



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v Minister of Employment and Social Development*, 2019 SST 1605

Tribunal File Number: GP-18-2564

BETWEEN:

A. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Virginia Saunders

DATE OF DECISION: September 4, 2019

REASONS AND DECISION

DECISION

[1] The appeal is summarily dismissed; because I am satisfied it has no reasonable chance of success.

OVERVIEW

[2] The Claimant's wife died in September 2011. He applied for a survivor's allowance under the *Old Age Security Act* (OAS Act) in March 2014.¹ The Minister granted the application, with payment effective April 2013. However, the Minister only paid the allowance from April 2013 to December 2014, and from June 2015 to October 2015.² The Minister gave the following reasons for these dates:³

1. The allowance could not be paid before April 2013 because the OAS Act allows a maximum of eleven months of retroactive payments, counting from the date the application was received.
2. The allowance could not be paid from January to May 2015 because the Claimant was outside Canada from June 2014 to June 2015.
3. The allowance could not be paid after October 2015 because the Claimant turned 65 that month.

[3] The Claimant appealed to the Tribunal. He said he applied late because he did not receive the application forms in time, and because he was unwell and had a difficult time for many years after his wife's death. He did not dispute that he was absent from Canada from June 2014 to June 2015, but said there were extenuating circumstances. He feels payments have been unfairly denied to him on technical grounds, and that the decision defied the purpose of the OAS Act.

¹ GD2-3-6

² Initial decision, January 4, 2016, GD2-81-82

³ Reconsideration decision, October 9, 2018, GD2-103-104

[4] The Tribunal has to summarily dismiss an appeal if satisfied there is no reasonable chance of success.⁴

ISSUE

[5] I have to decide if the appeal has a reasonable chance of success. That involves the question of whether the Claimant is entitled to payment of the allowance before April 2013, from January to May 2015, and after October 2015.

ANALYSIS

The allowance is not payable before April 2013

[6] A person whose spouse has died, and who has not remarried or become the common-law partner of another person, may be eligible for an allowance if he is between 60 and 64 years of age and meets residency requirements.⁵ The allowance cannot be paid until the person has applied for it, and the application has been approved.⁶

[7] The OAS Act specifically limits the amount of retroactive payment of the allowance. It cannot be paid more than eleven months before the application is received.⁷ The Claimant's application was received in March 2014, so payment could not begin before April 2013. That is the case regardless of the reason for the delay in applying.

The allowance is not payable between January and May 2015

[8] The OAS Act also limits the length of time a person can receive the allowance if he is outside Canada. Payment stops if the person is outside Canada for more than six months.⁸

[9] The Claimant gave a written statement that he was outside Canada from June 2014 to June 2015.⁹ He did not dispute the Minister's decision that he was absent from Canada during this period. He said he was absent because he had to look after his mother in India and settle

⁴ *Department of Employment and Social Development Act* subsection 53(1); *Miter v. Canada (A.G.)*, 2017 FC 262

⁵ OAS Act subsection 21(1)

⁶ OAS Act subsection 21(4)

⁷ OAS Act paragraph 21(9)(a)

⁸ OAS Act paragraph 21(9)(b)

⁹ GD2-17

some family matters.¹⁰ However, the reason for the absence does not matter; nor does it matter that the Claimant's primary residence is in Canada.

[10] The Claimant left Canada in June 2014. By January 2015 he had been absent for six consecutive months, not including the month he left. That meant the allowance was not payable to him. The Minister started paying him again in June 2015, the month he returned.

The allowance is not payable after October 2015

[11] The Claimant did not specifically appeal on this ground, but I will mention it anyway. The OAS Act says quite clearly that the allowance is only payable to a person who is at least 60 but has not yet turned 65.¹¹ The Claimant turned 65 in October 2015, so he was not entitled to receive the allowance after that month.

The Tribunal does not have equitable jurisdiction

[12] I agree with the Claimant that the OAS Act was intended to help seniors. However, it was written with limitations on how much help is available. I have to follow the law. That includes respecting and applying those limitations. I don't have the power to grant the Claimant greater retroactivity of his allowance, or to say he can receive it when he has been outside Canada for more than six months, or after he has turned 65. That is the case no matter the reasons for the Claimant's delay or his absence. The Minister correctly determined the months in which the Claimant was entitled to receive the allowance. As a result, I find the appeal has no reasonable chance of success.

[13] I gave the Claimant notice in writing of my intention to summarily dismiss this appeal. In his response to the notice, he suggested I might be colluding with Service Canada because the notice was sent soon after the Minister had filed its submission requesting the same. He thought the whole process looked like it was "fixed" and that, rather than acting as a mouthpiece for the Government I should be helping him. He asked to be heard in person.

¹⁰ GD2-72-73, 86

¹¹ OAS Act paragraph 21(1)(a)

[14] But the law says I have to summarily dismiss an appeal if it has no reasonable chance of success. That is the case here. There is no point in allowing the Claimant to waste his efforts on an appeal that is bound to fail. Nor was there any point in waiting to respond to the Minister's request to summarily dismiss the appeal. The Minister had the right to make the request. I saw no reason to delay acting upon it, as there is no basis on which the Claimant's appeal could succeed.

CONCLUSION

[15] The appeal is summarily dismissed.

Virginia Saunders
Member, General Division - Income Security