Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *The Estate of L. H. v. Minister of Employment and Social Development*, 2017 SSTGDIS 135

Tribunal File Number: GP-17-306

BETWEEN:

The Estate of L. H.

Applicant

and

Minister of Employment and Social Development

Respondent

and

J. V.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: John Eberhard

HEARD ON: September 12, 2017

DATE OF DECISION: September 20, 2017

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

J. V., Representative of the Estate and the Added Party

INTRODUCTION

[1] This application involves a request to rescind or amend a decision of the General Division of the Social Security Tribunal (Tribunal). On October 29, 2016, the General Division determined that guaranteed income supplement (GIS) benefits were paid to L. H. to which he was not entitled. The Added Party filed an application with the General Division to rescind or amend that decision on January 4, 2017 in accordance with section 66 of the d*epartment of Employment and Social Development Act* (the "DESD Act"-"Application to Rescind or Amend").

[2] When the Tribunal refers to. J. V. personally, she is noted as the Added Party. When the Tribunal refers to the application to rescind or amend, she is referred to as the Applicant.

Preliminary Matter

[3] L. H., husband of the Added Party, applied for GIS benefits. The Department of Employment and Social Development Act (DESD Act or Act) Section 65 allows the Minister to add a person who is affected by a decision of the Social Security Tribunal (SST). L. H. died on September 12, 2012. The Tribunal has determined that his wife, the Added Party could be affected by the outcome of an appeal of the decision related to her late husband. She has been added as a Party to this application pursuant to section 10 of the Tribunal's Regulations.

[4] The hearing of this application was scheduled "in person" for the following reasons:

a) The Applicant and Added Party will be the only parties attending the hearing.

b) The method of proceeding provides for the accommodations required by the parties or participants.

c) Videoconferencing is not available within a reasonable distance of the area where the Applicant lives.

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.

BACKGROUND

[5] This is an application in which the Added Party seeks to rescind or amend a decision of the Tribunal rendered on October 29, 2016. A person who is the subject of a decision by the Tribunal may make an application to rescind or amend the decision under section 66 of the DESD Act. The Act provides that the Tribunal may rescind or amend a decision given by it where a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

[6] In its decision, the Tribunal found that the Deceased received the GIS in excess of the amount to which he was entitled. The Added Party applied for the CPP death benefit and that because she represents the estate as well, payment of the death benefit was imputed to the outstanding GIS overpayment. The Respondent called for the repayment of the overpayment since the *Canada Pension Plan* (CPP) death benefit was payable to the Deceased's estate. The excess amount was ordered to be repaid by his estate.

[7] The Added Party was not a participant in the preceding that led to this decision. After the decision was rendered, the Applicant produced the Last Will and Testament that provided her standing as the named executor of the Deceased. She appealed the decision to the Appeal Division of this Tribunal, which appeal is being held in abeyance until the outcome of these proceedings, and also brought this application to rescind or amend. She appeared as a representative of the Estate of her late husband (the Deceased) when she filed the application.

[8] The Tribunal is asked to make a decision as required by Section 66(4) of the DESD Act, being the same division of the SST as that which rendered the decision. The Tribunal recognizes that the purpose of this application is not a "rehash" of old evidence considered by the previous decision-maker. It is an exception to the finality principle which characterizes judicial and quasi-judicial decisions. The provision ought to be interpreted in a manner which ensures procedural

fairness to the parties who were either bound by, or entitled to rely upon, the final decision now under a new attack: *Canada (Attorney General)* v. *Jagpal*, 2008 FCA 38, para. 27.

[9] If the Tribunal determines that the additional evidence qualifies as new facts, the Tribunal then has to determine if (combined with the documents that were before it at the original hearing) the prior decision should be rescinded or amended. In this event the Tribunal will proceed *de novo* to determine whether, based on all the evidence, it was more likely than not the Deceased's marital status, during the periods October 2008-June 2009 and July 2010-September 2012, was "married" for the purpose of calculating his entitlement to GIS during those periods.

Evidence Adduced and Facts found at the earlier Tribunal hearing

[10] The appeal was decided on the basis of the documents and submissions filed. The Tribunal decision that has led to this application found the following facts:

[11] The Deceased was born X X, X. He died September 12, 2012. J. V. (the Deceased's spouse and Added Party here) and the Deceased were married on September 10, 1966. J. V. applied for the CPP death benefit on September 28, 2012. She declared the Deceased's marital status as at his date of death on September 12, 2012, as married. She reported the Deceased's address at the time of his death as X X X, X, the same as her address.

[12] The Deceased's application for the GIS pursuant to the OASA for the payment period July 2008-June 2009 was received by the Respondent on November 5, 2008 and approved effective October 2008 (the month following the month the Deceased attained 65 years of age). The Deceased declared his marital status in the application as "single". The Deceased's entitlement to GIS was renewed for the payment periods July 2010-June 2011, July 2011-June 2012, and July 2012- June 2013. The Deceased was paid $7,098.33 GIS for the periods from October 2008-June 2009 and from July 2010-September 2012 (the month the deceased died) inclusive. The GIS received by the Deceased was calculated by the Respondent and paid to the Deceased at the single rate based on the income of the Deceased for the years 2007, 2009, 2010, and 2011.

[13] The Deceased married J. V. (the Deceased's spouse) on September 10, 1966. He died September 12, 2012. The Respondent determined the Deceased was not entitled to receive GIS for the noted periods as his marital status was "married" throughout the payment periods when he received GIS, and the combined income of the Deceased and the Deceased's spouse exceeded the maximum income allowable for a legally married applicants to qualify for GIS. The Respondent recalculated the Deceased's GIS entitlement for the payments periods based on the combined income of the Deceased and the Applicant, his spouse. It determined the Deceased was not entitled to GIS, and required repayment of the GIS received by the Deceased from the Deceased's estate.

[14] The Deceased's spouse declared on the application for the death benefit on September 28, 2012 that she was the wife of the Deceased. The signature of the Deceased's spouse on the application confirmed her surname was H.. She noted her name at birth was J. V.. The CPP death benefit application was approved. She reported that she and the deceased were still living together at the time of the deceased's death. The Added Party declared the information on the application was true and complete. The surname of the Deceased's spouse's signature on the application was H.. The amount of the benefit was retained by the Respondent and applied towards repayment of the outstanding indebtedness on the GIS that the Respondent determined the Deceased had not been entitled to receive.

[15] The Respondent had conducted an investigation into the Deceased's spouse's marital status, which included a home visit with the Deceased and the Applicant in April 2012 at the address the Deceased reported on his application for the OAS pension dated October 31, 2007 (being the same address as the Deceased's spouse noted on the applications she submitted for a CPP survivor's pension and CPP death benefit). The investigator's report noted the Deceased stated that he and the Deceased's spouse have lived together as husband and wife at the same address since 1981. The investigator reported the Deceased and the Deceased's spouse entered into a separation agreement in March 2006 "for financial reasons only", but had maintained the same living arrangements as existed both before and after the separation agreement. The report noted the Deceased's spouse advised the investigator the separation agreement was entered into as a result of the suspension of the deceased's ODSP benefits, and not due to marital breakdown.

[16] It was found that the Canada Revenue Agency (CRA) advised the Respondent that the Deceased reported his marital status as married on his 2007-2011 tax returns.

[17] The Respondent made a decision to "claw back" the GIS benefits. The Deceased's spouse requested the Respondent to reconsider the October 10, 2012 decision. Following reconsideration, the Respondent maintained the decision that the Deceased had been overpaid GIS for the period from October 2008-June 2009 and from July 2010-September 2012, as the amount received during that period had been calculated based on the Deceased's income only, and not the combined income of the Deceased and the Deceased's spouse. The Respondent recalculated the Deceased's GIS entitlement for the noted payments periods based on the combined income of the Deceased and the Deceased's spouse, determined the Deceased was not entitled to GIS, and required repayment of the GIS received by the Deceased from the Deceased's estate.

[18] The Deceased's spouse submitted, notwithstanding she and the Deceased were legally married and living together during the periods the Deceased received GIS, the Deceased's marital status during those periods was "separated", as she and the Deceased had signed a separation agreement in March 2006.

[19] The Added Party appealed the reconsideration decision to the Tribunal on August 13, 2013. The issue for the Tribunal was whether it was more likely than not the Deceased's marital status during the periods October 2008-June 2009, and July 2010-September 2012 was "married" for the purpose of calculating his entitlement to GIS during those periods.

Submissions and Evidence by the Respondent

[20] In numerous letters written by the Added Party on behalf of her husband and herself, she provided explanations about their separate living arrangements while living under the same roof which included separate bedrooms, the division of payment of bills and the general maintenance of the home. An investigator visited the home, following her letter dated September 23, 2011 in which she stated the ODSP had laid charges with respect to the fraudulent collection of benefits as ODSP did not recognize their reported marital status.

[21] The investigator reported that nothing had changed in the couple's lifestyle since their legal separation in 2006L. H. was reported to state that he and J. H. (or J. V.) lived together as husband and wife at the same address since 1981. J. V. admitted during the investigator's visit that L. H. did not initially know the reason he signed the separation agreement or what it was about until she told him much later. The Added Party explained that she went by J. V. during the week and J. H. on the week-ends due to complications with ODSP. J. V. advised the investigator that the separation agreement was entered into as a result of the suspension of L. H.'s ODSP benefits and not due to marital breakdown.

[22] The CRA reported that for the calendar years (tax years) 2007 to 2011, L. H. filed his tax returns claiming that he was married. Further, the Minister has no record of an application for a CPP credit split, which typically occurs when a couple has separated. In addition, when her husband passed away, J. V. applied for the CPP survivor pension claiming that she was his spouse at the time of death.

[23] For these reasons, the Respondent determined that the deceased and the Added Party continued to be living under the same roof and in a marital relationship from March 2006 until his death in September 2012 and therefore, he was not entitled to the GIS for the period of October 2008 to September 2012 as a single person pursuant to section 15 of the OAS Act. Since the couple's joint income was too high to qualify him at the married rate during this period, the Deceased was overpaid in the amount of $7,098.

[24] Since the CPP Death benefit was payable to the Deceased's Estate pursuant to subsection 71(1) of the CPP, the Minister applied the entire death benefit entitlement of $2,500 directly to the outstanding GIS overpayment in accordance with subsection 37(2.1) of the OAS Act reducing it to $4,598.

Documentary Evidence of the Added Party in Advance of the "Rescind or Amend" Application hearing

[25] The Added Party filed letters with the Tribunal dated February 16, 2017 (GD-17-306); March 19, 2017; March 20, 2017 (RA3); July 27, 2017 (RA5). In her application dated January 4, 2017, the Added Party stated that she has represented her husband, the Deceased, from 2008 until his

death in 2012 in various court proceedings and ODSP matters. In a letter dated February 16, 2017, the Added Party provided a chronology of relevant events including:

a) In 2008- L. H. received a direct deposit of over $4,000 "out of nowhere". He was not physically or mentally capable of addressing this situation himself; but was made aware of the contents of all government communication and was totally reliant on me for a translation and assistance.

b) The Provincial Government had failed him miserably and I had represented him since 1997 to 2008 to via Tribunals.

c) I relented for his sake to assist with the emerging CPP problem and requested a detailed break-down of this approx. $4,000.00. What was provided did not even add up mathematically. Attempts to reconcile that went ignored for 4 years.

d) In 2012 when L. H. died an application for the death benefit was done by an employee of the funeral home as a courtesy; to cancel the obvious, driver's license, health card etc. and advise all government agencies of proof of his death. The funeral home was paid in full on the day of his death Sept 12th 2012 and to my knowledge they did not receive any benefit directly from the government.

e) When I received a T4 for the death benefit for tax due on it, I took an active interest, since I never received the death benefit.

f) Only when the Provincial Government began claiming my eligible senior's credits, and have done since 2012 did I take an interest again by requesting a breakdown from the Ontario Recovery Unit (ORU) responsible for handling money received from the Federal Government. The total now stands at $8,580.04 recovered (including $254.76 from an absolutely unknown source, consisting of 3 separate payments).

[26] In a letter dated March 20, 2017, there was no evidence provided that addressed the issues before the Tribunal. She indicated that she wanted an opportunity to explain her situation in an oral hearing.

[27] In a letter to the Tribunal received on July 27, 2017, the Added Party noted that earlier correspondence prior to Sept 12th 2012 came from her (J. V.) to "spare a dying man the problem of addressing a situation he was neither physically or mentally capable of doing". She points out the difficulty of accounting for the outstanding amounts owed from the estate. She cannot determine if her husband's senior credits are to be found in CRA files. She pointed out that the funeral director was the party who actually made the application for the death benefit. She wrote about why she continued to wear a wedding ring and the investigator "made assumptions of the

layout of our home, how many bedrooms we had and who slept where." The Added Party noted that she was a "caregiver" to the diseased which made her a "nurse, not his wife". She states that he received single benefits for 5 years and "left me to struggle to subsidize the rest and for the following 7 years subsidize the whole thing". It was this that prompted the formal separation agreement. She states that she is not personally responsible for his debt.

Testimony of the Applicant

[28] The Added Party provided a lucid account of the history of her relationship with the Deceased. She recounted the tragedy of a fire in 1981 in the plant in which the Deceased worked. She explained his resulting disabilities and the care that she provided to him in the matrimonial home until the time of his death. She became the bread-winner and the nurse. She noted that he became 65 years of age in 2008.

[29] In June of 2009 she went part time with her accounting work so that she could spend more time caring for the Deceased. She explained the application made for ODSP benefits and the tangle of legal processes that she found herself involved in as a result of ODSP paying the Deceased as a single recipient of the Provincial benefit. This involved the entering into a separation agreement in 2006 so as to be able to receive the "single" rate.

[30] The Added Party noted that she and the Deceased had a joint bank account and it was into this account that the GIS benefits were paid. The money was co-mingled with her professional earnings and used to look after household expenses. As a joint owner of the matrimonial home she stated she wanted to protect her financial interests in the property. She testified that as of 2006 because of the pressure put on to her by the Provincial government, she was turned from a "wife into a nurse". There was no explanation or documentation presented to assist the Tribunal in knowing exactly what this meant although she pointed out that she has a volume of letters on file in her home that could have been made available to the hearing. The last will and testament was among them. She did not produce any other documents or new evidence that might impact on the finding of the Respondent regarding the overpayment issue of GIS benefits. She did state clearly that she has no interest in the outcome of this application.

Submissions of the Respondent

[31] On October 26, 2012, the Minister advised the Applicant that the Estate's entitlement to the CPP Death benefit, in the amount of $2500, was being withheld and applied to the GIS overpayment. By two separate letters dated November 2, 2012, the Applicant expressed her disagreement with the decision regarding the couple's marital status and the decision to withhold the CPP death benefit. The Minister reconsidered and upheld the original decisions on the basis of a the report from Integrity Services and various letters from J. V. which, it concluded, verified that the separation was on paper only for the purpose of receiving additional funding for the Deceased from the ODSP. CRA confirmed the couple reported their marital status as married for the entire period of October 2008 to September 2012. This reconsideration decision was issued by letter dated August 7, 2013. The Applicant appealed the August 7, 2013 decision to the Tribunal on August 13, 2013. The Tribunal issued a decision confirming the Minister's position on October 29, 2016. The appeal was decided on the basis of the documents and submissions filed.

[32] Elizabeth Charron (OAS Policy executive with the Respondent) allows that the Estate is responsible for repaying the remaining overpayment of $4,598 and that J. V. is not personally responsible. The Minister has asked for repayment from the Added Party solely as she is the representative (Executor) for the Estate. Since the Added Party has advised the Minister that there are no funds remaining in the Estate, the Minister is prepared to remit the outstanding amount. This means that following the conclusion of this appeal, the rest of the overpayment will be cancelled and nothing further will be owing.

[33] The Tribunal regards this as a generous and reasonable conclusion. The Respondent invited the Tribunal to dismiss the appeal.

THE LAW

[34] The DESD Act provides for the amendment of a decision.

[35] Subsection 66(1) of the DESD Act reads as follows:

> 66. (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if:
>
> > (a) in the case of a decision relating to the Employment Insurance Act, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; or
> >
> > (b) in any other case, a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.
>
> (2) An application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to the Applicant.
>
> (3) Each person who is the subject of a decision may make only one application to rescind or amend that decision.
>
> (4) A decision is rescinded or amended by the same Division that made it.

[36] Section 12 of the OASA provides for the payment of a GIS benefit to low-income OAS pensioners. Benefits for a payment period are based on the pensioner's current marital status and income received in the previous calendar year. Pensioners who are not married or 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 the couple's combined income.

[37] Section 15 of the OASA provides that every person who makes an application for GIS in respect of a payment period shall state whether the person has or had a spouse at any time during the payment period or in the month before the payment period and if so, the name and address of the spouse and whether the spouse is a pensioner.

[38] Pensioners must notify the Minister of any change to their marital status. This is set out in subsections 15(1), 15(2) and 15(9) of the OAS Act as follows:

> 15 (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.

> 15. (2) 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).
>
> 15 (9) 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.

[39] Section 37 (1) of the OASA provides as follows: Return of benefit where *recipient not entitled* – 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.

[40] Section 37(2.1) of the OASA provides if any amount becomes payable to a person's estate under any program administered by the Respondent, the amount may be retained and applied towards repayment of an amount received by the deceased to which he was not entitled.

[41] Although not an issue in this application, The *Canada Pension Plan* (CPP) provides that where payment of a death benefit is approved, the Minister shall pay the death benefit to the estate of the contributor.

> Section 71 (1): Where payment of a death benefit is approved, the Minister shall, except as provided in subsections (2) and (3), pay the death benefit to the estate of the contributor.
>
> Exceptions

> (2) The Minister may direct payment of a death benefit in whole or in part to such person or body as is prescribed where
>
> (a) he is satisfied, after making reasonable inquiries, that there is no estate;
>
> (b) the estate has not applied for the death benefit within the prescribed time interval following the contributor's death; or
>
> (c) the amount of the death benefit is less than the prescribed amount.

ISSUES

a) The issue in this case is whether or not the Applicant has provided new material evidence that prompts the Tribunal to rescind or amend the decision. If this is found then the Tribunal will revisit the merits of the case and either amend or rescind.

b) On the merits, the Tribunal must decide if it is more likely than not the Deceased's marital status during the periods October 2008-June 2009, and July 2010-September 2012 was married for the purpose of calculating his entitlement to GIS during those periods.

ANALYSIS

[42] The Added Party argues that it was recognition of the difference between a single payment and one calculated as a married party that prompted the formal separation agreement. She states that she is not personally responsible for his debt. With this statement both the Respondent and the Tribunal agree.

[43] While it is clear that the Applicant has had problem with ODSP, she acknowledges that she was a full time wage earner and nurse and caregiver to a man who could only be left alone for short periods of time. Her problems with ODSP are not relevant to the issue before this Tribunal.

[44] The investigator's report noted the Deceased stated he and the Deceased's spouse have lived together as husband and wife at the same address he reported on his OAS pension application since 1981. He reported he and his spouse entered into a separation agreement in March 2006 for financial reasons only, but had maintained the same living arrangements as existed both before and after the separation agreement. The report noted the Deceased's spouse advised the investigator the separation agreement was entered into as a result of the Deceased's ODSP benefits, and not due to marital breakdown. She concludes that both Federal and

Provincial Governments are at fault: "they should put more attention to treating their seniors with respect, instead of taking advantage". The manner in which governments treat seniors is not relevant to the question to be answered by the Tribunal.

[45] The Tribunal may rescind or amend a decision given by it in respect of any particular application if a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The applicant argues in support of her application to rescind or amend that protocol and the rules related to the representation of estates prevented the Added Party from participating in the original hearing. This was entirely within her powers to prevent. The production of the Will which provided her standing in the capacity of Executor of the Estate could have been done long before the original hearing. She would have had the full opportunity at that time to provide the testimony and "evidence" that she has submitted now to the Tribunal and any and all relevant documents that she states she has at her home but has never produced.

[46] As an aside, the Added Party did not dispute the Respondent's determination that the combined income of she and the Deceased for the years 2007, 2009, 2010, and 2011, was in excess of the maximum income allowable in each of those years for a legally married applicant to qualify for GIS for the noted payment periods and no relevant evidence of the point was adduced by her. There were no "new facts" related to this issue.

The New Facts Test

[47] The Applicant must prove on a balance of probabilities that the evidence filed in support of the Application to Rescind or Amend establishes a new material fact within the meaning of paragraph 66(1)(b) of the DESD Act.

[48] Before paragraph 66(1)(b) of the DESD Act came into force in April 2013, the Federal Court of Appeal (FCA) set out a test for evidence to be admissible as a "new fact" in relation to former subsection 84(2) of the CPP:

a) It must establish a fact (usually a medical condition in the context of the CPP) that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of due diligence (the "discoverability test"), and

b) The evidence must reasonably be expected to affect the results of the prior hearing (the "materiality" test).

(*Canada (Attorney General) v. MacRae*, 2008 FCA 82)

[49] If the Applicant fails to introduce a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence she does not meet the criteria for new facts: *Taylor v. Canada (Minister of Human Resources Development*), 2005 FCA 293, para. 13 &14. The test for materiality is met only "if the proposed new facts may reasonably be expected to affect the outcome": *Mazzotta v. Canada (Attorney General*), 2007 FCA 297, para. 4

[50] This is often referred to as the "discoverability test". Discoverability implies that the evidence existed at the time of the original hearing. Otherwise, any evidence arising after the original hearing could routinely be found not to be discoverable. In addition, the new material fact must reasonably be expected to affect the result of the prior hearing. This is often referred to as the "materiality test".

[51] Materiality and discoverability has been the focus of this Tribunal. The Added Party has submitted no new material facts. The will and the separation agreement and documents do not qualify as new facts. The separation was known by the Minister`s investigator and was information that was part of the record before the Tribunal Member therefore "discoverable". The will was discoverable as it has been in the hands of the Added Party since the death of her husband.

[52] In *Carepa v. Canada (Minister of Social Development),* 2006 FC 1319, the Federal Court decided that an applicant must provide evidence of what steps were taken to find the new evidence, and why it could not have been produced at the time of the hearing. The Added Party took no steps to avail herself as a party in the original hearing process nor (with the exception of the will) has not produced any documents that might be related to the interests of herself personally or the Applicant

[53] There is no probative or material evidence that adds to the volume of evidence now before the Tribunal that could not have been made available at the time of the hearing. Accordingly, the Tribunal finds that the Added Party has not made out a case for either amendment or rescission of the finding made by Tribunal Member at the time of the original hearing.

[54] The Tribunal gratuitously adds, as did the Tribunal Member, that the applicable legislation is clear and the evidence unequivocal. The GIS is an income tested benefit that is based on marital status and income. If an applicant for GIS is single, the applicant's entitlement is based solely on the applicant's income. If an applicant is, on all of the evidence, "married", the applicant's entitlement is based on the combined income of the applicant and the applicant's spouse. Notwithstanding, since the Respondent has indicated that it does not seek any repayment of an overpaid GIS account from the Added Party, the Tribunal is satisfied that the ends of justice are met by a dismissal of this application. The Tribunal finds that the evidence does not establish a new material fact within the meaning of paragraph 66(1)(b) of the DESD Act.

CONCLUSION

[55] The Application to Rescind or Amend is dismissed.

John Eberhard
Member, General Division - Income Security