIS applications of April 29, 2010?

EVIDENCE

[10] The Tribunal took the entire record into account. The following is a summary of the relevant evidence in this case.

[11] The Appellant is originally from Haiti. He lived in Canada between February 23, 1977 and August 1, 1998. Consequently, he was granted an OAS pension at a rate of 21/40. The Respondent denied the GIS applications received April 29, 2010, on the ground that the Appellant had not resided in Canada since October 1998.

[12] The Respondent investigated the Appellant's residency in Canada. Its report dated October 1, 2009, (GT-61 to 68) provides the following information and conclusions:

[Translation]

We visited X X on September 30, 2009, and met the recipient's daughter-in-law who told us that the recipient was in Haiti and had been there since October 2008 (1 year), ...

The recipient had made several trips of more than 6 months...

We have no proof that he was living in Canada. According to the RRQ, he worked from 1977 to 1998, but nothing after that. Starting in 2001, the RAMQ shows only visits during the summer months. Furthermore, he has not been in Canada for a year, which shows that he is living in Haiti and only comes back for a few months every year to have his presence noted...

According to the facts, the recipient is only present in Canada and not residing in Canada. He has been in Haiti since October 2008. He has not and cannot provide documentary evidence to support the fact that he has been living permanently in Canada since 1999.

[13] In the context of the hearing, according to the response written on behalf of the Appellant, the Appellant agrees with this report (GT4-3). According to the written response (GT4-3), the Appellant also agrees with the Respondent's investigation report of May 26, 2011 (GT-51 to 53). According to this report:

[Translation]

He does not really have any personal property in Canada because he does not have a home... he said that he pays \$300 a month for a room in the basement. He showed me his room, which has a small refrigerator. He had no receipts to show that he was actually paying \$300 a month... His departure and arrival dates should be mostly the same as in 2010, a year in which he spent 168 days outside Canada. According to the information received, it seems the recipient spent more than 183 days in Canada in 2010.

[14] Counsel for the Appellant indicated that the Appellant has no assets of any value in either Canada or Haiti. He has no lease, contract for utilities, property or bank account in Haiti. He also

explained that he does not own a family home in Haiti. When he is in Haiti, he stays with his sister. He added that his usual address is in Montreal (GT4-4).

[15] The Appellant did not file any tax returns in Haiti, whereas he filed returns for 2005, 2006 and 2007 (GT-87 to 103) in Canada. On his Canadian returns, he identified Quebec as his province of residence.

[16] The file does not contain any documents issued by Haitian authorities for the Appellant. However, he has a Canadian driver's licence, which was valid until May 26, 2011 (GT-33), as well as a Canadian passport renewed on September 23, 2009, in Port-au-Prince (GT-29 to 30). This passport shows the following exits and entries:

- a) Exited Haiti on April 13, 2010, entered on October 27, 2010;
- b) Exited Haiti on April 12, 2011.

[17] The Tribunal also noted the exits and entries on his Canadian passport renewed on September 20, 2004, in Montreal (GT-35 to 42).

[18] On September 26, 2012, Dr. Hippolyte noted that he was recommending the Appellant spend time in a warm country during the winter for medical reasons (GT-115).

SUBMISSIONS

[19] The Appellant submits that there are no serious grounds for determining that he was merely maintaining a presence in Canada rather than residing here during the period in question. He was residing in Canada because his ties to Canada are stronger than his ties to Haiti. Moreover, the Respondent's file does not contain any documents showing the dates on which the Appellant was in Canada or Haiti between May 2009 and July 2011.

[20] The Respondent submits that the Appellant has not resided in Canada since October 1998. On the other hand, he has been present here. Therefore, he is not entitled to receive the GIS for the periods indicated on the GIS applications received in April 2010.

ANALYSIS

[21] The Appellant must prove on a balance of probabilities that he was residing in Canada between May 2009 and July 2011.

[22] The issue of whether someone makes his home and ordinarily lives in any part of Canada is a question of fact and depends on the circumstances of each case. The following factors may guide the Tribunal in its analysis in determining whether the Appellant makes his home and ordinarily lives in any part of Canada. The following list is not exhaustive:

- a) Ties in the form of personal property such as land, businesses, furniture, a car, a bank account and credit cards;
- b) Social ties in Canada (for example, participation in professional organizations);
- c) Other ties (such as health insurance, a driver's licence, rent, a lease, a mortgage, property tax statements, insurance policies, contracts, passport declarations, and provincial or federal tax returns);
- d) Ties in another country;
- e) Regularity and length of stay in Canada, and the frequency and length of absences from Canada; and
- f) The person's mode of living, or whether the person living in Canada is sufficiently deep-rooted and settled.

(Canada (Minister of Human Resources Development) v. Ding, 2005 FC 76;
Singer v. Canada (Attorney General), 2010 FC 607, confirmed 2011 FCA 178)

[23] The Tribunal examined the entire file carefully.

[24] In this case, the file does not contain any documents from Haitian authorities about the Appellant. However, the official ties to Canada during the period in question, namely, the driver's licence and the passport (renewed in Haiti) do not of themselves show a mode of living that is very deep-rooted in Canada. The Appellant submitted his tax returns to the Canada

Revenue Agency but they were for years before the period that is the subject of this appeal. According to the evidence presented, it seems that the Appellant spent his time in Canada and Haiti, mainly for family and social reasons. There are no documents to show that he was renting an apartment in Montreal. In short, the Appellant's official ties and mode of living in Canada as opposed to Haiti are not conclusive for determining residency in Canada between May 2009 and July 2011.

[25] Consequently, the Tribunal must examine the regularity and length of stay in Canada, and the frequency and length of absences from Canada. The evidence of this is more reliable. According to the October 1, 2009, report (with which the Appellant agreed), the Appellant was absent from Canada for a year, from October 2008 to September 30, 2009. According to the May 26, 2011, report, which the Appellant also did not contest, he came back to Canada on April 13, 2010. This statement is supported by the stamps on his passport, which was valid at the time. According to this passport, the Appellant returned to Haiti on October 27, 2010, and stayed there until April 12, 2011.

[26] In short, the evidence shows that the Appellant was absent from Canada for at least six months before May 2009 (November 2008 to April 2009). This absence continued uninterrupted between May 2009 and April 13, 2010 (a period of approximately 11.5 months). He was in Canada from April 13, 2010, to October 27, 2010 (approximately 6.5 months). Between October 27, 2010, and April 12, 2011, he spent his time in Haiti (approximately 5.5 months). According to the information on the passports, the Appellant split his time between Canada and Haiti. Therefore, the Tribunal assumes that he was in Canada between April 12, 2011, and July 2011 (about 3.5 months).

[27] A person can reside in only one country at a time. In light of the evidence presented, the Tribunal concludes that the Appellant was not residing in Canada within the meaning of paragraph 21(1)(a) of the OAS Regulations between May 2009 and July 2011. He failed to convince the Tribunal that his mode of living was sufficiently deep-rooted and settled in Canada. Instead, he spent most of his time in Haiti during this period.

CONCLUSION

[28] The appeal is dismissed.

Shane Parker

Member, General Division