



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

*Citation: A. A. v Minister of Employment and Social Development, 2019 SST 797*

Tribunal File Number: GP-18-324

BETWEEN:

**A. A.**

Appellant

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: March 29, 2019

## **DECISION**

I find that the Appellant was not resident in Canada before his return to Canada on September 13, 2013. Therefore, he is not eligible for the Guaranteed Income Supplement (GIS) from November 2012 to August 2013.

## **OVERVIEW**

[1] The Appellant turned 65 in October 2012. He applied for an Old Age Security (OAS) pension on September 16, 2013, and for the GIS on December 9, 2013.<sup>1</sup> The Respondent acknowledged that the Appellant had resided in Canada for a total of 13 years (September 1991 to July 2, 2005), and that he qualified for a partial pension as of November 2012. However, the Respondent found that the Appellant was not eligible for GIS benefits for the period from November 2012 to August 2013.<sup>2</sup> The Appellant requested a reconsideration of the decision. The Respondent denied the reconsideration request and the Appellant appealed the reconsideration decision to the Social Security Tribunal.

## **ISSUE**

[2] Is the Appellant eligible for GIS benefits from November 2012 to August 2013?

## **ANALYSIS**

### **i. Eligibility requirements for the Old Age Security pension**

[3] To receive a partial pension,<sup>3</sup> an applicant must have resided in Canada for at least 10 years, if they resided in Canada on the day before their application was approved. An applicant who resided outside of Canada on the day before their application was approved must prove that they had previously resided in Canada for at least 20 years.

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<sup>1</sup> GD2-145 and GD2-40.

<sup>2</sup> GD2-119 and GD2-3.

<sup>3</sup> OAS Act, s 3(2).

[4] A person resides in Canada if they make their home and ordinarily live in any part of Canada, and a person is present in Canada when they are physically present in any part of Canada.<sup>4</sup>

[5] Case law has set out a non-exhaustive list of factors to be considered when establishing residence. These factors are personal property, social and fiscal ties in Canada, ties in another country, regularity and length of visits to Canada, as well as the frequency and length of absences from Canada, the lifestyle of the person, and their establishment here. The burden of proof in this matter is on the appellant.<sup>5</sup>

**ii. Eligibility criteria for Guaranteed Income Supplement benefits**

[6] According to section 11(7) of the *Old Age Security Act* (OAS Act), no supplement may be paid to a pensioner for

(c) any month throughout which the pensioner is absent from Canada having commenced to be absent from Canada either before or after becoming a pensioner and having remained outside Canada before that month for six consecutive months, exclusive of the month in which the pensioner left Canada;

(d) any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month.

**iii. Period: November 2012 to August 2013**

[7] In his OAS benefits application, the Appellant stated that he had resided in Canada from September 24, 1991, to July 2, 2005, and from September 13, 2013.

[8] The Appellant was married in Morocco on December 5, 2012,<sup>6</sup> and his wife remained in Morocco. She does not yet have status in Canada.

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<sup>4</sup> *Old Age Security Regulations* (OAS Regulations), s 21(1)(a).

<sup>5</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>6</sup> GD2-76.

[9] In an investigation report dated March 31, 2014,<sup>7</sup> the Appellant said that he had had a house in Casablanca, Morocco, but that he had sold his assets in 2013 and had nothing left to his name. He had also closed his bank account.

[10] According to a letter dated May 11, 2016,<sup>8</sup> the Appellant has lived in Sherbrooke, Québec, since September 2013, and he pays \$600 per month for housing.

[11] According to a report by the Régie de l'assurance-maladie du Québec<sup>9</sup> (RAMQ), the Appellant is eligible for benefits from October 20, 1993, to July 1, 2005, and from May 1, 2014.

[12] The evidence on file shows that the Appellant filed a Canadian tax return in 2012.<sup>10</sup>

[13] The Appellant held a valid Moroccan passport from 2012 to 2017<sup>11</sup> and valid Canadian passports from 2005 to 2010, issued in Québec,<sup>12</sup> and from 2010 to 2015, issued in Morocco.<sup>13</sup>

[14] After September 13, 2013, the Appellant allegedly left Canada on October 6, 2013, on November 19, 2013, and on December 17, 2013. In a letter stamped February 28, 2014,<sup>14</sup> he explained that he had returned to Morocco to help his family, to prepare and arrange his personal affairs, and to obtain a visitor's visa for his wife while he could legally sponsor her. According to the list of passport stamps and the Canada Border Services Agency report,<sup>15</sup> he entered Canada on September 13, 2013, on October 28, 2013, on December 3, 2013, and on February 6, 2014.

## **CONCLUSION**

[15] I find that the Appellant was not resident in Canada for the period from November 2012 to August 2013. Unfortunately, there is no evidence of residence or ties in Canada during that period.

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<sup>7</sup> GD2-224.

<sup>8</sup> GD2-110.

<sup>9</sup> GD2-419.

<sup>10</sup> GD2-42.

<sup>11</sup> GD2-447.

<sup>12</sup> GD2-469.

<sup>13</sup> GD2-482.

<sup>14</sup> GD2-436.

<sup>15</sup> GD2-425.

[16] I must apply the rules of the OAS Act and the rules of case law to determine residence and GIS eligibility and, as stated, based on the evidence I cannot consider the Appellant a resident of Canada. Based on the Appellant's submissions and the evidence, he returned to Canada on September 13, 2013.

[17] The OAS Act does not allow GIS payments to pensioners outside Canada, whether they have taken up residence in another country or are simply absent for a significant period. The OAS Act does not permit GIS payments for any month throughout which the pensioner is **not resident** in Canada, having ceased to resident in Canada six months before the beginning of that month. Payments may resume as soon as the **pensioner** returns to Canada as a resident. Under the OAS Act,<sup>16</sup> the Appellant is eligible to receive the **OAS pension** as of November 2012, but **GIS payments** cannot begin in November 2012 because he was not resident in Canada.

[18] The appeal is dismissed for these reasons.

Antoinette Cardillo  
Member, General Division – Income Security

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<sup>16</sup> OAS Act, s 8.