



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. L. v Minister of Employment and Social Development*, 2019 SST 1476

Tribunal File Number: GP-18-1806

BETWEEN:

**K. L.**

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: Pierre Vanderhout

Teleconference hearing on: October 15, 2019

Date of decision: October 16, 2019

## **DECISION**

[1] The Claimant was required by law to repay his original 2012 and 2013 Old Age Security (“OAS”) pension payments of \$6,516.55, in order to defer his OAS pension to February 2017. While the Tribunal does not have the authority to make a finding on the erroneous advice issue, the Claimant might still be able to pursue it with the Minister or the Federal Court.

## **OVERVIEW**

[2] The Claimant turned 65 on January 10, 2012. Later that year, he applied for the OAS pension. His application was approved in December 2012, and he was granted benefits back to February 2012. However, in May 2013, he told the Minister that he wished to take advantage of the “OAS Voluntary Deferral Program”. That would end his OAS pension for the time being, but would give him an increased amount when he eventually reapplied for and started receiving the OAS pension. The Minister granted this request, but the Claimant had to repay the OAS pension he had already received.

[3] In July 2016, the Claimant applied again for his OAS pension. He wanted to start receiving it after his 70<sup>th</sup> birthday in January 2017. The Minister approved his application in March 2017, and paid the pension effective February 2017. However, it was only 25.8% more than the full OAS pension amount, instead of the 36% premium that the Claimant expected. He wanted the premium increased to 36%, or a return of the repayment he made in 2013. The Minister denied his request on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal. At the hearing, the Claimant admitted that the 25.8% premium was correct. However, he argued that the law did not require him to repay the OAS pension payments he had received in 2012 and 2013. He also said he had been given incorrect advice by the Minister’s employees.

## **ISSUES**

[4] Did the Claimant have to pay back the OAS payments he received in 2012 and 2013, as a condition of deferring his OAS pension to 2017?

[5] What can be done about the erroneous advice he apparently received from the Minister?

## ANALYSIS

[6] OAS recipients are able to defer the start of their OAS pension for up to five years after their 65<sup>th</sup> birthday. Each deferred month increases the OAS pension amount by 0.6%.<sup>1</sup> Although the deferral program took effect on July 1, 2013, it was also available to those (like the Claimant) who reached age 65 prior to that date. However, the 0.6% per month increase does not apply to months before July 2013.<sup>2</sup> The Claimant deferred his OAS pension until February 2017. As a result, starting in July 2013, his OAS pension was increased by 0.6% for each month of the deferral. This caused a 25.8% increase in the monthly amount of his pension.

[7] The Minister told the Claimant he had to repay the OAS pension payments he had already received, if he wanted to take advantage of the OAS deferral program. There was some confusion about the exact amount to be repaid, due to taxes. However, based on the Minister's revised instructions, the Claimant repaid the amount of \$6,516.55.<sup>3</sup> The Claimant now says he should not have had to repay \$6,516.55, as a condition of the OAS deferral program.

### **Did the Claimant have to pay back the OAS payments he received in 2012 and 2013?**

[8] For the reasons that follow, I find that the Claimant had to pay back the OAS payments he received in 2012 and 2013.

[9] The Claimant says the requirement to pay back his 2012 and 2013 OAS payments was only a policy. He says he is not bound by a policy: he can only be bound by a law. The Minister's submissions also focus on the policy, rather than the law.<sup>4</sup> I will consider whether the law required the Claimant to repay the payments he received prior to July 2013.

[10] The pension increase in the OAS deferral program is based on when a person applies for their pension. The Claimant received credit for deferred months up to January 2017, for a pension starting in February 2017. However, his original October 2012 application for the OAS pension made no mention of deferral: at that time, he wanted his effective date to be February

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<sup>1</sup> S. 7.1(1) of the *Old Age Security Act*.

<sup>2</sup> S. 7.1(4) of the *Old Age Security Act*.

<sup>3</sup> GD2-25 and GD2-27

<sup>4</sup> GD5-2

2012. Only his July 2016 application mentioned a deferral to February 2017.<sup>5</sup> It follows that his OAS current pension is based on his July 2016 application.

[11] However, a person cannot have multiple valid applications for an OAS pension. The deferral provisions speak only of a single application date.<sup>6</sup> A person must cancel any previous application before making a new application. This means the Claimant must have cancelled his October 2012 application in order to take advantage of the deferral program. The *Old Age Security Act* (the “Act”) sets out the rules for cancelling an application.

[12] According to the Act and its regulations, a person must make a cancellation request in writing. The Minister must receive the request no later than six months, “after the day on which payment of the pension begins”.<sup>7</sup> The Minister approved the Claimant’s application and made the first payment (including retroactive payments) on December 14, 2012.<sup>8</sup> As a result, the Claimant had until June 14, 2013, to cancel his OAS pension. The Minister received his two almost identical requests to cancel his OAS pension on May 8 and June 4, 2013.<sup>9</sup> This means the Claimant made his cancellation request on time.

[13] The Act also says an application is “deemed never to have been made”, if the Minister grants the request and the pension “is repaid within the prescribed time”.<sup>10</sup> The “prescribed time” is six months after the request is granted.<sup>11</sup> While the Minister granted the Claimant’s request on June 14, 2013, that letter had an error. The Minister adjusted the repayment period and amount in a letter dated August 8, 2013, and said the Claimant had until February 7, 2014, to repay the pension.<sup>12</sup> On January 2, 2014, the Minister said the repayment had been received.<sup>13</sup> As this was before the February deadline, the Claimant successfully cancelled his initial OAS pension. He could not have cancelled the initial OAS pension if he did not repay it in accordance with the

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<sup>5</sup> GD2-7 and GD2-31

<sup>6</sup> S. 7.1(1) of the *Old Age Security Act*.

<sup>7</sup> S. 9.3(1) of the *Old Age Security Act* and s. 26.1(1) of the *Old Age Security Regulations*.

<sup>8</sup> GD2-16

<sup>9</sup> GD2-21 and GD2-22

<sup>10</sup> S. 9.3(2) of the *Old Age Security Act*.

<sup>11</sup> S. 26.1(2) of the *Old Age Security Regulations*.

<sup>12</sup> GD2-25 and GD2-27

<sup>13</sup> GD2-29

Act. In other words, the repayment was required by law, not just by the Minister's policies. This ground of appeal therefore cannot succeed.

[14] However, I also want to look at the Claimant's reasons for cancelling and deferring his pension. He said he would not have deferred his pension if he knew that he would not get the full 36% increase in the monthly amount. He did not learn about the lesser (25.8%) increase until the Minister's letter of March 9, 2017. He thought he would get the maximum 36% increase, based on what the Minister's employees had told him.

**What can be done about the erroneous advice that the Claimant apparently received?**

[15] While it is possible that the Claimant received erroneous advice, I find that the Tribunal does not have the authority to consider this issue.

[16] The Claimant said he received incorrect advice from the Minister's employees on at least three occasions. He said "Roxanne" advised him to cancel his initial OAS pension as early as 2012: this resulted in his cancellation requests of May 6 and May 21, 2013. Roxanne apparently said he would get a full 36% increase in his OAS pension if he cancelled his pension and asked for it to start again after his 70<sup>th</sup> birthday. He also said his February and March 2017 discussions with "Zenesa" and "David" prompted his March 29, 2017, reconsideration request.

[17] The Claimant said he would not have deferred his OAS pension in 2013, and repaid the amounts he had already received, if he knew he would not get a 36% increase in his OAS pension when it started in February 2017.

[18] While the discussions with Zenesa and David took place long after the Claimant cancelled his initial OAS pension, it is possible that Roxanne's advice affected his decision to cancel the pension. He also points out that section 32 of the Act deals with erroneous advice. That section says the Minister can take remedial action, if satisfied that a "person was denied a benefit or a portion of a benefit" because of erroneous advice by an employee of the Minister. The remedial action is supposed to put the person in the position he would have been in, if the erroneous advice had not been given.<sup>14</sup>

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<sup>14</sup> S. 32 of the *Old Age Security Act*.

[19] Although section 32 of the Act might apply to the Claimant's situation, he must first raise the issue of erroneous advice with the Minister. It is not clear that the Claimant has done this. At the hearing, he said he never made a formal request in writing. In the filed materials, I do not see a decision about the issue of erroneous advice.

[20] From the Tribunal's perspective, however, it does not matter if the Minister has already made a decision on the erroneous advice issue. The Tribunal is created by statute, and can only make decisions that are specifically assigned to it by statute. The Act does not give the Tribunal authority to deal with the issue of erroneous advice.<sup>15</sup> As a result, I cannot make a finding on whether the Claimant received erroneous advice from one of the Minister's employees. If the Claimant is not happy with the Minister's decision on the advice issue, he would have to make an application for judicial review to the Federal Court of Canada.<sup>16</sup>

## CONCLUSION

[21] The appeal is dismissed. However, this does not necessarily prevent the Claimant from pursuing the erroneous advice issue with the Minister or the Federal Court.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>15</sup> The jurisdiction of the Tribunal for OAS matters is described in ss. 27.1 and 28(1) of the *Old Age Security Act*.

<sup>16</sup> The Federal Court and the Federal Court of Appeal have made binding decisions on this topic. See *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278, *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99, and *Canada (Minister of Human Resources Development) v. Myrheim*, 2004 FC 884.