



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *V. O. v. Minister of Employment and Social Development*, 2016 SSTGDIS 87

Tribunal File Number: GP-15-2424

BETWEEN:

V. O.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Jude Samson

DATE OF DECISION: October 28, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant turned 60 in May 2010. He was in a common-law relationship from 1978 to September 1990, when his spouse died (GD2-20 and 21). He never remarried and did not have any other common-law relationships after his spouse died (GD2-4).

[2] On December 29, 2014, the Appellant applied for a survivor's allowance under the *Old Age Security Act* (OAS Act) (GD2-3). On February 23, 2015, the Respondent approved the Appellant's application effective January 2014 (GD2-6 and 11). He was thus given 11 months of retroactivity as of the month of his application.

[3] However, the Appellant requested reconsideration of the decision, as he felt that he had been entitled to benefits since June 2010, i.e. the month after his 60th birthday (GD2-14). The Appellant's arguments are as follows:

- (a) Many people do not know about the survivor's allowance and the Respondent is failing in its duty to inform the public about it;
- (b) He submitted his application for a survivor's allowance as soon as he knew about it;
- (c) He is a person of limited means; and
- (d) The information needed to establish his eligibility for a survivor's allowance was included in his tax returns. It was the Respondent's duty to take a more rigorous approach to handling this information and to inform him that he was eligible for benefits.

[4] On June 11, 2015, the Respondent upheld its initial decision (GD2-12). It was that decision arising from the reconsideration that is the subject of his appeal before the Social Security Tribunal (Tribunal).

METHOD OF PROCEEDING

[5] The Tribunal rendered its decision on the basis of the documents submitted, for the following reasons:

- (a) The issues under appeal were not complex;
- (b) The information in the file was complete and did not require clarification;
- (c) Credibility is not one of the main issues; and
- (d) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[6] Is the Appellant entitled to retroactive payment of survivor's allowance benefits for the months from June 2010 to December 2013?

THE LAW

[7] As part of the eligibility criteria for a survivor's allowance, an applicant must be between the ages of 60 and 64 and must comply with subsection 21(4) of the OAS Act with regard to applying annually:

Must apply annually

21(4) Subject to subsections (5) and (5.1), no allowance may be paid to a survivor under this section in any payment period unless the survivor has made an application for an allowance in respect of that payment period and payment of the allowance has been approved under this Part.

[8] Section 3 of the *Old Age Security Regulations* (OAS Regulations) authorizes the Minister to insist on the use of an application form.

[9] With regard to the date on which payment of a survivor's allowance starts, sections 21 and 23 of the OAS Act read in part as follows:

Commencement of allowance

21(6) An allowance may be paid under this section commencing with the month following the month in which the applicant becomes a survivor or attains sixty years of age, whichever is later.

[...]

Limitations

21(9) No allowance may be paid under this section to a survivor pursuant to an application therefor for

- (a) any month more than 11 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....

Commencement of allowance

23(1) Payment of an allowance to any person under this Part shall commence in the first month after the application therefor has been approved, but where an application is approved after the last day of the month in which it was received, the approval may be effective as of such earlier date, not prior to the day on which the application was received, as may be prescribed by regulation.

[...]

Exception

(2) Notwithstanding subsection (1), where a person who has applied to receive an allowance attained the age of sixty years before the day on which the application was received, the approval of the application may be effective as of such earlier day, not before the later of

- (a) a day one year before the day on which the application was received, and
(b) the day on which the person attained the age of sixty years, as may be prescribed by regulation.

[Emphasis added.]

[10] Subsection 12(3) of the OAS Regulations must also be taken into consideration:

Approval of Application for an Allowance

12(3) Where a survivor is entitled to an allowance under section 21 of the Act before the day on which an application in respect of the survivor is received, the approval of the application by the Minister shall be effective as of the later of

(a) the day that is one year before the day on which the application was received, and

(b) the day on which the survivor became entitled to an allowance under section 21 of the Act.

EVIDENCE AND ANALYSIS

[11] When the appellant turned 60 in May 2010, he met one of the eligibility criteria for receiving a survivor's allowance. However, he did not meet all of the criteria. In particular, he never applied for a survivor's allowance and no application was approved, as provided for under subsection 21(4) of the OAS Act.

[12] Rather, the Appellant's application was submitted in December 2014 and was approved in February 2015. Subsection 21(6) of the OAS Act provides for retroactive payment when an application is submitted late but must be read in light of the other legislative provisions cited above, which limit the retroactivity allowed under the legislation.

[13] Although the Appellant turned 60 in May 2010, his application was not received until December 2014. Therefore, the approval of his application by the Minister took effect in December 2013, i.e. on a date one year before the day on which the application was received (OAS Act, s. 23(2) and OAS Regulations, s. 12(3)). The Appellant was thus eligible for the first survivor's allowance payment as of the month following approval of his application, namely January 2014 (OAS Act, s. 23(1)).

[14] This analysis is confirmed by subsection 21(9) of the OAS Act, which prohibits payment of a survivor's allowance any month more than 11 months before the month in which the application is received.

[15] In this case, the Appellant was granted 11 months of retroactive payments: the maximum provided for under the OAS Act and Regulations.

[16] The Appellant's strong arguments notwithstanding, the Tribunal is merely a legislative entity whose authority flows solely from the applicable legislation. The Tribunal interprets and applies the provisions set out in the OAS Act. The Tribunal cannot invoke principles of equity or take specific situations into account to override the requirements set out in the legislation.

CONCLUSION

[17] The Tribunal has carefully considered the documents in the appeal file as well as the relevant legislative provisions. In short, the Tribunal finds that the Appellant has received the maximum payments authorized under the OAS Act.

[18] The appeal is dismissed.

Jude Samson
Member, General Division - Income Security Section