

Citation: *M. N. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 12

Appeal No: GT-115992

BETWEEN:

**M. N.**

Appellant

and

**Minister of Human Resources and Skills Development**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Shane Parker

DATE OF DECISION: June 3, 2014

## **DECISION**

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

## **INTRODUCTION**

[2] This appeal concerns the suspension of the Appellant's *Old Age Security* pension (OAS) and Guaranteed Income Supplement (GIS) effective January 2011. In a letter dated December 16, 2010, Correctional Service Canada (CSC) notified the Respondent that the Appellant was currently incarcerated. The Respondent then informed the Appellant, by letter dated January 11, 2011, that it was suspending his OAS and GIS effective January 2011. The Appellant asked the Respondent to reconsider this decision. In a letter dated April 26, 2011, the Respondent outlined its reconsideration, and maintained its initial decision. On July 21, 2011 the Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT).

[3] That appeal was transferred to the Social Security Tribunal of Canada (the Tribunal). By letter dated October 16, 2013 the Tribunal notified the Appellant of its intent to summarily dismiss the appeal (the Notice). In the Notice, the Tribunal requested that the Appellant confirm his intent to proceed with a special appeal based on alleged violations of the Canadian *Charter of Rights and Freedoms* (*Charter* appeal). By letter dated November 3, 2013, the Appellant confirmed this intent. On February 5, 2014 the Tribunal issued an Order setting out the information required of the Appellant in order to continue with a special *Charter* appeal. The Appellant did not provide the Tribunal with any additional information by the deadline indicated in the Order.

## **ISSUE**

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

## THE LAW

[5] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states 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 of Canada.

[6] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.

[7] 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.

[8] An important change to the *Old Age Security Act* (OASA) took effect on January 1, 2011. Specifically, subsection 5(3) of the OASA stipulated that the OAS pension, Guaranteed Income Supplement and Allowance were no longer payable during periods of incarceration. Subsection 5(3) reads:

### **Incarcerated persons**

- (3) No pension may be paid in respect of a period of incarceration -exclusive of the first month of that period- to a person who is subject to a sentence of imprisonment
- (a) that is to be served in a penitentiary by virtue of any Act of Parliament; or
- (b) that exceeds 90 days and is to be served in a prison, as defined in subsection 2(1) of the Prisons and Reformatories Act, if the government of the province in which the prison is located has entered into an agreement under section 3.3.1 for the administration of this paragraph.

## EVIDENCE

[9] The Tribunal considered all the evidence submitted in the Hearing File. What follows is an overview of the most relevant evidence.

[10] A CSC data sheet states that the Appellant was incarcerated December 16, 2005, and that his OAS and GIS were in pay. In December 2010 the CSC informed the Respondent that the Appellant was currently incarcerated. The Respondent suspended the Appellant's OAS and GIS effective January 2011.

[11] Once the appeal came before the Tribunal, the Appellant was notified in writing of the Tribunal's intention to summarily dismiss the appeal because it was unclear whether the Appellant intended to pursue a special *Charter* appeal. Once this intention was confirmed, the Tribunal issued an Order dated February 5, 2014 (the Order) that stated the following at paragraphs 1 and 2:

1. The Tribunal shall receive on or before April 16, 2014 a record comprised of the Appellant's submissions and supporting evidence in respect of the constitutional challenge. The Appellant's record must:
  - a. confirm the provision(s) of the OAS Act at issue;
  - b. confirm the rights and freedoms that were allegedly violated (for example, identify the specific provision(s) of the *Canadian Charter of Rights and Freedoms* or the *Canadian Bill of Rights*);
  - c. set out the factual basis for the constitutional challenge;
  - d. provide any further explanation how the provision(s) of the OAS Act violate the protected rights and freedoms;
  - e. confirm the remedies sought;
  - f. provide a copy of all supporting evidence, including affidavit and expert evidence;
  - g. list the number of witnesses expected to provide oral testimony if not affidavit evidence; and,
  - h. provide a copy of all relevant case law and other authorities relied upon, if applicable.
2. Failure to comply with the above time limit and requirements listed above may result in the appeal being treated as a regular appeal. Should this occur, the Appellant would be precluded from raising the constitutional challenge during the proceedings.

[12] The Appellant provided no further information to the Tribunal by the deadline requested in the Order.

## SUBMISSIONS

[13] The Appellant argued that the suspension of his OAS and GIS violated sections 11(h), (l), and 12 of the *Charter* and “is only applicable to those convicted and sentenced after the time of Royal Assent. Otherwise it alters and adds an increased punishment ...” (GT1-31). For the reasons discussed below, the appeal was treated as a regular appeal. In the regular appeals process, *Charter* arguments are, and were, not considered.

[14] The Appellant’s non-*Charter* submissions are reproduced here:

All my life while in Canada I worked very hard, and employed many Canadians. I paid all my taxes and that should allow me to collect benefits for that. I have a grandson which I never see yet, but I am setting up a trust account for him and I would like to share my benefits that I worked for with him. Next year, I am eligible for Day Parole and I hope my benefits for which I paid taxes for will help me to start my life in the community in a way where I can be in beneficial to and not dependent on society. (GT1-23)

[15] The Respondent submitted that it abided by the law in suspending the Appellant’s OAS and GIS.

## ANALYSIS

[16] In compliance with section 22 of the *Social Security Tribunal Regulations*, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions. He did not make any further submissions by the requested deadline in the Order.

[17] Pursuant to paragraph 2 of the Order, cited above, the Tribunal carefully reviewed the information on file which predated the Order. Further to this review, the Tribunal found that the Appellant did not comply with paragraph 1 of the Order. In particular, the factual basis set out by the Appellant for the alleged *Charter* violations was insufficient to properly mount a *Charter* appeal. The factual basis was limited to that mentioned in paragraph 13 of these Reasons. The Appellant did not provide any further explanation or detail as to how the alleged *Charter* violations caused increased punishment, or what the added punishment allegedly is.

The Supreme Court of Canada and Federal Court of Appeal make it clear that *Charter* decisions cannot be made in a factual vacuum (*Bekker v. Canada*, 2004 FCA 186, at paragraph 12; *MacKay* [1989] 2 S.C.R. 357 at page 361.) As such, the present appeal was treated as a regular appeal in which *Charter* arguments are not considered.

[18] The evidence and legislation are clear. Subsection 5(3) of the OASA mandates that the Appellant's OAS and GIS be suspended while incarcerated effective January 2011. The Tribunal is a creature of statute, and therefore must apply the law as it is written. The Tribunal does not have the authority to consider matters of fairness, equity, or extraneous matters such as financial objectives or work history. In summary, the Respondent correctly applied the law to the Appellant's situation by suspending his OAS and GIS effective January 2011. The Tribunal sees no reason to overrule this decision.

[19] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[20] The appeal is summarily dismissed.

*Shane Parker*

Member, General Division