



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. P. v Minister of Employment and Social Development*, 2019 SST 1649

Tribunal File Number: GP-18-1456

BETWEEN:

**S. P.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Antoinette Cardillo

Teleconference hearing on: August 8, 2019

Date of decision: August 30, 2019

## **DECISION**

The Appellant is not entitled to the Allowance (ALW) benefits from June 2014 to June 2016 based on her first ALW application dated July 12, 2013.

## **OVERVIEW**

[1] The Appellant applied for the Allowance (ALW) on July 12, 2013<sup>1</sup>. The ALW was granted effective on June 2014, the month following the Appellant's 60th birthday. After an investigation, the Minister determined that the Appellant's spouse was not eligible to receive the Old Age Security pension and the Guaranteed Income Supplement (GIS) from July 2011 to April 2017, therefore, the Appellant was not eligible to receive the ALW benefits from June 2014 to June 2016 pursuant to the *Old Age Security Act (OAS Act.)* A reimbursement of the benefits received was requested. The Appellant requested a reconsideration of the Minister's decision. The Minister denied the reconsideration request and the Appellant appealed the reconsideration decision to the Social Security Tribunal.

## **ISSUE**

[2] The issue in this appeal is whether the Appellant is entitled to the ALW from June 2014 to June 2016 based on her first ALW application dated July 12, 2013.

## **ANALYSIS**

### *i. Applicable law*

[3] The *OAS Act*<sup>2</sup> provides for the payment of an income-tested ALW benefit to individuals age 60 to 64 who meet the minimum residence requirements and who are the spouses or common-law partners of GIS beneficiaries.

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<sup>1</sup> GD2-225

<sup>2</sup> Subsection 19(6)(b)

[4] Subsection 5(1) of the OAS Act provides that, no pension may be paid to any person unless that person is qualified under the Act, an application has been made by or on behalf of that person and the application has been approved.

[5] Subsections 3(1) and (2) of the *Old Age Security Regulations (OAS Regulations)* provide that where required by the Minister, an application for a benefit shall be made on an application form and an application is deemed to have been made only when an application form completed by or on behalf of an applicant is received by the Minister.

*ii. Documentary evidence and testimonies*

[6] The Appellant was born on May X, 1954. She arrived in Canada on August 15, 1988 with her spouse. She applied for the ALW on July 12, 2013. Her husband was already in receipt of the OAS pension and GIS benefits since July 2011. The Appellant's ALW was granted effective June 2014, the month following her 60th birthday.

[7] Based on the evidence, in February 2015, the Appellant's ALW file is requested by Service Canada integrity department for Canadian residence review following a joined investigation by the RCMP and the Canada Border Services Agency.

[8] During an interview with an integrity agent on May 9, 2017, the Appellant's spouse admitted he did not sign nor complete his OAS pension application submitted in November 2010. He asked his son to complete and sign the application on his behalf by verbal procuration.

[9] On October 19, 2017<sup>3</sup>, the Minister sent a letter to the Appellant indicating that she was not entitled to the ALW benefits because her spouse was not eligible to receive the GIS benefits and also because she did not reach the minimum of 10 years of Canadian residence. Consequently, she was not eligible for ALW benefits from June 2014 to April 2017 creating an overpayment amount of \$36,637.85.

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<sup>3</sup> GD2-18

[10] The Appellant asked for a reconsideration of the Minister's decision and on April 19, 2018<sup>4</sup>, a decision letter was sent to the Appellant stating that the decision dated October 19, 2017 regarding the legitimacy of her spouse's OAS pension application submitted in November 2010 was maintained. The letter further stated that regarding the review of the Appellant's second ALW application dated June 15, 2017 with the new documents sent along with the request for reconsideration, the original decision was reversed, as the Appellant was found eligible for the ALW effective on July 2016. As a result, the total ALW overpayment of \$36,637.85 was revised to \$26,040.25.

[11] In her notice of appeal, the Appellant stated that she was not responsible for the signature of her spouse's OAS pension application in 2010. She signed her ALW application in 2013 and she should be entitled to the benefits.

[12] In his Notice of Appeal, the Appellant's spouse stated that he asked his son to fill out the OAS application submitted in 2010 and sign it for me.

[13] Based on the evidence and the testimony of the Appellant's spouse at the hearing, the OAS application submitted in November 2010 was not made by him nor was it made on his behalf. The son of the Appellant signed the form as if he was the Appellant's spouse. He did not sign his name on behalf of the Appellant's spouse but represented himself as being the Appellant's spouse. The Appellant did not add any additional information during the hearing.

[14] The *OAS Act* is very clear and indicates that payment of the ALW benefits are made to the spouses of GIS beneficiaries. Given that the Appellant's spouse is not entitled to the GIS from July 2011 to July 2016, she cannot therefore be eligible for the ALW for the period from June 2014 to June 2016.

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<sup>4</sup> GD2-4

**CONCLUSION**

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

Antoinette Cardillo  
Member, General Division - Income Security