



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. K. v. Minister of Employment and Social Development*, 2016 SSTADIS 213

Tribunal File Number: AD-15-1313

BETWEEN:

**M. K.**

Appellant

and

**Minister of Employment and Social Development  
(formerly known as the Minister of Human Resources and Skills  
Development)**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

DECISION BY: Janet Lew

DATE OF DECISION: June 17, 2016

## REASONS AND DECISION

### OVERVIEW

[1] This case is about whether the Appeal Division has any jurisdiction to remedy any administrative errors which may have been made by the Respondent.

[2] The Appellant appeals a decision dated November 3, 2015 of the General Division, whereby it summarily dismissed her appeal of the Respondent's reconsideration decision and her request that an overpayment of Guaranteed Income Supplement (GIS) be forgiven. The General Division was satisfied that the appeal did not have a reasonable chance of success.

[3] The Appellant filed an appeal of the decision of the General Division on December 7, 2015 (the "Notice of Appeal"). No leave is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division. Having determined that no further hearing is required, this appeal before me is proceeding pursuant to subsection 37(a) of the *Social Security Tribunal Regulations*.

### ISSUES

[4] This appeal raises three primary issues:

1. Has the Appellant properly raised any grounds of appeal under subsection 58(1) of the DESDA?
2. Does the Appeal Division have any equitable jurisdiction to remedy any administrative errors which may have been made by the Respondent?
3. Did the General Division err in choosing to summarily dismiss the Appellant's appeal?

## **FACTUAL BACKGROUND**

[5] The Appellant received a full Old Age Security allowance [available to spouses of recipients of a Guaranteed Income Supplement] effective from March 2001 until May 2005, when she turned 65 years of age, at which time it was converted to an Old Age Security pension.

[6] In June 2005, the Appellant began receiving the Old Age Security pension. The Appellant's spouse was no longer entitled to receive GIS because their combined income exceeded the maximum allowable threshold.

[7] After the Appellant submitted a Statutory Declaration - Separation of Legal Spouses indicating that she had separated from her husband in May 2005, the Appellant's marital status was changed to single and she began receiving GIS at the single rate, effective September 2005.

[8] At this juncture, there are some gaps in the documentary trail. The Appellant alleges that sometime in 2008 or thereabouts, she notified the Respondent by both telephone and letters that she had reunited with her spouse. She also filed joint income tax returns with her spouse. The Respondent has no record of the telephone or of any letters. The Appellant argues that she should not be held responsible that the Respondent did not have this information.

[9] In September 2009, the Respondent conducted an investigation into the Appellant's marital status, as information filed with Canada Review Agency indicated that she was married while her information for the GIS indicated that she was single. The Respondent sent a letter to the Appellant requesting confirmation of her marital status.

On May 30, 2012, the Respondent sent another letter to the Appellant, requesting that she complete a Statutory Declaration Separation of Legal Spouses. On March 19, 2014, the Respondent received the updated Statutory Declaration - Separation of Legal Spouses from the Appellant, who disclosed that she and her spouse had been living separate and apart from May 2005 to December 2007. The Appellant did not indicate whether she had

received the 2009 correspondence from the Respondent, nor explain why it took close to two years to provide an updated Statutory Declaration.

[10] On April 2, 2014, the Respondent wrote to the Appellant informing her that when it had approved her application for GIS, it calculated her entitlement to GIS based on her income as a single person, and it had also advised her on an annual basis to disclose any changes in her marital status. The Respondent advised that after she reunited with her spouse in December 2007, the GIS should have been recalculated based on her joint income with her spouse, for the years 2006 to 2012. As a result, she was overpaid by \$25,695.26 from January 2008 to October 2013. The Respondent advised her that it would be seeking recovery of this amount starting in May 2014, by deducting \$215.00 monthly from her payments.

[11] The Appellant requested a reconsideration of this decision, on the basis that repayment was causing financial and emotional hardship.

[12] The Respondent wrote to the Appellant on November 27, 2014, advising that for amounts exceeding \$10,000, it was required to recover those amounts within 120 months or 10 years. After a review of the Appellant's Statement of Income and Expense, the Respondent proposed to reduce the recovery rate and reclaim the remaining \$25,480.26 within 180 months or 15 years, which worked out to \$141.55 per month, effective January 2015. The Respondent indicated that she would be required to complete a Statement of Income and Expense every year, to review the recovery rate each payment year. The Appellant appealed the Respondent's decision to the General Division, on the basis of administrative error and financial hardship.

[13] On November 3, 2015, the General Division summarily dismissed the Appellant's application for a Canada Pension Plan disability pension, on the basis that it saw no reasonable chance of success for the appeal. The General Division determined that the Appellant was obligated to repay guaranteed income supplement at the rate demanded by the Respondent, though it did cite paragraph 37(4)(d) of the *Old Age Security Act* and noted that the Respondent has some discretion to forgive all or part of an overpayment due to an

administrative error, where it is satisfied that the debtor will suffer undue hardship. The General Division determined that it did not have any discretionary power to relieve or vary the terms of the repayment.

[14] The Appellant appealed the decision of the General Division, alleging that there had been a breach of the principles of natural justice.

## **SUBMISSIONS**

[15] The Appellant submits that the Respondent knew or should have become aware of her marital status, as it has access to information from Canada Revenue Agency. She claims that most of the overpayment accumulated as a result of a series of “administrative delays” and the Respondent’s “inordinate delays perpetuated by internal administrative handling”, all of which have resulted in a breach of the principles of natural justice. She argues that demanding repayment “hardly conform[s] to any principle of natural justice”.

[16] She argues that she should not be held responsible for the Respondent’s administrative delays and errors, particularly as the Respondent acknowledges “contributory negligence” on its part, with its modified repayment schedule. The Appellant requests that her appeal be considered on the basis of financial hardship and that her appeal be forwarded to the Respondent “for consideration in exercising discretionary power”. Although any repayment would present hardship for her, she proposes to pay \$40 to \$50 per month.

[17] The Appellant submits that, given the facts, the General Division erred in concluding that she knew or should have become aware sooner that she was receiving GIS payments. She denies that she had any knowledge of the overpayments and does not say whether she was aware that she was even being paid GIS at all. She claims that she relied on the Form SC ISP-3072 (2010-01), which reads in part, “Your file will be reviewed annually. If you qualify again we will contact you. It is important to file income tax each year since we use that information to determine your eligibility”. She understood this form to indicate that she was not receiving any GIS payments and that she would need to qualify again before receiving it. She argues that the form indicates that the Respondent had to have known her marital status.

[18] The Respondent's counsel filed submissions on January 22, 2016. The Respondent's counsel submits that the General Division correctly stated and applied the test for a summary dismissal. He contends that the General Division did not err in its application of the law to the facts, and that it is clear from the record that was before the General Division that the Appellant was overpaid GIS from January 2008 onwards because she was paid at the single rate although she had reunited with her spouse in December 2007. Counsel argues that, given the uncontested facts and the applicable law, there was only one possible conclusion. Counsel argues that the appeal is bereft of any chance of success and was properly summarily dismissed.

## **ANALYSIS**

### **(a) Grounds of appeal**

[19] Natural justice is concerned with ensuring that an appellant has a fair and reasonable opportunity to present his or her case, that he or she has a fair hearing, and that the decision rendered is free of any bias or the reasonable apprehension or appearance of bias. It relates to issues of procedural fairness before the General Division, rather than to the process involving the Respondent.

[20] As the General Division determined, section 37 of *Old Age Security Act* requires a person who has received a benefit to which he or she is not entitled to return the amount, otherwise it constitutes a debt and is recoverable at any time. The *Old Age Security Act* does not distinguish between whether the overpayment was the result of errors on the part of an appellant or the Respondent. Here, it was not a matter of holding the Appellant responsible for any errors or delays that might have been made by the Respondent, but a matter of interpreting and applying the *Old Age Security Act*.

[21] The Appellant alleges that there has been a breach of the principles of natural justice, as she is being held responsible for the Respondent's administrative delays and administrative errors. The Appellant's allegations do not address any issues of procedural fairness or of natural justice as they relate to the General Division. She has not provided any

evidence that she has otherwise been deprived of an opportunity to fully and fairly present her case, or that the General Division denied her a fair hearing.

**(b) Equitable jurisdiction**

[22] The Appellant seeks equitable relief, on the basis that any overpayment is the result of the alleged Respondent's administrative errors. The relief she seeks falls under paragraph 37(4)(d) of the *Old Age Security Act*, which provides that the Respondent may remit, i.e. forgive, all or any portion of the amount.

[23] Unfortunately for the Appellant, neither the General Division nor the Appeal Division has any equitable jurisdiction to relieve the Appellant from her obligations under section 37 of the *Old Age Security Act*. As the Federal Court of Appeal determined in *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278, the only remedy with respect to the Respondent's decision made under paragraph 37(4)(d) of the *Old Age Security Act* available to her is an application for judicial review in the Federal Court.

**(c) Summary dismissal procedure**

[24] The Appellant did not contest the appropriateness of the summary dismissal of her appeal before the General Division. A summary dismissal is appropriate when there are no triable issues or when there is no merit to the claim, or as the statute reads, there is "no reasonable chance of success". On the other hand, if there is a sufficient factual foundation to support an appeal and the outcome is not "manifestly clear", then the matter is not appropriate for a summary dismissal. A weak case is not appropriately summarily dismissed, as it involves assessing the merits of the case and examining the evidence and assigning weight to it.

[25] The General Division found that it was empowered only to the extent of its governing statute and that it was required to interpret and apply the provisions as set out in the *Old Age Security Act*. The General Division found the provisions of the *Old Age Security Act* to be clear and the evidence unequivocal. The General Division also noted that it did not have any equitable jurisdiction to forgive the overpayment. The General Division found that there was no chance for the Appellant to succeed on an appeal, given the law and the facts.

[26] As the General Division was satisfied that the appeal was without any merit, it rightly concluded that the appeal had no reasonable chance of success, and properly summarily dismissed it on that basis.

## **CONCLUSION**

[27] The appeal is dismissed.

*Janet Lew*  
Member, Appeal Division