



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. D. v Minister of Employment and Social Development and The Estate of G. G.*,  
2019 SST 1051

Tribunal File Numbers: AD-19-447 and AD-19-448

BETWEEN:

**M. D.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**The Estate of G. G.**

Added Party  
(AD-19-447)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 17, 2019

## DECISION AND REASONS

### DECISION

[1] Leave to appeal the decision given by the General Division of the Social Security Tribunal of Canada on May 7, 2019, is refused.

### OVERVIEW

[2] The Applicant, M. D., applied for the Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OAS Act). The GIS was paid to the Applicant since the start of her Old Age Security (OAS) pension in August 2011.

[3] The Applicant's OAS pension could not be paid in July 2017 because the Respondent had not received her Canada Revenue Agency (CRA) income tax and benefit returns for 2016 as part of the renewal process. The Applicant completed a 2016 statement of income for the renewal of the GIS, and she stated that she was in a common-law relationship. In 2015, the Applicant had stated that she was single.

[4] After receiving information about the Applicant's change of marital status, the Respondent recalculated the GIS amount to which she was entitled. The Respondent gave an initial decision on August 25, 2017, finding that, for the period of July 2016 to June 2017, the Applicant did not qualify to receive the GIS according to the rate for people living alone and based on her income.

[5] The deceased went to live with the Applicant on June 25, 2015, left her to go to the hospital then to the palliative care centre on June 15, 2017, and died on August 6, 2017.

[6] A GIS overpayment for the period of July 2016 to June 2017 was claimed from the Applicant. An overpayment for the period of July 2016 to June 2017 was also claimed from the Added Party.

[7] On her own behalf and on behalf of the Added Party as its executor, the Applicant requested a reconsideration of the Respondent's decisions. The Respondent upheld its final

decisions. The Applicant appealed those decisions to the General Division. The General Division joined the appeals and gave a single decision for these two files.

[8] The General Division found the following: The Applicant adjusted her statements based on how she could benefit from them, which raises an issue of credibility with her testimony; and the Applicant and the deceased were in a common-law relationship from June 25, 2015, until the deceased's death. As a result, the appeal was dismissed.

[9] In her application for leave to appeal, the Applicant argues that the General Division [translation] "jumped to conclusions."

[10] The appeal does not have a reasonable chance of success because the Applicant has not raised any arguable case that the General Division may have made an error.

## **ISSUE**

[11] Is there an arguable case that the General Division erred when it found that the Applicant and the deceased were in a common-law relationship?

## **ANALYSIS**

[12] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.<sup>1</sup>

[13] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground on which the Applicant might succeed?<sup>2</sup>

[14] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error. The only reviewable errors are the

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act), ss 56(1) and 58(3).

<sup>2</sup> *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

<sup>3</sup> DESD Act, s 58(2).

following:<sup>4</sup> The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

**Is there an arguable case that the General Division erred in finding that the Applicant and the deceased were in a common-law relationship?**

[15] According to the Applicant, the General Division should have considered the deceased's health and the fact that the Applicant could not let him die without helping him.

[16] The Tribunal sent the Applicant and the Added Party a request for additional information.<sup>5</sup> It did not receive any reply. As a result, the Appeal Division does not have a detailed explanation of the reasons for which the parties are appealing.

[17] Contrary to the Applicant's submission, the General Division considered the Applicant's arguments, according to which the deceased's health deteriorated so much so that he could not live on his own, he asked the Applicant in the spring of 2015 whether he could go stay with her, and she agreed to look after him until the end of his life, which was approaching.<sup>6</sup>

[18] The Applicant is repeating the arguments that she presented before the General Division, but she has not raised any arguable case that the General Division may have based its decision on a reviewable error.

[19] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misconstrued important evidence. I also find that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not raised any error of law or any

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<sup>4</sup> DESD Act, s 58(1).

<sup>5</sup> Letter from the Tribunal dated July 17, 2019.

<sup>6</sup> General Division decision at para 16.

erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[20] For these reasons, I find that the appeal does not have a reasonable chance of success.

[21] The General Division joined the appeals and gave a single decision for these two files. Therefore, the Appeal Division is giving a single decision for these two files.

**CONCLUSION**

[22] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	M. D., self-represented and Representative for the Added Party
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