



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. R. v Minister of Employment and Social Development*, 2019 SST 1630

Tribunal File Number: GP-19-804

BETWEEN:

S. R.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: November 26, 2019

Date of decision: November 29, 2019

DECISION

[1] S. R. is the Claimant. I have decided that he is not entitled to an Old Age Security (OAS) pension retroactive to April 2007 when he turned 65 years old.

[2] However, he is entitled to the maximum retroactivity provided by the legislation, making his OAS pension payable retroactively to May 2017.

OVERVIEW

[3] The Claimant was born in India on April 17, 1942. The Claimant came to Canada as a Landed Immigrant in 1965. He has been a Canadian citizen since January 1971.

[4] The Minister received the Claimant's application for the OAS pension in April 2018. The OAS pension was approved as of April 2018 at a rate of 40/40th.

Issue in this appeal

[5] I must decide if the Claimant is entitled to an OAS Pension retroactive to April 2007 when he turned 65 years old. If he is not, then I must decide when should the Claimant's OAS pension payments have started?

When was the Claimant's OAS application made?

[6] The Claimant made several previous applications for the OAS pension. He says that his initial OAS application made in 2007 when he turned 65 years old, should be the application that is considered. However, the Minister denied these applications because of "non-compliance". Documents that were required and requested by the Minister, were not provided. The Claimant did not appeal any previous decision. Therefore, I have no authority to consider the previous applications.

[7] I must consider the Claimant's most recent OAS application which was received by the Minister in April 2018. The Minister allowed the benefit effective April 2018. The Claimant did not agree with the pension start date and he appealed the Minister's decision to the *Social*

Security Tribunal (Tribunal). Because he appealed the decision relating to this most recent application, I have the authority to hear his appeal and make a decision.

OAS application of April 2018

[8] The Claimant indicated on his application that he wanted his pension to start in April 2018. However, a start date of April 2007 was written, crossed out and initialed by the Claimant. The Claimant says that he was told by a Service Canada employee that he should change the start date from April 2007 (when he turned 65 years old) to April 2018 so that he would begin receiving benefits faster and that he had the option to appeal.¹

[9] The Claimant is asking that he be paid OAS benefits from April 2007, when he turned 65 years old.

Does the Claimant qualify for retroactive payments to his 65th birthday (April 2007)?

[10] The OAS Regulations provide instructions for when an application can be approved. The date of approval is the latest of the following dates:

- One year before the application is received; (April 2017) or
- On the applicant's 65th birthday; (April 2007) or
- The day when the Claimant became qualified; (April 2007) or
- The month before the date specified in writing by the applicant (March 2018).

[11] The latest date would be March 2018. The Claimant has said that he made an error when he said he wanted his OAS benefit to start in April 2018. He said he wanted it to start as soon as he qualified, but to him this was April 2007 (when he turned 65). Even if I were to disregard the April 2018 date which was written by the Claimant as to the date he wanted his benefit to start, the latest date would still not be when he turned 65 years of age.

[12] The Claimant says he chose the date of April 2018 based on advice he received from an employee of Service Canada. He wants his OAS benefits to start when he turned 65 years of age.

¹ The Claimant's letter is at GD 5-3

However, this is not possible. I cannot consider his earlier OAS applications because they were not appealed.

[13] The OAS Act provides that those who make a mistake for various reasons and who submit a late application for an OAS pension can be granted retroactive payments. However, the OAS Act and Regulations also provide a maximum retroactive.² The OAS Act says a pension is effective on the later of:

- the day that is one year before the day on which the application was received. This means no OAS pension may be approved earlier than 12 months prior to the date of receipt of the application. This date would be April 2017, or
- the day the application became 65 years old (which is April 2007 in this case).

[14] It is whichever is the later date. In this case, the later date is April 2017. Payments would begin one month later which is May 2017³.

[15] I considered the Claimant's testimony that he received advice to change the date from April 2007 (when he turned 65) to April 2018 (when he applied for the OAS benefit) on his application form. Even if he had left the date as April 2007, the result would be the same. This is because the application cannot be approved more than one year earlier than when it was received.

When should the Claimant's pension payments have started?

[16] The Claimant has asked that the Tribunal show benevolence, sympathy and compassion. He asked that this mistake of choosing a date other than April 2007 be forgiven. The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the OAS Act. The Tribunal cannot use the principles of equity or consider extenuating circumstances, such as

² This is explained in the *Old Age Security Act* (OAS), subsection 8, and Section 5 of the OAS Regulations

³ This is found in the OAS Act subsection 8(1).

misunderstanding or financial hardship, to grant more retroactivity than is prescribed by the OAS Act.

CONCLUSION

[17] No OAS pension may be approved earlier than 12 months prior to the date of receipt of the application, and payment begins one month later. This would be 11 months. The Minister had offered the Claimant an 11-month retroactive period.

[18] I agree with the Minister and the Claimant that he made an honest mistake when completing his OAS application in April 2018. Therefore, the maximum period of retroactive payments can be applied. The earliest the Claimant's application can be deemed to be received is April 2017. Payments begin the following month which is May 2017⁴.

[19] The appeal is allowed to the maximum retroactivity provided by the legislation.

Connie Dyck
Member, General Division - Income Security

⁴ The OAS Act explains this in subsection 8.