



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *V. H. v Minister of Employment and Social Development*, 2019 SST 112

Tribunal File Number: GP-17-1455

BETWEEN:

V. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Carol Wilton

Date of decision: January 25, 2019

DECISION

[1] The Claimant is not entitled to a larger retroactive payment of his Guaranteed Income Security (GIS). The appeal is dismissed.

OVERVIEW

[2] The Claimant was born in 1943 and submitted an application for the Old Age Security (OAS) pension in 2007. He has been collecting the OAS pension since March 2008.

[3] In April 2016, the Claimant submitted a duplicate application for the OAS. He checked off the box stating that if his OAS pension were approved, he wanted to apply for the GIS.¹ In November 2016, the Minister mailed a GIS application to the Claimant along with correspondence of the same date. The Minister received the Claimant's GIS application in December 2016,² and granted retroactive GIS payments to January 2016 (11 months).³ The Claimant requested reconsideration on the basis that his April 2016 application for the OAS should be considered as an application for the GIS. The Minister denied the application on reconsideration, and the Claimant appealed to the Social Security Tribunal (Tribunal).

ISSUES

[4] Is the Claimant entitled to a larger retroactive payment of his GIS pension than the Minister allowed based on his application of December 2016?

ANALYSIS

Test for payment of a GIS

[5] The OAS Act provides that no supplement may be paid to a pensioner more than 11 months before an application is received or is deemed to have been made or in which the requirement for an application has been waived.⁴

¹ GD2-11 ff.

² GD2-17

³ GD2-18

⁴ Paragraph 11(7)(a) of the OAS Act

[6] The OAS Act also provides that a supplement may be paid only when an applicant has made an application and the payment of the supplement has been approved.⁵

[7] The onus is on the Claimant to show that he is entitled to greater retroactivity than he was granted.⁶

The Claimant is not entitled to greater retroactivity

[8] The Claimant submitted that it had taken numerous inquiries from him before the Minister provided a reconsideration letter, which he needed in order to appeal to this Tribunal. However, while the delay is regrettable, earlier receipt of the reconsideration letter would not have changed the outcome of the appeal.

[9] The Claimant made other submissions relating to efforts in 2018 to file GIS applications for 2012 and 2014. As these are not the matter under appeal, I have not considered them in my decision.

[10] In support of his claim for greater retroactivity, the Claimant submitted that the legislation does not require that an application be submitted on a particular form. He stated that the fact of his checking the box on the 2016 OAS application form stating that he wished to apply for the GIS amounted to an application, and that as long as the request was clearly conveyed, it did not matter whether it was conveyed on a prescribed form. However, the OAS *Regulations* indicate that “an application for a benefit shall be made on an application form.”⁷ The Regulations further provide that “an application is deemed to have been made only when an application form ... is received by the Minister.”⁸ Further, an “application form” means the form of application required by the Minister.⁹ The Claimant acknowledged that he had been informed in numerous telephone conversations that a particular form was required to apply for the GIS.¹⁰ In addition, as the Minister submitted, an OAS application asks if an applicant wishes to apply for the GIS, but it is not the GIS application itself.

⁵ Subsection 11(2) of the OAS Act

⁶ *De Carolis v. Canada (A.G.)*, 2013 FC 366

⁷ Subsection 3(2) of the OAS *Regulations*

⁸ Subsection 3(2) of the OAS *Regulations*

⁹ Subsection 2(1) of the OAS *Regulations*

¹⁰ GD1A-4

[11] The Claimant further submitted that the word “deemed” in s. 11(7)(a) of the OAS Act (see paragraph 5 above) means that the Minister has discretion to find that the Claimant had the intention to apply for the GIS in April 2016 because he checked the box indicating that he wished to apply for the GIS on the OAS application form. The Minister, he further submitted, should have used his discretion and reviewed information available from the Canada Revenue Agency to see whether the Claimant qualified for the GIS.

[12] This argument for ministerial discretion is based on a misreading of subsection 11(7)(a) of the statute. Section 11 does not give the Minister discretion to disregard the requirements of the law. Instead, the word “deemed” should be read in the context of subsection 11(3) of the OAS Act. That provision applies in the case of a spouse, common-law partner, or former common-law partner when they become ineligible for an allowance because they have reached the age of 65. Subsection 11(3) of the OAS Act does not apply in this case.

[13] The Claimant also argued that the Minister has the authority to waive the requirement for an application. He further submitted that if Service Canada had sent him a GIS application after he checked off his wish to receive one, “then an application for GIS would have been undoubtedly waived as well.”¹¹ Subsection 11(4) of the OAS is very specific about the circumstance in which the requirement for an application may be waived: when an applicant has made a prior application for payment of a supplement. There was no application for the GIS in this case prior to the one received in December 2016, so waiving the requirement was not an option for the Minister. Further, the Minister was bound by subsection 11(2) of the OAS Act, which prohibits the payment of a supplement unless an application has been made and payment has been approved. The Claimant’s statement that the Minister would have waived the requirement for a GIS application is purely conjecture, and I must act only on credible and supporting evidence and not on speculation.¹²

[14] The Claimant additionally submitted that there were extenuating circumstances:

¹¹ GD7-1

¹² *MHRD v S.S.* (December 3, 2007) CP 25013 (PAB). This decision concerned an application for a CPP disability pension, but the same reasoning applies here.

- a. He intended to apply for the GIS in April 2016 but used the wrong form by mistake.¹³
- b. The OAS form is misleading.¹⁴
- c. His accountant failed to notify him until April 2016 that he was eligible for the GIS for some previous years.¹⁵
- d. His accountant misdirected him by advising him to “contact OAS re GIS.”¹⁶
- e. There was a delay of 7 months between the time he notified the Minister that he wished to apply for the GIS and the time the Minister sent the application.

[15] The law is clear that an application for a supplement must be made, received, and approved before it is payable. I have no authority to make exceptions to the provisions of the OAS Act, nor can I render decisions based on fairness, compassion, or extenuating circumstances. The Tribunal is a statutory decision-maker and I am required to interpret and apply the provisions as they are set out in the OAS Act.

[16] I therefore find that the Claimant has not proven on a balance of probabilities that he is entitled to further retroactivity.

CONCLUSION

[17] The appeal is dismissed.

Carol Wilton
Member, General Division - Income Security

¹³ GD1-1

¹⁴ GD5-3

¹⁵ GD5-2

¹⁶ GD5-3