



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 198

Tribunal File Number: AD-16-1055

BETWEEN:

M. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: May 1, 2017

REASONS AND DECISION

OVERVIEW

[1] The Applicant seeks leave to appeal the General Division's decision dated June 7, 2016, which dismissed his request for greater retroactive payments of Old Age Security benefits.

ISSUE

[2] Does the appeal have a reasonable chance of success?

ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[4] Before I can consider granting leave to appeal, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal, and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant submits that the General Division erred in law and that it failed to observe a principle of natural justice, as it failed to consider his family's unique circumstances. Sadly, his daughter passed away from an infection, after having undergone three liver transplants over a span of 20 years. Caring for her took a significant toll on him

personally and professionally. The Applicant indicates that, despite his personal circumstances and the financial demands of dealing with his daughter's medical needs, he nevertheless was an exemplary and productive Canadian citizen who contributed greatly to his community. He claims that the General Division's decision is callous and insensitive, as it neglects to consider that his daughter's well-being was a greater preoccupation than applying for an Old Age Security pension in a timely manner, and as it neglects to appreciate that he is dealing with intense grief. He also notes that greater retroactive payments will ease an overwhelming financial burden; he incurred expenses exceeding \$30,000 associated with bringing his daughter's body back to Australia.

[6] The Applicant does not contest the date of his application for an Old Age Security pension.

[7] The *Old Age Security Act* and the *Old Age Security Regulations* are very specific as to the length of retroactivity of payment(s) of an Old Age Security pension. If an applicant "has attained sixty-five years of age" before the day on which the application is received, the approval of the application is effective as of the latest of "the day that is one year before the day on which the application was received." In the case of an applicant who "attained sixty-five years of age", approval of the application can be effective "as of such earlier day, not before the later of a day one year before the day on which the application was received..." Payment of a pension to any person is to start in the first month after the application has been approved.

[8] The General Division referred to and applied these sections in determining the maximum retroactivity to which the Applicant (then Appellant) was entitled under the *Old Age Security Act*. The General Division properly set this out in its analysis and applied the law to the facts.

[9] I am not convinced that the General Division erred in its interpretation of the *Old Age Security Act* or the *Old Age Security Regulations*. The General Division identified the applicable provisions of the *Old Age Security Act* and the *Old Age Security Regulations*, and it appropriately applied them to the facts. There is no suggestion that the General Division failed to follow the *Old Age Security Act* or the *Old Age Security Regulations*, that it erred in

its interpretation of the *Old Age Security Act* or the *Old Age Security Regulations* or that it had any jurisdiction to grant any *ex gratia* payments.

[10] The Applicant has endured remarkable personal tragedy and is under significant financial strain, but these are irrelevant considerations, as the *Old Age Security Act* does not provide for these exceptional circumstances when determining the maximum retroactivity of an Old Age Security pension, nor does it provide for any discretionary relief.

CONCLUSION

[11] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division