



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *FP v Minister of Employment and Social Development*, 2020 SST 891

Tribunal File Number: GP-19-577

BETWEEN:

**F. P.**

Appellant

and

**Minister of Employment and Social Development**

Minister

---

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

---

Decision by: Antoinette Cardillo

Teleconference hearing on: June 3, 2020

Date of decision: June 23, 2020

## **DECISION**

I find that the Appellant has been a resident of Canada since June 2013 and therefore is entitled to receive the Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS).

## **OVERVIEW**

[1] The Appellant's application for the OAS pension was date stamped by the Minister on February 15, 2011<sup>1</sup>. In June 2013<sup>2</sup>, the Minister approved the Appellant's OAS pension, at the rate of 10/40 effective in August 2011 since the appellant completed 10 years of Canadian residence in July 2011. The GIS was also approved. Based on an investigation, the period after June 22, 2013 has been determined by the Minister to be periods of presence and not residence. Consequently, a reimbursement was requested for the period of April 2014 to January 2016. The Appellant requested a reconsideration of the Minister's decision. The Minister denied the reconsideration request and the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

## **ISSUES**

[2] The issue I have to decide is whether the Appellant was a resident of Canada since June 22, 2013, and whether she qualifies to receive the OAS partial pension and the GIS benefits after December 2013.

## **ANALYSIS**

### *i. The law and case law*

[3] Subsection 3(2) of the *OAS Act* provides that to receive a partial pension, an applicant must have resided in Canada for at least 10 years if he or she resides in Canada on the day before

---

<sup>1</sup> GD2-289

<sup>2</sup> GD2-249

the application is approved. An applicant who resides outside of Canada on the day before the application is approved must prove that he or she had previously resided in Canada for at least 20 years. Also, subsection 21(1)(a) of the *OAS Regulations* provides that a person resided in Canada if he or she makes her home and ordinarily lives in any part of Canada. Finally, subsection 21(4)(a) of the *OAS Regulations* stipulates that any interval of absence from Canada of a person resident in Canada that is of a temporary nature and does not exceed one year, shall be deemed not to have interrupted that person's residence or presence in Canada.

[4] Pursuant to the case law, the residence analysis involves a fluid approach, with each case determined on its own facts<sup>3</sup>. The Federal Court set out factors to be taken into account in determining whether a person makes his or her home in and ordinarily lives in Canada. In the present appeal, I find these factors to be relevant and helpful in determining the issue before me. They are as follows:

- a) ties in the form of personal property (bank accounts, business, furniture, automobile, credit card);
- b) social ties (membership with organizations or associations, professional membership);
- c) other fiscal ties to Canada (hospital and medical insurance coverage, driver's license, property tax statements, public records, immigration and passport records, federal and provincial income tax records);
- d) ties in another country;
- e) regularity and length of stay in Canada and the frequency and length of absences from Canada; and
- f) the lifestyle of the person or his/her establishment in Canada.

**ii. *Presence or Residence since June 2013***

---

<sup>3</sup> *Canada (Minister of Human Resources and Development) v. Ding*, 2005 FC 76.

[5] The Appellant turned 65 years of age in March 2010. Her application for the OAS pension was date stamped by the Minister in February 2011 and she began receiving a partial pension in August 2011 and GIS benefits in February 2012.

[6] The evidence on file demonstrates that the Appellant traveled to the United States (US) on June 22, 2013 to visit her daughter. She initially planned to stay for a couple of months but she experienced severe foot pain and heart palpitation. She therefore had to stay longer than planned because she needed medical treatment<sup>4</sup>. Her claim is supported by medical reports<sup>5</sup>. She returned to Canada on March 28, 2014.

[7] The Appellant explained at the hearing that she also had to stay longer in 2013 to help with her grandson who had health issues and he was dependent on her. During that period, she kept her apartment in Montreal (Quebec). The Appellant submitted her last lease from September 1<sup>st</sup>, 2014 to August 31, 2015<sup>6</sup>. She testified that she kept her apartment until 2015, along with her belongings. She also continued to pay for utilities and maintained her health coverage in Quebec. After September 2015, she moved in with her brother and lived with him when she was in Canada. She then moved with her other daughter in Vancouver.

[8] During her travels between 2013 to date, she explained that her goal has always been to return to Canada, she never brought furniture or belongings with her to the US. Her mailing address is also now in Vancouver and she moved her belongings to Vancouver. In addition to her older daughter, she has friends in Vancouver. She stated that she usually does not stay abroad for more than six (6) months with a few exceptions because of medical reasons or her grandson's health and dependence on her. In the US, she only has her daughter.

[9] The Appellant submitted proof of her departures and re-entry to Canada. The documents show that she departed Canada:

- on June 22, 2013 and re-entered on March 28, 2014; (for a period of nine (9) months)
- on September 15, 2014 to March 12, 2015; (for a period of six (6) months)

---

<sup>4</sup> GD2-197

<sup>5</sup> GD2-203 to 209

<sup>6</sup> GD2-300

- on April 13, 2015 to June 16, 2015; (for a period of two (2) months)
- on June 22, 2015 to December 3, 2015; (for a period of six (6) months)
- on January 11, 2016 to June 15, 2016; (for a period of five (5) months)
- on August 4, 2016 to December 14, 2016. (for a period of four (4) months)

[10] The Appellant has a Canadian passport issued in Montreal (Quebec) valid from March 2013 to March 2018<sup>7</sup>. She also had an Iranian passport. The evidence also shows that the Appellant had a cellular phone number with an area code from Montreal (Quebec). The bills were sent to her address in Montreal<sup>8</sup> until September 2015. Afterwards, they were sent to an address in the US.

[11] The report from the Quebec health department shows medical visits from July 1<sup>st</sup> 2001 to January 9, 2013<sup>9</sup>.

[12] In her request for reconsideration date stamped March 21, 2018<sup>10</sup> and at the hearing, the Appellant stated that she lived in Canada from July 2001 to April 2016 but she spent considerable time in the US helping her daughter to take care of her grandchild who was suffering from serious medical ailment since 2013. She said that she had maintained her apartment in Canada until September 2015 and she moved on X which is her brother's address. She explained that she made multiple trips to Vancouver in 2016 with the intention to relocate with her other daughter, which she now did.

[13] The Minister submitted that although the appellant has family ties in Canada which include her daughter and brother, she also has family ties in USA and in Iran. Her daughter and grandchild reside in USA. She explained that the reason why she left Canada in June 2013 was to visit her daughter. She extended her stay for health reasons. She returned in Canada only on March 28, 2014. She went again to USA on September 17, 2014 for almost six (6) months. Then, she went to Iran from April 13, 2015 to June 16, 2015. She stayed in USA from June 22, 2015 to December 3, 2015, from January 11, 2016 to June 15, 2016 and from August 4, 2016 to

---

<sup>7</sup> GD2-217

<sup>8</sup> GD2-8 to 44

<sup>9</sup> GD2-106

<sup>10</sup> GD2-5

December 14, 2016. These absences clearly show that the appellant was spending the majority of her time outside Canada during the period under dispute.

[14] The evidence shows that the Appellant has family ties in Canada. The evidence also shows that she had an apartment in Montreal until September 2015, she now has moved in with her older daughter in Vancouver. Her belongings and mailing address are in Vancouver. She never brought her belongings to the US. Her departure and re-entry in Canada show that other than on a few occasions, since 2013, she was not abroad for more than six (6) months. The Appellant provided an explanation of the occasions she was away for more than six (6). I have considered all the evidence and the Appellant's testimony, which I found to be credible and forthcoming and find that the evidence shows that the Appellant has maintained her residency in Canada. I do not consider that the Appellant has stopped residing in Canada since 2013. As provided by the *OAS Regulations*, any interval of absence from Canada of a person resident in Canada that is of a temporary nature and does not exceed one year, shall be deemed not to have interrupted that person's residence or presence in Canada. Based on the evidence, I do not consider that the Appellant's residence has been interrupted.

## **CONCLUSION**

[15] Therefore, the appeal is allowed and the Appellant is entitled to receive the OAS partial pension and the GIS after December 2013.

Antoinette Cardillo  
Member, General Division - Income Security