



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v. Minister of Employment and Social Development*, 2018 SST 469

Tribunal File Number: GP-16-2660

BETWEEN:

L. M.

Claimant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: John Eberhard

HEARING BY TELECONFERENCE ON: April 5, 2018

DATE OF DECISION: May 28, 2018

REASONS AND DECISION

DECISION

The appeal is dismissed.

OVERVIEW

[1] This is an Old Age Security (OAS) pension appeal concerning the interpretation of the Old Age Security Act (Act) ¹ specifically whether additional years of residency can be added to the pension calculation in cases where a person accepts to voluntarily defer receiving their partial monthly pension. The Claimant was born in India on X. He entered Canada June 4, 1978. He turned 65 years of age in X thereby acquiring 33 years of residency in Canada. He applied for an OAS pension in March 2015. His application indicated that he wanted his pension to start in January 2015². The Application was approved by letter dated June 2, 2015.³ The partial pension was granted on a ratio of 33/40 based on his residence in Canada.⁴

[2] The Claimant now wants to take advantage of both an increase in the number of years of residence⁵ and the actuarial adjustment contemplated for voluntary deferral claimants⁶. The Claimant argues that he received erroneous information from Service Canada and as such should not be penalized.

[3] The Tribunal has decided that a Claimant may choose one of the options available, but not both. The legislation allows the Claimant to select the partial monthly pension calculation that yields the greatest amount, unless they decide otherwise. Therefore either the calculation based on the actuarial adjustment or based on the years of residency.⁷

ISSUES

¹ subsection 7.1(2).

² (GD2-4 to GD2-8)

³ effective in January with a back payment.

⁴ according to Section 3(2) of the OASA.

⁵ As per Section 3(2) of the OASA.

⁶ Section 7.1(2) of the OASA (voluntary deferral).

⁷ OASA, section 7.1 (3)

- a. Where a pensioner has requested a voluntary deferral, can the calculation of a partial pension simultaneously include the actuarial increase and additional years of residency acquired after the age of 65?
- b. Does the Tribunal have jurisdiction to render decisions concerning appeals where claimants argue they were denied a benefit due to erroneous information being provided by Service Canada?

ANALYSIS

The voluntary deferral provision and residency

[4] Benefits under the Act are calculated based on the number of years of Canadian residence.⁸ The Claimant applied for his partial pension in 2014, four years after he qualified to receive a partial OAS pension. The voluntary deferral provision came into force in 2013. As such, he is able to benefit from the voluntary deferral provision under the Act.⁹ When a voluntary deferral is selected, the pensioner will be entitled to a partial OAS pension that includes a monthly increase calculated at 0.6%; starting from the month after Claimant became qualified, until the month in which the application is approved.

- [5] His OAS application was processed and a letter sent to the Claimant offering a choice of:
- a. a partial OAS pension at 36/40ths effective January 2015; or,
 - b. an increased partial OAS pension of 33/40ths beginning in January 2015, with an actuarial adjustment of 10.8% for the 18 months starting July 2013 to December 2014¹⁰

[6] The Claimant chose (b), but unilaterally amended the years of residency from 33/40ths to 35/40ths, and returned it to the Respondent. The Respondent called the Claimant to advise him to choose only one of the two options provided. The Claimant was counseled that if he disagreed he could appeal the decision after the application is processed. The Claimant again chose the second option, without alteration, and returned it to the Respondent for approval.

⁸ OASA Section 3(2)

⁹ OASA Section 7.1(2)

¹⁰ OASA section 7(2)

[7] On June 2, 2015, an award letter was sent to the Claimant advising that his OAS benefits were approved at 33/40ths effective January 2015, with an actuarial adjustment of 10.8% covering July 2013 to December 2014. The Claimant disagreed with the decision, stating he ... *should qualify for 35/40ths effective June 2013, with 18 months of voluntary deferral.* He submitted a letter requesting reconsideration on August 18, 2015.

[8] By letter dated February 9, 2016, the Respondent maintained its decision. As the issues in his reconsideration letter appeared to have been misunderstood, a follow-up letter was sent by the Respondent on May 10, 2016 to explain to the Claimant that he could either choose additional years of residence (beyond age 65), or the actuarial adjustment but he could not select both.

The Claimant testified in a very articulate manner which allowed for a better understanding of the arguments submitted in writing as to why he should be granted a larger OAS pension. More specifically, he believes that effective January 2015, he was entitled to a partial pension of 35/40ths plus 18 months of increase (at 0.6% per month) for each month that he deferred his pension after July 2013. In support of his position, the Claimant wrote that:

- a. he originally intended to commence his OAS pension in July 2013, after attaining 35 years of residency in Canada;
- b. in mid-2013 he was advised by Service Canada that he qualified for an OAS pension of 35/40ths commencing July 2013 and that if he voluntarily delayed his pension beyond July 2013 he would be entitled to an increase of 0.6% for each month of delay;
- c. he deferred his pension to January 2015 (a period of 18 months) and so he is entitled to an OAS pension of 35/40ths plus 18 months of increase at 0.6% each month (representing the months he deferred his pension after he qualified in July 2013);
- d. He stated that he falls within a narrow band of claimants in that, at the relevant time, he was between 65 and 70 years of age. He turned 65 before the deferral option in the legislation became law in July of 2013.

[9] The Claimant testified that he sought a deferred retirement pension, in part, as a result of his understanding from a telephone “help desk” conversation at a Service Canada office. He eventually filed a request for a deferral and based on his interpretation of the statute believing that he could take advantage of both an increased number of years (35) of residence plus the actuarial adjustment to determine his eligibility. He testified that his verbal communications with staff at Service Canada: “gave me the impression that it would be beneficial” (to defer taking the pension). The first issue before the Tribunal is whether the Claimant can incorporate the additional years of residency, acquired from voluntarily deferring his OAS pension, into the actuarial adjustment calculation.

[10] An application for a pension is effective as of the day on which the claimant became qualified for a pension.¹¹ The Claimant was eligible to receive an OAS pension on July 13, 2011 (the date he turned 65). His application was received on March 13, 2015 with a requested start date of January 2015. The voluntary deferral provision was not enacted until 2013 and therefore unavailable to him when he became eligible for the OAS pension in 2011.¹² The only option available would have been for a partial pension of 33/40ths. However, since he requested a start date of January 2015, the residence years from his June 4, 1978 date of entry, until the month prior to the month his application was to be approved¹³ would be 36/40.

[11] Once the voluntary deferral provision was introduced, the Claimant argues that he now had a second option. In addition to the 36/40ths effective January 2015, he could also choose 33/40ths (June 4, 1978 date of entry, until July 13 2011), with an 18 month actuarial adjustment of his pension of 10.8% (July 2013 until December 2014). An argument, based on the OAS legislation, is that if the deferral provision did not exist, the Claimant would be entitled to 36/40ths effective January 2015.

[12] In his reconsideration letter dated August 18, 2015, the Claimant concedes that while he became qualified for a partial OAS pension of 33/40ths when he reached age 65, he states he also

¹¹ in accordance with sections 3 to 5 of the Act

¹² under s. 3(2) of the OASA

¹³ being December 2014

"became qualified" for a partial pension of 34/40ths in July 2012; and 35/40ths in July 2013. I disagree.

The legislation provides two options for calculating a partial monthly pension

[13] In response to the Respondent's submissions that "a claimant can either benefit from additional years of Canadian residence after age 65; or, the voluntary deferral, but not both" the Claimant notes that the Act does not prohibit part of this period from being considered residence and part from being used as voluntary deferral. He acknowledges exceptions which allow a part period to be considered as residence and part as voluntary deferral but only for individuals who become eligible for a full pension during their period of deferral i.e. they are allowed to accumulate additional years of residence to reach 40 years during the deferral period and then apply the actuarial adjustment on their full pension thereafter. While the 40 year residence exception does not apply to him, he points out that there is already a precedent allowing part period to be considered residence and part as voluntary deferral. I do find that he was given the choice and he made a choice knowing that he would appeal the finding after his application was processed. He did not elaborate on the "precedent".

[14] The Claimant recognised that Section 7(4) of the Act has a limitation which states:

(4) Despite Subsections (1) and (2), the amount of a pension is not increased for any month

(a) before July 2013;

[15] The Claimant argues that he can take advantage of both an increased pension based on additional years of residence plus the actuarial increase should he defer taking the pension. Pursuant to section 7.1 (3) of the OAS Act, the legislation allows a person to choose the calculation that provides the greatest amount of a partial monthly pension based on either residency or the actuarial adjustment. Is the Claimant's argument plausible based on the wording as contained in the legislation – is the wording of the legislation so restrictive or narrow as to bar the Claimant's proposed interpretation or is it general enough to allow for that interpretation? Or, is the phrase "become qualified" in section 7.1(2) restricted only to when the

Claimant turned 65? Put another way, can one become qualified pursuant to the indicia set out in section 3(2) and again be qualified when one qualifies for the deferral date.

[16] The Act does not define “become qualified”, nor does it specify that a new (or 2nd) qualification date be established for purposes of receiving the actuarial adjustment on top of the increased years of residence that also would allow for an increased pension. However, Subsection 5(1) of the OAS regulations states that no pension may be paid to any person unless that person is “qualified” under subsection 3(1) or (2), an application therefore has been made by or on behalf of that person and the application has been approved.

[17] If “approval” becomes an issue, section 5 of the OAS regulations sets out when the Respondent’s approval shall be effective. The parties have both made persuasive arguments. Interestingly, the voluntary deferral is only applicable from July 2013 so the Respondent’s position means that the Claimant’s option of 33/40th with a voluntary deferral means that his residence from August 2011 to July 2013 is not being used for additional residence or for the voluntary deferral.

[18] I am satisfied that the plain meaning of the words found in this section compel me to find that Section 5(2)(c) of the OAS regulations refers to the day on which the claimant became qualified for a pension in accordance with sections 3 to 5 of the Act. That is, when he qualified by number of years resident and the turning to age 65. This can only be read in the context of the qualification section set out in Section 3(2). The Claimant’s argument is on the interpretation of the words “become qualified” in Subsection 7.1(2). The paragraph read as a whole and in the context of Section 3 plainly refers to a qualifying time as the time when one reaches 65 and has the required years of residence in Canada. The deferral section¹⁴ uses the same phrase “---after they become qualified---”. Section 7.1(3) uses the language “--- person who is qualified to receive---“.

[19] I do not agree with the Claimant’s argument that some other meaning should be put to the word “become” (as in, qualified). He submits that one cannot conclude that “become” means or

¹⁴ 7.1(2)

refers to “the earliest date” or the earliest time. I find that word is inextricably tied to the words of qualification found in section 3(3) of the Act and is bound to the time of qualification for the pension and not to the date when a deferred pension under section 7.1 is approved. This leads me to conclude that one cannot have it both ways. The Claimant must chose, at the outset, one of the options: additional years of residence (beyond age 65), or the deferred receipt of a pension based on the qualification found in section 3(3) plus the actuarial adjustment. Here the qualification would be the 33/40 ratio plus the adjustment.

[20] The Appellant concedes that he became qualified for a partial OAS pension of 33/40ths when he reached age 65. Based on the Claimant’s choice when he sought the deferral, I find that he was entitled to the qualification for the pension or 33/40 plus the actuarial adjustment.

Conclusion on Issue

[21] There is no combination of a benefit based on additional residency acquired over 65 years of age plus an actuarial adjustment contemplated in section 7 of the Act. On that argument, the Claimant fails to meet the onus upon him.

The terms found in section 7.1 of the Act are clear and unambiguous when read harmoniously with the object and scheme of the Act and in their grammatical and ordinary sense

[22] In the book entitled *Construction of Statutes*¹⁵, the modern principle of statutory interpretation states:

“(…), the words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. Since 1983, this modern principle of interpretation has been cited and relied on in innumerable decisions of the Court”.¹⁶

[23] As far as the Tribunal is aware, there has not yet been any jurisprudence on the interpretation of the words “become qualified”. In fact, there is no jurisprudence on this subsection 7.1 of the Act, at all. This calls for an analysis of statutory interpretation, particularly for a provision that has not yet been interpreted by the Courts.

¹⁵ Driedger, Elmer A *The Construction of Statutes*; Canadian legal manual series, Edition 2 (Butterworths, 1983 ISBN 0409828033, 9780409828030

¹⁶ Driedger at page 87

[24] The earliest anyone can qualify for OAS pension is when they reach age 65. The Claimant argues: *"There is nothing in Section 7.1 of the OAS Act limiting the determination to when an individual first becomes qualified for a partial pension."* Subsection 7.1 (2) of the Act uses the term "become qualified". The Respondent asserts that subsection 7.1 refers to the first time one is qualified. For example, the earliest anyone can qualify for an OAS pension is when they reach age 65. One is not considered to have "become qualified" a second time at age 66, or a third time at age 67. The authority cited by the Claimant is the online Cambridge Dictionary which defines the word "become" as "to start to be." This would refer to the earliest date one could "become qualified." The Merriam-Webster's describes it as "to come into existence," or "to come to be." The Oxford Dictionary's definition is "begin to be." The Respondent argues that the term, "become qualified," can only occur once: at the earliest date.

[25] The legislation is clear. The Claimant **became qualified** for his OAS pension at age 65. From his June 1978 date of entry to Canada until his 65th birthday in June 2011, the Claimant acquired 33 years of Canadian residency. Therefore the Claimant was eligible for a partial monthly pension based on the calculation of 33/40th. However, the Claimant requested his pension begin in January 2015. As such he now had the choice of either selecting the voluntary deferral which came into effect July 2013 **or** adding 3 additional years of residency. By applying the voluntary deferral, the Respondent added the actuarial adjustment for 18 months calculated from July 2013 to December 2014, and therefore began the Claimants partial monthly pension payments at 33/40ths plus the actuarial adjustment over 18 months, effective January 2015, as he requested.

Parliament's intent in implementing the voluntary deferral provision

[26] The Claimant has encouraged the Tribunal¹⁷ to look at the intent of the voluntary deferral provisions in the legislation. The Claimant argues that the deferral would be an incentive by way of a higher pension for delaying it. This is true; the OAS pension is increased either by an actuarial adjustment or by additional years of residency being added after 65 years of age. He

¹⁷ GP7-3

refers to a Regulatory Impact Analysis Statement dated December 1, 2012 which he found on the internet. This document is interesting but it does not have any legislative authority, nor does it support the semantics argument advanced by him. Statutory interpretation focuses on the "entire context" of an Act and the "intention of Parliament".

[27] The Claimant submits that based on the Minister's interpretation of the policy, the youngest person will get the highest OAS pension and that the OAS pension gets progressively smaller as the person is older even though all the conditions (except age) are exactly the same. He argues that the policy being applied by the Minister is contrary to the intent of the voluntary deferral provisions in the legislation. He speculates that the voluntary deferral program was introduced to encourage seniors to defer their OAS pension and start receiving it at an older age by offering an incentive in the way of a higher pension for delaying it. But this does not happen according to his calculations. He submits that it was surely not the intent of the legislation that it be applied in an unfair and discriminatory manner where individuals with the same residence period and same accrual adjustment were penalized for their age and got lesser OAS pensions the older they were.

[28] HANSARD provides a deeper understanding as to Parliament's intent in 2012 when voluntary deferral was first debated. The primary intent was to ensure the sustainability of the OAS program because Parliament found that the program was becoming unaffordable. The OAS program is the largest single program for the government of Canada and is funded 100% by annual tax revenue. Parliament stated that the only two alternatives for dealing with the costs were either raising taxes or diverting funds from other government programs and services. Parliament chose neither one of these options, but instead decided to relieve the cost pressures on the OAS program by proposing to gradually raise the age of eligibility from 65 to 67.¹⁸ The implementation period for this long term solution would occur between 2023 and 2029. As an interim solution to ensuring the sustainability of the OAS program Parliament proposed a voluntary deferral option to Canadians. As of July 2013 Canadians over 65, were offered the option of either voluntarily deferring receipt of their OAS benefits or continuing to work and personally save towards their retirement. For those Canadians who opted to defer their pension,

¹⁸ Hansard , p. 7187

Parliament stated that they would receive on average the same total OAS pension over their lifetime as those who did not defer their benefits.¹⁹

[29] The *Dictionary of Canadian Law* does not define deferral however it provides two definitions for deferred:

- 1) of a debt, time for payment is extended;
- 2) delayed

Delayed is defined as: to postpone, to put off.

[30] In both cases a delay must have a starting point from which to be delayed or deferred. Section 3 (2) of the Act is that starting point by defining the parameters of eligibility. Once all the criteria have been met then the voluntary deferral can begin. It is through that lens that the Claimant wishes to enhance his pension benefits. It is not the stated purpose of the legislation or the words of the Act that would lend to more than one starting point. It seems never to have been the intention of parliament to expressly allow for this to happen. Contrary to the Claimant's position, it would be inconsistent with the modern principle of statutory interpretation to overlook the entire context, scheme and object of the Act and simply analyze two words in the entire Act in order to draw a conclusion that is in line with the outcome that the Claimant is seeking.

[31] I find that the case does not turn on the application of the Claimant's interpretation of the semantics argument. I look favourably upon the policy and the intent of Parliament in the choice of words in the Act to underscore the legislative intention to sustain the OAS program. (Since Parliament's intent was to ensure the sustainability of the OAS program, an argument could be made that allowing the OAS pension to include both additional years and the actuarial adjustment would be counter intuitive to sustaining the OAS program because including both options incurs higher costs. A pension calculated using both additional years and an actuarial adjustment defeats the purpose of creating a sustainable program because the costs of implementing voluntary deferral would outweigh the benefit of delaying pension payments to increase revenue to the OAS program.)

¹⁹ Hansard p. 7188

Partial Monthly pension amounts vary depending on age and years of residency when a person becomes qualified

[32] A monthly pension is calculated using the aggregate period in years that the claimant has resided in Canada after attaining 18 years of age and before the day the application is approved, up to 40 years²⁰. The Claimant agrees that the amount of OAS benefit is proportional to the number of years of residence in Canada. He suggests that different individuals with the same number of years of residence, commencing their OAS pension on the same date and with the same deferral increase, should be entitled to the same amount of OAS pension, regardless of age. In his correspondence of August 18, 2015²¹ to Service Canada, he included an example of a person who is exactly two years younger (dob: X) who entered Canada on the same date (June 1978) and applied for the OAS pension to commence at the same time (January 2015). He asserts that based on the interpretation of the legislation that is being applied by the Respondent, the younger person would be entitled to a higher OAS pension of \$546.66 (i.e. $35/40\text{ths} + 10.8\% = \546.55) even though both entered Canada on the same date, had the same number of years of residence in Canada and commenced our OAS pension at the same time. He does not indicate the source of this information that provided the actuarial calculation.

[33] He expanded the example to four individuals (with the same parameters mentioned above) to illustrate that the policy as currently applied will result in different amounts of OAS pension even though the parameters are the same²². He asserts that the policy as it is currently being applied discriminates against older persons. The table is not helpful to his argument on the statutory interpretation and it must be remembered that while the parties may have the same demographics, they reach the age of 65 at different dates. The actuarial adjustment is intended to be extended not just to a monthly figure but providing for equality of amounts over the extended actuarial time-frame. It is not helpful to reduce the comparison to a static monthly amount only as the Claimant does by reference to persons two years younger.²³

[34] The four subjects noted in the table, each having entered Canada on the same date, but one year apart from each other in age resulting in four different OAS rates at age 65: (32/40ths,

²⁰ OASA Section 3(3)

²¹ GD5-7 and GD6-2

²² GD6-3 and GD7-2

²³ Media player 2 34:45 and GD7-2

33/40ths, 34/40ths and 35/40ths). Using the same 18 month deferral calculation that was applied to himself, the claimant believes it to be unfair that the younger subjects garner a higher monthly pension than the older subjects.

[35] Section 3(3) of the OASA is clear that the calculation is based on the aggregate period between 18 years of age and the date the application is approved (which is at 65 years old). Since they turned 65 in different years the calculation will differ. This is because the initial pension rate changes as per the calculation found in section 7 OAS, which involves multiplying the applicable pension rate by the Consumer Price Index applicable in the payment quarter.

[36] When applying the actuarial adjustment, the years of residency only include the date a person arrives in Canada up to the date they attain the age of 65. In the four scenarios presented, there are four different birth dates. This differences have the effect of modifying the calculation in such a way that each person's initial pension rate differs. The actuarial adjustment is then added to that initial OAS pension rate. Over time the actuarial adjustment is to have the effect of modifying each pension to which it applies, in such a way that in the end it balances out.

[37] Moreover, section 7.1 (3) states that the calculation that provides the greatest amount of the three choices listed is what the claimant will receive, unless they decide otherwise. As such, the claimant can request additional months of residency or the actuarial increase but not both.

[38] The differences are attributed to the fact that circumstances will vary from one individual to the next; an element over which the Minister has no control. When new legislation or policies are put into place, it is not the role of the Minister to calculate how one citizen will compare with another or to see what the effects are on each. HANSARD is also useful to point out that the legislative intention was clearly pointing out that people who defer their pension, pensions will, on average, receive the same total OAS pension over their lifetime as those who do not defer their benefits²⁴. This is an actuarial calculation which is inevitably complex, with many variables. It is not a "one calculation fit all" approach. Therefore, the approach is not discriminatory against older persons, as the claimant suggested in his February 5 2018 letter to

²⁴ .(pg. 7188 Hansard, April 26, 2012)

the SST²⁵. Section 7.1 (3) states the claimant will receive the highest pension amount established amongst the three calculations, unless they choose differently

[39] It must be remembered that the 10.8% actuarial calculation percentage is based on an actuarial projection. It will differ with people of different ages when calculated and is intended to provide for a lifetime amount of benefit. Based on the monthly amount one receives over the long term should be equal to the persons hypothetically referred to in his chart provided by the Claimant²⁶. When a deferral is elected with the actuarial adjustment, the actual life total should be consistent with the actuarial calculations as a result of the deferral so as to be in harmony with the intent of Parliament. It is important to keep in mind that when Parliament amended the legislation, the intent was that those who defer their pension should receive the same total OAS pension over their lifetime as those who do not defer their benefits.

[40] The voluntary deferral is applied to each pensioner based on their individual circumstances including the date they become eligible for their OAS pension, the years of Canadian residence they have acquired, as well as how many months of deferral they wish to apply to their pension. It was not meant to draw comparisons between pensioners since individual situations may vary which means the pension amounts can also differ from one another.

CONCLUSION

[41] This Tribunal has no jurisdiction to change the law or policy that has led to the legislation. 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 Act. The Tribunal cannot use the principles of equity or consider extenuating circumstances to apply the law in a manner inconsistent with its purpose and intent.

²⁵ (GD6 - 3)

²⁶ (GD7-20)

[42] I do not find or agree with the Claimant that the legislation²⁷ permits a part period during which a resident period can be added and the other part accommodating a voluntary deferral. Nor do I find that the provision is discriminatory.

[43] The burden of proof rests on the Claimant to establish entitlement to an OAS benefit. He has not done so.²⁸

Conclusion on Statutory Interpretation

[44] I find that sections 3 and 7.1 of the Act must be read together and it is incumbent on a claimant to either choose additional years of residence (beyond age 65), or the actuarial adjustment when applying for a pension deferral, as per section 7.1 (3). The legislation is clear; the greater amount will be awarded to the Claimant. He is not able to choose both or a combination of options as he has attempted to do here.

[45] Had Parliament intended to allow a qualification period other than that set out in Section 3(2) in section 7.1(2), the section would have provided explicitly for two qualification dates. The Claimant argues that the provision does not limit the determination to when an individual first becomes qualified for a partial OAS pension, but the legislation does not say that. Nor does the legislation say that there can be additional times when one can qualify under the deferral provisions. Parliament is better equipped than the Tribunal to find an appropriate balance between the competing interests that arise in a policy perspective in determining choices and results that flow from interrelated sections of the legislation. Here, the plain reading of the sections have left me with no uncertainty as to the intention of the legislators. A claimant can either benefit from additional years of Canadian residence after age 65 or the voluntary deferral, but not both. As the Claimant was in agreement to have the voluntary deferral applied to his OAS pension, he cannot also benefit from of additional years or residence.

Conclusion on Erroneous Advice

²⁷ section 7.1 (3) of the OASA

²⁸ De Carolis v. Canada (Attorney General), 2013 FC 366

[46] The Claimant alleges that he received erroneous advice from a Service Canada employee regarding the effect of the choices he could make. Only the Minister has jurisdiction to address the issue of erroneous advice being provided to Claimants. The Minister shall take remedial action where the Minister is satisfied that a person was denied a benefit or a portion thereof, as a result of erroneous advice or an administrative error. The remedial action should place the person in the position they would be in under the Act had the erroneous advice not been given or the administrative error not been made. As such, the Tribunal does not have jurisdiction to render discretionary decisions on subject matters that are under the authority of the Minister²⁹.

[47] The Tribunal does not have jurisdiction to render decisions under section 32 of the Act³⁰.

[48] The appeal is dismissed.

John Eberhard

Member, General Division - Income Security

²⁹ section 32 of the OASA

³⁰ Canada (Respondent of Human Resources Development) v. Tucker, 2003 FCA 278