



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *F. N. v. Minister of Employment and Social Development*, 2017 SSTGDIS 117

Tribunal File Numbers: GP-16-2414; GP-16-2415; GP-16-2416

BETWEEN:

**F. N.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

DECISION BY: John Eberhard

HEARD ON: August 21, 2017

DATE OF DECISION: August 21, 2017

## **REASONS AND DECISION**

Social Security Tribunal (SST) File #'s: GP-16-2414; GP-16-2415; GP-16-2416

### **PERSONS IN ATTENDANCE**

F. N., Appellant

J. D., Friend and accountant of the Appellant

### **PRELIMINARY MATTER**

[1] This is a decision on the three applications to the Social Security Tribunal on the related files: GP-16-2414; GP-16-2415; GP-16-2416. The evidence received on File # GP-16-2515 was heard and, on the consent of the Appellant, was applied on the other files to reach a decision on each. Each of the appeals is dismissed.

### **INTRODUCTION**

[2] The Appellant made three applications for benefits pursuant to the Old Age Security Act (OAS Act):

- a) The Appellant applied for a pension pursuant to the OAS Act.
- b) The Appellant seeks a Guaranteed Income Supplement (GIS) pursuant to the OAS Act but did not make an application for same.
- c) The Appellant applied for an "Allowance for the Survivor" (ALWS) pursuant to the OAS Act.

[3] The hearing of this appeal was by way of a teleconference, for the following reasons:

- a) The Appellant will be the only party attending the hearing.
- b) The issues under appeal are not complex.
- c) There are gaps in the information in the file and/or a need for clarification.
- 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.

Old Age Security Pension Application (GP-16-2415)

[4] The OAS Act provides for payment of a partial OAS pension where the applicant is not eligible for a full pension. To receive a partial OAS pension, applicants must have resided in Canada for a minimum of 10 years after the age of 18, but less than 40 years. For applicants no longer residing in Canada, the minimum residence period is 20 years.

[5] The *Old Age Security Regulations (OAS Regulations)* permit the Respondent to request further information or evidence from the Appellant in order to confirm their eligibility for a pension. This was done. The onus falls on the Appellant to provide sufficient evidence to satisfy the Respondent that she meets the eligibility requirements. A lack of sufficient evidence could result in a denial of an application.

[6] The Appellant applied from India for the Old Age Security (OAS) pension on March 2, 2012. This application was denied by the Respondent on October 24, 2012 for the reason that she had not lived in Canada for 20 years or more after age 18 to qualify for the pension outside of Canada. The position of the Respondent is that the evidence is insufficient to determine the Appellant's eligibility to the Old Age Security (OAS) pension. She could however be eligible for a partial pension even though she does not have 20 years of Canadian residence.

[7] The Appellant was born in India on X X X. The appellant turned 65 on X X X. Her OAS application was received by the Minister on September 15 2014. She stated on her application that she entered Canada on September 13 1990 which is confirmed on her Record of Landing.

[8] Letters were sent to the Appellant on October 17, 2014, and December 5, 2014 requesting proof of her entries and departures. These have never been received. She was also asked for a copy of her spouses' Death Certificate and completion of an enclosed questionnaire. The questionnaire was never received by the Respondent. An application for the Guaranteed Income Supplement (GIS) was also sent to her but the Appellant did not return this form. As there had been no response, the Respondent sent her a letter dated February 9, 2015 advising that her OAS application had been denied. She asked for a reconsideration of this decision.

[9] The Respondent received the Appellant's reconsideration request on April 17, 2015. As no documents accompanied the letter, her reconsideration request was denied and a letter sent May 10, 2016 to so advise the Appellant. She appealed the reconsideration decision to the SST.

[10] In her notice of appeal, the Appellant acknowledged that she was not resident in Canada from 1990 to June, 2004. She attached a number of documents including

- a) Landed Immigration Form X
- b) Married Certificate (translated from Urdu to English).
- c) Copies of identification pages of 5 Relevant Canadian Passports (no entry pages were included)
- d) The Death Certificate of her late. Husband (Original SIN X)
- e) Earliest proof of Employment (no Record of Earnings or subsequent employment documentation)
- f) Consent to Communicate Information to an Authorized Person (relating to J. D.)
- g) Copy of her letter dated May 10, 2016
- h) Certificate of Canadian Citizenship (Adult) card

[11] The question for the Tribunal is whether the Appellant is eligible for the OAS pension and, if she is eligible, the amount of her entitlement pursuant to section 3 of the OAS Act. The Tribunal must determine whether the Appellant has provided sufficient information to allow for the approval of his application for an OAS pension.

[12] Based on the documentation provided, the Tribunal finds that:

- a) she was married to the deceased S. N. on July 17, 1966.
- b) her husband, S. N., died on April 26, 2004.
- c) that the Appellant was employed as a Sales Floor Associate for Sears Canada Inc. at the X location in Canada from July 26, 2007 to May 21, 2008.
- d) the Canadian passports contained no information concerning her entries or exits from Canada

e) in her residence history document she states in 2004 she lived at X X, X Ontario. There is no corroborative evidence or evidence of her return to Canada in 2004.

## THE LAW

[13] The OAS eligibility requirements for the payment of a monthly partial pension are set out in the legislation:

Subparagraph 3 (2) (b) of the *OAS Act* provides:

### **Payment of partial pension**

(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.

Paragraph 34.(a) of the *OAS Act* provides:

### *REGULATIONS*

Section 34: The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and, without restricting the generality of the foregoing, may make regulations

a) prescribing the manner of making any application, statement or notification required or permitted by this Act, the information and evidence to be made available or allowed to be made available in connection therewith and the procedure to be followed in dealing with and approving applications

Subsection 20. (1) of the *OAS Regulations* provides:

### *RESIDENCE*

20. (1) To enable the Minister to determine a person's eligibility in respect of

residence in Canada, the person or someone acting on the person's behalf shall provide a statement giving full particulars of all periods of residence in Canada and of all absences from Canada that are relevant to that eligibility.

Subsection 21 (1) of the OAS Regulations provides;

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;

(b) a person is present in Canada when he is physically present in any part of Canada.

Section 23 of the OAS Regulations provides;

23. (1) The Respondent, at any time before or after approval of an application or after the requirement for an application is waived, may require the applicant, the person who applied on the applicant's behalf, the beneficiary or the person who receives payment on the applicant's behalf, as the case may be, to make available or allow to be make available further information or evidence regarding the eligibility of the applicant or the beneficiary for a benefit.

(2) The Respondent may at any time make an investigation into the eligibility of a person to receive a benefit including the capacity of a beneficiary to manage his own affairs.

#### Decision on the OAS Pension Application

[14] The Tribunal finds that the Appellant is not entitled to a partial OAS pension.

[15] The OASA provides for the payment of a full or partial OAS pension to individuals who meet three eligibility requirements: age, legal status and residence. To receive the OAS pension individuals must be at least 65 years of age. The Appellant qualifies in this respect. When applying for an OAS pension, an individual must meet the legal status requirement. Legal status means that the applicant is lawfully in Canada, pursuant to the immigration laws of Canada in force on the day proceeding the day on which their application is approved. There is no evidence on this point.

[16] The OAS Regulations (OASR) permit the Respondent to request further information or evidence from the applicant in order to confirm his eligibility for a pension. The onus falls on the Appellant to provide sufficient evidence to satisfy the Respondent that she meets the eligibility requirements. A lack of sufficient evidence could result in a denial of an application or suspension of benefits.

[17] The burden of proof rests on the Appellant to establish entitlement to an OAS pension (*De Carolis v. Canada (Attorney General)*, 2013 FC 366). The Tribunal is bound by the records from the Canadian Revenue Agency but none are found in the file. This might have assisted the Appellant by inference of her working in Canada was legally a “resident” of Canada. The Tribunal can be satisfied that the information on a Record of Earnings corroborates the evidence of the Appellant in associating work with residence in Canada. This is not the case her.

[18] In order for the Respondent to accurately review an individual's residence, it is necessary that the Appellant provide a chronological history, of her residence from age 18 to the present, and proof of all dates of entry into, departure from and re-entry into Canada as required. She has provided the history but no information on entries or exits from Canada or corroborating evidence as to where she lived in Canada, under what circumstances; or, when. While there are specific rules regarding the extent and types of evidence required in different situations, Service Canada's policy generally requires that individuals provide documentary evidence to support their residence, including, but not limited to, information in passports, tax records, Provincial documents such as drivers licences and the movements from one place to another in Canada and abroad, airplane tickets, education and work histories relevant to residence such as records of employment and other third party documents establishing residence in the area of one's work. None of these items have been produced for the Tribunal.

[19] The Tribunal takes direction from the Federal Court decision in *Singh v. Canada (Attorney General)*, 2013 FC 437, which states at paragraph 30:

“There are several factors that may be considered in determining whether the residence conditions of the OASA have been observed: ties in the form of personal property; social ties in Canada; other fiscal ties in Canada (medical coverage, driver's license, rental lease, tax records, etc.); ties in another country; regularity and length of visits to Canada, as well as the frequency and

length of absences from Canada; and the lifestyle of the person or his establishment here”.

[20] No probative evidence along these lines has been offered.

[21] The Appellant and her accountant testified. They confirmed that all documentation relevant to the case had been submitted. They confirmed that she is a landed person in Canada and worked in Canada. That is all. It is on the basis of this very little detail that the Tribunal has been asked to make a decision.

[22] The facts accepted by the Tribunal are as follows. The Appellant submitted a separate sheet with her OAS application advising that she lived in Canada from October 1990 to 1996, and 2004 to 2013. No specific dates were included. The only relevant document she provided in relation to her residence in Canada was a copy of her Record of Landing from (then) Employment and Immigration Canada which revealed her date of entry to be September 13 1990 and an employment record in Canada covering a period of less than one year. These documents were submitted with her reconsideration request.

[23] As the OAS is a residency-based benefit, it is necessary that the Respondent be provided with evidence to prove the individual resided in Canada for at least 10 years in accordance with Subparagraph 3 (2) (b) of the OAS Act; Paragraph 34. (a) of the OAS Act; and Subsection 20. (1) of the OAS Regulations. The Appellant did not satisfy the Respondent that she meets the minimum residence requirements to qualify for an OAS benefit. In her appeal to the SST, the Appellant requested that her qualifying period begin June 2004, not September 1990. She stated that she was continuously out of Canada for periods of more than 6 months between these dates. If the Respondent were to be able to use a 10 year qualifying period from June 2004 to May or June 2014 (depending on the date of entry) and the Appellant was resident in Canada when she made the application, her current OAS application could be used to allow eligibility as early as June or July 2014. The Tribunal would still require proof of her return to Canada in 2004 and continued residence from that time forward.

[24] The Appellant submitted a separate sheet with her OAS application advising that she lived in Canada from October 1990 to 1996, and 2004 to 2013. The only document she was able to provide in relation to her residence in Canada was a copy of her Record of Landing from



(then) Employment and Immigration Canada which revealed her date of entry to be September 13 1990. This document was submitted with her reconsideration request. Her residence histories dated June 16, 2013 and September 2, 2014 are not supported or corroborated by evidence either by testimony or documentation.

[25] As the OAS is a residency-based benefit, it is imperative that the Minister be provided with evidence to prove the individual resided in Canada for at least 10 years in accordance with the OAS Act and Regulations. In her appeal to the SST, the Appellant requested that her qualifying period begin June 2004, not September 1990. The Tribunal has not seen evidence of her return to Canada in 2004.

[26] Base on the evidence presented, the Tribunal finds that the burden of proof has not been met by the Appellant. The decision on the status issue is that the Appellant does not qualify in this respect.

[27] The Appeal on file # GP-16-2415 is dismissed.

Request for a Guaranteed Income Supplement (GP-16-2416)

[28] The Tribunal finds that the Appellant is not eligible for the GIS.

[29] The Respondent sent the Appellant a GIS application on October 17 2014 to be completed and returned to Service Canada. To date, the Respondent has not received a completed application from the appellant. The issue before the Tribunal in this appeal is whether a GIS benefit can be paid to the Appellant when no application for said benefit has been received by the Respondent.

**THE LAW**

Subsection 11 (2) of the OAS Act provides:

Requirement for application

Section 11 (2): Subject to subsection (4), no supplement may be paid to a pensioner for a month in any payment period unless an application for payment of a supplement has been made by the pensioner and payment of the supplement for months in that year has been approved under this Part.

[30] The Tribunal concludes that since no GIS application has been received by the Respondent, the benefit cannot be paid to the Appellant in accordance with subsection 11 (2) of the OAS Act.

[31] The Appeal on file # GP-16-2416 is dismissed.

Survivor's Pension Application (GP-16-2414)

[32] The Appellant's application for a Survivor's Pension under the Canada Pension Plan (CPP) was dated August 29, 2012 and date stamped received by the Respondent on September 5, 2012. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and this appeal was transferred to the Tribunal in April 2013. The matter is now being adjudicated by the SST, the successor Tribunal.

[33] The *OAS Act* provides for payment of an income-tested ALWS benefit to survivors who are age 60 to 64. To receive an ALWS benefit, applicants must have resided in Canada for a minimum of 10 years after the age of 18. Applicants must also be a resident of Canada at the time of approval.

[34] The *Old Age Security Regulations (OAS Regulations)* permit the Minister to request further information or evidence from the applicant in order to confirm their eligibility for a pension. The onus falls on the Appellant to provide sufficient evidence to satisfy the Respondent that she meets the eligibility requirements. A lack of sufficient evidence could result in a denial of an application.

[35] The Appellant was born in India on X X X. Her spouse passed away on April 26 2004. The Appellant turned 60 on April 29 2009 and applied for the ALWS benefit October 22 2013. She stated on her application that she entered Canada on September 13 1990 which is confirmed on her Record of Landing. Letters were sent to the Appellant on February 26 2014, October 17 2014, and December 5 2014 requesting proof of her entries and departures and a questionnaire asking for details of residence.

[36] No response was received from the Appellant. Proof was not received by the Respondent. The Respondent sent her a letter dated February 9 2015 advising that her ALWS application had been denied. The Appellant's reconsideration request was dated April 17 2015. As no documents accompanied the letter, her request was denied. The Appellant appealed the reconsideration decision to the SST.

[37] The question for the Tribunal is whether or not the Appellant has resided in Canada after attaining eighteen years of age and prior to the day on which her application is approved for an aggregate period of at least ten years.

[38] The issue is whether or not the Appellant is eligible to receive an ALWS without submitting evidence including supporting documents to confirm her residency in Canada. These documents would include the dates of residency in accordance with paragraph 34. (a) of the OAS Act, and subsection 20. (1) of the OAS Regulations as noted above. The decision regarding her eligibility and the evidence needed to support an OAS pension has been decided in the case noted above (GP-16-2415).

[39] The Appellant submitted a separate sheet with her ALWS application advising that she lived in Canada from October 1990 to 1996, and 2004 to 2013. No specific dates were included. No passport or border control documentation was submitted that might have assisted her to meet the onus required in these hearings. The only document she was able to provide in relation to her residence in Canada was a copy of her Record of Landing from Employment and Immigration Canada which revealed her date of entry to be September 13 1990. This document was submitted with her reconsideration request and received by the Respondent on April 17 2015. As the ALWS is a residency-based benefit, it is imperative that the Respondent be provided with evidence to prove the individual resided in Canada for at least 10 years in accordance with Subparagraph 21 (1) (b) of the *OAS Act*; Paragraph 34. (a) of the *OAS Act*; and Subsection 20. (1) of the *OAS Regulations*. It is of interest only that in her appeal to the SST, the Appellant requests that her qualifying period begin June 2004, not September 1990 as she states she was continuously out of Canada for periods of more than 6 months between these dates. If the Tribunal was to use a 10 year qualifying period from June 2004 to June 2014, the Appellant

would then be too old to receive the ALWS as she turned 65 in April 2014, which is the last month ALWS could be payable.

[40] The Appeal on file # GP-16-2414 is dismissed.

John Eberhard  
Member, General Division - Income Security