



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *WP v Minister of Employment and Social Development and KR*, 2020 SST 815

Tribunal File Number: GP-18-2551

BETWEEN:

W. P.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

K. R.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: George Tsakalis

Teleconference hearing on: August 27, 2020

Date of decision: August 31, 2020

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Claimant applied for an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OAS Act) in August 2012. The Minister approved the GIS on the basis that the Claimant was single in July 2012. The Minister subsequently learned that the Claimant had lived in a common-law relationship since 2009. The Minister took the position that it overpaid the Claimant because it paid the Claimant's GIS at a higher rate as a single person. The Minister asked the Claimant to pay back \$13,724.80 in GIS benefits that he had received from July 2012 to February 2017.

[3] The Claimant appealed the Minister's decision to the Social Security Tribunal (the Tribunal).

[4] The Claimant argues that he reported his marital status to the Minister. The Minister was aware that he was in a common-law relationship but continued paying him the GIS at the higher single rate. The Claimant asked for forgiveness of the overpayment because the Minister made a mistake in paying him the GIS at a higher rate when it should have been aware of his common-law relationship.

PRELIMINARY MATTERS

[5] I heard this appeal together with the appeal of the Claimant's common-law partner. The *Social Security Tribunal Regulations* allow for the joining of appeals if there is a common question of law or fact and no injustice is likely to be caused to any party to the appeals.¹ These appeals have common questions of law or fact. They centre on whether the Claimant and his common-law partner collected GIS benefits at the higher rate for single people. The parties did not raise a concern about both appeals proceeding together. I do not see any injustice that is

¹ Section 13, *Social Security Tribunal Regulations*

likely to be caused to any party to the appeals. The decisions in the Claimant common-law spouse's appeal is being released separately and simultaneously.

ISSUES

[6] Did the Claimant receive GIS benefits at the rate payable for a single person from July 2012 to February 2017?

[7] If so, do I have jurisdiction to forgive the overpayment?

ANALYSIS

[8] Every person who applies for the GIS has to state whether they have a spouse or common-law partner at any time during the payment period.²

[9] Claimants must inform the Minister without delay if their marital status changes.³

[10] The amount of the GIS is determined by, among other things, the annual income of a claimant and their marital status.⁴

[11] The OAS Act and OAS Regulations contain provisions that authorize the Minister to recover benefits that a claimant was not entitled to receive.⁵

The Claimant received GIS benefits at the rate payable for a single person from July 2012 to February 2017.

[12] The Minister produced documentation that showed that it paid the Claimant GIS benefits at the rate payable for a single person from July 2012 to February 2017. The Minister provided documents that confirmed that it overpaid the Claimant the amount of \$13,724.80 in GIS benefits from July 2012 to February 2017.⁶

² Subsection 15(1), *Old Age Security Act*

³ Subsection 15(9), *Old Age Security Act*

⁴ Subsections 12(5) and (6), *Old Age Security Act*

⁵ Section 37, *Old Age Security Act* and section 27 *Old Age Security Act Regulations*

⁶ See GD2-63-69

I do not have jurisdiction to forgive the overpayment

[13] The documents show that the Claimant indicated that he was divorced when he applied for the OAS pension in August 2012. He stated on his OAS application that he was also applying for the GIS.⁷

[14] However, the Claimant informed the Minister that he was in a common-law relationship when he applied for the GIS for the period of July 2012 to June 2013.⁸

[15] The Claimant also informed the Canada Revenue Agency (CRA) in 2013 that he was in a common law relationship.⁹

[16] The Claimant signed a Statutory Declaration for the Minister in June 2013. He declared that he had been in a common-law relationship for 25 years.¹⁰ He completed a questionnaire for the Minister in September 2014, advising that he had been in a common-law relationship since 1989.¹¹ He completed another questionnaire and Statutory Declaration for the Minister in March 2017 that he had been in a common-law relationship since 1994.¹² In a May 2017 questionnaire, he stated that he lived in a common-law relationship since 2009.¹³

[17] The Claimant testified that when he initially applied for the OAS pension, he checked off divorce on the form because he was actually divorced from his previous wife. He notified the Minister and the CRA of his common-law status in 2013. He testified that he met his common-law partner in the 1990s. They began to living together in a marriage-like relationship in 2009. The file documents confirm that they began living together in 2009 and shared a joint bank account.¹⁴ The Claimant explained that they were discrepancies in the file as to when the

⁷ See GD2-6-9

⁸ See GD2-12

⁹ See GD2-95

¹⁰ See GD2-71

¹¹ See GD2-74

¹² See GD2-30-33 and 37

¹³ See GD2-52-53

¹⁴ See GD2-57, 62 and 63

common-law relationship began because he relied on a friend to complete the forms. His friend asked him how long he had known the Claimant, as opposed to how long they had been in a common-law relationship.

[18] I agree with the Claimant that the Minister should have known that he was in a common-law relationship since 2013. The Claimant argued that he should be pardoned from the overpayment because the Minister made a mistake paying him the GIS at the higher single rate.

[19] I feel sorry for the Claimant. I do not believe that he every deliberately intended to mislead the Minister. But the law says that the Tribunal must interpret and apply the provisions as they appear in the OAS Act and the OAS Regulations. I cannot waive or change them, even though I have great sympathy for the Claimant.¹⁵

[20] The law says that the Tribunal does not have jurisdiction over the issue of whether an overpayment is caused by erroneous advice or administrative error by the Minister. The Tribunal does not have jurisdiction to consider the issue of whether repayment would cause undue hardship to a Claimant. The Tribunal also does not have the power to forgive overpayments, only the Minister can do that.¹⁶

[21] Although I have great sympathy for the Claimant, his appeal cannot succeed. I do not have the power to forgive the overpayment.

CONCLUSION

[22] The appeal is dismissed.

George Tsakalis
Member, General Division - Income Security

¹⁵ *R. v. Conway*, 2010 SCC 22

¹⁶ Subsection 37(4) *Old Age Security Act* and *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278