Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. M. v. Minister of Employment and Social Development*, 2018 SST 588

Tribunal File Number: AD-18-245

BETWEEN:

A. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: May 31, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, A. M., is a recipient of the Old Age Security pension. In June 2016, he submitted three applications for the Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OASA) for the payment periods July 1, 2014, to June 30, 2015; July 1, 2015, to June 30, 2016; and July 1, 2016, to June 30, 2017.

[3] The Respondent, the Minister of Employment and Social Development (Minister) approved the application for the latter two payment periods, but not the first, citing the maximum period of retroactivity permitted under the law. The Respondent informed the Appellant that his effective date of payment would be July 2015.

[4] The Appellant appealed the Minister's decision to the General Division of the Social Security Tribunal. In a decision dated February 28, 2018, the General Division summarily dismissed the appeal because it had no reasonable chance of success. The General Division found that the Minister had acted within the law by limiting the Appellant's retroactive GIS payments.

[5] On April 13, 2018, the Appellant appealed the summary dismissal to the Tribunal's Appeal Division. He also submitted a brief, in which he raised the following points.

- Limiting the retroactive claims period for the GIS unfairly penalizes the most vulnerable sector of society—the elderly poor. It is also unjustifiable because there is no reason—administrative or otherwise—for such a restriction.
- This inequity is compounded by the fact that information about potential payment limits do not appear on either the GIS application or the accompanying explanatory brochure.

- The General Division took an excessively formalistic approach to applying the law, ignoring considerations such as equity, reasonableness and justice.
- By mechanistically applying ss. 11(7)(*a*) and 28.1 of the OASA, the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[6] The Minister made no submissions.

[7] No leave to appeal is necessary in the case of an appeal brought under s. 53(3) of the *Department of Employment and Social Development Act* (DESDA) because there is an appeal as of right when the matter deals with a summary dismissal from the General Division.

[8] I have decided that an oral hearing is unnecessary and that the appeal will proceed on the basis of the documentary record for the following reasons:

- There are no gaps in the file and there is no need for clarification.
- This form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness, and natural justice permit.

ISSUES

[9] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, or 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.[1] The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration, or vary the General Division's decision in whole or in part.[2]

[10] The issues before me are as follows:

Issue 1: Did the General Division apply the correct test for a summary dismissal?

[1] DESDA, s. 58(1).
[2] DESDA, s. 59(1).

Issue 2: Did the General Division commit any errors in rendering its decision?

ANALYSIS

Issue 1: Did the General Division apply the correct test for summary dismissal?

[11] I am satisfied that the General Division used the appropriate mechanism to dispose of the Appellant's appeal. In paragraph 3 of its decision, the General Division invoked s. 53(1) of the DESDA, correctly citing the provision that permits it to summarily dismiss an appeal that has no reasonable chance of success. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[12] The decision to summarily dismiss an appeal relies on a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed. In *Fancy v. Canada*,[3] the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also considered the question of summary dismissal in the context of its own legislative framework and determined that the threshold for summary dismissal is high.[4] It must be determined whether it is plain and obvious on the record that the appeal is bound to fail. The question is not whether the appeal must be dismissed after considering the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

[13] Here, the evidence is clear that the Appellant did not submit a GIS application until June 2016. The law is equally clear that retroactive payment of the GIS, following an approved application, is limited to 11 months. The Appellant's submissions indicate that he was aware of the statutory exemption under s. 28.1 of the OASA, although he did not claim to be incapable of forming or expressing an intention to apply for the GIS.

[14] In arriving at its decision, the General Division rightly applied a high threshold for summary dismissal, finding the Appellant's arguments "certain to fail" in the absence of a

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[3] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[4] *Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

factual or legal foundation. In my view, the General Division was within its authority to summarily dismiss the appeal.

Issue 2: Did the General Division err in rendering its decision?

[15] Having reviewed its decision, I am satisfied that the General Division did not breach any principle of natural justice or commit an error in fact or law. The General Division assessed the record and concluded that the Appellant, having applied for the GIS in June 2016, was entitled to no more than 11 months of retroactive payments. The General Division saw no arguable case on any ground that the Appellant had raised, and I see no reason to interfere with its reasoning.

[16] While the Appellant may not agree with the General Division's analysis, my jurisdiction to offer him a remedy is limited by the terms of s. 58(1) of the DESDA. The Appellant has not alleged that the General Division committed an error in fact or law, although he does claim to be the victim of unfairness. His submissions indicate that the object of his ire is not the General Division, but rather the OASA itself—particularly the way in which it has been drafted to limit retroactive payment.

[17] As much as I may sympathize with the Appellant's position, I am bound to follow the OASA, and so was the General Division. The Appellant finds it unfair that senior citizens are being denied a benefit merely because they may have been delayed—for understandable reasons—in submitting an application, yet this is the outcome that Parliament prescribed when it enacted the OASA. The General Division found that it could not simply ignore the letter of the law and order what it felt was a just result. Such power, known as "equity," has traditionally been reserved to the courts, although even they typically exercise it only if there is no adequate remedy at law. In *Canada v. Esler*,[5] for example, the Federal Court reversed an attempt by the General Division's predecessor to extend retroactive OASA benefits beyond the legislative limitation, stating: "The Review Tribunal is a pure creature of statute and as such, has no inherent equitable jurisdiction which would allow it to ignore the clear legislative provision

[5] *Canada (Minister of Human Resources Development) v. Esler*, 2004 FC 1567.

contained in subsection 8(2)[6] of the Act and use the principle of fairness to grant retroactive benefits in excess of the statutory limit."

CONCLUSION

[18] As noted, the earliest month, under s. 11(7)(*a*) of the OASA, in which the Appellant could have received the GIS was July 2015. The Appellant has not shown how the General Division erred in upholding the Minister's decision to limit retroactive payment.

[19] The appeal is dismissed.

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVE:	A. M., self-represented

[6] Subsection 8(2) of the OASA limits retroactive payment of the Old Age Security pension to one year before the date of application.