



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. S. v Minister of Employment and Social Development*, 2020 SST 639

Tribunal File Number: GP-20-204

BETWEEN:

C. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Shannon Russell

Claimant represented by: J. S.

Teleconference hearing on: June 8, 2020

Date of decision: June 26, 2020

DECISION

[1] The Claimant did not reside in Canada from May 18, 2016 to January 25, 2019. However, the Claimant has resided in Canada since January 25, 2019.

OVERVIEW

[2] The Claimant is a 72-year-old woman who immigrated to Canada in April 1966. In 2012, the Claimant applied for an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS). The Minister approved both applications. The Claimant began receiving her OAS pension (a partial pension of 25/40ths) and the GIS in September 2012 (the month after her 65th birthday).

[3] In or about December 2017, the Minister launched an investigation into the Claimant's residency in Canada. At the end of its investigation, the Minister determined that the Claimant had stopped residing in Canada in May 2016. The Minister told the Claimant that because she had stopped residing in Canada in May 2016, she was not eligible for the GIS monies she received from December 2016 (six months after the month of her departure from Canada in May 2016) to June 2019, an amount totalling \$32,268.67.

[4] The Claimant asked the Minister to reconsider its decision. In support of her request, she explained that, although she travels outside of Canada, she did not stop living in Canada in May 2016. The Minister reconsidered, and decided to maintain its decision. The Claimant appealed the reconsideration decision to the Social Security Tribunal (SST or Tribunal).

PRELIMINARY MATTERS

The Claimant did not attend the hearing

[5] This appeal was scheduled to be heard by teleconference on June 2, 2020. The Claimant and her representative (the Claimant's daughter) attended that hearing. The Claimant's representative initially told me that the Claimant would not be testifying. However, after I explained that one of the purposes of the hearing is to obtain oral evidence so that I can fill in some gaps in the documentary evidence, the Claimant's representative agreed that her mother would testify.

[6] During the hearing, it became evident that the Claimant's representative had not had an opportunity to go through the appeal file with a view to preparing her case. She asked for an adjournment, and I granted her request.

[7] The appeal was rescheduled for June 8, 2020. The Claimant's representative attended the hearing, but the Claimant did not. The Claimant's representative explained that the Claimant was not feeling well and was in bed. I asked the representative if she wanted to proceed with the hearing in the Claimant's absence (knowing I would be unable to obtain oral evidence from the Claimant) or whether she wanted to ask for an adjournment due to her mother's ill health. The representative said she wanted to proceed with the hearing. I proceeded with the hearing as scheduled.

Post-Hearing Documents

[8] Most appeals do not involve post-hearing documents. This one does, and so I will explain what happened.

[9] The Claimant filed her Notice of Appeal with the Tribunal on January 29, 2020. With the Notice of Appeal, the Claimant included about 80 pages of documents. Staff at the Tribunal removed four pages of those documents because they were not written in either English or French. In their place, Tribunal staff inserted blank pages that say, "Sent back for Translation"¹.

[10] During the hearing, the Claimant's representative told me that she had not noticed these blank pages before the hearing and she said that no documents had been returned to her. I looked to see if I could find a letter that may have been sent to the Claimant explaining that documents were being returned because they were not in English or French, but I could not find any such letter. I contacted a Registry Officer at the Tribunal Office and I asked if she was able to confirm if the documents in question were returned to the Claimant, and she said she could not confirm that they were.

¹ Pages GD1-76 to GD1-79

[11] Given the circumstances, I asked the Claimant's representative if she wanted an opportunity to have the documents translated and then included in the appeal file. The representative expressed some uncertainty as to whether she would be able to have the documents translated given the current situation with COVID-19 and its effect on business operations. She asked if she could simply have the Claimant's health care practitioners in Greece write letters in English. I said she could.

[12] On June 9, 2020, the Claimant's representative submitted two notes in English from health care practitioners in Greece². The post-hearing documents were sent to the Respondent that same day (June 9, 2020) and the Respondent was given an opportunity to review and comment on the documents. The Respondent did not provide any written comments on the documents and did not ask for an extension of time to comment on the documents.

ISSUE(S)

[13] I must decide whether the Claimant stopped residing in Canada at any time in or after May 2016.

ELIGIBILITY REQUIREMENTS FOR THE GIS

[14] The GIS is an income-tested monthly benefit that is paid to individuals who receive the OAS pension, reside in Canada, and have little to no income. If a GIS recipient stops residing in Canada, then that person is no longer eligible for the GIS. In that situation, the GIS is paid for six months after the month of departure and then it stops³. This is so regardless of how many years of residency in Canada the person has.

[15] The OAS Regulations distinguish between the concepts of residency in Canada and presence in Canada. A person resides in Canada if she makes her home and ordinarily lives in any part of Canada⁴. A person is present in Canada when she is physically present in any part of the country⁵.

² Pages GD10-1 to GD10-6

³ Paragraph 11(7)(d) of the *Old Age Security Act*

⁴ Paragraph 21(1)(a) of the *Old Age Security Regulations*

⁵ Paragraph 21(1)(b) of the *Old Age Security Regulations*

[16] There are a number of factors that are relevant to determining whether a person makes their home in and ordinarily lives in Canada. These factors include, but are not limited to⁶:

- Ties in the form of personal property (i.e. house, business, furniture, automobile, bank account, credit card);
- Social ties in Canada (i.e. membership with organizations or associations or professional memberships);
- Other ties in Canada (i.e. hospital and medical insurance coverage, driver's license, rental, lease, loan or mortgage agreement, property tax statements, electoral voter's list, life insurance policies, contracts, public records, immigration and passport records, provincial social services records, public and private pension plan records, federal and provincial income tax records);
- Ties in another country;
- Regularity and length of stay in Canada and the frequency and length of absences from Canada; and
- The person's mode of living (i.e. whether her lifestyle and degree of establishment in Canada is substantially deep rooted and settled).

ANALYSIS

What each party says

[17] The Minister says that the Claimant stopped residing in Canada in May 2016, and as a result she is not eligible for the GIS for any period in or after December 2016. The Minister says its position is supported by the fact that since May 2016 the Claimant has spent most of her time abroad. Also, the evidence the Claimant provided to show her residency in Canada since May 2016 (such as photographs of her belongings in Canada) are not sufficient to show that the Claimant's ties to Canada have been stronger than her ties to Greece.

⁶ *Canada (MHRD) v. Ding*, 2005 FC 76

[18] The Claimant says that she did not stop residing in Canada in May 2016. She says her residential ties are to Canada. She says, for example, that she files her taxes in Canada every year, she has Ontario health insurance, she has physicians in Canada, she has a Canadian driver's license, she does her banking in Canada, she has her belongings in Canada (at her daughter's home) and she has (when able to afford it) paid rent to her daughter.

The Claimant did not reside in Canada from May 18, 2016 to January 25, 2019

[19] I accept that, from May 2016 to January 2019, the Claimant had residential ties to Canada. These ties include an Ontario driver's license⁷, Ontario health insurance coverage⁸, physicians in Canada, a Canadian bank account and credit cards⁹, and friends and family in Canada (including her daughter and four grandchildren and one great-grandchild).

[20] However, the evidence as a whole does not show the Claimant resided in Canada from May 18, 2016 to January 25, 2019. The evidence does not show that, during this time, the Claimant's residential ties to Canada were stronger than her residential ties to Greece.

[21] It is significant that from May 2016 to January 2019, the Claimant spent most of her time in Greece. The Claimant's travels since May 2016 are as follows:

Date of Entry¹⁰	Date of Departure	Country	Approximate Length of Stay
May 18, 2016 ¹¹	January 19, 2017	Greece	247 days
January 19, 2017	May 20, 2017	Canada	122 days
May 20, 2017 ¹²	February 2, 2018	Greece	259 days
February 2, 2018	May 30, 2018	Canada	118 days
May 30, 2018 ¹³	January 25, 2019	Greece	241 days
January 25, 2019	June 26, 2019	Canada	153 days
June 26, 2019 ¹⁴	October 15, 2019	Greece	112 days
October 15, 2019 ¹⁵	To the date of the hearing (June 2020)	Canada	237 days

⁷ Page GD2-80

⁸ Page GD2-80

⁹ Page GD2-80

¹⁰ Unless otherwise stated, the dates of entries into Canada are taken from the CBSA report at page GD2-106

¹¹ Passport stamp (pages GD2-41, GD2-115 and GD1-28)

¹² Passport stamp (pages GD2-41 and GD2-115)

¹³ Passport stamp (pages GD2-41, GD2-115 and GD1-27)

¹⁴ Passport stamp (page GD2-41)

¹⁵ An Air Canada Itinerary shows the Claimant was booked to fly from Greece to Toronto on October 15, 2019 (page GD1-34)

[22] The Claimant's representative told me that the Claimant was not absent from Canada from May 18, 2016 to January 19, 2017. She says the Claimant returned to Canada in October 2016. In support of her argument, she pointed to a flight itinerary, which shows the Claimant was booked to fly from Greece to Canada on October 23, 2016¹⁶.

[23] I do not accept that the Claimant returned to Canada in October 2016. The CBSA report does not show an entry into Canada in October 2016¹⁷. The Claimant's representative submitted that the CBSA report is not conclusive evidence, and that a CBSA officer may have neglected to scan the Claimant's passport upon her return to Canada. I accept that the CBSA report is not determinative evidence of a person's entries into Canada, and I accept that mistakes can happen. However, there is other evidence (or lack of evidence) that supports a finding that the Claimant likely did not return to Canada in October 2016.

[24] First, the Claimant's representative completed a Questionnaire in October 2019, and in that Questionnaire she acknowledged that the Claimant was absent from Canada from May 18, 2016 to January 19, 2017¹⁸.

[25] Second, if the Claimant had returned to Canada in October 2016, then I would have expected to see a passport stamp showing an entry into Greece (or another foreign country) at some point between October 23, 2016 (when the Claimant reportedly returned to Canada) and January 19, 2017 (when the Claimant entered Canada via the Pearson International Airport). There is no such passport stamp.

[26] Third, the evidence showing the Claimant's medical appointments in Canada during 2016 does not show any appointments between October 2016 and January 2017¹⁹.

[27] Fourth, aside from the flight itinerary showing that the Claimant was booked to fly from Greece to Toronto on October 23, 2016, I could not find any other evidence corroborating the Claimant's representative's assertion that the Claimant returned to Canada at that time. Like the CBSA report, I do not consider the flight itinerary to be determinative of the issue. It shows that

¹⁶ Page GD1-40

¹⁷ Page GD2-106

¹⁸ Page GD2-38

¹⁹ Pages GD1-18 and GD2-134

the Claimant was booked to fly on that date. It does not show she actually travelled on that date. While it may have been the Claimant's general pattern to travel as scheduled, I know that was not always the case. For example, a travel itinerary shows she was booked to fly from Toronto to Greece on April 14, 2020²⁰, but the Claimant's representative told me the Claimant did not return to Greece in April 2020 and instead remained in Canada.

[28] The Claimant's representative submitted that one of the reasons why the Claimant has spent so much time in Greece is because of her health. She said the treatment the Claimant receives in Greece is not available in Canada. She also said that the Claimant's physician in Greece has recommended that she go to the beach during the summer months. I accept that the Claimant has medical conditions and I accept that she receives treatment in Greece. I also accept that the Claimant has been advised to go to the beach in the summer months²¹. However, I do not accept that the Claimant's lengthy absences from Canada are explained by her poor health.

[29] First, although I have some medical evidence from the Claimant's health care providers in Greece, not one of the practitioners has said that the treatment the Claimant receives in Greece is not available in Canada.

[30] Second, while the Claimant has been told to go to the beach during the summer months, she has clearly stayed in Greece well beyond the summer months. Her travel history shows she usually travelled to Greece in May and stayed in Greece until either January or February.

[31] Third, the Claimant has reported to the Minister that she is involuntarily separated from her husband (who lives in Greece), and she has cited her medical conditions as one of the reasons why she and her husband are involuntarily separated²². It does not make sense to me for the Claimant to say, on the one hand, that she must live in Canada for health reasons and then say, on the other hand, that her medical condition requires extended stays in Greece. The Claimant's limited number of medical appointments in Canada make it even more difficult to understand her explanation for being involuntarily separated from her husband. Since May 2015, the Claimant has only seen her oncologist in Canada (Dr. Katherine Enright) once a year²³. Moreover, a report

²⁰ Page GD1-35

²¹ Page GD10-5

²² Pages GD2-158 and GD2-160

²³ Page GD2-67

from the Ontario Ministry of Health shows that the Claimant has not seen many other health care providers in Canada since 2016. In fact, between May 2016 and May 2018 (the last date for which the report covers), the Claimant only had one medical appointment that was not with her oncologist²⁴.

[32] The Claimant's representative suggested that one of the reasons why the Claimant may have stayed so long in Greece from May 2018 to January 2019 is because the Claimant and her former son-in-law (the representative's ex husband) had a falling out and the Claimant had to leave the home. The representative said that she (the representative) then went to live in a women's shelter for a little less than a year. I have two difficulties with this explanation. First, I did not have the opportunity to hear from the Claimant directly and so I do not know whether this was in fact one of the reasons for the Claimant's lengthy stay in Greece. Second, the Claimant's representative completed a Questionnaire in 2019 and in that document she reported that she accompanied her mother to Greece during the trip from May 2018 to January 2019²⁵. This causes me to question whether the representative was in the shelter for as long as she remembers.

[33] In addition to the considerable length of the Claimant's stays in Greece, I also find it significant that the Claimant has strong residential ties to Greece. Her husband lives in Greece. She is receiving medical care in Greece. She has two children and three grandchildren in Greece. Also, according to the Claimant's representative, when the Claimant is in Greece she stays in a very large home with her son, daughter, their spouses, and her grandchildren. The Claimant's representative also said that the Claimant has no personal property whatsoever in Greece. I have difficulty accepting this. I did not have the benefit of being able to hear from the Claimant directly. Also, I have a hard time believing that the Claimant has spent as much time as she has in Greece without having any personal property there, particularly since the Claimant has acknowledged that she has, on two occasions, returned to live in Greece since she immigrated to Canada in 1966. For example, she reported in her OAS application of 2012 that she lived in Greece from 1989 to 2000 and from 2002 to 2011²⁶.

²⁴ Page GD2-134

²⁵ Page GD2-38

²⁶ Page GD2-222

[34] My inability to hear from the Claimant directly also limits my ability to compare, in any meaningful way, the strength of the Claimant's residential ties to Canada with the strength of her residential ties to Greece.

The Claimant likely resumed residence in Canada on January 25, 2019

[35] The evidence shows that since January 25, 2019, the Claimant has spent most of her time in Canada. As I pointed out earlier, the Claimant did not return to Greece in April 2020 (despite the travel itinerary that shows she was booked for a flight at that time), and she remained in Canada until at least June 2020. Given the amount of time the Claimant has been spending in Canada since January 25, 2019 it is more likely than not that she resumed residency in Canada at that time.

No ability to waive or forgive the overpayment

[36] The Claimant submits that she is in dire financial need and is experiencing extreme hardship. She says she does not have any money to repay the overpayment²⁷.

[37] I am sympathetic to the Claimant's position. However, I do not have the ability to waive or forgive all or part of the overpayment on her account. The legislation allows the Minister, in certain circumstances, to remit all or part of an overpayment for reasons of financial hardship, but the law is clear that it is only the Minister (and not this Tribunal) who has the authority to make such a decision²⁸.

CONCLUSION

[38] The appeal is allowed in part.

Shannon Russell
Member, General Division - Income Security

²⁷ Page GD1-13

²⁸ Subsection 37(4) of the *Old Age Security Act*. See also *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278 and *Nanka v. Canada (Attorney General)*, 2018 FC 959