



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. D. v. Minister of Employment and Social Development*, 2017 SSTGDIS 102

Tribunal File Number: GP-16-3044

BETWEEN:

**A. D.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Susan Smith

HEARD ON: May 24, 2017

DATE OF DECISION: July 27, 2017

## **REASONS AND DECISION**

### **OVERVIEW**

[1] The Respondent received the Appellant's application for an Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS) under the OAS Act date stamped by the Respondent on October 16, 2013. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] To be eligible for an OAS pension, the Appellant must meet the requirements that are set out in the OAS Act. More specifically, the Appellant must be found to have accumulated sufficient years of residence in Canada after the age of 18. The calculation of years of residency is based on the particular facts of the Appellant's case.

[3] This appeal was heard by Videoconference for the following reasons:

- a) More than one party will attend the hearing.
- b) Videoconferencing is available within a reasonable distance of the area where the Appellant lives
- c) The issues under appeal are complex.
- d) There are gaps in the information in the file and/or a need for clarification.
- e) The method of proceeding is the most appropriate to address inconsistencies in the evidence.
- f) 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.

[4] The following people attended the hearing:

The Appellant: A. D.

[5] The Tribunal has decided that the Appellant is not eligible for an OAS pension for the reasons set out below.

## **PRELIMINARY ISSUES**

[6] The Appellant brought his old passports with him to the hearing. At the request of the Tribunal he submitted copies of his passports at the Service Canada Centre he attended for the videoconference hearing. The Tribunal received the copies, endorsed by Service Canada personnel as authentic, and shared the new documents as GD7 with the parties allowing the Respondent until June 16, 2017 to submit any response. No response has yet been received from the Respondent.

## **EVIDENCE**

[7] The Appellant is a sixty-eight-year-old man who immigrated to Canada September 21, 1959. In the Appellant's application for an OAS pension, received on October 16, 2013, he indicated that he was married; he wanted his pension to begin as soon as he qualified; he wanted to apply for GIS if his application for an OAS pension was approved; and his legal status in Canada was citizenship. He indicated his residency within Canada from September 1959, until June 1979, with absences from Canada from June 1979, to September 1980, when he lived in Italy and from September 1980, to present he travelled back and forth between Italy and Canada.

### **Documented**

[8] The Appellant's Record of Earnings (ROE) and Contributions official Service Canada printout dated September 14, 2016, shows the Appellant made contribution to CPP from 1967 to 1976. He had below the year's basic minimum insurable earnings in 1973 and self-employed earnings for 1974 to 1976, inclusive. He has made no further contributions to CPP after 1976. His earnings in 1976 were less than half of his earnings in 1975 (GD2-169).

[9] The Appellant answered a questionnaire provided by the Respondent. He indicated that the reason his CPP contributions ended in 1976 is because he began his career as a self-employed taxi driver in 1976. He indicated that he does not file income tax returns in Canada (GD2-16-21).

[10] On November 4, 2014, the Respondent wrote to the Appellant reminding him he had still not sent requested documents and he had not fully answered the questions on the questionnaire he submitted (GD2-26)

[11] The Appellant applied for OAS and GIS benefits a second time on December 23, 2014. He changed his details of residency and absence from his first application by indicating he resided in Canada from September 1959; was absent from February 1979 thru September 1980, while living in Italy; and September 1980 to present he resided in Canada (GD2-28)

[12] The Appellant submitted a copy of his Canada Customs and Immigration Traveler History for Pearson Airport arrivals recorded between August 1, 2000 and October 28, 2014. His record indicated entries to Canada as follows:

- May 19, 2005;
- February 15, 2009;
- December 4, 2009; and
- October 2, 2013 (GD2-70).

[13] The Appellant submitted copies of several expired passports and one current passport issued in his name as follows:

- May 2, 1984 to May 2, 1989, issued in Rome, Italy, the document indicates the Appellant's birthdate as October 10, 1949, it bears a stamp indicating the passport was issued at the Canadian Embassy in Rome on May 2, 1984, there are no exit or entry stamps, and the bearer's permanent residence is identified as X X, X, Italy (GD7-2-14);
- April 29, 1992 to April 29, 1997, issued in Rome, Italy, the document indicates the Appellant's birthdate as October 10, 1949, there are no exit or entry stamps, and the bearer's permanent address is left blank (GD7-72-84);

- The Appellant's official birth certificate from Italy indicates his birth date as January 10, 1949. The document was signed April 7, 2016 and bears the official stamp from the Civil Records of X, Italy (GD2-98).
- June 30, 1997 to June 30, 2002, issued in Rome, Italy, the document indicates the Appellant's birthdate as January 10, 1949, there are no exit or entry stamps, and the bearer's permanent address is left blank (GD7-41-53);
- November 21, 2002 to November 21, 2007, issued in Rome, Italy, the document indicates the Appellant's birthdate as January 10, 1949, the document indicates an exit stamp from Italy on May 19, 2005, and entry stamp to Italy on June 16, 2005, there are no other exit or entry stamps, and the bearer's permanent address is left blank (GD7-29-39);
- June 16, 2008 to June 16, 2013, issued in Rome, Italy, the document indicates the Appellants' birthdate as January 10, 1949, There are several stamps showing exit from Italy on February 15, 2009, and entry on May 18, 2009, exit from Italy on December 4, 2009, and entry on December 13, 2009, and the bearer's permanent address is left blank (GD7-16-28);
- September 4, 2013 to September 4, 2018, issued in Rome, Italy the document indicates the Appellant's birthdate as January 10, 1949, the document indicates entry to Italy on May 1, 2016, and exit from Italy on August 10, 2016, entry to Italy on December 8, 2016, and exit from Italy on February 8, 2017, and the bearer's permanent address is left blank (GD7-54-71).

[14] On December 24, 2014, the Department of Citizenship and Immigration issued a Status Verification indicating the Appellant became a permanent resident of Canada on September 21, 1959 and a Canadian Citizen on May 1, 1974 (GD2-36).

[15] May 19, 2015, the Appellant completed a questionnaire setting out his dates of residency in and outside Canada. He indicated he lived in Canada from age 18 years to 1992 except he lived in Italy February 1979 to September 1980; he lived in Italy 1992 to 1998; in

Canada 1998 to 2000; in Italy 2000 to May 2005; in Canada May 2005 to 2006; in Italy 2006 to October 2013; and in Canada October 2013 to present (GD2-42).

[16] August 17, 2015, the Appellant completed a questionnaire setting out his dates of residency in and outside Canada. He indicated he lived in Italy 1949 to 1959 and in Canada 1959 to present (GD2-64).

[17] The Appellant submitted a copy of a residential tenant's agreement dated June 1, 2014 (GD2-52-58), and a copy of a bank account statement from CIBC indicating the account was opened June 19, 2014 (GD2-47-51).

[18] December 19, 2015, the Respondent wrote to Appellant stating they needed further information to process his request for reconsideration. They sent a list of documentation they required and a new questionnaire to be completed by the Appellant (GD2-71).

[19] January 27, 2016, the Appellant completed the new questionnaire (GD2-76-78), and he submitted copies of his Ontario Health card effective October 24, 2015, until January 10, 2021 (GD2-81); and Ontario Driver's licence with expiry date of January 8, 1982 (GD2-83-84).

### **Oral Testimony**

[20] The Appellant testified during the hearing. He stated that he first arrived in Canada on September 21, 1959 at the age of ten years and he began attending school in Toronto. He said he attended three different schools in Toronto before stopping school to go to work and gave details of the three schools as well as the reasons he changed school, such as when his parents moved to a new home. His first job was at Kensington market. He gave details of his employment including the street of each place of employment up until he began self-employment as a taxi driver. He explained he was an independent driver only, and never a cab owner.

[21] The Appellant stated that he had traveled to Italy in the summer of 1969 with his mother and his younger brother and it was then that he met his wife. He said he travelled to Italy each summer to visit her until 1973 when he went to Italy for about 8 months and got married in Italy on October 14, 1973.

[22] The Appellant stated that he never had an Italian passport. When the Tribunal member pointed out that he had only become a Canadian citizen on May 1, 1974 and that he would have required a passport to travel between Canada and Italy, the Appellant said that he was included on his mother's passport.

[23] The Appellant stated that he did not have contributions to CPP after 1976 because he was self-employed as a taxi driver until 1979, and he never worked after 1979. He stated that his wife did not like the cold weather in Canada so she moved back to Italy. He said he accompanied his wife back to Italy then he came back to Canada but he never worked. He did not know what his wife's immigration status in Canada would have been. He said she was allowed entry because she was his wife in 1973 when they returned to Canada together after becoming married. He said whatever permission she had to enter was granted at the airport upon their arrival from Italy in 1973 and she never applied for or obtained any further immigration status and did not obtain a Social Insurance Number (SIN).

[24] The Appellant, when asked what he did for work from 1976 until 2013, stated that after he stopped working driving taxi he lived with his parents. He said "I lived with my parents for a long time, years". He later said his father died in 1981. He said his parents and his siblings supported him and he never worked again because he was depressed in the sense that he didn't care about anything. He said that his family supported him living in Canada from 1979 until 2013 and now he is in receipt of Ontario social assistance so he pays his brother room and board. He said his mother died in 2009. He said he did not support his wife and children.

[25] The Appellant stated that he has three sons and all of them were born in Italy. He easily recalled the dates his sons were born and said his oldest son was born April 15, 1979, and his twin sons were born June 4, 1986. He said he went to live in Italy in 1992 and returned to Canada in 1998. Then he went to Italy in 2000 for the millennium. On closer questioning he said he returned to Italy in December 1999 and he stayed there until May 2005. He returned to Canada May 2005 and stayed until 2006 then he returned to Italy and stayed there until October 2013 except he visited Canada twice in 2009 when his mother was ill and when she died. He stated that his wife came to visit Canada in 1999.

[26] The Appellant was not able to answer whether he has any recollection of living together with his family in Italy while his sons were growing up. He stated that he has no recollection of his sons being small children or of doing anything with them when they were young except a vague recollection of going to the beach on occasion. He said he was separated from his wife since about 1990. He said when he was in Italy he stayed with his sons because they owned an apartment their Grandmother. He then said he lived with his wife and kids from 1992 until 1998. He couldn't recall if he was in Italy between 1980 and 1992, but he agreed he must have been because his twin sons were born in June 1986.

[27] The Appellant stated that he has not filed tax returns in Canada since 1976 and he does not file tax returns in Italy, nor he has not worked in Canada or in Italy since 1976. He said his wife owned a clothing store and she supported their family. He said he never worked in her store.

[28] The Appellant stated that he returned to Canada from Italy in 1998 then went back to Italy in 2000 to celebrate the millennium. On reflection he agreed it was December 1999 he returned to Italy and he stayed until May 2005. He returned to Canada in May 2005 until 2006, and then he went back to Italy until October 2013 when he moved back to Canada and applied from OAS and for Ontario social assistance. He said that since he returned to Canada in October 2013 he has visited Italy once in 2016 for two months.

## **SUBMISSIONS**

[29] The Appellant submitted that he qualifies for an OAS pension because:

- a) He is a Canadian citizen and his whole family has lived in Canada since 1959;
- b) He has been forced to apply for social assistance and it is humiliating;
- c) The stress of waiting to be approved for his pension has made him sick and depressed again;
- d) He has always considered himself Canadian and he should be granted his pension.

[30] The Respondent submitted that the Appellant does not qualify for an OAS pension because:



- a) He has failed to meet the burden of proof in demonstrating that his mode of living is sufficiently deep rooted and settled within Canada to meet the residency requirements to qualify for an OAS pension.

## **ANALYSIS**

### **The Residency Requirements:**

[31] The general requirement for a full OAS pension as set out in paragraph 3(1)(c) of the OASA is to have accumulated 40 years of residence in Canada after the age of 18. However, paragraph 3(1)(b) of the OASA sets out the criteria to be met in order for an individual to qualify for a full OAS pension without having 40 years of residence. It provides as follows:

[32] 3. (1) Subject to this Act and the regulations, a full monthly pension may be paid to [...]

(b) every person who

(i) on July 1, 1977 was not a pensioner but had attained twenty-five years of age and resided in Canada or, if that person did not reside in Canada, had resided in Canada for any period after attaining eighteen years of age or possessed a valid immigration visa,

(ii) has attained sixty-five years of age, and

(iii) has resided in Canada for the ten years immediately preceding the day on which that person's application is approved or, if that person has not so resided, has, after attaining eighteen years of age, been present in Canada prior to those ten years for an aggregate period at least equal to three times the aggregate periods of absence from Canada during those ten years, and has resided in Canada for at least one year immediately preceding the day on which that person's application is approved;

[33] If an individual cannot qualify for a full OAS pension, he or she may qualify for a partial pension under subsection 3(2) of the OASA. For a partial pension, the individual must have resided in Canada for at least 10 years and must have been a resident on the day proceeding the day on which the application is approved. If the individual did not reside in Canada on the day preceding the day on which the application is approved, the individual must have resided in Canada for at least 20 years. Subsections 3(2) to 3(5) provide as follows:

3. (2) Subject to this Act and the regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and

(a) has attained sixty-five years of age; and

(b) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

(3) The amount of a partial monthly pension, for any month, shall bear the same relation to the full monthly pension for that month as the aggregate period that the applicant has resided in Canada after attaining eighteen years of age and prior to the day on which the application is approved, determined in accordance with subsection (4), bears to forty years.

(4) For the purpose of calculating the amount of a partial monthly pension under subsection (3), the aggregate period described in that subsection shall be rounded to the lower multiple of a year when it is not a multiple of a year.

(5) Once a person's application for a partial monthly pension has been approved, the amount of monthly pension payable to that person under this Part may not be increased on the basis of subsequent periods of residence in Canada.

[34] If an individual does not have at least 20 years of residence in Canada, subsection 9(3) of the OAS Act states where a pensioner ceases to reside in Canada, whether before or after becoming a pensioner, payment of the pension shall be suspended six months after the end of the month in which the pensioner ceased to reside in Canada, but payment may be resumed with the month in which the pensioner resumes residence in Canada.

[35] For individuals who have already established residence in Canada, subsection 21(4) of the OAS Regulations protects their residence by ensuring that temporary absences from the country do not interrupt their period of residence. It states:

21. (4) Any interval of absence from Canada of a person resident in Canada that is:

(a) of a temporary nature and does not exceed one year,

(b) for the purpose of attending a school or university, or

(c) specified in subsection (5)

shall be deemed not to have interrupted that person's residence or presence in Canada.

[36] Finally subsection 21(1) of the OAS Regulations explains the difference between "residence" and "presence" for purposes of OAS eligibility. It states:

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.

[37] The Appellant must prove on a balance of probabilities that his mode of living is sufficiently deep rooted and settled within Canada to qualify him with the status as a permanent resident of Canada during the period in question. The Respondent found that the Appellant failed to provide sufficient evidence of his residency in either Canada or in Italy to make a determination based on the facts.

[38] The issue of residence is a question of mixed fact and law that is more factually than legally driven. The determination of residency must be made having regards to all the circumstances not only the intention of the person (*Canada (MHRD) v. Ding*, 2005 FC 76; and *Canada (MHRD) v. Chhabu*, 2005 FC 1277).

[39] In *Canada (Minister of Human Resources Development) v. Ding*, 2005 the Federal Court outlined the following factors in determining whether the appellant makes their 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 license, 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.

[40] The legal test of residence has a substantial factual component and the decision as to the place or places in which a person is resident must turn on the facts of the particular case (*Laurin v. R.*, 2008 FCA 58).

[41] The Appellant's eligibility to qualify for an OAS pension, whether full or partial pension, and GIS benefits, depends on a determination of the Appellant's periods of residency, if any, in Canada, from 1976, onward. The OAS Act, at paragraph 21(1)(a), states that a person resides in Canada if he makes his home and ordinarily lives in any part of Canada.

[42] The Tribunal has carefully reviewed and considered all of the documented evidence submitted, the testimony provided by the Appellant during hearing, the oral submissions made by the Appellant, and the written submissions by the Respondent.

[43] The Tribunal is not satisfied that the Appellant has met the burden of proof in showing he was resident within Canada at any time after 1976. The Appellant has given testimony and has made statements both in writing and orally that, simply put, are not supported by the documented evidence. His testimony is unreliable in that it is inconsistent both internally and with the documented evidence to a degree that it cannot be considered persuasive or compelling in any respect. The Tribunal finds that the Appellant cannot qualify for even a partial OAS pension as of the time that he first applied for benefits. The evidence submitted does not demonstrate that the Appellant had 10 years of residency in Canada after age 18, nor does it demonstrate he was a resident at the time of his application. The Tribunal finds the Appellant has not met the burden of proof in demonstrating sufficient periods of residency to qualify for an OAS pension.

[44] The Tribunal is satisfied that the Appellant resided in Canada for 9 years from the date of he reached age eighteen years January 10, 1967 until 1976, when he last made contributions to CPP and last filed a tax return in Canada. The precise date cannot be determined based on the evidence presented by the Appellant. The Appellant claims that it was 1979 when he traveled to Italy to accompany his spouse when she chose to move back to her country of origin. The

Appellant's candor in providing details that could reveal a more specific time frame was lacking. The Appellant stopped making contributions to CPP in 1976. He also stopped filing income tax returns in Canada in 1976. He said he stopped making contributions to CPP in 1976 because he became self-employed after 1976. The Appellant's ROE shows his earnings in 1974, 75 and 76, were self-employed earnings. The Appellant's earnings in 1976 were less than half of his earnings in 1975. The Tribunal finds it is more likely than not the Appellant left Canada in 1976. The Tribunal finds that as of the date the Appellant left Canada to accompany his wife back to Italy he no longer resided in Canada.

[45] The documentation contained in the Appellant's file together with the information garnered from the Appellant's passports submitted the day of the hearing indicates that all of his passports were issued in Rome. He did not provide copies of his passports that expired prior to the passport issued in Rome on May 2, 1984. The Appellant testified that he never had an Italian passport. The Tribunal finds this to be unlikely because the Appellant testified that he traveled to Italy multiple times between 1969 and 1973, yet he only became a Canadian citizen on May 1, 1974. It is only reasonable to conclude that the Appellant was able to travel internationally prior to May 1, 1974, because he had a passport issued under his previous citizenship, being Italian. He could not have traveled internationally between Canada and Italy without a valid passport.

[46] The Appellant's expired passports show that there were lapses of time where he did not renew his passport when it expired. The expired passports show no exit or entry stamps from Italy until May 2005. He did not renew his passport that expired on May 2, 1989 until April 29, 1992. This would indicate the Appellant remained in Italy from at least 6 months prior to May 1989 until at least April 29, 1992. This fact is in direct opposition to the assertion made by the Appellant that he first began to live in Italy in 1992 and he remained there until 1998.

[47] The various statements made by the Appellant in support of his application for OAS, both written and oral, regarding his presence within Canada from 1976 onward, are not supported by the details garnered from his passports, expired and current, and by the copy of his Canada Customs and Immigration Traveler History (CCITH) for Pearson Airport arrivals recorded between August 1, 2000 and October 28, 2014.

[48] The passports indicate a consistent pattern of the Italian immigration department stamping both entry and exit to and from Italy within the Appellant's passports. The stamps align with the record of travel by Canada Customs and Immigration after August 1, 2000, when the record keeping began.

[49] The expired passports with validity commencing May 2, 1984 and ending November 21, 2007, show exit on May 19, 2005, and entry on June 16, 2005, and no other exit or entry stamps. The CCITH shows all entries to Canada from August 2000, onward. It confirms that May 19, 2005 is the only entry to Canada from August 2000 until May 2005. His passport shows he departed Italy May 19, 2005 and returned to Italy on June 16, 2005, though he stated he remained in Canada until 2006.

[50] The records of both passport stamps and CCITH confirm the Appellant traveled to Canada twice in 2009, which is the year he testified his mother passed away. He stayed in Canada from February 15 to May 18, 2009, when he said his mother was ill, and then he traveled to Canada December 4, 2009, and departed again December 13, 2009, when he said his mother had passed away. The only other entry date to Canada shown on the CCITH is October 2, 2013.

[51] The passports indicate the Appellant was present in Italy in order to obtain a new passport on several dates that he indicated he was in Canada. The Appellant's current passport shows he visited Italy May 1, 2016 until August 10, 2016 and December 8, 2016 until February 8, 2017. The Appellant testified he visited Italy once since 2013 for 2 months in 2016.

[52] The Appellant has not, to date, been able to produce documentation indicative of residency within Canada for any period after 1976 when he stopped making contributions to CPP. The last three years he filed tax returns in Canada shows self-employed earnings for 1974, 1975, and 1976. This is in alignment with his testimony that he worked three years driving as a self-employed independent taxi driver. The timing is also consistent with his previous work history. The Tribunal finds the Appellant's record of earnings to be the most reliable source of the year the Appellant stopped work as a self-employed taxi driver and finds the Appellant stopped work within Canada in 1976.

[53] The Appellant has substantial ties to Italy. He has a wife and three children, who have all lived in Italy continuously from birth to the present time, and he has lived in Italy most of his life as well. The Tribunal accepts that the Appellant has strong family ties to Canada as well in the form of many siblings and nieces and nephews, however his ties to his children are stronger. He testified that he is currently separated from his wife. He was unable to give an accurate account of when the separation began. The Appellant's ties to Canada, other than his family, are transient at best and do not amount to a deep rooted and settled mode of living. The frequency and length of absences from Canada show the Appellant's intention to establish residency within Italy and the evidence produced does not show that he has abandoned his mode of living in Italy in favor of Canada.

[54] The Tribunal finds that the Appellant has failed to meet the burden of proof in demonstrating he was ordinarily resident in Canada for any period after 1976 up to and including the date of his application for an OAS pension. The Tribunal further finds that from October 2, 2013, the Appellant has demonstrated his presence within Canada but has not demonstrated that his ties to Canada and his mode of living has become sufficiently deep rooted and settled to establish residency within the meaning of the OAS Act over his long term deep rooted ties to Italy and his children whom all continue to live in Italy.

[55] The Tribunal was not able to consider whether the International Agreement between Italy and Canada would help the Appellant to qualify for a pension from either Canada or Italy because the Appellant declined to submit evidence of his status as a resident of Italy.

## **CONCLUSION**

[56] The Tribunal finds that the Appellant does not qualify for an OAS pension.

[57] The appeal is dismissed.

Susan Smith  
Member, General Division - Income Security