



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. E. R. and M. W.*, 2018 SST 371

Tribunal File Number: AD-17-878

BETWEEN:

Minister of Employment and Social Development

Appellant

and

E. R.

Respondent

and

M. W.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 3, 2018

Canada 

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the decision that the General Division should have given is made.

OVERVIEW

[2] The Respondent (E. R.) began to live in the Added Party's (M. W.) home in 2003 as a tenant. In January 2008, their relationship changed and they began to live in a common-law relationship. They married in January 2009. E. R. had applied for and had begun to receive a Guaranteed Income Supplement under the *Old Age Security Act* (OASA) as a single person in 2002. In 2014, the Minister of Employment and Social Development (Minister) conducted an investigation and decided that E. R. had lived in a common-law relationship with M. W. starting in 2003. E. R. appealed this decision to the Social Security Tribunal. The Tribunal's General Division allowed the appeal and decided that E. R. was entitled to the GIS benefit as a single person until January 2008, and that any overpayment should be recovered by the Minister over a 10-year period. The Minister appeals this decision.

[3] The appeal is allowed. E. R. is entitled to the GIS as a single person until January 2009. No decision is made regarding recovery of any overpayment, since this is outside the Tribunal's jurisdiction.

PRELIMINARY MATTER: FORM OF HEARING

[4] This appeal was decided on the basis of the documents filed with the Tribunal, after considering the following:

- a) The legal issues are straightforward;
- b) E. R. and the Minister filed clear written submissions on all legal issues, and there were no gaps in the submissions;
- c) None of the parties requested an oral hearing; and

- d) The *Social Security Tribunal Regulations* require that proceedings be conducted as quickly as the circumstances and the considerations of fairness and natural justice permit.

ISSUES

[5] Did the General Division err by finding that E. R. was a common-law partner beginning in January 2008?

[6] Did the General Division err by deciding that any overpayment to E. R. should be recovered over 10 years?

ANALYSIS

[7] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides only three grounds of appeal that can be considered. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹ I must decide whether the General Division made such an error.

Issue 1: Did the General Division err regarding when E. R. became a common-law partner?

[8] The OASA provides for payment of a GIS benefit. The amount payable is calculated differently for a single claimant than for a common-law partner. The OASA defines "common-law partner" as a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with them for a continuous period of at least one year.²

[9] The parties agree on the following:

- a) When E. R. began to receive the GIS, he was single;
- b) E. R. began to live in a common-law relationship with M. W. in January 2008;

¹ DESD Act, s. 58(1)

² OASA, s. 2

- c) E. R. and M. W. were married in January 2009; and
- d) Therefore, under the OASA, E. R. became a common-law partner in January 2009, when he was living in a conjugal relationship with M. W. and had been living with her for one year. Coincidentally, he married M. W. at that time as well.

[10] The General Division set out the facts correctly. However, it erred when it decided that E. R. was a common-law partner in January 2008. He had not been living in a conjugal relationship with M. W. for one year until January 2009.

[11] The appeal is allowed on this basis.

Issue 2: Did the General Division err regarding the recovery of an overpayment?

[12] When the Minister completed its investigation in 2014 and decided that E. R. had been a common-law partner since 2003, it calculated that he had received a GIS overpayment of approximately \$51,560. It sought to recover the overpayment by reducing the amount of GIS currently payable to E. R..

[13] The OASA provides that a person who has received a benefit in excess of the amount they are entitled to shall forthwith return the excess amount.³ It also gives the Minister authority to recover the amount owed.⁴ After considering E. R.'s financial and health circumstances, the General Division decided that the overpayment should be recovered over a 10-year period. It did not have jurisdiction to do so for the reasons that follow.

[14] The OASA provides a process to be followed when a claimant is dissatisfied with the Minister's decision regarding benefits. They may request a reconsideration of the decision regarding the amount of benefit to be paid.⁵ If they are dissatisfied with the reconsideration decision, they can appeal to the Tribunal. In this case, the Minister has not decided what the amount of the overpayment is since this must be determined in light of the decision that E. R. became a common-law partner in January 2009. Consequently, there has also been no reconsideration of this decision by the Minister. Therefore, there is no decision to appeal to the

³ OASA, s. 37(1)

⁴ *Ibid.*, s. 37

Tribunal and the Tribunal cannot make any decision on this.

[15] In addition, the OASA gives the Minister authority to make a decision regarding recovery of overpayments, including authority to deduct amounts from other benefits payable, certify the amount owed and have the certificate filed with the Court, or remit all or part of the amount owed.⁶

[16] The Tribunal is a statutory tribunal and therefore has only the authority granted to it under the DESD Act. The Tribunal has authority to decide questions of fact and law⁷. This does not include the authority to direct how a debt owed to the Crown can be recovered. The Tribunal does not have jurisdiction regarding overpayment recovery.

[17] Furthermore, the Federal Court of Appeal considered whether a Review Tribunal (the predecessor to the Tribunal) had jurisdiction to entertain an appeal from the Minister's decision regarding recovery of an overpayment. It determined that although the Review Tribunal had jurisdiction to decide the amount of benefit payable, it did not have jurisdiction over the recovery of an overpayment.⁸

[18] E. R. argues that this decision is distinguishable from the matter at hand because E. R. has not requested remission of any of the debt owing, whereas the claimant before the Federal Court of Appeal had made that request. I disagree. The Federal Court of Appeal decision was based on the wording of the legislation, and that each section of the OASA provides for a remedy. It was not based on the type of remedy requested by the claimant. The decision that the Tribunal has no jurisdiction to decide how a debt is to be recovered is binding on the Tribunal.

[19] Finally, E. R. contends that because the overpayment will be recovered by the elimination of or reduction in GIS payable to him, the decision on recovery is really a decision with respect to the amount of benefit payable, which falls within the Tribunal's jurisdiction. I disagree. The amount that E. R. is entitled to receive on an ongoing basis is not at issue. It is any deduction from this amount, to recover the overpayment, that is at issue. This does not fall within the

⁵ OASA, s. 27.1

⁶ OASA, s. 37

⁷ DESD Act, s. 64

⁸ *Minister of Human Resources Development v. Tucker*, 2003 FCA 278

Tribunal's jurisdiction.

CONCLUSION

[20] The appeal is allowed. The facts in this appeal are not in dispute. The law is also clear. It is therefore appropriate that the Appeal Division give the decision that the General Division should have given.⁹

[21] E. R. became a common-law partner in January 2009. He is entitled to receive GIS benefits as a single person until that date.

[22] The General Division decision regarding recovery of any overpayment is quashed.

[23] The Minister is encouraged to consider E. R.'s personal circumstances when deciding how any overpayment is to be recovered.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	Philippe Sarazin, Counsel for the Appellant Marla Brown, Counsel for the Respondent

⁹ DESD Act, s. 59