



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v. Minister of Employment and Social Development*, 2017 SSTGDIS 144

Tribunal File Number: GP-16-2433

BETWEEN:

M. D.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Shannon Russell

DATE OF DECISION: September 30, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant is an Old Age Security (OAS) pensioner who ceased to reside in Canada in September 2014. In April 2016, the Respondent wrote to the Appellant and informed her that she was not eligible for the Guaranteed Income Supplement (GIS) benefits she received from April 2015 to March 2016 and the Respondent indicated that the Appellant would have to repay the excess benefits she received. The Appellant's representative asked the Respondent to reconsider its decision as she was of the view that the overpayment resulted from the Respondent's error and she was concerned about the Appellant's financial ability to repay the monies. The Respondent reconsidered and decided to maintain the original decision. 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, for the reasons set out herein, that this appeal does not have a reasonable chance of success.

EVIDENCE

[4] The evidence indicates that on March 4, 2016 the Appellant's representative (the Appellant's Power of Attorney) called the Respondent and advised the Respondent that the Appellant has been living in Portugal since September 2014 and is receiving some GIS benefits. The Appellant's representative further indicated that she had sent a letter regarding this matter in March 2015 (GD2-19).

[5] On March 9, 2016, the Respondent wrote to the Appellant and indicated that it was responding to the Appellant's enquiry of March 4, 2016 regarding the Appellant's OAS pension and GIS. The Respondent stated that it needed more documentation in order to reach a decision

and the Respondent asked the Appellant to provide proof of her departure from Canada in September 2014 (GD2-15 to GD2-16).

[6] By letter dated March 22, 2016, the Appellant's representative responded to the Respondent's request and she provided the Respondent with a copy of a letter she had submitted on March 9, 2015 along with a copy of an e-ticket and POA documents. She also explained the circumstances in which she had come to learn that her letter of March 9, 2015 had not been actioned (GD2-11).

[7] The March 9, 2015 letter indicates that the Appellant's representative asked the Respondent to send the Appellant's correspondence to her (as POA) and to send duplicates of the Appellant's CPP/OAS T4s. She also stated that effective immediately the Appellant will no longer be residing in Canada and that she departed Canada for Portugal on September 13, 2014. She provided the Appellant's contact information in Portugal and she explained that she had enclosed the Appellant's e-ticket as proof of her departure (GD2-7).

[8] The e-ticket shows the Appellant was booked on a flight that was to depart Toronto for Lisbon on September 13, 2014 (GD2-6).

[9] On April 18, 2016, the Respondent wrote to the Appellant and indicated that it had received information related to her OAS and GIS account and, as a result of this information, the Respondent had determined that, because the Appellant no longer resides in Canada, she is no longer eligible for the GIS and was not eligible for the payments she received from April 2015 to March 2016. The Respondent explained that the Appellant owed the Respondent \$7,695.10 and that the Respondent would recover this amount by deducting \$171.47 from the Appellant's OAS pension beginning in June 2016 (GD2-8 to GD2-9).

[10] By letter dated April 26, 2016 the Appellant's representative asked the Respondent to reconsider its decision. She said that on March 9, 2015 she provided the Respondent with several documents including the POA documents, an e-ticket showing the Appellant's departure and a letter that contained some requests and explained the changes. She submitted that the GIS payments should have stopped at that time, but no adjustments were made and the Appellant continued to receive the GIS payments. She submitted that the Appellant should not be at fault or

held accountable for repayment, given that all the required documentation was submitted in person on March 9, 2015 – within the 6-month allotted time frame following the Appellant's departure from Canada. She said the Appellant should not have to repay the overpayment because it resulted from the department's processing error and because the Appellant does not have the means to repay the money as she relies on her CPP and OAS income to cover her costs of living (GD2-5).

[11] On June 16, 2016, the Respondent wrote to the Appellant's representative and informed her that it had reconsidered the matter and had decision to maintain the original decision. The Respondent explained that, pursuant to paragraph 11(7)(d) of the OAS Act, the GIS cannot be paid to a pensioner for any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month. The Respondent apologized for not being able to action the documentation sooner but stated that the Appellant was still nonetheless required to repay the benefits she received from April 2015 to March 2016 because she was not entitled to those benefits. In support of its decision, the Respondent referenced several sections of the OAS legislation that deal with the recovery of overpayments (GD2-3 to GD2-4).

[12] On July 19, 2016, the Appellant's representative appealed the Respondent's reconsideration decision to the SST. In her Notice of Appeal, she submitted that she provided Service Canada with all of the required documents in March 2015 which was within the allotted time frame of six months from the Appellant's departure from Canada. Despite her due diligence, the Appellant continued to receive the GIS up until March 2016 and this went unnoticed for a year because the Appellant receives payments through direct deposit and the deposits are listed as CPP and OAS with no mention or breakdown of GIS. The Appellant's representative noticed a decrease in the Appellant's earnings on her bank statement and she believed it was directly related to the GIS being discontinued. She only learned of the discrepancy on March 4, 2016, when she contacted Service Canada because she had not received the Appellant's T4 slips for 2015. During that conversation she was told that Service Canada did not receive any such documents, although they confirmed receipt of the POA documents that were submitted at the same time. After some back and forth, Service Canada has now confirmed that they received the documents. She does not believe that the Appellant should be held

responsible for the department's processing error and she believes the Appellant should not have to repay the overpayment. The Appellant relies solely on her CPP and OAS income to cover her costs of living and has no other source of income. She does not have the means to repay the overpayment (GD1-4).

[13] On August 8, 2017, the Tribunal issued an intention to summarily dismiss the appeal and the Tribunal provided reasons for why the appeal does not give rise to a reasonable chance of success.

[14] On August 24, 2017, the Appellant's representative filed a response to the intention to summarily dismiss the appeal. She said she was disheartened to learn that the Tribunal had decided to summarily dismiss the appeal due to not having jurisdiction to make decisions on matters pertaining to administrative errors made by Service Canada. She said she has taken all measures required and followed all of the instructions provided to her and is again faced with Service Canada's error in that this time she was misinformed about the correct appeal process. She said she does not understand why she was provided with appeal rights if the Tribunal does not have jurisdiction on these matters and she asked the Tribunal to provide her with clear instructions on how she should proceed. She also asked the Tribunal to reconsider dismissing the appeal so as to see if there is any way the Tribunal can proceed (GD5-1).

SUBMISSIONS

[15] 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).

[16] The Appellant's representative submitted that the Appellant should not have to repay the overpayment on her GIS account because:

- a) the overpayment resulted from the Respondent's error in that the Respondent was informed in March 2015 that the Appellant had ceased to reside in Canada in September 2014 and yet the Respondent continued to pay the GIS benefit to the Appellant.

- b) The Appellant relies on her CPP and OAS pensions to cover her costs of living and she does not have the financial means to repay the overpayment.

[17] The Respondent submitted that the Appellant was not eligible for the GIS payments she received from April 2015 to March 2016 because she ceased to reside in Canada in September 2014. Because the Appellant was not eligible for the benefits she received, she is required to repay that money to the Respondent, even if the Respondent was late in processing the Appellant's representative's correspondence of March 2015.

ANALYSIS

[18] This appeal results from an unfortunate set of circumstances in which the Appellant's representative appears to have informed the Respondent in March 2015 that the Appellant ceased to reside in Canada in September 2014 and yet, for reasons that are not clear, the Respondent continued to pay the Appellant the GIS until March 2016 when it suspended the Appellant's benefits while it investigated the matter. After completing its investigation, the Respondent confirmed that the Appellant had ceased to reside in Canada when she claimed (i.e. September 2014) and that the Appellant was, therefore, not eligible for the GIS benefits she received from April 2015 to March 2016, totalling \$7,695.10 and the Respondent explained that the money would have to be repaid.

[19] The Appellant's representative submits that the Appellant should not have to repay the GIS monies she received in and after April 2015 because she (the Appellant's representative) diligently notified the Respondent in March 2015 of the Appellant's September 2014 departure from Canada and because the Appellant relies solely on her CPP and OAS income to cover the costs of her living and she does not have the means to repay the overpayment.

[20] The Tribunal is sympathetic to the Appellant's circumstances, particularly since the evidence suggests that the Respondent was in fact informed of the Appellant's departure as early as March 2015. However, the Tribunal is without a remedy to offer the Appellant.

Ceasing to Reside in Canada

[21] Paragraph 11(7)(d) of the OAS Act states that the GIS may not be paid to a pensioner for any month that falls six months after the month the pensioner ceased to reside in Canada. There is no dispute between the parties that the Appellant ceased to reside in Canada in September 2014. As a result, the Appellant was no longer eligible for the GIS effective April 2015. The Tribunal notes parenthetically that had the issue of residence or the date of departure been in dispute between the parties, the Tribunal would have had jurisdiction to decide that issue. This is one reason why the Respondent did not error in providing appeal rights to the SST.

Allegation of Administrative Error

[22] There is a provision in the OAS Act (i.e. section 32) that deals with administrative errors by Departmental officials; however, this provision is specific to those cases where an administrative error has resulted in the denial of a benefit or a portion of a benefit to which the person would have been entitled. In this case it would be difficult to characterize the Respondent's continued payment of the GIS as a denial of a benefit. Instead, the alleged error resulted in the Appellant receiving more money than she was entitled to receive. There is no value in the Tribunal speculating on how successful the Appellant might be with an administrative error argument because the jurisprudence is clear that the Tribunal does not have jurisdiction to investigate allegations of administrative error or to entertain appeals of decisions made by the Respondent under section 32 of the OAS Act (*Canada (Minister of Human Resources Development Canada) v. Tucker*, 2003 FCA 278). If the Appellant's representative feels that the Appellant's circumstances fall within the scope of section 32 then her recourse is to ask the Respondent to conduct an investigation under that provision.

Request to Remit Overpayment

[23] Section 37 of the OAS Act states that a person who has received a benefit payment in excess of the amount of the benefit payment to which the person is entitled shall forthwith return the excess amount. The OAS Act does not impose any time constraints on the Respondent regarding the initiation and/or completion of the investigations it conducts. In fact, subsection 23(2) of the OAS Regulations allows the Minister to investigate, at any time, the eligibility of a

person to receive a benefit. While subsection 37(4) of the OAS Act allows the Respondent, in certain circumstances, to remit all or a portion of an overpayment, the provision does not extend that authority to the Tribunal. To state it differently, the Tribunal does not have the jurisdiction to forgive an overpayment, either wholly or partly. The Tribunal is also without jurisdiction to entertain appeals of decisions made by the Respondent under subsection 37(4) of the OAS Act (*Tucker, supra*).

CONCLUSION

[24] 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. Because the Appellant's representative has not raised an argument that is within the Tribunal's jurisdiction to decide, the Tribunal finds that the appeal does not give rise to a reasonable chance of success.

[25] The appeal is summarily dismissed.

Shannon Russell
Member, General Division - Income Security