



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. L. v Minister of Employment and Social Development*, 2019 SST 1629

Tribunal File Number: GP-18-271

BETWEEN:

L. L.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: July 11, 2019

Date of decision: July 14, 2019

DECISION

[1] The Claimant was not entitled to receive the Guaranteed Income Supplement (“GIS”) under the Old Age Security Act (“OAS Act”), for the period between July 2014 and June 2016.

OVERVIEW

[2] The Claimant applied for an Old Age Security (referred to as “OAS”) and a GIS in May 2014. On his OAS application, he stated he was a Canadian Citizen but lived permanently outside of Canada.¹ He resided in the Dominican Republic and had since September 1999. In his application for the GIS, he stated that he had been absent from Canada for more than 6 months within the past 18 months². He also completed a Questionnaire outlining where he resided from June 1967 to June 2015³. The Claimant told me at the hearing, he correctly indicated that he resided outside of Canada of his OAS and GIS application forms. He agrees that he is not entitled to the GIS payments because he was not residing in Canada.

[3] He is however, disputing that he is required to repay the overpayment. His reason is that since this was not an error caused by him, he should not be held responsible.

BACKGROUND

[4] In August 2015, the Claimant received a retroactive GIS payment of \$16,966.58 for July 2014 to August 2015⁴. The letter also said that he must tell the Minister if “you leave Canada for more than six months or if you move between countries outside of Canada. This may affect your eligibility for your benefits...” In addition, the letter said that the GIS is payable only for the month you leave Canada and for six months thereafter. The letter provided phone numbers to contact the Minister if the Claimant had any questions. The Claimant did not advise the Minister that he was residing in the Dominican Republic. He submitted that he told them that on the application forms, yet they chose to pay him the benefit.

¹ The OAS application begins at GD2R-4

² This statement is letter D in the application at GD2R-30

³ This questionnaire is at GD2R-13

⁴ This letter is at GD2R-33

[5] In November 2015, the Minister began an investigation whether the Claimant was living in the Dominican Republic⁵.

[6] On June 2, 2016, the Claimant was advised by letter that his entitlement to the GIS was suspended pending a review of his residency⁶.

[7] In October 2016, the investigation was completed. The Minister decided that the Claimant was not entitled to the GIS benefit. This resulted in an overpayment of \$15,009.10 from July 2014 to May 2016⁷. The Minister set a recovery rate of \$221.98 per month, which was 25% of the total amount of the Claimant's OAS and CPP monthly benefit payment. The Minister told the Claimant this decision in a letter dated October 27, 2016⁸.

[8] The Claimant asked for a reconsideration of this decision. He stated that the repayment would cause financial hardship. In addition, he had been honest in his applications about his residency in the Dominican Republic. This was not his error and he believed he was not responsible for the Minister's error.

ISSUES IN THIS APPEAL

[9] Was the Claimant entitled to the GIS from July 2014 until May 2016?

[10] If not, is the Claimant obligated to reimburse the Minister for the GIS overpayment?

ANALYSIS

i) Was the Claimant entitled to receive the GIS from July 2014 to May 2016?

[11] There are eligibility requirements for the GIS benefit, including being a resident of Canada⁹. A person resides in Canada if he makes his home and ordinarily lives in Canada¹⁰.

⁵ This investigation request is at GD2R-39

⁶ The suspension letter is at GD2R-83

⁷ The results of the investigation are at GD2R-93

⁸ Decision letter is at GD2R-95

⁹ These requirements are found in Subsections 11(1)(2)(4) & (7) OASA and Section 10 OAS Regulations

¹⁰ This is explained in Paragraph 21(1)(a) of the OAS Regulations

Residency is a factual issue that requires an examination of the whole context of the individual¹¹. Factors that I considered to determine the Claimant's residency include: his ties in the form of personal property; his social and fiscal ties; his ties in other countries including the Dominican Republic; and the regularity and length of his stays in Canada.

[12] This appeal is unique because both the Claimant and the Respondent agree that he was not resident in Canada since 1999. The Claimant told me that at no time did he ever indicate to the Respondent or on his application forms that he resided in Canada. In fact, he was amazed that the Respondent approved the GIS application. He agrees that he should not have received the GIS benefit because he was not living in Canada.

[13] After considering the documentary evidence, the submissions of the Respondent and the testimony of the Claimant, I agree that the Claimant was not a resident of Canada since 1999. Therefore, he is not entitled to receive the GIS from July 2014 to May 2016.

ii) Is the Claimant obligated to reimburse the Minister for the GIS overpayment?

[14] From July 2014 to May 2016, the Claimant received GIS payments totaling \$15,009.10.

[15] The OAS Act confirms that a person receiving a benefit to which they were not entitled shall forthwith return or repay the benefit. This is a debt due to the Crown¹². Despite those provisions, the Minister may remit all or part of the overpayment amount if it is satisfied that one or more of the following apply:

- (a) The amount cannot be collected within the reasonably foreseeable future;
- (b) The administrative costs of collecting the amount are likely to equal or exceed the amount to be collected;
- (c) Repayment of the amount would cause undue hardship to the debtor; or

¹¹ The Federal Court explains this further in three decisions called *Singh v. Canada (AG)*, 2013 FC 437; *De Bustamante v Canada (AG)*, 2008 FC 1111; and *Canada (MRD) v Ding*, 2005 FC 76

¹² Subsection 37(1) and (2) of the *Old Age Security Act*

(d) The amount is the result of erroneous advice or administrative error in the administration of the OAS Act¹³.

[16] Some of these circumstances may apply in this case. The Claimant mentioned financial hardship on several occasions.¹⁴ The Claimant has argued that allowing his approval of the GIS was an administration error of the Minister and no fault of his own. He provided truthful and accurate the information in his applications.

[17] Those OAS Act provisions may provide the Claimant with some potential relief against the overpayment demand. However, I cannot make a finding on whether the Claimant is obligated to repay the overpayment amount, nor can I order the Minister to remit all or part of the overpayment amount. The Federal Court of Appeal, whose decisions are binding on me, has determined that the Tribunal does not have the power to make a finding on an appeal of the Minister's decision on remitting any or all of an overpayment. Decisions relating to the forgiveness of an overpayment made because of erroneous advice/administrative error are not decisions "respecting the amount of any benefit that may be paid to that person". As a result, such decisions are outside of the Tribunal's jurisdiction. The Federal Court of Appeal stated that the only remedy available to a person under these circumstances would be to apply to the Federal Court for judicial review of the Minister's decision¹⁵.

[18] I am sympathetic to the Claimant's situation. However, any intervention by me on this issue would constitute an error in law.

CONCLUSION

[19] The appeal is dismissed.

Connie Dyck
Member, General Division - Income Security

¹³ Section 37(4) of the *Old Age Security Act*

¹⁴ *O-42754 v. Minister of Human Resources Development* (June 4, 1999)

¹⁵ *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278 (CanLII), and s. 27.1(1) of the *Old Age Security Act*