



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. A. I.*, 2017 SSTADIS 665

Tribunal File Number: AD-17-460

BETWEEN:

**Minister of Employment and Social Development**

Applicant

and

**A. I.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: November 17, 2017

## DECISION AND REASONS

### DECISION

[1] The application requesting leave to appeal is granted.

### OVERVIEW

[2] The Applicant, the Minister of Employment and Social Development, seeks leave to appeal the General Division's decision dated March 17, 2017, which determined that the Respondent, A. I., was a resident of Canada from June 19, 2002 to October 1, 2010, and that he was therefore entitled to additional Old Age Security pension and a Guaranteed Income Supplement. However, the Respondent had already been receiving a partial Old Age Security pension since May 1996. The Applicant argues that subsection 3(5) of the *Old Age Security Act* precludes the Respondent from relying on subsequent periods of residence in Canada to increase his Old Age Security pension. The Applicant submits that the General Division erred in finding that the Respondent could increase his Old Age Security pension with subsequent years of residence.

[3] The Applicant has also raised other arguments in support of its application requesting leave to appeal, but if I should grant leave to appeal on at least one of them, it is unnecessary for me to address each of them.<sup>1</sup>

### ISSUE

[4] Does the appeal have a reasonable chance of success on the issue of whether the General Division failed to consider and apply subsection 3(5) of the *Old Age Security Act*?

### ANALYSIS

[5] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the

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<sup>1</sup> *Mette v. Canada (Attorney General)*, 2016 FCA 276.

*Department of Employment and Social Development Act* and that the appeal has a reasonable chance of success. The Federal Court has endorsed this approach.<sup>2</sup>

[6] The Applicant argues that the General Division erred in law by failing to consider and apply subsection 3(5) of the *Old Age Security Act*. The subsection states that once a person's application for a partial monthly pension has been approved, the amount of monthly pension payable to that person may not be increased on the basis of subsequent periods of residence in Canada.

[7] The Respondent began receiving a partial Old Age Security pension effective May 1996.

[8] The General Division examined the Respondent's residency between June 19, 2002 and October 1, 2010, and found that he was a resident of Canada within that timeframe. The General Division determined that the Respondent was entitled to a recalculation of his partial pension entitlement.

[9] Although the General Division set out the applicable law and specifically referred to subsection 3(5) of the *Old Age Security Act*, I do not see that it considered or analyzed whether the subsection applied in the Respondent's circumstances. Accordingly, I am satisfied that the appeal has a reasonable chance of success and that the General Division may have erred by failing to consider and apply subsection 3(5) of the *Old Age Security Act*.

#### **SERVICE ON RESPONDENT**

[10] Although I am granting leave to appeal in this matter, I will address another issue.

[11] The Respondent has apparently moved and has neglected to provide the Social Security Tribunal of Canada with his forwarding contact information. Therefore, the Tribunal has been unable to serve the Respondent with a copy of the application requesting leave to appeal.

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<sup>2</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[12] I am aware that section 6 of the *Social Security Tribunal Regulations* requires a party to file a notice of any change in their contact information. I query, however, whether that should remain an ongoing obligation, when it might be reasonable for an unrepresented party to assume that the proceedings have concluded, notwithstanding any recourse to an appeal that the other party might pursue. At the same time, it would be unreasonable to expect a party or the Tribunal to expend significant time and resources trying to locate a party to ensure that service can be effected, particularly when that party leads a relatively nomadic existence.

[13] Under the circumstances, I will permit substitutional service or notice of any documents on the Respondent's last-known permanent address which, in this case, happens to be his daughter's address.

#### **CONCLUSION**

[14] The application for leave to appeal is granted.

Janet Lew  
Member, Appeal Division