



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v FP*, 2020 SST 890

Tribunal File Number: AD-20-784

BETWEEN:

Minister of Employment and Social Development

Appellant
(Minister)

and

F. P.

Respondent
(Claimant)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal and Appeal Decision by: Jude Samson

Date of Decision: October 8, 2020

DECISION AND REASONS

DECISION

[1] Based on an agreement between the parties, I am granting the Minister's application for leave (permission) to appeal and allowing the Minister's appeal. I am also making a small change to the General Division decision.

ANALYSIS

[2] The Claimant, F. P., applied for an Old Age Security (OAS) pension and for the Guaranteed Income Supplement (GIS). The Minister approved her applications.

[3] Later, however, the Minister decided that the Claimant had stopped residing in Canada. As a result, the Minister said that the Claimant was not entitled to all the benefits that she had received and that she should repay those benefits.

[4] The Claimant appealed the Minister's decision to the Tribunal's General Division and won. Briefly, the General Division decided that the Claimant had maintained her residence in Canada after December 2013. It also concluded that the Claimant was entitled to receive her OAS pension and GIS benefits after that date.

[5] The Minister is now appealing one small part of the General Division decision. The Minister argues that the Claimant was not entitled to receive any benefits in January and February 2014 because the Claimant had been outside Canada for more than six months.¹

[6] At the Minister's request, I invited the parties to a settlement conference. During the settlement conference, the parties agreed that I should

- a) find that the General Division misapplied the law to the facts of this case;²

¹ The Minister's arguments are based on sections 9(1) and 11(7)(c) of the *Old Age Security Act* and the fact that the Claimant had resided in Canada for less than 20 years.

² This is a relevant error (or ground of appeal) under section 58(1)(b) of the *Department of Employment and Social Development Act*.

- b) grant permission (leave) to appeal, allow the appeal, and give the decision that the General Division should have given; and
- c) confirm the General Division decision, except that the Claimant is not entitled to receive her OAS pension and GIS benefits in January and February 2014.

[7] Based on the information available to me, I am granting leave to appeal and allowing the appeal in line with the agreement reached by the parties at the October 8, 2020, settlement conference.

[8] In short, the Claimant meets the Canadian residency requirements for receiving her OAS pension and GIS benefits from December 2013 to June 2020 (the date of the General Division decision), except for the months of January and February 2014. The amount of the Claimant's GIS benefits will depend on her income.³

Jude Samson
Member, Appeal Division

REPRESENTATIVES:	Tiffany Glover, representative for the Applicant F. D., Respondent
------------------	--

³ During the settlement conference, Ms. Glover noted that the Minister will need to get information about the Claimant's income. This could cause some delay processing the Claimant's file.