



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. F. v Minister of Employment and Social Development*, 2020 SST 545

Tribunal File Number: GP-19-555

BETWEEN:

P. F.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Date of decision: May 7, 2020

DECISION

[1] The Claimant is not entitled to an Old Age Security (“OAS”) pension.

OVERVIEW

[2] The Claimant was born in England in 1952. He arrived in Canada with his family on July 11, 1967. He then returned to England in 1986 and has lived there since. The Minister received the Claimant’s application for the OAS pension on February 24, 2017. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for an OAS pension, the Claimant must meet the requirements set out in the *Old Age Security Act* (“OAS Act”). For a full OAS pension, he would normally need forty years of Canadian residency, although this general rule has some exceptions.¹ For a partial OAS pension, he must have at least ten years of Canadian residency. However, if he has less than twenty years of Canadian residency, he must also reside in Canada to be eligible.² For either a full or partial OAS pension, Canadian residency before age 18 does not count towards eligibility.

ISSUES

[4] Is the Claimant entitled to a full OAS pension?

[5] If not, is the Claimant entitled to a partial OAS pension?

[6] If the Claimant does not meet the statutory requirements for an OAS pension, can I ignore the provisions of the OAS Act and award a pension anyway?

ANALYSIS

[7] A person resides in Canada if he makes his home and ordinarily lives in any part of Canada.³ In this case, the parties agree on when the Claimant resided in Canada. The Minister

¹ Subsection 3(1) of the *Old Age Security Act*.

² Subsection 3(2) of the *Old Age Security Act*.

³ Paragraph 21(1)(a) of the *Old Age Security Regulations*.

accepts that the Claimant arrived in July 1967 and left at some time in 1986.⁴ The Claimant says he arrived on July 11, 1967, and left at some time in 1986.⁵ The objective evidence supports an entry date of July 11, 1967.⁶ Although I see no evidence about exactly when the Claimant left Canada in 1986, the Minister's calculations gave the Claimant the benefit of the doubt by using December 31, 1986.⁷ I find this reasonable, as the Claimant reported some Canadian employment income in 1986. The Claimant's work history from 1971 to 1986 is also consistent with the Minister's admission of Canadian residency up to 1986.⁸

[8] As a result, I accept that the Claimant resided in Canada from July 11, 1967, to December 31, 1986. However, for OAS eligibility purposes, Canadian residency before age 18 does not count.⁹ This means I can only consider the Claimant's Canadian residency from April 25, 1970, to December 31, 1986. This amounts to 16 years and 251 days. For clarity, all subsequent references to "residency" in this decision shall mean residency after reaching age 18.

[9] I acknowledge that Canada and the United Kingdom have had an agreement on social security matters since at least 1997. I will call this the "Convention on Social Security".¹⁰ The only potentially relevant part of the Convention on Social Security is Article 8, which deals with the OAS Act. However, Article 8 does not assist the Claimant because it deals only with the amount of the benefit. Article 8 does not allow the Claimant to use periods of residence in the United Kingdom to become eligible for the OAS pension.

[10] I will now determine whether the Claimant is entitled to either a full or partial OAS pension, based on nearly 17 years of Canadian residency.

Is the Claimant entitled to a full OAS pension?

[11] For the reasons set out below, the Claimant is not entitled to a full OAS pension.

⁴ GD2-25, GD3-8 to GD3-9

⁵ GD2-13, GD5-1, and GD5-2

⁶ GD4-2 and GD5-5.

⁷ GD2-25 and GD3-9.

⁸ GD2-26

⁹ See paragraphs ss. 3(1)(b), 3(1)(c) and 3(2)(b) of the *Old Age Security Act*.

¹⁰ The full name is "Convention on Social Security Between the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland".

[12] An applicant usually needs 40 years of Canadian residency for a full OAS pension.¹¹ The Claimant does not meet this requirement, nor has he suggested that he meets it. However, the Claimant believes he qualifies under a transitional provision in the OAS Act that allows a full pension with less than 40 years of Canadian residency if certain conditions are met.¹²

The Claimant does not meet all three of the conditions for a full pension

[13] To receive a full OAS pension, the Claimant must meet three conditions. The first condition¹³ is that he attained age 25 by July 1, 1977, and resided in Canada on that date.¹⁴ As the Claimant's 25th birthday was on April 25, 1977, and he was residing in Canada on July 1, 1977, he meets the first condition.

[14] The second condition is that the Claimant must have reached age 65.¹⁵ The Claimant meets this condition, as he reached age 65 on April 25, 2017.

[15] The third condition is much more complicated, and there are two ways to meet it. Firstly, the third condition can be met if the Claimant resided in Canada for the ten years immediately before his application is approved.¹⁶ However, he does not meet this test. He could not get approval before he reached age 65, and he has not resided in Canada since 1986.

[16] The second way for the Claimant to meet the third condition has two requirements. First, he must reside in Canada for at least one year immediately before approval of his application. Second, for any residency gaps in the ten years before approval of his application, he must have had prior Canadian residence for at least three times the aggregate absence in those ten years.¹⁷ Once again, as the Claimant has resided in England since 1986, he cannot meet the requirement to reside in Canada for at least one year immediately before approval of his application. This is because he could not receive approval until he reached age 65.

¹¹ Paragraph 3(1)(c) of the *Old Age Security Act*.

¹² Paragraph 3(1)(b) of the *Old Age Security Act*.

¹³ Subparagraph 3(1)(b)(i) of the *Old Age Security Act*.

¹⁴ In the alternative, he must have been twenty-five years old and (i) resided in Canada for any period after attaining eighteen years of age, or (ii) had a valid immigration visa.

¹⁵ Subparagraph 3(1)(b)(ii) of the *Old Age Security Act*.

¹⁶ Subparagraph 3(1)(b)(iii) of the *Old Age Security Act*.

¹⁷ Subparagraph 3(1)(b)(iii) of the *Old Age Security Act*.

[17] Although the Claimant argued forcefully that he should receive a full OAS pension, he only addressed the first condition.¹⁸ While he met the first and second conditions, he did not meet the third condition. As a result, he is not entitled to receive a full OAS pension.

Is the Claimant entitled to a partial OAS pension?

[18] For the reasons set out below, the Claimant is not entitled to a partial OAS pension.

[19] Two conditions must be met for a partial OAS pension. Firstly, the applicant must be at least 65 years old.¹⁹ The Claimant has met this requirement since April 25, 2017.

[20] The second condition depends on where the applicant is residing. Applicants residing outside Canada need at least twenty years of Canadian residency. Applicants residing in Canada immediately before application approval only need ten years of Canadian residency.²⁰ As the Claimant has not resided in Canada since 1986, he must have at least twenty years of Canadian residency to qualify for a partial pension. However, he has less than seventeen years of Canadian residency. This means he does not meet the second condition for a partial OAS pension. Before concluding, I will briefly address an issue raised by the Claimant at the reconsideration stage.

Can I ignore the provisions of the OAS Act and award a pension anyway?

[21] The Claimant suggested that the Minister's denial of his pension application was unfair, because he knew of other people who had the "same status" and received an OAS pension. However, he said he could not provide details because of privacy concerns.²¹

[22] People with Canadian permanent resident status might receive an OAS pension even though they no longer reside in Canada. However, in each case, their entitlement would reflect how their actual Canadian residency meets the criteria outlined above. It is not their permanent resident status, *per se*, that allows them to get an OAS pension. If they had more than 20 years of Canadian residence, for example, they would meet the requirements for a partial OAS pension.

¹⁸ GD1-2 and GD5-1

¹⁹ Paragraph 3(2)(a) of the *Old Age Security Act*.

²⁰ Paragraph 3(2)(b) of the *Old Age Security Act*.

²¹ GD2-8 and GD2-21.

[23] More generally, I cannot circumvent the OAS Act's provisions. The Tribunal was created by legislation. It only has the powers granted to it by its governing statute. As a Tribunal Member, I must interpret and apply the provisions as they appear in the OAS Act. I cannot change or waive them, even if they seem unfair. Nor can I unreasonably interpret the wording of the OAS Act. The OAS Act does not allow the Tribunal to make decisions on a compassionate basis. I cannot contradict Parliament's intent.²² If the legislation has a gap, it is up to Parliament to address it. As a result, I cannot grant an OAS pension to the Claimant.

CONCLUSION

[24] The Claimant does not meet the criteria for either a full OAS pension or a partial OAS pension. As a result, his appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

²² See, for example, the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22, at paragraph 101.