



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *MA v Minister of Employment and Social Development*, 2020 SST 746

Tribunal File Number: GP-20-840

BETWEEN:

**M. A.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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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 17, 2020

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant filed an application for an Old Age Security (OAS) pension, which was received on August 30, 2002.<sup>1</sup> The Appellant also asked to be considered for the Guaranteed Income Supplement (GIS).<sup>2</sup> The Respondent approved the application and began to pay the Appellant the OAS and GIS. The Appellant submitted to the Respondent a statutory declaration of separation between her and her spouse effective November 6, 2003.<sup>3</sup> After a stroke, the spouse went back to live with the Appellant on June 27, 2008. Following an investigation, the Respondent determined that the Appellant was not eligible to receive the GIS according to the rate for people living alone, and it informed the Appellant on December 2, 2014, that it was requesting an overpayment of \$32,752.18 from her for the period of July 2008 to November 2014.<sup>4</sup>

[2] The Respondent denied the request for reconsideration on February 20, 2015.<sup>5</sup> The Appellant appealed this decision to the Social Security Tribunal (Tribunal) on May 28, 2020.

### ISSUE

[3] The Tribunal must decide whether the appeal was brought in time.

### THE LAW

[4] Under section 52(2) of the *Department of Employment and Social Development Act* (Act), the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

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

<sup>2</sup> GD2-4, question 12.

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

<sup>4</sup> GD2-131 to 132.

<sup>5</sup> GD2-147 to 148.

## **APPELLANT'S SUBMISSIONS/EVIDENCE**

[5] The Appellant's representative (her daughter) argues that the Respondent did not consider her father's file; he had applied for the GIS in 2009 but did not receive it until December 2012. The representative also argues that the Respondent did not update her parents' file after receiving a statutory declaration from the Appellant informing the Respondent that her parents had resumed living together. The representative argues that the Respondent's oversight resulted in financial losses for her parents.

## **ANALYSIS**

[6] On March 25, 2020, the Appellant said that she received the reconsideration decision.<sup>6</sup> However, the Tribunal notes that it is actually a reply from the Respondent to the Appellant that confirms that the Respondent already made a decision on this file on February 20, 2015, following the Appellant's challenge. The Appellant is not alleging that she did not receive the Respondent's reconsideration decision but that she did not have new information to build the case and appeal.<sup>7</sup> The Tribunal presumes that the February 20, 2015, reconsideration decision was sent to the Appellant by mail. The Tribunal takes judicial notice of the fact that mail in Canada is usually received within 10 days. The Tribunal therefore finds that the reconsideration decision was communicated to the Appellant by March 6, 2015.

[7] The Tribunal finds that the Appellant brought the appeal to the Tribunal's General Division more than one year after the decision was communicated to her. The Tribunal must apply section 52(2) of the Act, which clearly states the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

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<sup>6</sup> GD3-3, paragraph 3.

<sup>7</sup> GD1-3.

**CONCLUSION**

[8] The appeal to the Tribunal's General Division was not brought in time and therefore will not proceed.

François Guérin  
Member, General Division – Income Security