



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. M. v. Minister of Employment and Social Development*, 2018 SST 460

Tribunal File Number: GP-17-934

BETWEEN:

H. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Jane Galbraith

Teleconference hearing on: May 22, 2018

Date of decision: May 29, 2018

DECISION

[1] The Claimant is not entitled to an Old Age Security (OAS) Pension retroactive to 2003 when she turned 65 years old. She is entitled to the maximum retroactivity provided by the legislation, making her OAS pension payable retroactively to January 2013.

OVERVIEW

[2] The Claimant was born in Jamaica on X X, XXXX. The Claimant is a Canadian citizen since 1978. She retired from work in the federal government on October 25, 2013 after 27 years.

[3] The Minister received the Claimant's application for the OAS pension and Guaranteed Income Supplement on December 30, 2013. The Claimant indicated on her application that she wanted her pension to start as soon as she qualified and February 2014.¹

[4] The Minister approved her OAS pension as of February 2014 at a rate of 40/40th with an actuarial adjustment (deferral) of 4.20%. The Minister states the Claimant met the age, residence and legal status requirement to qualify for the OAS pension in 2003, but she did not apply until 2013.²

[5] The Claimant submitted a reconsideration request that her pension be paid for the last ten years since she turned 65 in 2003. The Minister maintained their decision. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE(S)

[6] Is the Claimant entitled to an OAS Pension retroactive to 2003 when she turned 65 years old?

[7] If not, when should the Claimant's OAS pension payments have started?

ANALYSIS

¹ GD2-8

² GD5-2

Does the Claimant qualify for retroactive payments to her 65th birthday?

[8] The OAS Act and Regulations provide a maximum retroactive.³

[9] The Claimant did not apply for OAS benefits until December 2013 when she was 75 years old.

[10] She believed that although she hadn't sent in paperwork for the pension when she was 65 years old she would be entitled to the pension funds retroactively to that time when she did apply.

[11] The maximum retroactivity that she could possibly be eligible for is a day one year before the day on which the application was received. I understand the Claimant was not informed about the retroactivity provided by the legislation. However, I am required to interpret and apply the provisions as they are set out in the legislation and the Claimant does not qualify for retroactive payment to the age of 65.

When should the Claimant's pension payments have started?

[12] When people apply for an OAS pension when they are over 65 they may qualify for retroactive payments. The Minister in this case was satisfied that the Claimant was qualified for a pension due to her over 40 years living in Canada.

[13] In answering question 10 on the OAS application the Claimant indicated she wanted it to start as soon as she qualified. But she also wrote a specific date of February 2014 as well. In essence she answered both parts of an either/or question. The Minister determined her pension should commence in February 2014 because she indicated this specific date on her application in question 10.⁴

[14] The Minister relies on the OAS regulations which indicate that the later of the date the applicant became qualified and the date the applicant specifies in writing to be the effective

³ Old Age Security Act, subsection 8, and Section 5 of the OAS Regulations

⁴ GD2-8

date.⁵ The Minister submits the Claimant has clearly indicated a start date of February 2014 and as such, this is the earliest date her pension could commence.

[15] The Claimant informs me that she had applied for multiple pensions and benefits at the same time. She was clearly confused about the difference between the OAS and CPP pensions. She thought she would be receiving a great deal of retroactive payments. She received a letter written to her from the Minister dated August 28, 2014 indicating she would receive \$18,428. However the Claimant read the letter to me and the letter from the Minister was providing information about her CPP retroactivity and not her OAS application.

[16] There is no question in my mind from the correspondence and the confusing answer to question 10 in her application that she wanted to have retroactivity to when she turned 65 years of age. This was confirmed to me by her credible oral testimony. She indicated that she made a mistake. From the documents and the correspondence I find her testimony is clear that she wanted the most retroactivity.

[17] Considering all of this information together I do not agree with the Minister that the Claimant clearly indicated a start date of February 2014. Having answered both parts of question 10 she did not clearly indicate one start date or the other. She indicated at the hearing she made a mistake, as she always wanted her pension to be paid to when she became eligible, which she understood to be when she turned 65.

[18] The OAS Act provides that those who make a mistake for various reasons and who submit a late application for an OAS pension can be granted up to 11 months of retroactive payments. The application provides the Claimant the opportunity to choose a date if they wish to delay their pension.

[19] The Claimant has indicated clearly in her correspondence with the Minister that she wanted further retroactivity. She did not apply for her pension for 10 years as she continued to work until 2013. There is nothing that gives me the impression in any way that she wanted to delay her pension further.

⁵ Section 5(1) (c)(d)(e) of the OAS Regulations

[20] As her applications for CPP and OAS were made at the same time I do not have all the correspondence that occurred between the Claimant and the Minister for both benefits, only the OAS pension. They have included a letter from her that was not relevant to the OAS pension but the Minister mistakenly considered as a request for reconsideration for her OAS retroactivity. I do not have the letter the Minister sent outlining the retroactive CPP payments. It appears to me that there was some confusion on the part of both parties.

[21] I accept the Claimant's submission that she made a mistake when specifying a date as she wanted over 10 years of retroactivity. It was not her expectation that she would receive anything less than pension payments back to her 65th birthday. As I found above, her expectation was incorrect as to the amount of retroactivity that can be granted.

[22] I cannot ignore the direction provided in the Federal Court decision, *Stiel*, when the OAS legislation is described as altruistic in purpose by Judge Snider. In paragraph 28 he said OAS legislation should be construed liberally and people should not be lightly disentitled to OAS benefits.⁶

[23] This attitude was also confirmed by Judge Hershfield as well. In *Ward*⁷ when he noted that the OAS Act is "social welfare legislation which must be construed liberally to favour those who might reasonably be expected to benefit from it." I am persuaded that these cases relate to this situation as the Claimant's intention or wishes cannot be easily discerned from her application.

[24] The Minister denied the retroactive payments because of the specific date being entered. The fact that she also indicated she wanted her pension to begin as soon as she was eligible was not addressed in the submissions. I find there is more reason to determine the earlier date was her intention and not the date specified.

[25] Applying the facts and the direction from the courts, I find the Claimant is entitled to the maximum retroactivity allowed based on her application for an OAS pension in December 2013.

⁶ *Canada (Minister of Human Resources Development) v. Stiel*, 2006 FC 466

⁷ *Ward v. Canada (Human Resources and Social Development)*, 2008 TC 25

CONCLUSION

[26] Accepting her application was made in December 2013, the earliest it could be approved is one year prior to the application date⁸, December 2012. The earliest I find the Claimant's OAS pension was payable is January 2013.⁹

[27] The appeal is allowed to the maximum retroactivity provided by the legislation.

Jane Galbraith
Member, General Division - Income Security

⁸ OAS Act, subsection 8(2)

⁹ OAS Act, subsection 8(1)