Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *I. P. v Minister of Employment and Social Development*, 2019 SST 1072

Tribunal File Number: GP-18-1842

BETWEEN:

I. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: August 6, 2019

Date of decision: August 7, 2019

Canada

DECISION

[1] The Claimant is not entitled to more than a 4/40ths Old Age Security ("OAS") pension.

OVERVIEW

[2] The Claimant was born in Canada in May 1930, but moved to the United States in October 1956. She has lived in the United States ever since. The Minister received her application for the OAS pension disability pension on March 17, 2016. On October 23, 2017, the Minister granted a 4/40ths OAS pension. The Claimant requested a reconsideration of this decision, claiming that her residency in Canada from 1948 to 1956 actually entitled her to an 8/40ths OAS pension. However, the Minister maintained its original decision on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] The Claimant is not disputing the amount of time that she was resident in Canada. However, she disagrees with the Minister's application of the *Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security* (which I will simply call the "Canada-US Agreement"). According to the Minister, the Canada-US Agreement only permits Canadian residency on or after January 1, 1952, to be considered when calculating the amount of an OAS pension.

ISSUES

[4] What is the impact of the Canada-US Agreement on the Claimant's OAS pension?

[5] If the Claimant's OAS pension is less than 8/40ths, does the nature of her pre-1952 work in Canada or the advice received from a Minister's employee affect the amount of her pension?

ANALYSIS

[6] In general, entitlement to an OAS pension is based solely on an applicant's actual residence in Canada. However, Canada has social security agreements in place with several countries. These social security agreements are all different, but they generally allow certain time spent in one of the countries to count towards social security eligibility in the other country. The Canada-US Agreement is one such agreement.

What is the impact of the Canada-US Agreement on the Claimant's OAS pension?

[7] There is no dispute that the Claimant resided in Canada from her birth in May 1930 until she moved to the United States in October 1956.[1] This is a period of just over 26 years. However, only Canadian residency after age of 18 counts towards an OAS pension.[2] There also is no dispute that the Claimant resided in Canada for less than 9 years after her 18th birthday.

[8] Without the Canada-US Agreement, the Claimant would not be entitled to an OAS pension. She would not have the required 20 years of Canadian residency that would allow her to receive an OAS pension while residing outside of Canada.[3] However, the Canada-US Agreement only assists the Claimant with eligibility for an OAS pension. The amount of the OAS pension still depends on the eligible periods of residence in Canada. This distinction is important.

[9] Article VIII of the Canada-US Agreement allows quarters of social security coverage in the United States to count towards eligibility for an OAS pension. This is what enables the Claimant to qualify for an OAS pension. However, if eligibility only exists because of Article VIII, Article IX states that the amount of an OAS pension can be based only on periods of residence in Canada on or after January 1, 1952. In this case, the Claimant's eligibility for an OAS pension is only achieved through Article VIII of the Canada-US Agreement. This means that her residence in Canada before January 1, 1952, cannot be considered when calculating the amount of her OAS pension.

[10] As a result, only the Claimant's residence in Canada from January 1, 1952, to October 1956 can count towards the amount of her OAS pension. This is a period of roughly four years and nine months. However, if a period of residence contains a fraction of a year, the total period of residency must be rounded down to the next lower multiple of a year. This means the Claimant has four years of Canadian residency for the purposes of calculating her OAS pension amount, and she is entitled to 4/40ths of a full OAS pension.[4] As the Claimant is already receiving

---

[1] GD2-39 and GD2-43.
[2] See, generally, section 3 of the *Old Age Security Act*.
[3] Subsection 3(2) of the *Old Age Security Act*.
[4] These rules are set out in subsections 3(3) and 3(4) of the *Old Age Security Act*.

a 4/40ths pension, it appears that her appeal cannot succeed. However, before concluding, I would like to address her two main arguments for receiving an 8/40ths pension.

Does the nature of the Claimant's pre-1952 work in Canada, or the advice received from a Minister's employee, affect the amount of her OAS pension?

[11] For the reasons that follow, neither of these factors affect the amount of the Claimant's OAS pension.

The nature of the Claimant's pre-1952 work in Canada

[12] When she was studying to be a registered nurse from 1949 to 1952, the Claimant described working 12 hours per day, for 6½ days per week. She described these three years as the hardest years of her life as a young person, as she was in charge of patient care at a hospital and had tremendous responsibilities. She said those years were like being a slave: all she did was work, study, and sleep. She believes these difficult years should be recognized by the Tribunal.

[13] I do not dispute the Claimant's account of these years. The demands on her were heavy, particularly at such a young age, and her pay was minimal. However, the Claimant's activities before 1952 are simply not relevant when determining the amount of an OAS pension. As noted above, residency before January 1, 1952, does not count towards the amount of an OAS pension, even if the Claimant's activities during that time were clearly for the benefit of Canada and Canadians.

[14] The Tribunal is created by legislation. As a result, the Tribunal only has the powers granted to it by its governing statute. I must therefore interpret and apply the provisions as they are set out in the *Old Age Security Act*, and as they are supplemented by agreements such as the Canada-US Agreement. I cannot ignore the law, even if it appears to be unfair in a particular case.

The advice received from a Minister's employee

[15] The Claimant said she had a conversation with a Minister's employee (named "Morgan") on August 23, 2017. Morgan apparently told the Claimant that she would receive an OAS

pension of $116.75 per month, retroactive to 2015. This corresponds to an 8/40ths pension, rather than the 4/40ths pension the Claimant currently receives.[5]

[16] As with the Claimant's account of her days as a nursing student, I do not deny that the conversation with Morgan took place. Morgan may well have been under the mistaken belief that pre-1952 years of Canadian residence were included when calculating the amount of an OAS pension. The question is whether the Minister is bound by Morgan's mistaken belief.

[17] Once again, I must interpret and apply the provisions that appear in the applicable legislation. A statement by a Minister's employee cannot take precedence over what the law says. In addition, the *Old Age Security Act* addresses what can happen when an administrative error or erroneous advice causes the denial of a benefit that a person should have received. The Minister can then take "remedial action", if appropriate, to put the person in the position they should have been in (without the erroneous advice or the administrative error).[6]

[18] It is not clear that Morgan's statement caused the denial of a benefit that the Claimant was legally entitled to receive. However, even if Morgan's actions amount to an administrative error or erroneous advice that caused the denial of a benefit, the Claimant must raise this matter directly with the Minister. The Tribunal does not have the jurisdiction to intervene in cases of administrative error or erroneous advice. If the Claimant is not satisfied with the Minister's response, it appears that her recourse is to the Federal Court instead of the Social Security Tribunal.[7] I do not have the authority to intervene.

CONCLUSION

[19] The Claimant's OAS pension amount cannot be increased by either Morgan's comments about an 8/40ths pension or the nature of the Claimant's work prior to January 1, 1952. The Claimant is entitled to receive an OAS pension amounting to 4/40ths of a full pension. As she is already receiving this amount, her appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

---

[5] The Claimant first mentioned this at GD2-13, but also affirmed it at GD1-2, GD1-4, and at the hearing itself.
[6] This is set out in section 32 of the *Old Age Security Act*.
[7] See Federal Court of Canada cases such as *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99.