



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. B. v Minister of Employment and Social Development*, 2018 SST 1213

Tribunal File Number: GP-18-8

BETWEEN:

J. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

DATE OF DECISION: October 12, 2018

DECISION

The Applicant is not entitled to the Guaranteed Income Supplement (GIS) for the period of July 2017 to June 2018 for the reasons set out below.

OVERVIEW

[1] The Applicant applied for the GIS on June 5, 2017, for the period of July 2017 to June 2018.¹

[2] On December 5, 2017, the Respondent sent a decision letter to the Applicant notifying him that he was not entitled to the GIS because of the combined income he reported with his spouse. The Applicant requested a reconsideration of the Respondent's decision. The Respondent denied the reconsideration request, and the Applicant appealed the reconsideration decision to the Social Security Tribunal.

THE LAW

[3] Section 2² of the *Old Age Security Act* (OAS Act) states that the income of a person for a calendar year means the person's income for the year is computed in accordance with the *Income Tax Act* and that the payment period, in relation to a month, means the period after June 30, 1999, that begins on July 1 of one year and ends on June 30 of the next year, where that period includes the month.

[4] Section 10 of the OAS Act states that the base calendar year means the last calendar year ending before the current payment period, the current payment period means the payment period in respect of which a GIS application is made by an applicant, and the previous payment period means the payment period immediately before the current payment period.

[5] Section 13 of the OAS Act states that, for the purposes of determining the amount of GIS that may be paid to a pensioner, the income for a calendar year of a person or an applicant is the

¹ GD2-3.

² OAS Act, s 2(c).

income of that person or applicant for that year computed in accordance with the *Income Tax Act*.

[6] Section 14 of the *Old Age Security Regulations* (OAS Regulations) states that pension income means the aggregate of amounts received as

- (a) annuity payments;
- (b) alimony and maintenance payments;
- (c) employment insurance benefits;
- (d) disability benefits deriving from a private insurance plan;
- (e) any benefit, other than a death benefit, under the *Canada Pension Plan* or a provincial pension plan as defined in the *Canada Pension Plan*;
- (f) superannuation or pension payments, other than a benefit received pursuant to the [OAS] Act or any similar payment received pursuant to a law of a provincial legislature;
- (g) compensation under a federal or provincial employee's or worker's compensation law in respect of an injury, disability or death;
- (h) income assistance benefits under an agreement referred to in subsection 33(1) of the *Department of Human Resources Development Act* by reason of a permanent reduction in the work force as described in that subsection; and
- (i) income assistance benefits under the Plant Workers' Adjustment Program, the Fisheries Early Retirement Program or the Northern Cod Adjustment and Recovery Program by reason of a permanent reduction in the work force.

ISSUE

[7] I must decide whether the Applicant's GIS entitlement calculation for the payment period of July 2017 to June 2018 was made in accordance with the OAS Act.

ANALYSIS

[8] The GIS is a supplementary benefit paid to low-income pensioners. It is calculated for the period of July to June each year based on the income reported to the Canada Revenue Agency (CRA) the previous year.

[9] Based on the evidence on file, the Applicant applied for the GIS on June 5, 2017, for the period of July 2017 to June 2018. For 2016, the Applicant's income was \$45,427.00 and his spouse's income was \$14,022.00, which is a total income of \$59,449.00. The Respondent states that, to be entitled to the GIS for the period [sic], the maximum combined income is \$42,624. Based on the income that the CRA determined,³ the Applicant reportedly made a withdrawal from his RRSPs.

[10] The Applicant submitted a letter to the Respondent dated November 20, 2017,⁴ explaining that his actual income for 2017 was a lot less than his 2016 income and that, in 2016, he took advantage of only one withdrawal from his RRSPs.

[11] The Respondent notified the Applicant on December 5, 2017,⁵ that his GIS entitlement was established based on the combined income that he and his spouse reported. One option (Statement of Estimated Income after Retirement or Reduction in Pension Income) may be assigned to a pensioner or to a spouse or common-law partner who retired from work, stopped running a business, or suffered a loss or reduction in pension income. It is intended to alleviate the financial effect of retirement or of the loss or reduction in pension income. However, the Respondent could not use this option to calculate the Applicant's GIS. The option applies only where there is a loss or reduction in a pension income, which is not the case here; RRSPs are not regarded as pension income under section 14 of the OAS Regulations.

[12] Based on the evidence on file, the Applicant made an RRSP withdrawal of \$36,217.39 in 2016; this amount must be considered for the purposes of determining the GIS for the period of July 2017 to June 2018, according to sections 10 and 13 of the OAS Act.

[13] Furthermore, in accordance with the case law, withdrawals from an RRSP are to be included in income under the *Income Tax Act*. Case law makes it clear that RRSP withdrawals must also be reflected in the income used to determine GIS entitlement (*Lankarani v Human Resources*, 2011 TCC 176 (CanLII)).

³ GD2-4 and 5.

⁴ GD2-9.

⁵ GD2-6.

CONCLUSION

[14] For these reasons, the Tribunal concludes that the GIS entitlement calculation was made in accordance with the OAS Act and that the Applicant is not entitled to GIS benefits for the payment period of July 2017 to June 2018 because his combined income exceeded the maximum allowed for receiving benefits.

[15] The appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security