



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *WM v Minister of Employment and Social Development*, 2020 SST 1091

Tribunal File Number: GP-19-1240

BETWEEN:

**W. M.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Pierre Vanderhout

Date of decision: November 23, 2020

## DECISION

[1] The Claimant is not entitled to any additional Guaranteed Income Supplement (“GIS”) amounts for the 2016-2017 payment year. I do not have the jurisdiction to grant the Claimant relief for his equitable and related claims. As the Minister’s reconsideration decision did not address the Claimant’s GIS entitlements during the 2017-2018 and 2018-2019 payment years, I do not have the jurisdiction to consider those amounts either. However, the Claimant may contact the Minister about making a reconsideration decision for those years.

## OVERVIEW

[2] The Claimant is a former lawyer. He suffered a traumatic brain injury in 1994. He was awarded a CPP disability pension, which he received until his 65<sup>th</sup> birthday in June 2011. He then started receiving an Old Age Security (“OAS”) pension. For many years, he has also received the GIS, as his household income fell below the applicable threshold. He continued doing some work for therapeutic reasons, but his earnings have been minimal.<sup>1</sup>

[3] In July 2018, the Claimant filed documents to support increased GIS payments.<sup>2</sup> This was because one of his income streams stopped in May 2017. In September 2018, the Minister made a decision on the Claimant’s GIS entitlement for the 2016-2017, 2017-2018, and 2018-2019 payment years.<sup>3</sup> The Claimant requested a reconsideration of that decision.<sup>4</sup> However, the Minister’s reconsideration decision only addressed the 2016-2017 payment year.<sup>5</sup> The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[4] The GIS is payable to low-income OAS pension recipients. The GIS is paid monthly and reassessed yearly. GIS payments starting in July of each year are usually based on the recipient’s income during the previous calendar year. However, if a GIS recipient shows that their current income will be reduced (such as through the end of a job), their GIS can be based on an estimate

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<sup>1</sup> GD1-5.

<sup>2</sup> GD2-3 to GD2-4, GD7-11 to GD7-12, and GD7-15 to GD7-16.

<sup>3</sup> GD2-10 to GD2-12. Alas, this letter has some date errors, which create confusion about the dates involved.

<sup>4</sup> GD2-13

<sup>5</sup> GD2-14

of their current income instead. That is what happened to the Claimant. The Minister increased the Claimant's GIS amount after one of his income streams ended in May 2017.

### **PRELIMINARY MATTERS**

[5] The first preliminary matter involves a late document. On September 1, 2020, the Tribunal sent each of the parties a "Notice of Hearing" (the "Notice").<sup>6</sup> The Notice contained questions for both parties, and specified a deadline of October 2, 2020. The Notice said that any documents filed after that date would only be admitted at the Tribunal member's discretion. The Notice asked parties to explain why late-filed documents were important for the appeal and why they could not file them before the deadline.<sup>7</sup> The Claimant filed his answers one day before the deadline. However, the Minister only filed answers (indexed as "GD7") on October 9, 2020. The Claimant questioned the Minister's late filing.<sup>8</sup>

[6] I decided to receive GD7, despite its lateness. I relied heavily on the importance of the GD7 responses in resolving some of the issues in this appeal. I do not find this prejudicial to the Claimant. In fact, several of the GD7 responses confirm that the Minister made errors in handling this matter. GD7 also contains relevant documents that were not previously disclosed. Finally, the Minister explained it had inadvertently overlooked the Notice questions.<sup>9</sup>

[7] The Minister should have reviewed the Notice sooner. However, the delay has not significantly affected the resolution of this matter. The Minister gave an explanation for the delay. The Tribunal's Regulations say I must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.<sup>10</sup> It would be unfair to exclude relevant evidence that clarifies the disputed matters, and is not prejudicial, because it was a few days late.

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<sup>6</sup> GD0-1

<sup>7</sup> GD0-3

<sup>8</sup> GD8-1

<sup>9</sup> GD7-1

<sup>10</sup> Paragraph 3(1)(a) of the *Social Security Tribunal Regulations*.

[8] The second preliminary issue is the relevance of the Claimant's CPP disability pension. In this appeal, the Claimant devoted considerable attention to that pension. He suggests, for example, that the CPP disability pension is a lifetime benefit.<sup>11</sup>

[9] Payment of a CPP disability pension has no impact on the Claimant's OAS pension or GIS. Although the Claimant received a CPP disability pension right up to his 65<sup>th</sup> birthday, that was the latest date on which he could receive it.<sup>12</sup> The OAS pension is not payable before age 65. The Claimant's OAS pension is based on his years of Canadian residence before his OAS pension started. Health and disability status have no effect on the OAS pension. The GIS is an income-tested benefit that depends entirely on the income of the Claimant and his spouse. For the purposes of this appeal, it is irrelevant that the Claimant once received a CPP disability pension.

## **ISSUES**

[10] What is the Claimant's GIS entitlement for the 2016-2017 payment year?

[11] Besides the Claimant's GIS entitlement for the 2016-2017 payment year, does the Tribunal need to consider any other issues?

## **ANALYSIS**

[12] Miscommunication has plagued the dealings between the Claimant and the Minister. The Minister's letters contain several errors.<sup>13</sup> The Claimant and the Minister adopted different interpretations of the word "retired", although it had little relevance to the actual issues. They also interpreted the scope of the Claimant's reconsideration request differently. Finally, the Claimant also raised issues outside the Tribunal's jurisdiction.<sup>14</sup>

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<sup>11</sup> GD5-1, in paragraph 2.

<sup>12</sup> Subsection 70(1) of the *Canada Pension Plan*.

<sup>13</sup> These errors became clear in the Minister's GD7 answers to the Tribunal's questions. For example, the September 2018 decision (GD2-10) purports to deal with "the 2016-2017, 2016-2017 and 2017-2018 payment years" [sic], but also discusses the 2018-2019 payment year. That same letter claims to deal with the Claimant's "statement of estimated income for the year 2015", when no such document existed. The Minister admits this error at GD7-3.

<sup>14</sup> For example, the Claimant claims equitable relief at GD5-2 and GD6-1. I will discuss this in more detail later.

[13] The Minister's reconsideration decision clearly addresses the Claimant's GIS in the 2016-2017 payment year.<sup>15</sup> I will first look at that issue, before addressing the other issues raised by the Claimant.

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<sup>15</sup> GD2-14

**What is the Claimant’s GIS entitlement for the 2016-2017 payment year?**

[14] The Claimant’s 2016-2017 GIS would normally be based on his actual 2015 income. However, a statement of estimated income can change the GIS amount after a “retirement”<sup>16</sup> from employment. In this case, the Claimant “retired” from one of his part-time roles in May 2017. The resulting income drop means his GIS could increase for the remainder of the GIS payment year. However, as the GIS payment year ends after June 2017, only one month (June 2017) of the GIS for the 2016-2017 payment year could potentially increase.

[15] The Claimant’s GIS payment for June 2017 increased from \$108.23 to \$168.23.<sup>17</sup> The Minister included this \$60.00 increase in a \$480.00 payment issued to the Claimant on October 1, 2018. The other \$420.00 of that payment comes from an increase in the Claimant’s GIS for the payment year from July 2017 to June 2018.<sup>18</sup>

[16] I see no error in the Minister’s calculation of the Claimant’s June 2017 GIS payment. The payment increased when the Minister learned that one of the Claimant’s income streams ended in May 2017. In any event, the Claimant doesn’t base his appeal on a single incorrect GIS payment. His complaints are of a more systemic and ongoing nature. I will now look at those more closely.

**Does the Tribunal need to consider any other issues in this appeal?**

[17] The evidence and the Claimant’s submissions reveal many grievances. I have summarized them into three categories, although they overlap somewhat. I will begin with GIS entitlement after the 2016-2017 payment year.

*1. The Claimant’s GIS for the 2017-2018 and 2018-2019 payment years*

[18] In September 2018, the Minister made initial decisions regarding the Claimant’s GIS for the 2016-2017, 2017-2018, and 2018-2019 payment years.<sup>19</sup> The Minister told the Claimant he could request a reconsideration of those decisions. In November 2018, the Claimant asked the

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<sup>16</sup> This word should not be strictly interpreted, especially in cases (like this one) where the Claimant “retired” from his main occupation long ago and/or has more than one income source. In this context, “retirement” just means that a given source of income has ended.

<sup>17</sup> GD7-3

<sup>18</sup> GD2-11

<sup>19</sup> GD2-10

Minister to “reconsider your decision, particularly with respect to the 2016-2017 payment year.”<sup>20</sup> This request may include the GIS for each of the three payment years. The Claimant’s SST submissions also suggest that he wanted all three payment years considered.<sup>21</sup>

[19] Alas, the Minister interpreted the Claimant’s request differently. The Minister’s reconsideration decision only addressed the Claimant’s GIS for the 2016-2017 payment year.<sup>22</sup> In response to the Tribunal’s question, the Minister confirmed making no reconsideration decision for the 2017-2018 and 2018-2019 payment years.<sup>23</sup>

[20] The Claimant wants me to make a decision on issues that the reconsideration decision did not address. However, my jurisdiction is limited to decisions made in a reconsideration decision.<sup>24</sup> This means I cannot make any findings on the Claimant’s GIS entitlement for the 2017-2018 and 2018-2019 payment years. I also cannot order the Minister to make a reconsideration decision.<sup>25</sup> I can only suggest that the Minister and the Claimant contact each other about his GIS entitlement for those payment years.

## *2. Equitable relief, bad faith, punitive damages, etc.*

[21] The Claimant submitted that he had a claim against the Minister “based upon a bad faith calculation of the benefits as should have been provided on a continuous basis.” He also refers to an “inordinate delay” and punitive damages for breaching equitable rights such as fairness and good faith. While the basis for this claim is not clear, it appears connected to the CPP disability benefits that expired in law on his 65<sup>th</sup> birthday.<sup>26</sup>

[22] Even if there was a legal basis for such an argument, I could not provide the remedy requested. The Tribunal is a creature of statute. It has no inherent equitable jurisdiction. It cannot use the principles of fairness to grant benefits in excess of what the statute clearly mandates.<sup>27</sup>

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<sup>20</sup> GD2-13

<sup>21</sup> See the first paragraph of GD5-1.

<sup>22</sup> GD2-14

<sup>23</sup> GD7-4

<sup>24</sup> Subsection 28(1) of the *Old Age Security Act*. See also *Canada (Attorney General) v. Bannerman*, 2003 FCT 208.

<sup>25</sup> Subsection 54(1) of the *Old Age Security Act*.

<sup>26</sup> GD6-1

<sup>27</sup> See the binding decision in *Canada (MHRD) v. Esler*, 2004 FC 1567. See also the persuasive decision of the Tribunal’s Appeal Division in *D. T. v. Minister of Employment and Social Development*, 2015 SSTAD 1134, at paras. 36-37.

Nor can it grant remedies that are within the exclusive domain of the civil court system. These claims cannot succeed at the Tribunal.

### *3. The Claimant's "\$8,000.00 Claim"*

[23] The Claimant has made several references to an outstanding claim against the Minister for the approximate amount of \$8,000.00. He suggests that this claim arises from submissions made by his accountants in June 2018, but says the Minister has only paid him approximately \$800.00 of that amount.<sup>28</sup> In response to the Tribunal's questions, the Claimant could not clearly explain the basis of the \$8,000.00 claim.<sup>29</sup> Nor were any June 2018 documents found by either the Claimant or the Minister.<sup>30</sup> The Claimant may be referring to GIS amounts for the 2017-2018 and 2018-2019 payment years, based on documents filed in July 2018.<sup>31</sup> Alternatively, the Minister suggests the Claimant may be referring to a Canada Revenue Agency matter.<sup>32</sup>

[24] In any case, I do not see any valid basis for this claim at the Tribunal. I cannot award damages. I can only make findings on issues that are properly before the Tribunal. The only issue validly before the Tribunal is the Claimant's GIS for the 2016-2017 payment year.

## **CONCLUSION**

[25] The appeal is dismissed with respect to the Claimant's GIS entitlement for the 2016-2017 payment year. The Claimant's request for equitable and other monetary relief is outside the Tribunal's jurisdiction. The Claimant and the Minister may wish to contact each other with respect to the Claimant's GIS entitlement for the 2017-2018 and 2018-2019 payment years.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>28</sup> See, for example, GD3-1, GD5-1, GD5-2

<sup>29</sup> GD0-2 and GD6-1.

<sup>30</sup> The Minister was asked about these documents at GD0-2, and responded at GD7-4 (and again at GD9-1).

<sup>31</sup> This possibility is set out at GD10-1. However, the Claimant believes some pages are still missing, and suggests they form the basis for a significant claim.

<sup>32</sup> GD9-1