



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *F. Z. v. Minister of Employment and Social Development*, 2017 SSTGDIS 160

Tribunal File Number: GP-16-1753

BETWEEN:

**F. Z.**

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: Susan Smith

DATE OF DECISION: October 25, 2017

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for and was in receipt of Old Age Security (OAS) Act pension and Guaranteed Income Supplement (GIS). By decision dated March 20, 2014, the Respondent reassessed the Appellant's application and determined an overpayment was due with respect to GIS in the amount of \$44,133.84 on the basis his marital status for the period July 2000 to June 2013 was common law, not single as claimed. The overpayment assessment was reversed upon reconsideration by decision dated February 25, 2016. By a second decision dated February 25, 2016, the Respondent issued a new overpayment assessment of the Appellant's GIS from November 1999 to March 2012 on the basis his place of residence was outside Canada. The Appellant filed an appeal with the Social Security Tribunal (Tribunal) dated May 19, 2016. On May 8, 2017 the Respondent reversed the reassessment and overpayment decision of February 25, 2016, in response to request for reconsideration received May 19, 2016, and indicated the assessment of overpayment in the amount of \$40,644.42 for the period November 1999 to December 2012 had been removed from the Appellant's account. The Appellant did not withdraw the appeal following the reconsideration decision of May 8, 2017.

[2] This appeal involves issues regarding procedure.

[3] 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).

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

### EVIDENCE

[5] The Respondent reassessed the Appellant's eligibility for GIS in March 2014. They determined an overpayment had resulted from payment based on marital status of single and new evidence had indicated the Appellant was in a common law relationship. The Appellant

requested reconsideration and produced evidence that satisfied the Respondent he was not living in a common law relationship until 2012 and the initial decision was reversed on reconsideration.

[6] On the same day that the Respondent determined the Appellant was not in a common law relationship until 2012, based on the evidence the Appellant produced to prove he was not living common law, the Respondent reassessed the Appellant's eligibility to receive GIS and determined an overpayment had been made from 1999 to 2012 because the Appellant did not reside in Canada during that time frame.

[7] The Appellant submitted an appeal to the Tribunal and it was acknowledged as received May 26, 2016. The appeal was with respect to the reassessment of February 25, 2016 determining overpayment based on residency.

[8] The Respondent submitted that the reassessment of February 25, 2016 was an initial decision and the Tribunal has no jurisdiction. They argue the Appellant must have requested reconsideration of the initial decision and that decision upheld in whole or in part before an appeal can properly be submitted to the Tribunal pursuant to Section 28 of the OAS Act.

[9] By decision dated May 8, 2017, the Respondent reversed the reassessment of February 25, 2016, and indicated the Appellant had retained his residency despite numerous absences from Canada during the time frame considered. The Respondent further indicated that the overpayment of \$40,644.42 for the period of November 1999 to March 2012 had been removed from the Appellant's account.

## **SUBMISSIONS**

[10] 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).

[11] The Appellant's counsel submitted that the Respondent cannot simply reverse their decision and the Tribunal must ratify the outcome by rendering a decision stating the Respondent is entitled to GIS for the period of the reassessment.

[12] The Respondent submitted that the reassessment decision was reversed on reconsideration and the appeal was submitted prior to requesting reconsideration so the Tribunal has no jurisdiction over the appeal as it was brought prior to a reconsideration decision being rendered. Furthermore, since the reconsideration decision reversed the initial decision there is no issue left to be determined and the appeal is not properly before the Tribunal.

## **ANALYSIS**

[13] 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 CPP.

[14] The Tribunal finds that the submissions made by the Appellant's counsel fail to identify any issue under the OAS Act and Regulations which would allow the Tribunal to assume jurisdiction. Furthermore, the facts of the case demonstrate that the decision with which the Appellant was unhappy was reversed on reconsideration and his benefits have been restored.

[15] The Tribunal finds that no arguable case has been presented.

[16] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[17] The appeal is summarily dismissed.

Susan Smith  
Member, General Division - Income Security