



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *L. R. v Minister of Employment and Social Development*, 2019 SST 1588

Tribunal File Number: GP-18-488

BETWEEN:

**L. R.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Antoinette Cardillo

DATE OF DECISION: November 29, 2019

## DECISION

I find that the Appellant is not eligible to receive Old Age Security (OAS) benefits while he is incarcerated in a federal penitentiary within the meaning of section 5(3) of the *Old Age Security Act* (OAS Act).

## OVERVIEW

[1] The Respondent received the Appellant's OAS pension application in February 2017. On October 30, 2017,<sup>1</sup> the Respondent informed the Appellant that his benefits could not begin and that they would be suspended because he was incarcerated. The Appellant requested a reconsideration of the decision. The Respondent upheld its initial decision. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] The OAS Act was amended so that, as of January 1, 2011, the OAS pension, Guaranteed Income Supplement, and Allowance are no longer payable during periods of incarceration. Section 5(3) of the OAS Act states that no pension may be paid in respect of a period of incarceration—exclusive of the first month of that period—to a person who is subject to a sentence of imprisonment (a) that is to be served in a penitentiary by virtue of any Act of Parliament; or (b) that exceeds 90 days and is to be served in a prison, as defined in section 2(1) of the *Prisons and Reformatories Act*, if the government of the province in which the prison is located has entered into an agreement under section 41 of the *Department of Employment and Social Development Act*.

## PRELIMINARY MATTERS

[3] When the Appellant filed his appeal on February 28, 2018, he appeared to raise arguments under the *Canadian Charter of Rights and Freedoms* (Charter). I will therefore summarize the steps followed before the appeal is heard on the record.

[4] Based on the Tribunal's 2018 process for files raising Charter arguments, on October 2, 2018, a form entitled [translation] "Charter Argument" was sent to the Appellant. The

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<sup>1</sup> GD2-6.

instructions provided with the form indicated the requirements to meet under section 20(1)(a) of the *Social Security Tribunal Regulations* (Regulations) and that, if the Appellant wanted to raise Charter arguments, he had to fill out the form.

[5] On November 16, 2018, the Appellant sent submissions but did not fill out the form. He questioned the requirements of section 20(1)(a) of the Regulations and made reference to several non-Charter related laws.

[6] On December 2, 2018, the Appellant's file was assigned to me. I verified whether the Appellant's November 16, 2018, submissions met the requirements of section 20(1)(a) of the Regulations.

[7] On January 15, 2019, I made an interlocutory decision indicating that the Appellant's submissions did not meet the requirements of the Regulations.

[8] On January 30, 2019, the Appellant sent a letter asking the Tribunal to send him a copy of the act that allows the Respondent to suspend OAS pension benefits.

[9] On February 5, 2019, the Appellant sent another letter asking to appeal my January 15, 2019, interlocutory decision to the Tribunal's Appeal Division.

[10] On March 22, 2019, the file was put on hold to allow the Appeal Division to process the application for appeal.

[11] On May 31, 2019, the Appeal Division gave its decision and refused to grant leave to appeal my interlocutory decision.

[12] On October 18, 2019, a letter was sent to the Appellant informing him that, following the Tribunal's Appeal Division's refusal to grant his application for leave to appeal my interlocutory decision, his appeal would proceed as an ordinary appeal, and the Appellant could no longer raise constitutional issues during the process. The letter also indicated that the appeal would proceed on the record given that the Appellant had asked that the entire process be done in writing because he did not have a telephone or Internet access. He could make additional submissions and send them to the Tribunal by November 18, 2019.

[13] The Appellant did not make any additional submissions.

## **ISSUE**

[14] I must determine whether the Appellant is eligible for an OAS pension while he is incarcerated in a federal penitentiary.

## **ANALYSIS**

[15] Based on the evidence on file, the Respondent received the Appellant's OAS pension application in February 2017 and approved it in October 2017.

[16] On October 30, 2017, the Respondent sent a letter to the Appellant informing him that, even though his OAS pension application had been approved, his benefits could not begin because he was incarcerated. The letter specified that OAS benefits could not be paid to persons incarcerated in a federal penitentiary as a result of a sentence of two years or more or a sentence of more than 90 days in a provincial prison where an agreement on the exchange of information was negotiated.

[17] The Appellant has been incarcerated in a federal penitentiary since 1999.

[18] After considering the evidence, because the Appellant is incarcerated in a federal penitentiary, based on section 5(3) of the OAS Act, he cannot be paid OAS pension benefits until he is released.

## **CONCLUSION**

[19] The appeal is dismissed.

Antoinette Cardillo  
General Division Member – Income Security