



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The Estate of M. N. v Minister of Employment and Social Development*,
2018 SST 1035

Tribunal File Number: GP-17-1570

BETWEEN:

The Estate of M. N.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Date of decision: September 7, 2018

DECISION

[1] The Claimant was not entitled to receive the Guaranteed Income Supplement (“GIS”) under the Old Age Security Act (“OAS Act”), for the period between December 2012 and October 2013. I do not have the jurisdiction to render a decision on whether the Claimant must reimburse the Minister for the GIS overpayment.

OVERVIEW

[2] The Claimant was born on March 15, 1924, and passed away on April 30, 2015. In 2012, she was receiving both the Old Age Security (“OAS”) pension and the GIS. She left Canada for Lebanon on May 3, 2012, and was scheduled to return on October 27, 2012. However, she was unable to return to Canada because of illness. Although the Minister was promptly advised of her circumstances, she continued receiving the GIS until October 2013, when the Minister suspended her GIS because she had been absent from Canada for more than six months. The Minister later determined that she had been ineligible for the GIS since December 2012 and demanded repayment of the GIS payments she had received between December 2012 and October 2013.

[3] The Claimant’s appeal appears to be based on both the retrospective denial of the GIS starting December 2012, as well as the Minister’s position that the GIS payments from December 2012 to October 2013 had to be repaid. The Minister first set out its position on the GIS denial in a letter dated January 30, 2015. The Minister upheld its position in a reconsideration decision dated March 30, 2017.¹ The Claimant appealed the reconsideration decision to the Social Security Tribunal.

PRELIMINARY MATTER

[4] For ease of reference, I will use the word “Claimant” throughout this decision: it will refer to M. N. before her death and to her estate after her death. I acknowledge that the estate representative (J. K., M. N.’s son) is the same person who, through a Power of Attorney, essentially made all communications on M. N. behalf before her death. However, I will only specifically refer to J. K. where the context demands it.

¹ GD2-3 and GD2-46

ISSUES

[5] Was the Claimant entitled to the GIS from December 2012 until October 2013?

[6] If not, is the Claimant obligated to reimburse the Minister for the GIS overpayment?

ANALYSIS

[7] The GIS is a supplementary payment made to certain recipients of the OAS pension who have little or no other income. The Claimant's level of income from December 2012 until October 2013 is not in dispute. However, if a GIS recipient is absent from Canada or ceases to reside in Canada, the GIS can only be paid for the month of departure and the following six months.² The Claimant's absence from Canada, commencing in May 2012, raises the issue of whether she was entitled to receive the GIS from December 2012 until October 2013.

Was the Claimant entitled to receive the GIS from December 2012 until October 2013?

[8] The Claimant left Canada for Lebanon on May 3, 2012. She arrived in Lebanon on May 4, 2012. She had purchased a return ticket and was scheduled to return to Canada on October 27, 2012.³ However, her health declined and, on October 18, 2012, Dr. Rene El-Khoury (Heart Specialist) advised her against travelling because of heart failure. He affirmed her ongoing inability to travel in a further letter dated November 25, 2013.⁴ On May 26, 2014, J. K. said she had not been able to return to Canada after May 4, 2012. This is consistent with her passport stamps and the evidence submitted during the "Question and Answer" process.⁵ I therefore find that the Claimant was absent from Canada from May 4, 2012, until at least October 31, 2013.

[9] Under the OAS Act, the Claimant would have been entitled to receive the GIS for the month of her departure from Canada and the subsequent six months.⁶ There is no dispute that she left in May 2012. She was therefore entitled to, and did, continue receiving the GIS until November 2012. However, the OAS Act does not provide any exceptions, even on humanitarian grounds, to the rule that the GIS is not payable after those initial six months have passed. While

² S. 11(7)(c) of the *Old Age Security Act*

³ GD2-36 to GD2-39

⁴ GD2-30 and GD2-35

⁵ GD2-14 to 18, GD2-23, and GD6-2 to GD6-6

⁶ S. 11(7)(c) of the *Old Age Security Act*

this appears to deal with the issue of GIS eligibility after November 2012, I will first address J. K.'s letter dated December 4, 2012 (the "Overseas Illness Letter").⁷

What is the impact of the Overseas Illness Letter?

[10] The Overseas Illness Letter asked the Minister to extend the Claimant's GIS, as deteriorating health prevented her from returning to Canada as scheduled on October 27, 2012. At that time, she still intended to return to Canada once she had been cleared to travel. However, such clearance was never given and she passed away in Lebanon on April 30, 2015.⁸

[11] There is no evidence of a response from the Minister until October 22, 2013, when the Minister informed the Claimant that her GIS was suspended effective November 2013. While the Minister received the Overseas Illness 2012 letter on December 5, 2012, the Minister continued paying the GIS to the Claimant for December 2012 through October 2013. The Minister did not demand repayment of those GIS payments until January 30, 2015.⁹

[12] Having sent the Overseas Illness Letter, the Claimant may well have considered herself to be entitled to GIS payments from December 2012 forward until she received the letter dated October 22, 2013. There is no evidence of any other correspondent to the Claimant before then: there does not even appear to be an acknowledgment by the Minister that it received the Overseas Illness Letter. On the other hand, the Overseas Illness Letter shows that the Claimant (through J. K.) clearly had some awareness of the GIS eligibility rules and how her continued absence from Canada could disentitle her to further GIS payments.¹⁰

[13] Ultimately, the Overseas Illness Letter does not give me the authority to find a GIS entitlement from December 2012 to October 2013. The OAS Act does not prevent the Minister from finding that a person was disentitled to the GIS for a prior period despite having received GIS payments for that period already. The Minister may also, at any time, investigate a person's eligibility to receive a benefit.¹¹ Accordingly, I must conclude that the Overseas Illness Letter does not affect the Claimant's lack of GIS entitlement from December 2012 to October 2013.

⁷ GD2-29

⁸ GD2-39 and GD2-59

⁹ GD2-46 to GD2-50

¹⁰ GD2-29

¹¹ See, for example, s. 23 of the *Old Age Security Regulations*

She was not entitled to receive the GIS during that period. However, I will now consider whether the Claimant is obligated to reimburse the Minister for the overpayment.

Is the Claimant obligated to reimburse the Minister for the GIS overpayment?

[14] From December 2012 to October 2013, the Claimant received GIS payments totalling \$12,682.10. However, the Minister began offsetting part of the Claimant's ongoing OAS benefits against the GIS overpayment in May 2014. As a result, the outstanding overpayment had been reduced (by \$1,258.58) to \$11,423.52 by January 2015. It appears that further offsets were suspended while the Claimant's poor health and associated financial difficulties were being considered.¹² As a result, once the Minister learned of her death, her estate was asked for repayment of \$11,423.52.¹³

[15] The OAS Act confirms that a person receiving a benefit to which they were not entitled shall forthwith return or repay the benefit. This is considered a debt due to the Crown.¹⁴ Despite those provisions, the Minister may remit all or part of the overpayment amount if it is satisfied that one or more of the following apply:

- (a) The amount cannot be collected within the reasonably foreseeable future;
- (b) The administrative costs of collecting the amount are likely to equal or exceed the amount to be collected;
- (c) Repayment of the amount would cause undue hardship to the debtor; or
- (d) The amount is the result of erroneous advice or administrative error in the administration of the OAS Act.¹⁵

[16] Some of these circumstances may apply in this case. The Claimant mentioned financial hardship on several occasions, and there is some evidence suggesting a lack of assets.¹⁶ The Tribunal's predecessor also found that "erroneous advice" can include the failure to give any advice at all.¹⁷ Although such a finding is not binding on me, it does appear to be a reasonable interpretation of "erroneous advice". Alternatively, it could be argued that the failure to respond to the Overseas Illness Letter for more than ten months constitutes an "administrative error".

¹² GD2-6, GD2-8, and GD2-46 to GD2-47

¹³ GD6-4

¹⁴ Ss. 37(1) and (2) of the *Old Age Security Act*

¹⁵ S. 37(4) of the *Old Age Security Act*

¹⁶ See, for example, GD5-2 to GD5-3

¹⁷ *O-42754 v. Minister of Human Resources Development* (June 4, 1999)

[17] Those OAS Act provisions appear to provide the Claimant with some potential relief against the overpayment demand. However, I cannot make a finding on whether the Claimant is obligated to repay the overpayment amount, nor can I order the Minister to remit all or part of the overpayment amount. The Federal Court of Appeal, whose decisions are binding on me, has determined that the Tribunal does not have the power to make a finding on an appeal of the Minister's decision on remitting any or all of an overpayment. Decisions relating to the forgiveness of an overpayment made as a result of erroneous advice are not decisions "respecting the amount of any benefit that may be paid to that person". As a result, such decisions are outside of the Tribunal's jurisdiction. The Federal Court of Appeal stated that the only remedy available to a person under these circumstances would be to apply to the Federal Court for judicial review of the Minister's decision.¹⁸

[18] This may be difficult for the Claimant to accept, as the Minister eventually admitted that its delay in responding to the Overseas Illness Letter contributed to the accumulation of a significant overpayment.¹⁹ However, any intervention by me on this issue would constitute an error in law.

CONCLUSION

[19] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

¹⁸ *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278, and s. 27.1(1) of the *Old Age Security Act*

¹⁹ GD4-3