



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. C. v. Minister of Employment and Social Development*, 2018 SST 656

Tribunal File Number: AD-17-865

BETWEEN:

A. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: June 6, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, A. C., applied for his Old Age Security pension (OAS pension) in November 2013. On his application form, he indicated that he also wanted to apply for the Guaranteed Income Supplement (GIS).¹ The Appellant and his daughter say that they made numerous attempts to follow up on his GIS application, both over the phone and in person, but were always told that they had to wait for the relevant application form to be sent to them, which would happen in due course.

[3] In fact, the GIS application form was sent to the Appellant in March 2015. He completed and submitted it later the same month.² Because he applied for his OAS pension in November 2013 and for his GIS benefits in March 2015, however, it meant that his OAS pension could be paid as of September 2013, but that his GIS benefits could not be paid earlier than April 2014. According to the Respondent, the Minister of Employment and Social Development (Minister), the Appellant's GIS benefits could not be paid for more than 11 months prior to the date on which it had received his application for that benefit.³

[4] The Appellant asked the Minister to reconsider its decision regarding the effective date of his GIS benefits, arguing that the Minister's decision to withhold the relevant application form prevented him from applying any sooner. Though there is little or no dispute regarding the relevant underlying facts, the Minister maintained its initial decision, and a subsequent appeal to the Tribunal's General Division was summarily dismissed.

[5] There is no doubt that the Minister's actions affected the Appellant's eligibility for the GIS. Unfortunately, however, I agree with the conclusion reached by the General Division:

¹ GD2-7.

² GD2-12.

³ GD2-3.

- a) the Appellant has received the maximum retroactive payment allowed under s. 11(7)(a) of the *Old Age Security Act* (OAS Act); and
- b) the Tribunal has no power to investigate into whether the Appellant has been the victim of erroneous advice or of an administrative error, or to review whatever decision the Minister might make in this regard.

ISSUE

[6] Has the Appellant established a recognized ground of appeal that justifies my intervention in this case?

ANALYSIS

[7] In order to succeed on appeal, the Appellant must show that the General Division committed one or more of the three recognized errors (or grounds of appeal) set out in s. 58(1) of the *Department of Employment and Social Development Act*. Generally speaking, these errors concern whether the General Division:

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or
- c) 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.

[8] In his written materials, the Appellant alleges that the General Division failed to observe a principle of natural justice.⁴ However, his concern clearly relates to the way that his file was processed by the Minister (through Service Canada). In particular, the Appellant forcefully argues that the form he needed to apply for the GIS was in the exclusive control of the Minister, that the Minister refused to provide it in a timely way, and that the Minister never indicated that there could be consequences if the application was filed beyond a certain date. As a result, he has been denied retroactive GIS payments to which he otherwise might have been entitled.

⁴ AD1-9; AD1A-1.

[9] As an Appeal Division member, however, my focus is on whether the General Division committed one or more of the three errors listed above. This appeal must fail, therefore, because the Appellant is attacking the conduct of the Minister and not that of the General Division. Indeed, the General Division cited the relevant legal principles and its conclusion is sound in all the circumstances of this case.

[10] Rather, the Appellant's arguments strongly suggest that he may have been prejudiced by the actions of an agent or agents at Service Canada. If the Appellant was the victim of erroneous advice or administrative error, then s. 32 of the OAS Act provides the following remedy:

Where person denied benefit due to departmental error, etc.

32 Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

[11] Unfortunately, as the General Division correctly noted, the courts have consistently concluded that the Tribunal has no jurisdiction to investigate allegations of administrative error or erroneous advice and it has no power to review whatever remedy the Minister might or might not provide.⁵

[12] If the Minister has not already initiated an investigation under s. 32 of the OAS Act, it is strongly encouraged to do so now and to assess whether this unfortunate situation can be made better. Should the Appellant be unsatisfied with whatever decision the Minister might make at the end of its investigation, then the Appellant can apply for judicial review at the Federal Court (rather than an appeal to this Tribunal).

⁵ *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278; *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99.

CONCLUSION

[13] While the Appellant's frustration is justified, the Tribunal's role is defined by legislation and it has only the powers that are given to it by its governing statutes. As a result, I am unable to assist the Appellant in this case. Regardless of the compassion that I have for him, the OAS Act simply does not allow me to order that he be paid GIS benefits for the months prior to April 2014.

[14] The appeal is dismissed.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	A. C., Appellant M. K., Representative for the Appellant