



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. F. v Minister of Employment and Social Development*, 2017 SSTGDIS 207

Tribunal File Number: GP-16-2850

BETWEEN:

**S. F.**

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: Shannon Russell

DATE OF DECISION: September 25, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for a Guaranteed Income Supplement (GIS) for the payment period 2013/2014. The Respondent approved the application and in calculating the amount of the Appellant's benefit, the Respondent determined that monies the Appellant received from the Italian government should be included in her income for 2012. The Appellant asked the Respondent to reconsider its decision as she was of the view that she was eligible for a higher GIS benefit than what the Respondent had awarded. Specifically, the Appellant did not believe that the monies she received from Italy should be included in her income. The Respondent reconsidered its decision and decided to maintain the initial award. The Appellant appealed the reconsideration decision to the Social Security Tribunal (SST or Tribunal).

[2] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[3] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

### EVIDENCE

[4] On July 9, 2013, the Appellant submitted a GIS application for the payment period of July 2013 to June 2014 (GD5-34). By letter dated July 30, 2013, the Respondent informed the Appellant that it had approved her application and that she was eligible to receive \$612.74 per month (GD5-37).

[5] On August 22, 2013, the Appellant wrote to the Respondent and asked the Respondent to reconsider its decision because she disagreed with the amount of her GIS. She submitted that the money she received from the Italian government was social allowance and, therefore, it should be treated in the same way that an allowance from the Canadian government is treated, and not considered as income for GIS purposes (GD5-30).

[6] By letter dated December 19, 2013, the Respondent informed the Appellant that it had reconsidered its decision to include the Appellant's Italian pension in her income for 2012 and had decided to maintain the decision. The Respondent explained that, in some cases, pension income from outside Canada may be exempt from tax in Canada due to a tax treaty, but even so the income must still be reported on the tax return. The Respondent further explained that the tax exemption does not apply in this case because Canada and Italy do not currently have a tax treaty. The Respondent referenced section 3 of the *Income Tax Act* and section 13 of the OAS Act and stated that, even though the Appellant did not report her Italian pension as income on her income tax return, it is still nonetheless considered as income for GIS purposes. The Respondent said that it calculated the Appellant's Italian pension as \$10,348.36 (8053.20 euro x 1.285 exchange rate). The Respondent went on to say that because the Appellant stopped receiving the Italian pension in December 2012 she may be "entitled to an estimated income" which could increase her GIS. In this regard, the Respondent enclosed Statements of Estimated Income for the Appellant to complete (GD5-13 to GD5-15).

[7] The following month, in January 2014, the Appellant filed the two Statements of Estimated Income, one for 2012 and one for 2013 (GD5-4 to GD5-5).

[8] On February 25, 2014, the Appellant wrote to the Respondent and raised a number of concerns, including (GD1-4 to GD1-8):

- Her frustration about having received inconsistent information from the Respondent's agents regarding the information needed to process her GIS application. She said, for example, that she was told by one officer on December 10, 2013 that they could not do anything with her application until they received confirmation from Italy as to the nature of the pension she had received, but two days later a supervisor told her that the regulation requires that all foreign income be considered income. The Appellant asked if the Respondent was playing tricks on her, as she could not understand why she had been told that confirmation from Italy was needed when in fact it made no difference at all. She also could not understand why the regulation had changed so sharply and why it had not been mentioned in her decision letter.

- Her belief that the Respondent provided her with inaccurate and incomplete information. For example, the Respondent indicated that Canada and Italy do not currently have a tax treaty but to her knowledge there is a tax treaty and according to that treaty the social allowance she received from Italy is not taxable either in Italy or in Canada. As another example, the Respondent cited section 13 of the OAS Act in its decision letter but neglected to quote the part of that section that includes the exceptions and one of those exceptions relates to social assistance payments.
- Her belief that the Respondent improperly criticized her which severely injured her reputation. The Respondent said, for example, that she did not report her foreign pension in her income tax return. This is untrue because when she completed her income tax return she followed instructions set out in a Guide and those instructions stated that in some cases amounts you receive may not be considered pension income and they may have to be reported elsewhere on the return. With this in mind, she attached a document to her tax return showing the amount she received in social assistance from Italy and the amount she received for the Alberta Seniors Benefit. Also, when she completed her application for the GIS she followed the instructions set out in the document entitled “Comparison between Guaranteed Income Supplement Renewal Application form and Canada Revenue Agency Income Tax and Benefit Return” and that document indicated that the box for “other income” should be zero. Also because the social security agreement between Canada and Italy indicates that the Italian social allowance is not included in Old Age Benefits, she amended the amount she had put in that box and wrote zero instead.
- Her belief that the Respondent calculated her GIS entitlement incorrectly in that the amount of social allowance monies she received from Italy in 2012 totals \$1,754.08, which is less than the amount used by the Respondent in its GIS determination.
- Her frustrations over the delays she experienced in the processing of her applications, including the processing of the two income estimates she filed in January 2014.

[9] In May 2014, the Appellant appealed the Respondent's reconsideration decision to the SST and in her notice of appeal she reiterated many of the same concerns set out in her letter of February 25, 2014 (GD1-1 to GD1-3).

[10] Because the Appellant's Notice of Appeal was received by the SST after the 90 day appeal period had expired, the appeal was assigned to a Tribunal Member to determine whether the circumstances were appropriate to grant an extension of time to appeal. By decision dated January 25, 2016, that Tribunal Member refused to allow the extension. The Appellant appealed the Tribunal Member's decision to the SST Appeal Division. In a decision dated June 28, 2016 the appeal division granted leave to appeal and on August 22, 2016, the appeal division allowed the appeal and returned the matter to the Vice-Chairperson of the General Division with directions that she grant an extension of time to appeal and then refer the matter to the Tax Court of Canada (TCC). In a decision dated September 13, 2016, the Vice-Chairperson of the General Division granted the extension of time to file an appeal and on September 16, 2016, the SST referred the Appellant's appeal to the TCC.

[11] On April 19, 2017, the Appellant wrote to the SST and explained that her hearing with the Tax Court was held on March 15, 2017 and that at the end of the hearing the Justice said that he would refer the appeal back to the SST and would say "keep the decision", referring to the decision made in the Appellant's husband's appeal. She said the Justice ordered her to do two things. First, she was told to write to the SST and state her concerns (other than those issues decided by the Tax Court). Second, she was told to write a letter of complaint to her MP's office about a conversation the Appellant had with someone who worked in that office. The Appellant said she did both of the things the Court asked her to do. With respect to her appeal with the SST, she said that the Court determined that her Italian income is social assistance and that the Appellant had correctly reported that income on her tax returns. She said that the remaining issue that has not yet been decided is whether she filed her GIS application in accordance with the "Comparison Table" (IS4-1 to IS4-2).

[12] With her letter, the Appellant enclosed a number of documents including

- the submissions she filed with the SST following her hearing at the Tax Court. In these submissions, the Appellant stated that she is in complete agreement with the TCC's

decision in her husband's appeal and that the TCC had resolved the dispute about their combined income for the years 2010, 2011, and 2012. She said that the dispute that remains unresolved is whether her Italian social assistance should be deducted from their combined total income and she submitted that this issue is in the jurisdiction of the SST to decide. The Appellant then set out her reasons for why she is of the view that the Italian social assistance should not be included in her income. The Appellant also said that after her husband's TCC hearing, an article was published on the website "info.51.ca" and, when translated into English, the title of the article reads "Did not report foreign assistance, Chinese couple repaid". She contacted the editor of the website and learned that the article was written as a result of her husband's TCC decision. She feels the article seriously hurt and damaged her and her husband's reputation (IS2-1 to IS2-9).

- a letter the Respondent sent the Appellant on February 1, 2017 informing her that her statements of estimated income for the years 2012 and 2013 could not be approved because "the income that was reduced was not a working pension and is not optionable" (IS4-31 to IS4-32).
- A letter the Appellant wrote to the Respondent, dated March 27, 2017, in which she acknowledged receipt of the Respondent's decision letter of February 1, 2017 and in which she expressed her dissatisfaction with that decision and asked a number of questions relating to the income estimate statements (IS4-33 to IS4-34).

[13] The decision of the TCC was issued on April 24, 2017 and the judgement reads as follows (IS5-1 to IS5-3):

For the reasons given by Justice C. Miller in the reference in respect of the Appellant's spouse, H. F., (2016-398(OAS)) involving these same two issues for the same years and in which the Appellant testified, this matter is referred back to the Social Security Tribunal of Canada on the same basis:

- (i) The Appellant's social assistance payment from Italy is determined to be €6,711 or \$8,623, and therefore the total combined income of the Appellant and her spouse for the 2012 taxation year for purposes of determining the Appellant's GIS eligibility is reduced to \$15,950.29.

(ii) There is no change to income for the 2010 and 2011 taxation years.

This decision is completely without prejudice to the Appellant's right to pursue her request to use the estimated income approach, or any other issue, which she is pursuing separately from the specific issues in her notice of appeal received on March 7, 2014 by Service Canada and referenced to this Court.

[14] On May 22, 2017, the Appellant wrote to the SST and stated that the main points that are unresolved between her and the Respondent are (1) whether she completed the first page of her GIS application in accordance with the Comparison Document; and (2) if she did not complete it correctly, she would like to know where the problem lies. She submitted that she was told by Justice Boyle at her TCC hearing that "he had no power to judge other than tax" and this, combined with the concluding paragraph of his decision explains why the court did not determine whether she filed her GIS applications correctly. She submitted that it is the jurisdiction of the SST and not the TCC to determine the issue of whether she completed the applications correctly. She further submitted that she used the Comparison document correctly and therefore her Italian social assistance should not be included in the considered income. She added that the delay she experienced in having the Respondent process her application and her statement of estimated income is unreasonable and illegal (IS8-1 to IS8-4).

[15] On June 12, 2017, the Tribunal issued an intention to summarily dismiss and the Tribunal provided reasons for why the appeal did not give rise to a reasonable chance of success.

## **SUBMISSIONS**

[16] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations).

[17] The Appellant submitted that:

- a) She would like her GIS for the period from April 2012 to June 2013 to be recalculated using the incomes reported on her federal income tax and benefit returns because the TCC has ruled that she correctly included all of her income, both from Canada and abroad, in her federal tax and benefit returns, and Service Canada fully agreed with this.

- b) The issue of whether her Italian social assistance should be deducted from the combined total income of her and her spouse is unresolved.
- c) The issue of whether she completed her GIS application in accordance with the Comparison Document has yet to be resolved.
- d) She disagrees with the Respondent's decision regarding her statements of estimated income.
- e) It is unreasonable for the Respondent to have an unlimited amount of time to process her application, including the statements of estimated income.
- f) The Respondent has provided her with inaccurate information.
- g) The article that was published on the website "info.51.ca" is damaging to her reputation and to the reputation of her husband.

[18] The Respondent submitted that:

- a) There were only two issues under appeal and those two issues were correctly resolved by the TCC under subsection 28(2) of the OAS Act. Specifically, the TCC confirmed that the Appellant's Italian Social Allowance payments were to be included in the calculation of income for the purposes of determining her entitlement to the GIS, and the TCC confirmed that the Appellant's spouse's Italian pension had been correctly calculated and included as well.
- b) While the Appellant has expressed concerns that she has been accused of being dishonest in the manner in which she completed her GIS applications, the Respondent is of the view that the issue is not about honesty or credibility. The Respondent fully accepts that the Appellant completed her GIS applications in good faith. The issue is about the law and the TCC has ruled that the Appellant's GIS benefits, and those of her spouse, must be calculated on the basis of their joint income that includes her Italian Social Allowance.



- c) If it is the Appellant's assertion that the TCC erred in its decision, then she has the right to appeal to the Federal Court of Appeal. The SST has no jurisdiction to render a decision in this matter.
  
- d) The Appellant has also raised concerns with a decision of the Respondent dated April 2017. The decision she is referring to is a decision denying an option for the loss of her Italian Social Allowance. To date, the Respondent has not received a request under subsection 27.1(1) of the OAS Act for reconsideration of the April 2017 decision. As a result, the Respondent has not issued a decision under subsection 27.1(2) of the OAS Act. The Respondent submits that the SST has no jurisdiction to render a decision in this matter.

## **ANALYSIS**

[19] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the OAS Act.

### Payment Period at Issue

[20] Although the Appellant submitted that she would like her GIS recalculated for the period from April 2012 to June 2013, the Tribunal is without jurisdiction to review the Appellant's eligibility for that period of time. The Tribunal's jurisdiction is limited to the payment period of July 2013 to June 2014. This is because the Tribunal derives its jurisdiction from what has been decided at the initial and reconsideration levels of appeal. In this case, the initial and reconsideration decisions are specific to the Appellant's eligibility for the GIS for the payment period of July 2013 to June 2014.

### Income Issue Resolved by TCC

[21] Pursuant to subsection 28(2) of the OAS Act, the Appellant's appeal was referred to the TCC. The TCC heard the matter on March 15, 2017 and held that the Appellant's social assistance payment from Italy is determined to be €6,711 or \$8,623 and, therefore, the total combined income of the Appellant and her spouse for the 2012 taxation year for the purposes of

determining her GIS is \$15,950.29. The issue of what constitutes income for GIS purposes (for the payment period of 2013/2014) has thus been resolved by the TCC. If the Appellant is not satisfied with the decision of the TCC her recourse is to appeal that decision to the Federal Court of Appeal. The Tribunal has no jurisdiction to make findings as to what constitutes income or income from a particular source or sources.

#### Completion of GIS Applications

[22] The Appellant claims that the issue of whether she completed the GIS application in accordance with the Comparison Document is still unresolved. As the issue as to the Appellant's income for the year 2012 has already been decided by the TCC and keeping in mind that the Tribunal does not have jurisdiction to decide issues relating to income or income from a particular source, there is no practical value in the Tribunal assessing whether the Appellant's GIS application was completed in accordance with the Comparison Document.

#### Statements of Estimated Income

[23] The evidence indicates that the Appellant applied in 2014 to have her income estimated for the years 2012 and 2013; however, this issue is not properly before Tribunal. This is because the Tribunal only has jurisdiction on matters that have been decided by the Respondent at both the initial and reconsideration levels of adjudication. According to the Respondent's submissions of May 2, 2017, the Respondent has not yet reconsidered the Appellant's eligibility for the income estimates. The Respondent says it has not done so because it has not received a request for reconsideration. There is, however, a letter on record from the Appellant dated March 27, 2017 in which she appears to have expressed her dissatisfaction with the Respondent's initial decision of February 1, 2017 (IS4-33 to IS4-34). It is not clear to the Tribunal why the Appellant's letter was not treated as a request for reconsideration. It is possible, for example, that the Respondent did not receive the letter. Whatever the reason, the Tribunal's jurisdiction in this appeal is limited to the matters covered in the Respondent's reconsideration decision of December 19, 2013 and even then the Tribunal has no jurisdiction to decide matters of income or income from a particular source or sources.

Allegations Against the Respondent

[24] The Tribunal acknowledges the frustration the Appellant has expressed with respect to her interactions with the Respondent and, in particular, the delays she has experienced in having her applications processed and the inconsistent information she says she received regarding whether it was necessary for the Respondent to await confirmation from the Italian government as to the type of benefit that was paid to the Appellant. However, this is not a ground of appeal for which the Tribunal can provide a remedy. There is a provision in the OAS Act (i.e. section 32) that allows for investigations into matters of alleged administrative error and/or erroneous advice by Departmental officials; however, it is the Respondent who conducts the investigations and not the Tribunal. Moreover, the jurisprudence is clear that the Tribunal has no jurisdiction to entertain appeals made to the Tribunal of a decision of the Respondent under section 32 of the OAS Act (*Canada (Human Resources Development Canada) v. Tucker*, 2003 FCA 278).

Article Published on Third Party Website

[25] The Appellant claims that soon after the TCC issued its decision in her husband's appeal, an article about her and her husband was published on the website "info.51.ca" and that the article was damaging to their reputation. While the Tribunal can understand why the Appellant has concerns with the article in question, it would be well beyond the Tribunal's authority to make findings as to the appropriateness or accuracy of articles published on a third party website.

[26] For the reasons set out above, the Tribunal finds that the appeal does not give rise to a reasonable chance of success.

**CONCLUSION**

[27] The appeal is summarily dismissed.

Shannon Russell  
Member, General Division - Income Security