



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. Z. v Minister of Employment and Social Development*, 2020 SST 357

Tribunal File Number: GP-19-716

BETWEEN:

J. Z.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Tyler Moore

DATE OF DECISION: January 23, 2020

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for an Old Age Security pension. The Respondent granted a partial pension at a rate of 39/40ths. The rate was calculated using the Appellant's residency in Canada from November 24, 1978 to October X, 2018, or when he turned 65. There was a pension start date of November 2018.

[2] The Appellant requested reconsideration of the approved pension rate. He felt that he should have been entitled to a full 40/40ths pension, using the same period of residence. An altered 40/40ths pension rate was allowed, but the Minister based the increased rate on residency from November 24, 1978 to November 23, 2018. Using the revised residency period, the new pension start date was determined to be December 2018. The Appellant disagreed with the revised pension start date and appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on April 26, 2019.

[3] This appeal involves whether or not the Appellant is entitled to a full 40/40ths Old Age Security pension rate using residency dates in Canada from November 24, 1978 to October X, 2018. It also involves whether or not a pension overpayment was made for November 2018.

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[5] I have decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[6] The Appellant was born on October X, 1953 and turned 65 on October X, 2018. His Old Age Security application was received on February 28, 2018. On his application he requested that his pension start as soon as he qualified.

[7] The Appellant came to Canada on November 24, 1978. The period of residence in Canada from November 24, 1978 to October 1, 2018 amounts to 39 years and 312 days.

[8] On March 23, 2019, an amended pension rate of 40/40ths was awarded and based on a residency period from November 24, 1978 to November 23, 2018. That was the earliest date the Appellant qualified for the increased pension rate.

[9] The Appellant had already started to receive his Old Age Security pension when the reconsideration decision with an increased pension rate was made by the Minister. As a result, the Minister determined that an overpayment for the month of November 2018 was made.

SUBMISSIONS

[10] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations).

[11] The Appellant submitted that:

- a) His residency period in Canada from November 24, 1978 to October X, 2018 equals a pension rate of 39.9/40ths. He should have always that rate or it should have been rounded up to 40/40ths.
- b) His pension for November 2018 was not an overpayment.

[12] The Respondent submitted that:

- a) The aggregate rate of a pension is rounded down to the last complete year of residence. There is no provision that would allow a pension to be calculated at a rate of 39.9/40ths.
- b) While the information on file supports that the Appellant can in fact be paid a 40/40ths rate with an effective payment date of December 2018, it results in an overpayment for the month of November 2018 that was already made.

ANALYSIS

[13] 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 CPP.

[14] I find that the Appellant does not qualify for a 40/40ths Old Age Security pension rate with a payment start date of November 2018. Subsection 4 of the Old Age Security Act sets out that the aggregate rate of pension is rounded down to the last complete year of residence. It is not rounded up.

[15] With regards to whether or not there was a pension overpayment for November 2018, I do not have the authority to alter decisions already made by the Minister involving established pension overpayments.

[16] Accordingly, I find that the appeal has no reasonable chance of success.

CONCLUSION

[17] The appeal is summarily dismissed.

Tyler Moore
Member, General Division - Income Security