



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. F. v Minister of Employment and Social Development*, 2019 SST 628

Tribunal File Number: AD-19-317

BETWEEN:

S. F.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: July 8, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] S. F. (Claimant) was born in China. She worked in Italy and the U.S.A. as a professor before she moved to Canada and later retired. The Claimant applied for the Guaranteed Income Supplement (GIS) under the *Old Age Security Act* in July 2013. The Minister of Employment and Social Development approved payment of this benefit beginning April 2012. The Claimant disagreed with the amount that she received, and so appealed the Minister's decision regarding its calculation of this benefit to the Tribunal.

[3] Since it is only the Tax Court of Canada (TCC) that can decide what is income under the *Old Age Security Act*, the Tribunal referred the matter to the TCC. The TCC made a decision on the Claimant's income and that of her spouse. The Claimant still disagreed with the Minister's calculation of her GIS payment, and continued her appeal to the Tribunal.

[4] The Tribunal's General Division decided that it only had jurisdiction to consider the Claimant's income for the payment period of July 2013 to June 2014. It decided that the issue under appeal had been decided by the TCC and summarily dismissed the Claimant's appeal. The Tribunal's Appeal Division dismissed the Claimant's appeal from this decision.

[5] The Claimant applied to the Federal Court for judicial review of the General Division's decision. The Federal Court decided that the General Division erred when it decided that it did not have jurisdiction to decide issues related to the 2012/2013 GIS payment year. It referred the matter back to the Appeal Division only on the issue of the calculation of GIS for the entire period of April 2012 to July 2014.¹ The appeal is dismissed because although the General

¹ *Fu v. Attorney General of Canada* 2019 FC 527

Division erred when it failed to exercise its jurisdiction over the 2012 payment year, the same result is reached when this is considered.

ISSUES

[6] Did the General Division make a jurisdictional error when it only considered the GIS payment period of 2013/2014?

[7] If so, what remedy should the Appeal Division give?

ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. 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.² If at least one of these errors was made, the Appeal Division can intervene.

Did the General Division make a jurisdictional error?

[9] The Claimant received Italian social assistance payments from 2003 to 2012. The amount of these payments was included as income to calculate the amount of the GIS payment that was payable to the Claimant. Since the Claimant first received GIS payments she has disagreed with how her GIS benefit was calculated. In particular, she says that her social assistance payments from Italy should not be considered income, and should be excluded from the GIS calculation.

[10] A review of the entirety of the written record makes clear that the Claimant disputed this calculation for the period from April 2012 when the benefit started until July 2014. However, the

² DESD Act s. 58(1)

General Division considered only the Minister's reconsideration letter dated December 13, 2013,³ when it concluded that it had jurisdiction only to deal with the 2013/2014 payment period.

[11] The TCC decided that the General Division had jurisdiction to consider the entire period from 2012 to 2014. I agree. Therefore, the General Division made an error under the DESD Act when it refused to exercise its jurisdiction to consider the entire time from April 2012 to July 2014. The Appeal Division should intervene.

What remedy should the Appeal Division give?

[12] The DESD Act sets out what remedies the Appeal Division can give when it intervenes. This includes giving the decision that the General Division should have, and referring the matter back to the General Division for reconsideration,⁴ and that the Tribunal can decide any question of law or fact to dispose of an appeal.⁵ *The Social Security Tribunal Regulations* also require that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.⁶ Both parties have requested that I give the decision that the General Division should have given. The facts are not in dispute, and the record before me is complete. In addition, this appeal was started in 2013, over six years ago. Further delay would be incurred if the matter were referred back to the General Division for reconsideration. This is not in the interests of justice. Therefore, I will give the decision that the General Division should have given.

[13] The Claimant came to Canada with her husband in 2002. They retired, and both applied for benefits under the *Old Age Security Act*, including GIS. The Minister approved their applications and began to pay GIS benefits to the Claimant in April 2012. Both the Claimant and her husband disagreed with the Minister's calculation of the amount of the GIS benefit they received, so they appealed the Minister's decision. Their appeals were referred to the TCC because only the TCC has legal authority to decide income issues.⁷ One of the issues before the

³GD5-13

⁴DESD Act s. 59(1)

⁵ DESD Act s. 64

⁶ *Social Security Tribunal Regulations* s.3(1)

⁷ *Old Age Security Act* s. 28(2)

TCC was whether the Claimant's social assistance payments from Italy should be included as income when the amount of her GIS benefit is calculated. The TCC decision states:

The [Claimant's] social assistance payment from Italy is determined to be €6,711 or \$8,623, and therefore the total combined income of the [Claimant] and her spouse for the 2012 taxation year for purposes of determining the [Claimant's] GIS eligibility is reduced to \$15, 950.29.

There is no change to income for the 2010 and 2011 taxation years.

[14] The TCC decision also refers to its decision in the Claimant's husband's application to the TCC. This decision dealt with the same legal issues and the same benefit payable – GIS is calculated based on family income. The decision regarding the Claimant's husband states the following:

[4] The more significant issue is whether or not Mr. F.'s wife [Claimant], must include her social assistance payments from Italy in income for the determination of Mr. F.'s GIS entitlement.

...

[10] It is clear from a review of the *Old Age Security Act*, specifically sections 10 to 18, that Mr. F.'s entitlement to GIS is determined based on his income combined with his spouse's income. Further, income for this purpose is income calculated in accordance with the *Income Tax Act* (the ITA) with certain exceptions, one of which is the following, taken from (c)(iii) of the definition of income in the *Old Age Security Act*:

(iii) the amount of any social assistance payment made on the basis of a means, a needs or an income test by a registered charity as defined in subsection 248(1) of the *Income Tax Act* or under a program provided for by an Act of Parliament or a provincial legislature that is neither a program prescribed under the *Income Tax Act* nor a program under which the amounts referred to in subparagraph (i) are paid

This exception does not include foreign social assistance.

...

[13] ... I accept [the Claimant's] evidence that her [social assistance] payment would not have been taxable in Italy, but I find on balance the payment is more aptly described in subsection 56(u) of the ITA as a social assistance payment made on the basis of a means, needs or income test. That is precisely how [the Claimant] described her payment, not as a retirement arrangement. It is income therefore to be included in determining Mr. F.'s entitlement.

[15] The *Old Age Security Act* is clear. If, on an appeal to the Tribunal, the Minister's decision as to income from a particular source is a ground of appeal, the matter must be referred to the TCC, and the TCC's decision is final and binding for all purposes of the appeal to the Tribunal.⁸ The TCC specifically considered the Claimant's income from her Italian social assistance payments. It decided that this is income for the purpose of calculating the amount of GIS payment. It decided that the total family income for 2012 was \$15,950.29 and that no change should be made to the calculation for the 2010 and 2011 tax years. This decision is binding on the Tribunal. The Claimant's GIS benefit payable to the Claimant must be calculated on this basis.

[16] The Claimant argues that the Tribunal erred when it considered the definition of income set out in s. 13 of the *Old Age Security Act* (see reference in TCC decision to "sections 10 to 18 of this Act"). However, the reference to these sections is a general one, referring to the part of the *Old Age Security Act* that sets out all the rules for the GIS benefit. The General Division made no error in referring to this.

[17] The Claimant also argues that it is unfair to include social assistance payments received from Italy as income when social assistance payments from Canada are excluded. This may be so. However, the Tribunal cannot change the legislation. It is the legislation that excludes only Canadian social assistance benefits from income for GIS purposes. The Tribunal must apply the law to the facts of the case. The Tribunal must also follow decisions of the TCC. The TCC

⁸ *Old Age Security Act* s. 28(2)

decided that the Claimant's Italian social assistance is income for GIS purposes. Therefore, the Claimant's appeal from the Minister's decision cannot succeed on this basis.

CONCLUSION

[18] For these reasons, the appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	June 27, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	S. F., Appellant Matthew Vens, Counsel for the Respondent