



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 598

Tribunal File Number: AD-17-233

BETWEEN:

M. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: November 2, 2017

REASONS AND DECISION

DECISION

[1] The application for leave to appeal (Application) is refused.

OVERVIEW

[2] The Applicant, M. S., seeks a reinstatement of his Old Age Security (OAS) pension. He maintains that he has been a resident of Canada since he first arrived in 1972, that he qualifies for a full pension effective August 2008 and that he is entitled to the Guaranteed Income Supplement (GIS).

[3] The Respondent, the Minister of Employment and Social Development, now recognizes that the Applicant had sufficient years of residence to qualify for a full OAS pension. However, based on a previous investigation, the Respondent suspended the Applicant's OAS pension and GIS and asked the Applicant to reimburse the benefits that he had received.

[4] The General Division of the Social Security Tribunal of Canada (Tribunal) found that the Applicant is entitled to the reinstatement of his full OAS pension, retroactive to the date of its suspension, and to the GIS, "but subject to a verification of his income and the income of his spouse, as appropriate."

[5] The Applicant filed an Application to the Appeal Division and seeks to appeal only the portion of the General Division decision pertaining to the verification of his income and his spouse's income.

[6] I find that the appeal does not have a reasonable chance of success, because the Respondent (not the Tribunal) has the authority to verify an applicant's income.

ISSUES

[7] Is the Appeal Division able to prevent the Respondent from verifying the Applicant's income and the income of his spouse?

[8] Is the Appeal Division able to calculate the Applicant's income for the purpose of the GIS?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[12] The Applicant submits that it is inappropriate to verify his income and his spouse's income. He argues that his OAS and GIS benefits should simply be reinstated from the date of their suspension without further verification of income because he has provided ample financial information to both the Respondent and the Tribunal.

Is the Appeal Division able to prevent the Respondent from verifying the Applicant's income and the income of his spouse?

[13] The Appeal Division does not have the authority to prevent the Respondent from verifying an applicant's income or the income of their spouse, as that information pertains to OAS benefits.

¹ *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

² *Osaj v. Canada (Attorney General)*, 2016 FC 115 at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208 at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 363 at paragraph 22.

³ DESD Act at subsection 58(1).

⁴ DESD Act at subsection 58(2).

[14] The Applicant's income is relevant to determining his GIS entitlement.⁵ His spouse's income may also be relevant.⁶

[15] The Respondent, and not the Tribunal, has the authority to verify an applicant's income. In addition, the determination of a dispute relating to income does not fall within the Tribunal's jurisdiction.

[16] It was not inappropriate for the General Division to find that the Applicant is entitled to the GIS, "but subject to a verification of his income and the income of his spouse, as appropriate." It was entirely appropriate.

[17] Based on documents filed by the Applicant and the Respondent with the Appeal Division, it appears that the Respondent has requested that the Applicant submit applications for the GIS for 2009 and the following years. In addition, the Respondent has communicated its calculation of the OAS pension owing to the Applicant and the GIS overpayment to the Applicant. The purpose of these communications is to put into effect the General Division's decision reinstating the Applicant's OAS pension and GIS benefit. These measures are necessary for the Applicant's benefits to be reinstated in accordance with the legislation.

[18] The Applicant's argument that the General Division erred when it found that the Applicant's entitlement to the GIS is subject to verification of his income and of his spouse's income does not have a reasonable chance of success.

Is the Appeal Division able to calculate the Applicant's income for the purpose of the GIS?

[19] Neither the Appeal Division nor the General Division is able to calculate the Applicant's income or his spouse's income.

[20] Where there is a calculation of income to be done in a matter before the Tribunal, the Tribunal is not authorized to make this calculation. The Tribunal has a statutory duty to refer the determination of an applicant's (or their spouse's) income to the Tax Court of Canada for adjudication.

⁵ *Old Age Security Act*, sections 13 and 14.

⁶ *Ibid.*, section 15.

[21] Here, the current issue pertaining to the Applicant's income and that of his spouse is at the verification stage before the Respondent. These measures are necessary for the Respondent to reinstate the Applicant's OAS pension and to calculate his GIS entitlement. If the Applicant is dissatisfied with the Respondent's eventual reconsideration decision in this regard, then he may appeal the decision to the Tribunal.⁷

[22] In an appeal to the Tribunal, if there is a ground of appeal based on the Respondent's determination of income (of an applicant or a spouse), then the Tribunal must refer the issue to the Tax Court of Canada.⁸

[23] The Applicant cannot seek a decision from the Appeal Division that verifies or calculates his income or his spouse's income, which is currently pending with the Respondent. It is premature at this stage and not in the jurisdiction of the Appeal Division.

[24] Therefore, the argument that the Applicant's income has been proved through documents provided to the Respondent and that the General Division erred by requiring the Respondent's verification does not have a reasonable chance of success.

[25] I have read and considered the General Division decision and the documentary record. My review does not indicate that the General Division either overlooked or misconstrued important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction or that it erred in law in coming to its decision.

[26] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[27] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division

⁷ *Old Age Security Act*, subsection 28(1).

⁸ *Ibid.*, subsection 29(2).