



[TRANSLATION]

Citation: *SB v Minister of Employment and Social Development and FB*, 2020 SST 844

Tribunal File Number: GP-19-1786

BETWEEN:

**S. B.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**F. B.**

Added Party

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

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DECISION BY: François Guérin

DATE OF DECISION: July 2, 2020

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for an Old Age Security (OAS) pension under the *Old Age Security Act* (OAS Act) on September 5, 1995.<sup>1</sup> In that application, the Appellant stated that he was married. He received the Guaranteed Income Supplement (GIS) based on the married or common-law rate until October 2004, the month of his late wife's death. He started receiving GIS benefits based on the rate of a person living alone as of November 2004. The Appellant and the Added Party contacted the Respondent in July 2018 to inform it that their marital status had changed and that the notice received from the Respondent was incorrect. The Respondent sent the Appellant a Statutory Declaration of Common-law Union that they completed and brought to their Service Canada Centre in person on August 7, 2018.<sup>2</sup>

[2] The Respondent reviewed the calculation of the GIS amount the Appellant was entitled to as of September 2017, one year after the date the Appellant and the Added Party began living together according to their statutory declaration. The Respondent informed the Appellant that it had overpaid \$3,582.31 for the period from September 2017 to August 2018.<sup>3</sup> On August 6, 2019, the Respondent informed the Appellant of an overpayment of \$3,713.83 for the period from September 2018 to August 2019. The Respondent determined that this overpayment was the result of an administrative error, but also that the Appellant had an obligation to report this. For that reason, the Respondent decided to reduce the amount of the second overpayment by half and to claim only \$1,856.92.<sup>4</sup>

[3] According to that August 6, 2019, letter, the total to be repaid is \$7,296.14. However, based on what is indicated in that letter, the Tribunal finds that the total should be \$5,439.23.

[4] The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on November 1, 2019.<sup>5</sup>

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<sup>1</sup> GD2-3 to 6.

<sup>2</sup> GD2-7.

<sup>3</sup> GD2-8 to 9.

<sup>4</sup> GD2-12 to 13.

<sup>5</sup> GD1.

[5] The appeal is about the repayment of an overpayment of \$5,439.23 for the GIS benefit from September 2017 to August 2019.

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

[7] The Tribunal has decided that the appeal has no reasonable chance of success for the reasons set out below.

### **PRELIMINARY MATTER**

[8] The Respondent asked that the Added Party be added to this appeal given that she has a direct interest in its outcome.<sup>6</sup> On December 23, 2019, the Tribunal sent the Added Party a copy of the documents submitted by the parties as well as a copy of the written notice concerning the intent to proceed by way of summary dismissal.<sup>7</sup>

### **SUBMISSIONS**

[9] On May 21, 2020, the Tribunal sent the Appellant and his representative a written notice concerning the intent to proceed by way of summary dismissal.<sup>8</sup> The notice indicated April 3, 2020, as the deadline to make submissions, as stated in section 22 of the *Social Security Tribunal Regulations* (Regulations). A new written notice<sup>9</sup> was sent to the Appellant and his representative on June 1, 2020, to explain to them that the May 21, 2020, notice had been prepared before the government's stay-at-home orders and automatically generated with the dates entered in the file. An extension until June 19, 2020, was granted to the Appellant and his representative to make submissions.

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<sup>6</sup> GD3.

<sup>7</sup> GD0.

<sup>8</sup> GD0.

<sup>9</sup> GD6.

[10] Neither the Appellant, nor his representative responded to the notice of intent to summarily dismiss or the notice of change of date to respond to the notice of intent to summarily dismiss. The Added Party did not come forward either.

[11] In his notice of appeal to the Tribunal, received on November 1, 2019, the Appellant stated the following:<sup>10</sup>

- a) In 2017, he had sent a first declaration proving that he and the Added Party had been common-law partners since September 2016. In 2018, and again in 2019, they went through the same process. In 2018, the Respondent sent the Appellant a letter confirming that the amount would be corrected, but that did not happen. In 2019, it was the same thing again. Because it is the Respondent that made a mistake, the Appellant wants the amounts due to be cancelled.

[12] In its submission of recommendation to proceed with summary dismissal,<sup>11</sup> the Respondent submitted the following:

- a) The Appellant's request that the Minister cancel the outstanding GIS overpayment, established based on the OAS Act, cannot be granted given that section 28(1) authorizes the Social Security Tribunal (SST) to reconsider only decisions made under section 27.1 regarding the amount to be paid or not on the non-payment of benefits.
- b) Decisions of the Minister concerning the repayment of an established overpayment are discretionary decisions and cannot be subject to a review by the SST.
- c) In his reconsideration request, the Appellant considered that the amount that is claimed from him is the result of an administrative error because he had informed the Minister that he was living in a common-law relationship.

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<sup>10</sup> GD1-2, question 4.

<sup>11</sup> GD5.

- d) That the SST does not have jurisdiction to hear appeals for which an allegation of administrative error is the reason and that the Minister offered an appeal to the Federal Court of Canada, which has jurisdiction over this matter.
- e) That this appeal has no reasonable chance of success.

## **ANALYSIS**

[13] As a statutory entity, the Tribunal has only the powers that the law gives it. The Tribunal interprets and applies provisions as they are stated in the *Old Age Security Act*.

[14] The Respondent is claiming the GIS overpayment for the period from September 2017 to August 2019 from the Appellant.<sup>12</sup>

[15] The Appellant does not dispute the date when he and the Added Party began living together and used by the Respondent established based on his statutory declaration, but he submits rather that the Respondent did not correct the information on his common-law status after he sent it a first declaration in 2017. The Appellant therefore submits that the Respondent made an administrative error.

[16] The Social Security Tribunal does not have jurisdiction over issues of administrative error<sup>13</sup> and cannot decide on the amount of the overpayment.<sup>14</sup> Only the Respondent can decide whether there was an administrative error.<sup>15</sup>

[17] As a result, the Tribunal finds that the appeal has no reasonable chance of success because the Tribunal does not have jurisdiction to decide on an administrative error or the amount of a Survivor's Allowance overpayment.

## **CONCLUSION**

[18] The appeal is summarily dismissed.

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<sup>12</sup> GD2-8 to 9 and GD2-12 to 13.

<sup>13</sup> *Old Age Security Act*, section 32.

<sup>14</sup> *Old Age Security Act*, section 37(2).

<sup>15</sup> *Canada (Minister of Employment and Immigration) v Pincombe*.

François Guérin  
Member, General Division – Income Security