



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. H. v Minister of Employment and Social Development*, 2019 SST 615

Tribunal File Number: AD-19-145

BETWEEN:

**S. H.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: June 28, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] S. H. (Claimant) applied for a Guaranteed Income Supplement (GIS) in May 2016. The Minister of Employment and Social Development approved the application, and began payment as of June 2015, which is the maximum period of retroactive payment that is allowed under the *Old Age Security Act*. The Claimant claimed that she was incapable of forming or expressing an intention to make the application before she did so and asked for further retroactive payment of the GIS. The Minister refused this because it decided that she was not so incapable.

[3] The Claimant appealed the Minister's refusal to grant further retroactive payment to the Tribunal. The Tribunal's General Division dismissed the appeal because it decided that the Claimant was not incapable of forming or expressing an intention to make the application before she did so. The Claimant's appeal from this decision is dismissed because the General Division did not base its decision on any erroneous finding of fact under the DESD Act.

### ISSUES

[4] Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material that was before it as follows:

- a) It equated her capacity to form or express an intention to make an application in 2016 with such capacity in 2012;
- b) It failed to consider that the Claimant's son arranged for the sale of her home and purchase of a condominium;
- c) It failed to consider that the Claimant's son hired an accountant to prepare her income tax returns; or

- d) It failed to consider that the Claimant was unable to drive for approximately two years starting in 2009?

## **ANALYSIS**

[5] The Department of Employment and Social Development Act (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.<sup>1</sup> The Claimant argues that the General Division based its decision on erroneous findings of fact. To succeed on this basis she must prove, on balance, three things: that a finding of fact was erroneous (in error); that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and that the decision was based on this finding of fact.<sup>2</sup>

[6] The DESD Act does not define the terms "perverse" or "capricious". However, guidance is given by court decisions that considered the Federal Courts Act, which has the same wording. In that context, perverse has been found to mean "willfully going contrary to the evidence". Capricious has been defined as being "so irregular as to appear to be ungoverned by law." I accept that these definitions apply when considering the DESD Act. The Claimant's arguments regarding erroneous findings of fact are examined below.

### **Capacity in 2016 and 2012**

[7] First, the Claimant argues that the General Division examined her capacity in 2016, and equated that with her capacity in 2012 and accordingly based its decision on an erroneous finding of fact. She says that she was going through a very difficult time from 2009 to 2012 because of serious mental and physical conditions. Her circumstances had improved by 2016, and so her capacity also improved. Therefore, she argues, the General Division erred when it considered her capacity to form or express an intention in 2016 and found that it was the same in earlier years.

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<sup>1</sup> DESD Act s. 58(1)

<sup>2</sup> *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

[8] It is clear that the Claimant went through a very difficult time with mental and physical health issues beginning in 2009. The General Division decision accepts this. The decision refers to the Claimant's testimony that she intended to apply for the GIS in 2012 and completed the forms to do so at that time.<sup>3</sup> It also states that the Claimant maintains control over her finances,<sup>4</sup> lives alone, does her banking online and gives consent for medical treatment.<sup>5</sup> She needs supportive care from family and friends.<sup>6</sup> This has not changed from 2012 to 2016. Therefore, the General Division made no error when it considered these things, and did not err when it decided that the Claimant had capacity to manage her own household, her banking and her medical treatment during the period that the Claimant claimed that she was incapable of forming or expressing an intention to make an application.

### **Sale and purchase of property**

[9] The second finding of fact that the Claimant argues is erroneous is that the Claimant sold her home and purchased a condominium around 2013. The Claimant argues that this is erroneous because her son is a real estate agent and he managed these transactions for her. This may be so. However, the Claimant signed the necessary paperwork to complete the sale and purchase of the properties. Nothing suggests that she required anyone to make these decisions on her behalf. Therefore, this finding of fact was not erroneous.

### **Preparing tax returns**

[10] The third finding of fact that the Claimant says was erroneous is the General Division's statement that she hired an accountant to complete outstanding tax returns.<sup>7</sup> She argues that it was her son, and not herself, who hired the accountant and took all the necessary documents to her for the tax returns to be completed and filed with the Canada Revenue Agency.

[11] The finding of fact that the Claimant hired the accountant was erroneous. It was made without regard for the Claimant's testimony that her son arranged for the tax returns to be

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<sup>3</sup> General Division decision at para. 15

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.* at para. 16

<sup>6</sup> *Ibid.* at para. 17

<sup>7</sup> *Ibid.* at para. 17

prepared. However, the decision was not based on who hired the accountant or took the documents to the accountant. It was based on all of the evidence about the Claimant's capacity to make decisions, including consenting to medical treatment, completing transactions to sell and purchase property, and signing tax returns.

### **Inability to drive**

[12] The final erroneous finding of fact that the Claimant points to is that the General Division failed to consider that she was unable to drive for approximately two years beginning in 2009. This is not referred to in the General Division decision, except a statement that the Claimant limits herself to driving short distances.<sup>8</sup> The General Division may have failed to consider this. However, to receive further retroactive payment of the GIS, the Claimant would have to have been incapable of forming or expressing an intention to make an application continuously from the date she claims the incapacity began until she applied for the GIS in 2016. She testified that she was unable to drive for approximately two years beginning in 2009, not for the entire period that ended in 2016. Therefore, the General Division's failure to specifically consider this was not an error.

[13] In addition, the fact that the Claimant began to drive again, but limits herself to short distances points to her capacity to make decisions, including decisions about how far to drive and decisions related to driving itself, during this time.

### **CONCLUSION**

[14] The General Division did not base its decision on any erroneous finding of fact. I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. It made no error in law. There is no suggestion that the General Division failed to observe a principle of natural justice or erred regarding its jurisdiction.

[15] Therefore, although I have sympathy for the Claimant and her difficult health and financial circumstances, the appeal must be dismissed.

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<sup>8</sup> General Division decision at para. 17

Valerie Hazlett Parker  
Member, Appeal Division

HEARD ON:	June 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. H., Appellant  Nathalie Pruneau, Representative for the Respondent