



[TRANSLATION]

Citation: *P. D. v Minister of Employment and Social Development*, 2018 SST 1233

Tribunal File Number: GP-16-3804

BETWEEN:

**P. D.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Antoinette Cardillo

DATE OF DECISION: November 9, 2018

## **DECISION**

The Applicant was incapable of forming or expressing an intention to apply for the Guaranteed Income Supplement (GIS) from May 2013 to March 2016, in accordance with section 28.1 of the *Old Age Security Act* (OAS Act).

## **OVERVIEW**

[1] The Respondent received an application for GIS benefits from the Applicant on March 31, 2016. The Respondent approved benefits from April 2015 to April 2016. The Applicant requested a reconsideration. The Respondent denied the application, indicating that the Applicant had made his first GIS application on March 31, 2016, and that, in accordance with the OAS Act, no supplement may be paid to a pensioner for any month that is more than 11 months before the month in which the application is received. Furthermore, based on the information in the Applicant's file, the Respondent had apparently sent GIS application forms for an initial application and for a renewal on November 20, 2014. The Applicant apparently did not complete and return those forms. The Applicant's representative appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] In the notice of appeal dated November 18, 2016, the Applicant's representative alleges that the Applicant was waiting for an immigration status for many years and that the situation was resolved in June 2016. The Applicant was represented starting in 2010, and since that time, he has tried to obtain the old-age pension, but certain documents could not be produced. He applied for GIS benefits as of January 2010 or, if applicable, as of May 2013, given his special circumstances related to his health and incapacity.

[3] Following allegations of health issues, the Respondent asked that the appeal be held in abeyance so that it could assess the Applicant's declarations of incapacity. After assessing the file, the Respondent determined that the evidence did not support continuous incapacity despite the Applicant's limitations because of his health starting in 1999.

## **APPLICABLE PROVISIONS**

[4] The relevant provisions of the OAS Act are as follows:

**8(2)** Notwithstanding subsection (1), where a person who has applied to receive a pension attained the age of sixty-five years before the day on which the application was received, the approval of the application may be effective as of such earlier day, not before the later of:

- (a) a day one year before the day on which the application was received, and
- (b) the day on which the applicant attained the age of sixty-five years,

as may be prescribed by regulation.

**28.1(1)** Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that the person was incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

**(2)** Where an application for a benefit is made by or on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, that

- (a) the person was incapable of forming or expressing an intention to make an application before the day on which the application was actually made,
- (b) the person had ceased to be so incapable before that day, and
- (c) the application was made
  - (i) within the period that begins on the day on which that person had ceased to be so incapable and that comprises the same number of days, not exceeding twelve months, as in the period of incapacity, or
  - (ii) where the period referred to in subparagraph (i) comprises fewer than thirty days, not more than one month after the month in which that person had ceased to be so incapable,

the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have

commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later.

(3) For the purposes of subsections (1) and (2), a period of incapacity must be a continuous period except as otherwise prescribed.

## **ISSUE**

[5] I must determine whether the Applicant was able to form or express an intention to apply for GIS benefits in January 2010 or, if appropriate, from May 2013 to March 2016 in accordance with section 28.2 of the OAS Act, and whether his incapacity was continuous.

## **EVIDENCE**

[6] The Applicant is 72 years old. He was 65 years old in November 2010. The Respondent received an application for an OAS pension on January 22, 2010.<sup>1</sup> The applicant had signed the application and dated it January 18, 2010. The Respondent approved the Applicant's pension application with an effective date in December 2010, the month after the Applicant turned 65. The Respondent received a request for GIS benefits from the Applicant on March 31, 2016, and the benefits were approved based on the first date forms were received and 11 months of retroactivity before that date.

### **History of the Applicant's Mental Health – 2001 to 2017**

[7] Based on the evidence on file, the Applicant attempted suicide in May 2001; his diagnosis was probable somatic delusional disorder.<sup>2</sup> He was monitored from 2001 to 2005 for a psychotic condition with persistent symptoms. He was partially autonomous. He did not leave his home except for medical appointments. He travelled by taxi. A woman did his errands for him, or he used delivery services. The psychiatric summary dictated by Dr. Frare in October 2005 indicated an autonomy issue connected with his psychotic condition.

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<sup>1</sup> GD2-71.

<sup>2</sup> GD10-18.

[8] The progress notes from Dr. Filiatrault, psychiatrist, from April 2011 to August 2016,<sup>3</sup> refer to the Applicant's incapacity to see to his affairs or to get the help needed to advance his immigration case. Dr. Filiatrault indicates that, from 2005 to 2010, the Applicant was receiving front-line care from Dr. Marcotte at X. According to Dr. Marcotte, the Applicant's psychiatric condition was stable, although he remained isolated and was seeing virtually no one. His financial situation was chronically difficult because his rent was too expensive for him. He continued to have occasional periods of dysphoria connected with stress factors, including his difficult financial situation, which caused him to ruminate on suicide without attempting it.

[9] On December 8, 2011,<sup>4</sup> Dr. Rondeau at X indicated that the Applicant had received psychiatric follow-up since 2001 after a suicidal act where he jumped from the third floor because of body pains. After psychiatric evaluations, he was diagnosed with schizophrenia with painful somatic delusions. According to Dr. Rondeau, since that time, the Applicant's condition has required psychiatric care. He received care at X, at X, and, since 2006, at X from the front-line mental health team. Dr. Rondeau noted that the Applicant's condition worsened because of the stress of his immigration efforts. In July 2011, his dose of antipsychotic medication was increased. He was hospitalized for psychiatric reasons at X from September 6 to 10, 2011, because of more intrusive suicidal ideation and increased somatic delusions. On November 30, 2011, after the Applicant received discouraging news about his immigration file, his anxiety and despondency increased, and his medication had to be adjusted. The stress increased the schizophrenic Applicant's depressive, anxious, and psychotic symptomatology and the risk of suicide.

[10] On July 16, 2013, Dr. Filiatrault<sup>5</sup> stated in a letter that the Applicant was receiving care at X for schizophrenia with somatic delusions. The psychiatric illness was stable, but the Applicant's condition fluctuated significantly throughout the year, in connection with intrusive anxiety secondary to his non-clarified immigration status. During those periods, the Applicant was very anxious, had insomnia, and presented suicidal ideas with a plan to hang himself. In

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<sup>3</sup> GD10-12.

<sup>4</sup> GD1-24.

<sup>5</sup> GD1-21.

September 2011, he was hospitalized again because of more intrusive suicidal ideas and the resurgence of his psychotic symptoms. In May 2013, he was once again seized by somatic pains and became suicidal and barely functional. His medication had to be increased for his relief. However, he experienced significant side effects.

[11] A note from an external psychiatric clinic medical visit from June 4, 2014, by Dr. Filiatrault<sup>6</sup> sets out the Applicant's inability to manage simple financial situations. Dr. Filiatrault indicates that the Applicant had trouble tolerating the anxiety connected with Income Security. He needed help from his nurse to take action.

[12] Dr. Filiatrault's progress notes in August 2016<sup>7</sup> indicate that the Applicant had moved and was having fewer financial difficulties. However, his social worker wondered about his ability to manage his assets. The situation needed to be monitored for a number of months, but it was decided that there was no indication of opening a tutorship/curatorship plan for the Applicant at that date.

[13] In a report dated June 28, 2017,<sup>8</sup> Dr. Viau indicated, after a meeting with the Applicant, that he was unable to read correspondence and correctly interpret the message. He concentrated on alarming aspects instead of the overall picture. The Applicant's cognitive mode persisted despite assistance during the meeting. He had a cognitive inability, amplified by anxiety, to fully understand his mail.

[14] A declaration of incapacity signed on June 29, 2017, by Dr. Viau<sup>9</sup> indicates that the Applicant suffers from schizophrenia with chronic delusions, secondary anxious symptoms, and cognitive side effects from the medication. She answered yes to the question "Did/does the applicant's condition make him/her incapable of forming or expressing the intention to make an application?" She claimed that his incapacity began in 1999.

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<sup>6</sup> GD10-16.

<sup>7</sup> GD10-12.

<sup>8</sup> GD10-11.

<sup>9</sup> GD11-11.

## ANALYSIS

[15] Under section 28(2), the OAS Act allows the payment of benefits for the 11 months preceding the date the application is received, because of incapacity. This incapacity must be continuous. Continuous incapacity means the applicant was unable to form or express an intention to make an application.

[16] The Federal Court of Appeal<sup>10</sup> clarified that the interpretation of the word “capacity” does not require consideration of the capacity to make, prepare, process, or complete an application, but only the capacity, quite simply, of forming or expressing an intention to make an application.

[17] The Federal Court of Appeal<sup>11</sup> also indicated that the activities and medical documents may help to determine whether an individual was unable to form or express an intention to make an application for benefits.

[18] I have determined that the Applicant was incapable of forming or expressing an intention to make an application for the GIS from May 2013 to March 2016.

[19] I have relied on the letter dated July 16, 2013, from Dr. Filiatrault<sup>12</sup> indicating that in May 2013, the Applicant was once again seized by somatic pains and became suicidal and barely functional. His medication had to be increased for his relief. However, he experienced significant secondary effects. Then, on June 4, 2014, Dr. Filiatrault<sup>13</sup> reported the Applicant’s inability to manage simple financial situations. She indicated that the Applicant had difficulty tolerating the anxiety with Income Security. He had needed help from his nurse to take action.

[20] In addition, in a report dated June 28, 2017,<sup>14</sup> Dr. Viau indicated, after a meeting with the Applicant, that he was incapable of reading correspondence and correctly interpreting the message. He showed a cognitive inability, amplified by anxiety, to fully understand his mail.

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<sup>10</sup> *Canada (Attorney General) v Danielson*, 2008 FCA 78.

<sup>11</sup> *Slater v Canada (Attorney General)*, 2008 FCA 375.

<sup>12</sup> GD1-21.

<sup>13</sup> GD10-16.

<sup>14</sup> GD10-11.

[21] Finally, Dr. Viau completed a declaration of incapacity on June 29, 2017, indicating that the Applicant suffers from schizophrenia with chronic delusions, secondary anxious symptoms, and cognitive side effects of medication. She answered yes to the question “Did/Does the applicant’s condition make him/her incapable of forming or expressing the intention to make an application?” She claimed that his incapacity began in 1999.

[22] I find, based on the Applicant’s file, that his incapacity was continuous starting in May 2013.

[23] While it is clear based on the evidence on file that, as of a 2001 suicide attempt, the Applicant received psychiatric care and experienced, from 2001 to 2013, suicidal ruminations without an attempt and periods of dysphoria connected with financial stress, his psychiatric condition was stable during that period. I find that the Applicant did indeed have periods of incapacity at certain points, but I cannot find that this incapacity was continuous. As pointed out by the Federal Court,<sup>15</sup> the Applicant’s mental state was subject to fluctuations, meaning that, as the medical reports show, the Applicant’s mental state changed occasionally. My decision would have been different if the Applicant’s mental state had been constant between 2001 and 2013. In terms of finances, he did not task someone else with making decisions in his place under a power of attorney, and a public trustee did not make any decisions either. The Applicant lived alone in an unsupervised dwelling, and during the period in question, he consented to various medical treatments. He also retained a lawyer to help him with his file.

[24] I consider that, although the Applicant suffered from mental illness and that he has received care since 2001, he had the capacity to form or express an intention at certain periods before May 2013 and his incapacity was not continuous. In accordance with section 28(2) of the OAS Act, the Applicant must have been deemed incapable during the entire period.

## **CONCLUSION**

[25] In conclusion, I determine that the Applicant satisfied the incapacity criteria stated in the OAS Act, that he was incapable of forming or expressing an intention to make an application for

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<sup>15</sup> *Hussein v Canada*.



GIS benefits from May 2013 to March 2016, and that his incapacity was continuous during that period.

[26] The appeal is allowed.

Antoinette Cardillo  
Member, General Division – Income Security