



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. R. v. Minister of Employment and Social Development*, 2017 SSTGDIS 112

Tribunal File Number: GP-16-1312

BETWEEN:

**E. R.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**M. W.**

Added Party

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

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DECISION BY: John Eberhard

HEARD ON: August 15, 2017

DATE OF DECISION: August 16, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for the Guaranteed Income Supplement (GIS) benefit, pursuant to the Old Age Security Act (OASA). The GIS was approved for payment on the basis of a claimed marital status of: “single”. The Minister determined that the Appellant was living as a common-law partner as of January 1, 2003. If the Tribunal finds that he was in a common-law relationship, it is the Respondent’s position that as of February 1, 2004, he is not entitled to the GIS benefit based on the single status.

[2] The Appellant married M. W., herein referred to as “M. W.” (the added party) on January 23, 2009.

[3] The GIS payments to the Appellant were made from February 2004 to January 2013. The Respondent recalculated his payments based on a “common-law” status instead of a “single” status. An “overpayment” is alleged of \$51,568.83 for the period. A recovery rate was set at 100% of his OAS benefits. On August 1, 2014, the Minister received the Appellant's request for reconsideration of this decision. This appeal is from the denial by the Respondent to reconsider its decision.

[4] On April 13, 2016, the Appellant appealed the Minister's reconsideration decision to the General Division (GD) of the Social Security Tribunal (SST).

[5] The decision of the Tribunal is to recognise a common-law relationship between the Appellant and M. W. as of January 2008. The Respondent is ordered to recalculate the overpayment and if any balance remains owing shall collect it over a ten year period from the date of the decision by amortized deductions from OAS benefits due to the Appellant.

### The Hearing

[6] The hearing of this appeal was in-person, for the following reasons:

- a) More than one party will attend the hearing.

- b) The method of proceeding is most appropriate to allow for multiple participants.
- c) The method of proceeding provides for the accommodations required by the parties or participants.
- d) The issues under appeal are complex.
- e) There are gaps in the information in the file and/or a need for clarification.
- f) The method of proceeding is the most appropriate to address inconsistencies in the evidence.

## **Evidence**

### Background

[7] The Appellant applied for the GIS on April 16, 2002, and claimed "divorced". His GIS was approved for payment effective January 2002 on the basis of a marital status of single. The Appellant received the GIS payment on the basis of a marital status of single continuously from January 2002 to January 2013.

[8] A review of the Appellant's GIS entitlement was initiated by marital status discrepancies between Canada Revenue Agency (CRA) and information possessed by the Respondent. By letter dated January 28, 2013, the Respondent requested the Appellant to complete a new application for the GIS, a Statutory Declaration of Common-law Union, proof of common-law relationship, and a certified copy of his Marriage Certificate. His GIS payment was suspended at the same time.

[9] On February 11, 2013, the Respondent received the Appellant's Income Tax Return Information from CRA for the tax years from 2003 to 2011 and M. W. Income Tax Return Information for tax years from 2000 to 2011. The information showed the Appellant reported "single" to CRA for tax years 2003 - 2008 and "married" from 2009. M. W. reported "divorced/single" for tax years 2000 - 2008 and "married" from 2009.

[10] On March 21, 2013, the Minister received the Statutory Declaration of Common-law Union form from the Appellant, signed by himself and M. W.. On the form, the Appellant

declared that he and M.W. had been living together for 10 continuous years from January 1, 2003.

[11] The Marriage Certificate indicates the Appellant was married to M. W. on January 23, 2009.

[12] On March 21, 2013, the Respondent also received the GIS application for the income year 2011, signed by both the Appellant and M. W.. On the form, they indicated they started a common-law relationship on January 1, 2003 and got married on January 23, 2009.

[13] According to their address history on record, they both lived at the same address (X X X X., X) since January, 2003. By letter dated April 16, 2013, the Respondent requested details of the common-law relationship.

[14] The Appellant responded by letter that although they lived in the same house, he and M. W. did not enter into a common-law relationship until 2008. The Appellant asked the Respondent to reconsider its position and the debt recovery rate. Enclosed in the letter, the Appellant submitted a Statement of Income and Expenses form. The recovery of the overpayment was put on hold as of August 2014 pending the reconsideration decision.

[15] By letter dated July 28, 2015, the Respondent requested the Appellant to provide an updated Statement of Income and Expenses form and documentary proof of all expenses he was claiming. By letter dated January 25, 2016, the Appellant had not replied and was informed that the original decision was maintained.

Written Information filed by the Appellant

[16] The Questionnaire provided by the Appellant stated that: “We did not understand the term common-law union and both signed in error the forms in questioned”. An included letter added:

“This is how the friendship started. I moved into M. W.'s basement apartment in 2003 but was receiving my mail at her address prior to that date. We became common-law in 2008 and we got married on January 23, 2009. The mutually arrangements during the period we were not in a common-law relationship goes as follows. M. W. lived upstairs and I live in her basement apartment. We were

both responsible for our own food and its preparation we did our own cleaning and laundry. M. W. would pay the mortgage and I would give her money toward the property Tax bill, utilities and I paid the phone, cable and insurances. Instead of paying rent I would maintain the property but since 2009 I have been contributing finically towards the mortgage.”

[17] In the Questionnaire, the Respondent asked for the names and addresses of people who could confirm the relationship between the Appellant and M. W. One of the two names given was W. S. There is no evidence that this person was contacted. He was the person who actually wrote the letter noted above. He did this because the Appellant lacks the necessary literary skills.

#### Financial Position

[18] The Appellant and Respondent provide various items related to the former’s financial situation. The Respondent has analyzed the material and has calculated a “cash flow summary”. The parties both testified on their current joint financial situation. The couple’s income for 2016 was in the range of \$33,000 per annum.

#### Testimony

[19] The Appellant and the added party both testified. The Appellant is now 81 years of age. M. W. is 74. The parties became acquainted with one another through a friendship between M. W. and the sister of the Appellant some years before he moved into her house in 2003. Both ladies worked at the X X together for many years. The Appellant did not associate with M. W. during that time. The Appellant had financial difficulties prior to 2003 and lost his own house by a mortgage default. Because of the acquaintance, M. W. agreed to let him live in her basement rent free. He had other debts that he was trying to repay such a Canadian Tire credit card. In exchange for rent, he did some maintenance for her around the house.

[20] He is an uneducated (grade 6) and functionally illiterate person. He cannot spell or write. He did acknowledge that he could read words such as “divorce”, “marriage”, “single”. He did not understand the meaning of the word “common-law”. Indeed, he believed until the time of the hearing that “common-law” meant two people living “under the same roof”.

[21] The Appellant testified specifically about working on the Questionnaire associated with the application for GIS benefits and Statutory Declaration (completed by hand, by a lawyer) he

did not know that “common-law” meant something other than simply living under the same roof in the same building. He testified that his friend W. S. wrote the documents referred to above (GD3-5). He testified that before he moved in with M. W. he had been receiving the GIS and the application had been filled out by one E. C. (now deceased). He used that document as an example of how the annual form had to be filled out in future years. That is why he continued to unknowingly indicate that he was a “single” applicant for the ensuing years.

[22] The Appellant said he had qualified for the GIS before moving into the basement of the house of M. W. The basement was self-contained. It had a microwave and refrigerator. He prepared his own meals or ate out. Between 2003 and about January 2008 the Appellant and M. W. lived separate and apart and had separate lives. About 2007 she began to drive him to medical and dental appointments and he would drive her (twice a year) to optometrist appointments. He was impecunious and on rare occasions she would give him money for gas. She did not cook for him on a regular base. She did not do his laundry. They did not socialize together nor did their families relate to one another. He cut the lawn in lieu of rent. He did not (and was unable) to assist her with any household expenses such as mortgage payments. He bought his own clothes. Very occasionally she would buy him a tee-shirt that she thought he might like.

[23] They both agreed and testified that in 2007 they began to relate to each other with more concern and caring. As noted below, their relationship began to change and by 2008 he moved upstairs and they began to live as husband and wife in early 2008. They began to share a bed together and first had sexual relations in 2008.

[24] Of interest to the Tribunal is that the Appellant acknowledged (because of his recent understanding of the meaning of “common-law relationship”) that he must owe some money to the Government because of his innocent categorizing himself as “single” when in fact he had been in a conjugal relationship with M. W. in 2008, a year before their marriage. The parties both asserted that between 2003 and 2008, there was no such relationship.

## **ISSUES**

[25] The issues before the Tribunal in this appeal are:

- a) whether the Appellant was in a common-law relationship for the period beginning January 1, 2003? If not, what was the date when the tenant relationship became a common-law relationship?
- b) was the Appellant entitled to a higher GIS entitlement for the period following the time he and M. W. entered into a common-law relationship?
- c) was there an overpayment by the Respondent on GIS because the Appellant was not entitled to a “singles” payment?
- d) Is the Respondent entitled to an overpayment recovery rate at 100% of any excess benefits received?

## **SUBMISSIONS**

[26] The Appellant submits that:

- a) the overpayment resulted from confusion over his marital status and the definition of a common-law partner.
- b) it is not correct to find that he was living common-law since 2003. He maintains that he did not enter such a relationship until 2008 (a year before his marriage to his then common-law spouse).
- c) he cannot afford to pay back the amount owing at a rate of 100%.

[27] The Respondent submits that the Appellant was not entitled to receive the GIS at the single rate because:

- a) evidence that the Appellant claimed on the Statutory Declaration of Common-law Union form and on the GIS application dated March 21, 2013 that he was in a common-law relationship with M. W. since January 2003 establishes that he entered into a common-law relationship in January 2003.
- b) the record of the Appellant and M. W.'s address histories supports that they have been living together since January 2003.
- c) the Appellant later changed his statement in his reconsideration letter. He stated that he entered into the common-law relationship in 2008. This later statement is less credible because it was made after he received the Minister's overpayment letter.
- d) the fact that the Appellant did not communicate the change of his marital status on any of the GIS applications he submitted from 2008 to 2012. He continued to claim he was single on his GIS application dated April 19, 2010. This raises doubt about his credibility.

e) the financial information filed does not disclose that a 100% recovery would be a financial hardship on the Appellant. It is difficult to determine whether the recovery rate causes an undue hardship to the Appellant. The Respondent requested (on July 28, 2015 and October 21, 2015) additional information and documentation. The Appellant did not provide the requested information and documentation.

## **ANALYSIS**

[28] The Appellant must prove on a balance of probabilities that he was entitled to a higher GIS payment for the period of January 2003 and January 2013 based on his “single” status. He has done so, in part.

## **FACTS AS FOUND BY THE TRIBUNAL**

### Credibility

[29] The Respondent notes that the Appellant later changed his statement in his reconsideration letter. He stated that he entered into the common-law relationship in 2008. It is asserted that the Appellant did not communicate the change of his marital status on any of the GIS applications he submitted from 2008 to 2012. He continued to claim he was single on his GIS application dated April 19, 2010. This later statement is said to be less credible because it was made after he received the Minister's overpayment letter and thus raises doubt about his credibility.

[30] The Tribunal is satisfied that there was no intention to deceive and the format (template) he was using (prepared initially on his behalf when he was single) by another person was filed without an informed mind. The Tribunal finds as well that he did not know the correct meaning of a common-law relationship when he completed the declaration.

[31] The *OAS Act* provides for the payment of a GIS benefit to low-income Old Age Security (OAS) pensioners. Benefits for a payment period are based on the pensioner's marital status and income received in the previous calendar year. Pensioners who are not married or not living in a common-law relationship are considered single and have their GIS eligibility assessed on the



basis of their own income. Pensioners who have spouses or common-law partners are assessed on the basis of their joint income. Pensioners must notify the department of any change to their marital status. For those who have married or become a common-law partner, they must provide the name, address and income of their spouse or common-law partner and indicate if their spouse or common-law partner is a pensioner. The Tribunal finds that the Appellant did not have the intellectual competence or literacy abilities to understand the requirements of notification as noted above.

**In respect to issues number a) and b) and c), the Tribunal finds as follows:**

**LAW**

[32] The relevant law is found in sections of the *Old Age Security Act* (OAS Act).

Section 2 of the *OAS Act* provides:

2. Definitions - In this Act, "common-law partner", in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year. For greater certainty, in the case of an individual's death, the "relevant time" means the time of the individual's death;

**Old Age Security Act: Part 11 – Monthly Guaranteed Income Supplement**

*Definitions: In this Act:*

10. The definitions in this section apply in this Part.

"base calendar year"

"base calendar year" means the last calendar year ending before the current payment period.

"current payment period"

"current payment period" means the payment period in respect of which an application for a supplement is made by an applicant.

"previous payment period"

"previous payment period" means the payment period immediately before the current payment period.

Subsection 15(1) of the OAS Act provides:

15. Information required with application for supplement - (1) Every person by whom an application for a supplement in respect of a payment period is made shall, in the application, state whether the person has or had a spouse or common-law partner at any time during the payment period or in the month before the first month of the payment period, and, if so, the name and address of the spouse or common-law partner and whether, to the person's knowledge, the spouse or common-law partner is a pensioner.

Subsection 15(1.1) of the OAS Act provides:

15. (1.1) Statement if application waived - If the requirement for an application for payment of a supplement for any month has been waived under subsection 11(4) for a person who did not have a spouse or common-law partner immediately before the last payment period in respect of which a supplement was paid or, if no supplement was ever paid to the person, immediately before the last payment period in respect of which an application for payment of a supplement was received but who has a spouse or common-law partner immediately before the current payment period, the person shall notify the Minister without delay of the date of that change, the name and address of the spouse or common-law partner and whether, to the person's knowledge, the spouse or common-law partner is a pensioner.

Subsection 15(9) of the OAS Act provides:

15.(9) Notification of change - Every applicant shall inform the Minister without delay if they separate from, or cease to have, a spouse or common-law partner, or if they had a spouse or common-law partner at the beginning of a month, not having had a spouse or common-law partner at the beginning of the previous month.

Section 16 of the OAS Regulations provides:

**16. Relationship Evidence** - If the Minister has not received sufficient evidence or information in support of an application to determine the relationship between the applicant and their spouse or common-law partner, the applicant or their representative shall allow the Minister access to the following documents:

(a) in the case of spouses,

(i) an official copy or extract of the record of marriage issued by a competent authority or a certified copy of one, or

(ii) if the Minister has sufficient reason to believe that an official copy or extract of the record of marriage or a certified copy is not available, a statutory declaration setting out information as to the marriage, and other evidence of the marriage; and

(b) in the case of common-law partners,

(i) a statutory declaration setting out information as to the relationship of the common-law partners, and

(ii) other evidence of the relationship.

[33] Conjugal status refers to the nature of the relationship between the members of a couple. Specifically, it indicates whether the members of a couple are legally married to each other or living in a common-law relationship as defined by s. 2 of the OASA. The Appellant was not married until 2009. The definitions of common-law spouse found in Section 2 and Section 16 of the OASA and the related jurisprudence come into play.

[34] Over the years, a body of precedential case law has arisen that has settled on a series of factors that need to be considered in reaching a conclusion on whether or not a common-law union exists. They include: shelter, sexual and personal conduct, services, social, societal, support (economic) and children. The evidence related to these questions are indicative of the relationship that could give rise to the answer of whether or not the Appellant was in a common-law relationship during the time of “living under the same roof” as M. W. The evidence of the Appellant and M. W. applied against the indicia as noted above are accepted by the Tribunal.

[35] The Respondent contends that the Appellant submitted two documents: the Application for the Guaranteed Income Supplement for period July 2012 -June 2013 (submitted March 21, 2013) and the Statutory Declaration of Common-Law Union. Both documents stated that he has been in a common-law relationship with M. W. since January 1, 2003. Both documents were signed by the Appellant and M. W.. In his appeal (request for reconsideration) he stated that he was not in a common-law relationship with M. W. until 2008.

[36] The question for the Tribunal is: was there a common-law relationship between the two people in 2003 or at any time subsequent to that date and before the marriage. On the essential questions leading to a conclusion the Tribunal has considered the following accepted facts:

### **1. Shelter**

- (a) Did the parties live under the same roof? Yes. From 2003 through 2007, the parties lived in the same house; the Appellant in the basement and M. W. in the main house upstairs.
- (b) What were the sleeping arrangements? Until 2008, they slept separate and apart.
- (c) Did anyone else occupy or share the available accommodation? No.

### **2. Sexual and personal conduct**

- (a) Did the parties have sexual relations? Not until 2008.
- (b) Did they maintain an attitude of fidelity to each other? Not until 2007.
- (c) What were their feelings toward each other? There were no feelings of intimacy, dependence or mutual caring until 2007 leading to a maturing sense of affection in 2008.
- (d) Did they communicate on a personal level? Not until 2007.
- (e) Did they eat their meals together? Not until 2008.
- (f) What, if anything, did they do to assist each other with problems or during illness? Very little until occasional driving assistance provided by one to another in 2007.

### **3. Services**

What was the conduct and habit of the parties in relation to:

- (a) preparation of meals? Very occasional until 2008.
- (b) washing and mending clothes? Each did their own (he had a washer and dryer in the basement).
- (c) shopping? The parties did their own until 2008.
- (d) household maintenance? He did some routine maintenance in lieu of rent such as cutting the grass and cleaning the basement.

### **4. Social**

- (a) Did they participate together or separately in neighborhood and community activities? Not before 2008 and rarely after that time.
- (b) What was the relationship and conduct of each of them toward members of their

respective families and how did such families behave towards the parties? There was no interaction between the Appellant and the family of the M. W. before or after 2008. There was interaction between M. W. and the sister of the Appellant in the workplace until their respective retirements.

## **5. Societal**

- a) What was the attitude and conduct of the community toward each of them and as a couple? There was no direct evidence on this point but certainly before 2008, on their evidence, they were not regarded as a “couple”.

## **6. Support (economic)**

- a) What were the financial arrangements between the parties regarding the provision of or contribution toward the necessities of life (food, clothing, shelter, recreation, etc.)? Not before 2008.
- (b) What were the arrangements concerning the acquisition and ownership of property? There was no joint ownership of property. Since their marriage in 2009 they have operated a joint bank account.
- (c) Was there any special financial arrangement between them which both agreed would be determinant of their overall relationship? No.

## **7. Children**

What was the attitude and conduct of the parties concerning the children? M. W. has no children. The Appellant's children are distant, independent and non-communicative.

[37] The Tribunal finds that the Appellant and the added party M. W. to be credible witnesses and has no difficulty in accepting their evidence on all material issues.

[38] The Tribunal has considered the nature of the relationship by reference to the testimony and relevant exhibits that have been provided. The Tribunal finds the evidence of the Appellant and M. W. to be compelling. They both gave their evidence in a simple, straightforward and spontaneous manner. They answered all questions candidly and without embellishment or contradiction. The evidence was consistent with the letter dictated by the Appellant and written

by his friend, W. S. and filed with the Questionnaire. The Tribunal accepts the viva voce evidence as reliable, believable and credible.

[39] The Tribunal rejects the conclusions reached by the Respondent on facts and documents that were not produced or the speculative observations made without diligent investigation and follow-up regarding the nature of the actual relationship of the parties relative to the indicia to be applied to determine a common-law relationship.

[40] The Tribunal finds on a balance of probabilities and its acceptance of the credible evidence of the Appellant that he did not intend or even understand the relevance of information written by a friend who prepared his first GIS application. He did not apply his mind or understand that the “single designation” needed to be changed after the commencement of his co-habitation with M. W. in 2008. He continued to file as a single without realizing the implications. He did not become a common-law spouse before or during the year immediately prior to the year (2008) when he moved in with M. W.

[41] The Tribunal finds that this inadvertent reference was without an understanding of the term “common-law” partner. And, in fact, the relationship was not that of a common-law nature until 2008. Similarly, the tax returns prepared by an independent tax preparation firm correctly identified him as single until after his marriage in 2009. The Tribunal finds nothing sinister in the third party tax preparer not filing him as a common-law partner in 2008.

[42] The Appellant “declared” that he had been living with M. W. for a ten year period from January 1, 2003 to 2013 on his statutory declaration. Similarly, the Tribunal finds that this was a mistake based on a lack of understanding of the term “common-law”.

[43] It is argued that the documentation supplied by the Appellant appears indisputable since it shows both the Appellant and spouse at the same address sharing the same assets and accounts. This is clarified in the testimony of the Appellant. It is suggested by the Respondent that one of the strongest pieces of evidence comes in the form of the Declaration. The names of both the Appellant and M. W. are declared as cohabiting parties at the same address. Indeed, they were living at the same address from 2003 to 2008 as single people. The Tribunal again accepts the testimony of the Appellant and M. W. on this point.

## CONCLUSION #1

### Common-Law Relationship

[44] In answer to the Tribunal's questions, it finds as follows:

- a) the Appellant was not in a common-law relationship for the period of 2003 to 2008
- b) the Appellant is entitled to the higher GIS entitlement for the period of January 2003 to December 31, 2007.
- c) there was no overpayment by the Respondent on GIS between those dates because he was entitled to a "singles" payment
- d) for the year 2008, the Appellant is entitled to a GIS benefit at the common-law partner rate and for 2008, 2009 and thereafter at the married rate if the couple meets the financial criteria that allow a GIS benefit.

**In respect to issues number d), the Tribunal finds as follows:**

### Recovery Rate

#### Law

#### The Old Age Security Act (OASA)

Subsection 15(2) of the OASA provides:

15. (2) Statement by spouse or common-law partner - Subject to subsections (3), (4.1) and (4.2), where a person makes an application for a supplement in respect of a payment period and the person has or had a spouse or common-law partner at any time during the payment period or in the month before the first month of the payment period, the application shall not be considered or dealt with until such time as

- (a) the applicant's spouse or common-law partner files a statement in prescribed form of the spouse's or common-law partner's income for the base calendar year;
- (b) an application for a supplement in respect of the current payment period is received from the applicant's spouse or common-law partner; or
- (c) the income of the applicant's spouse or common-law partner for the base calendar year is estimated under subsection 14(1.1).

Old Age Security – Regulations (OAS Regulations)

*Recovery of Overpayments*

37 (1) A person who has received or obtained by cheque or otherwise a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, shall forthwith return the cheque or the amount of the benefit payment, or the excess amount, as the case may be.

27 (2) If a person has received or obtained a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, the amount of the benefit payment or the excess amount, as the case may be, constitutes a debt due to Her Majesty and is recoverable at any time in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

[45] An amount of indebtedness that is owing may be deducted and retained out of the whole or any portion of a benefit that is payable to the person. The Respondent may recover the overpayment in a single payment or in instalments, in any amount that does not cause undue hardship to the person.

[46] The Appellant submitted a variety of documents to the SST with his appeal on April 13, 2016. The bank account statements and expense documents he submitted to SST do not support his claim of financial hardship. The Respondent used the most recent available information in the Appellant's file.

[47] For the year 2016, the Appellant and his spouse have a total income of \$36,823.68 and expenses of \$19,419. The income includes both CPP and OAS income. The Respondent decided to withhold all his OAS benefits to recover the overpayment of \$51,568.83. This amount of indebtedness will now be reduced.

[48] The relevant fiscal year goes from July 2013 to June 2014. Their combined 2012 incomes are above the income level cut-off to be eligible for the GIS benefit. The current combined income level cut-off to be eligible for the GIS benefit based on the marital status (a married couple who are both in receipt of the OAS pension) is \$22,080.



[49] Clearly, on the evidence the Appellant was not entitled to the benefit of a “single” designation in the years following 2007. For the years 2003 through 2007 he properly filed his annual GIS applications as a “single” but thereafter should have made application in the “common-law” and “Married” category and be supported accordingly. The amount of money overpaid needs to be adjusted. The Respondent shall re-evaluate the amount owing to the Appellant with particular reference to him as a single recipient of benefits from January 2003 to December 31, 2007. Thereafter, if qualified by income, he should receive benefits as a married person.

[50] The Respondent alleges that the financial information filed does not disclose that a 100% recovery would be a financial hardship on the Appellant. The Tribunal finds that the Appellant has had no employment income or other sources of income throughout the period of 2003 and the present. However, the Appellant has not shown proof that this recovery rate would cause undue hardship to him. Therefore, the appeal related to a lower recovery rate is denied. The Respondent began recovering the full Old Aged Pension in June 2014 to collect the overpayment. This process will continue following a reconciliation of the amount owing based on this judgement.

[51] Based on their evidence, the recovery rate at 100% payable in a lump sum will cause a hardship to the Appellant.

## **CONCLUSION #2**

[52] The Tribunal finds that the Appellant has no employment income or other sources of income throughout the period of 2003 and the present. The Appellant is suffering from cancer and other physical problems including diabetes. He does not need more stress in his life. When the Respondent recalculates the amount owing to the Department, given the findings of this Tribunal, the entire amount owing is to be repaid but over a 10 year period.

[53] The Appellant is invited to file new applications and because of his intellectual capacities will need the assistance of a clerical person associated with a Canada Service Centre to assist in the completion of these documents.

[54] The appeal is allowed in part.

John Eberhard  
Member, General Division - Income Security