



[TRANSLATION]

Citation: *N. R. v Minister of Employment and Social Development*, 2020 SST 692

Tribunal File Number: GP-19-1135

BETWEEN:

N. R.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

HEARD ON: March 9, 2020

DATE OF DECISION: July 6, 2020

DECISION

I find that the Appellant's separation with her spouse on June 27, 2017, was an involuntary separation. Therefore, she is entitled to receive Guaranteed Income Supplement (GIS) benefits as a person living alone for the period of July to September 2017.

OVERVIEW

[1] After the Appellant's application for the Allowance (ALW) was approved under the *Old Age Security Act* and after it was automatically converted to an Old Age Security (OAS) pension and the GIS effective December 2007, the Minister received information in 2017 indicating that the Appellant had voluntarily separated, not involuntarily. The Appellant's GIS was then recalculated for the period of July 2017 to September 2017, which caused an overpayment. The Appellant requested a reconsideration of the decision, and the Minister upheld its decision on reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

PRELIMINARY MATTERS

[2] The Appellant submitted additional evidence at the March 9, 2020, hearing that I accepted. The documents were shared with the Minister, and the Minister made additional submissions. Given the delay in allowing the new evidence to be considered and the COVID-19 situation, there were delays in finalizing the decision.

ANALYSIS

[3] I must determine whether the Appellant voluntarily or involuntarily separated from her spouse and whether she is entitled to GIS benefits according to the rate for people living alone or as a couple for the period of July 2017 to September 2017.

[4] According to the *Old Age Security Act*:

15 (3) Where an application for a supplement in respect of any payment period has been made by a person, the Minister may, after any investigation of the circumstances that the Minister considers necessary,

direct that the application be considered and dealt with as though the person did not have a spouse or common-law partner on the last day of the previous payment period, in any case where

[...]

(b) the Minister is satisfied that the person, as a result of circumstances not attributable to the person or the spouse or common-law partner, was not living with the spouse or common-law partner in a dwelling maintained by the person or the spouse or common-law partner at the time the application was made.

15 (4.1) Where an application for a supplement in respect of a payment period that commences after June 30, 1999, has been made by a person, the Minister, if satisfied that the person is separated from the person's spouse, having been so separated for a continuous period of at least three months, exclusive of the month in which the spouses became separated, shall direct that the application be considered and dealt with as though the person had ceased to have a spouse at the end of the third such month.

[5] The Appellant¹ takes issue with the fact that the Minister considers that, effective June 27, 2017, there was a voluntary separation with her now-deceased spouse, while she considers that it was an involuntary separation because social services made the decision to place him in a hospital centre for long-term care (CHSLD) without her permission. They did not tell her where they placed him. She got a call on August 24, 2018, and she learned that he had died. She repeated this information during her testimony.

[6] According to the June 27, 2019, reconsideration decision,² the Minister received the "Statement – Spouses or Common-law Partners Living Apart for Reasons beyond their Control" form on July 28, 2017. On that form, the Appellant indicated that she had started living apart from her spouse on June 27, 2017, for reasons beyond her control because he required assisted living. After that change, the Minister started paying GIS benefits according to the rate for people living alone and based on the Appellant's income starting July 2017, which corresponded to the month following the day she started living apart for reasons beyond her control. On September 11, 2018, the Minister received a certified copy of a Superior Court of Québec judgment of separation from bed and board dated February 2, 2018, where it is stated that the

¹ GD1-2.

² GD1-5.

Appellant ceased cohabitation on June 27, 2017, and the Court ordered a division of certain earning as of that date. Furthermore, according to the Canada Revenue Agency (CRA), the Appellant had indicated that she was separated in 2017. For that reason, the Minister reassessed the file and determined that she was not separated for reasons beyond her control but that she had been voluntarily separated since June 27, 2017. Therefore, the Appellant had received a GIS overpayment for the period of July to September 2017.

[7] The Minister also submitted that there were acts on both sides that led to the spouses' separation.

[8] According to the Allowance application,³ the Appellant and her spouse married in 1988.

[9] According to the July 28, 2017, Statement – Spouses or Common-law Partners Living Apart for Reasons beyond their Control⁴ signed by the Appellant and her spouse, they involuntarily separated on June 27, 2017, because of her spouse's loss of autonomy.

[10] According to the letter date-stamped September 11, 2017,⁵ the Appellant stated that her spouse left home on June 27, 2017, in an ambulance, and he asked to be admitted. She explained all the times her spouse tried to escape. She also explained that he had gone on hunger strike and that she had to drive him to the hospital.

[11] The Appellant's evidence and testimony indicate that she obtained a separation from bed and board judgment from the Court in Québec in February 2018 after she had applied in January 2018 for financial reasons.⁶ She continued to try to find her spouse but was unsuccessful. Eventually, she learned that her spouse died on August 24, 2018.⁷

[12] According to a sworn statement signed January 25, 2018,⁸ in support of her application for separation from bed and board with the Court, the Appellant stated that her spouse was placed in a home-care centre of which the location was not disclosed to her; she acknowledged

³ GD2-3.

⁴ GD2-7.

⁵ GD2-9.

⁶ GD2-15 and 17.

⁷ GD2-31.

⁸ GD2-17.

June 27, 2017, as the date on which they ceased living together, and she requested a division of earnings as of that date. She also said she had made efforts to try to find him, that he had tried to contact her by phone several times, but that he was told to hang up, and that a competency assessment of her spouse was underway.

[13] The Appellant told the CRA⁹ that she was married in 2016, separated in 2017, and a widow in 2018.

[14] The Appellant was her spouse's executor.

[15] Based on the Appellant's evidence and testimony, I find that the Appellant's separation with her spouse on June 27, 2017, was an involuntary separation. I am not persuaded that there were acts on both sides that led to a voluntary separation as the Minister submitted. I base my decision on the fact that the Appellant was her spouse's executor, that social services kept the Appellant apart from her spouse until his death, that she did not know where her spouse's residence was despite taking steps to find him, and that he had a loss of autonomy. It is only for financial reasons that in 2018 she applied to the Superior Court of Québec for a separation from bed and board.

CONCLUSION

[16] The appeal is allowed.

Antoinette Cardillo
Member, General Division – Income Security

⁹ GD2-23 to 25.