



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AL c/o JS v Minister of Employment and Social Development*, 2020 SST 1099

Tribunal File Number: GP-18-2602

BETWEEN:

**A. L. c/o J. S.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

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

---

Decision by: Anne S. Clark

Claimant represented by: Dorothy Myles and David Daniels

Observers: Kathleen Hutchinson

Mr. S. Sparks

Teleconference hearing on: September 10, 2020 and

October 22, 2020

Date of decision: November 24, 2020

## DECISION

[1] I am allowing the Claimant's appeal. This is because the Minister does not have the authority to reassess its initial decisions about the Claimant's applications for a *Guaranteed Income Supplement* (GIS) for the period from July 2000 to June 2016.

## OVERVIEW

[2] The Claimant applied for a pension under the *Old Age Security Act* (OAS Act) in September 1995 and the Minister approved her application. The Minister also allowed her application for a GIS beginning in 1998. In her applications, she identified herself as single. As of June 2000, the Minister continued to pay a GIS benefit calculated for a single person. Each year the Claimant filed the necessary applications or submitted income information as required.

[3] In 2016, the Claimant applied for survivor's benefits under the *Canada Pension Plan* (CPP). She identified herself as the common-law spouse of CH. In her application, the Claimant said she and CH were common-law partners beginning in 1996. She later said that was a mistake and she did not live with CH in a common-law relationship until November 2014 when he moved into her home and lived there until his death on June 15, 2016.

[4] The Claimant said she and CH were in a personal relationship for many years. The Claimant lived on Union Street in Halifax and CH lived on Old Guysborough Road. The Claimant explained they were close and he helped her when she needed to mortgage the Union Street property. She transferred ownership of the property to the Claimant and CH jointly so the Claimant could borrow money against the house. CH was ill and by 2014, he found it increasingly difficult to travel to the city for his medical appointments. He moved into the Union Street home with the Claimant and lived there until his death in July 2016.

[5] There is very complicated and, at times, conflicting information about the Claimant's and CH's financial and personal circumstances. There is evidence from the Claimant's nephews in addition to her evidence about her relationship with CH. There are documents and letters about their financial and personal circumstances.

[6] In 2018, the Minister conducted an investigation of the Claimant's GIS benefits and reassessed the Claimant's entitlement to a GIS. The Minister decided the Claimant was not entitled to benefits she received from July 2000 to June 2016. The Minister said 2000 is the first year when common-law marital status could be considered for the purpose of calculating GIS benefits. The Minister concluded the Claimant was overpaid by \$121,855.53. The Claimant requested the Minister reconsider the decision and the Minister confirmed the overpayment on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

## **PRELIMINARY MATTERS**

### **The Claimant's evidence**

[7] The Claimant attended the hearing but was unable to participate directly because she has significant hearing loss. She previously submitted her evidence about her relationship with CH in writing using letters and sworn testimony. The Minister did not identify any concerns about the way the Claimant submitted her evidence and, in fact, said the appeal could proceed based on the evidence and documents on file. I was satisfied with the Claimant's written evidence and, with her nephew's help, I could ask her questions during the hearing.

### **Delays in the proceedings were justified**

[8] The proceedings were delayed several times. The Tribunal scheduled the initial pre-hearing conference for March 19, 2020. The proceedings had to be delayed at different times for several reasons including Covid19 restrictions, the Claimant's poor health, a change in representatives, and a conflict with my schedule. Each time I delayed the proceeding I was satisfied the circumstances were extraordinary and justified the delay. The hearing began on September 10, 2020, reconvened and concluded on October 22, 2020.

### **Claimant's request for more information from the Minister**

[9] The Claimant's representative requested a pre-hearing conference to discuss the appeal. The Minister did not attend the teleconference. The representative expressed concern about information the Minister filed. Specifically she questioned whether there is "better" or more

complete information about the deceased contributor's address than the information contained in income tax summaries the Minister received from the Canada Revenue Agency (CRA). The representative was not able to give any specifics about her concern except to say the Claimant wanted to see the original tax filing rather than information from the tax summary.

[10] The representative asked that I instruct the Minister to obtain copies of the deceased contributor's tax filings for the relevant years because there may be more information about the deceased contributor's actual address. The representative said she did not send a request directly to the CRA. She believes it would be easier and faster for the Minister to obtain the documents.

[11] I denied the Claimant's request. Each party has the opportunity to submit evidence on appeal. The Claimant is required to submit evidence to prove her case on a balance of probabilities. If she believes the Minister's evidence is not sufficient to justify the Minister's reconsideration decision she can raise her concerns at the hearing. I explained I would weigh all of the evidence after we conclude the hearing.

## **ISSUE**

[12] Did the Minister have the authority to re-assess the Claimant's GIS eligibility?

[13] If the Minister has the authority to reassess eligibility, the issue would then be whether the Claimant was single or living in a common-law relationship for the purpose of her entitlement to GIS benefits. Given my decision, it is not necessary for me to decide the Claimant's marital status.

### ***I may consider issues not raised by the parties***

[14] Both parties defined the issue on appeal as whether the Claimant's marital status was single or common-law for the period of July 2000 to June 2016. Neither party raised the issue of the Minister's authority.

[15] Before the teleconference in October 2020, I provided a copy of a recent Appeal Division (AD) decision I will call BR<sup>1</sup>. BR is about whether the Minister is allowed to revisit and change

---

<sup>1</sup> *B. R. v Minister of Employment and Social Development*, 2018 SST 844

initial decisions about a claimant's entitlement to benefits. I informed the parties I thought BR may affect the appeal and gave them time to make submissions.

[16] The Claimant's representative made oral submissions at the hearing. The Minister did not attend the hearing or make submissions on BR.

[17] I raised the issue and invited submissions because there have been several recent decisions addressing the Minister's authority to revisit and change previous decisions. BR was the first and not all subsequent decisions agree completely with the analysis in BR. I felt the issues in BR were similar to this appeal and the decision could apply. The General Division (GD) of the Tribunal is not required to question the validity of the Minister's powers in all appeals, particularly when no party raised any issues with those powers. While I may not be obliged to raise this question in every appeal, it does not mean I should not raise it when I question it. The question of the Minister's powers in appeals under the OAS Act is important, and the issue of the Minister's jurisdiction to reopen previous decisions has already arisen in OAS matters. The Tribunal has discretion to raise such issues<sup>2</sup> "when failing to do so would risk an injustice."<sup>3</sup>

[18] In this appeal, it would be an injustice not to raise this as an issue. Since the principle of law discussed in BR could affect the outcome of this appeal, I must give the parties a full opportunity to address it. Parties may not have ready access to decisions especially new or unpublished decisions from the Tribunal. To ensure fairness I advised both parties that I am aware of BR and it may apply the same principles to this appeal. I gave the parties full opportunity to make written or oral submissions.

[19] I recognize that the Tribunal should not build a party's case, but if there is a fundamental question such as jurisdiction, the parties should have the opportunity to address the question. Following the directions of the Federal Court, I gave notice to the parties and the opportunity to respond.<sup>4</sup>

---

<sup>2</sup> *Adamson v Canada (Human Rights Commission)*, 2015 FCA 153 at para 89

<sup>3</sup> *Adamson* citing *R.v. Mian* 2014 SCC, 54 [2014] 2 SCR 689 at para 41

<sup>4</sup> *Adamson v Canada (Human Rights Commission)*, 2015 FCA 153 at para 89 11

## ANALYSIS

### **The Minister may not recover the Claimant's GIS payments from July 2000 to June 2016**

[20] The Claimant's eligibility for a GIS from July 2000 to June 2016 depended on her being in receipt of the OAS pension. She also had to meet the income test and have been resident in Canada.<sup>5</sup> The facts that she satisfied the residency requirements and was in receipt of the OAS pension are not in issue.

[21] The Minister assessed the Claimant's entitlement to a GIS and paid her benefits for the period from July 2000 to June 2016. For the reasons that follow, I find the Minister may not change the decision and recover the benefits for that period.

#### ***I. The law does not give the Minister clear authority to change a previous decision***

[22] The OAS Act and *Regulations* apply to the GIS as well as the OAS pension. I do not find authority in either document for the Minister to overturn an initial decision on the Claimant's eligibility for the GIS.

[23] BR involved a claimant who initially received approval for the OAS. The Minister then reversed its position and stated that the claimant was not entitled to two years of benefits to which he had been found entitled in the initial eligibility decision. The Minister demanded repayment of the two years of benefits.

[24] In considering the appeal in BR, the AD member conducted a careful review of the law.<sup>6</sup> He concluded that the OAS Act did not give the Minister authority to revisit a claimant's initial eligibility once the Minister approved an OAS application. AD decisions are not binding on me but I may adopt the reasoning used in similar appeals. I find the analysis and reasoning in BR also applies to this appeal and, in particular the following conclusions:

- a) As social welfare legislation, the OAS regime should be interpreted liberally.<sup>7</sup>

---

<sup>5</sup> Subsections 11(7)(c) and (d) of the OAS Act

<sup>6</sup> Especially section 23 of the OAS *Regulations*, section 37 of the OAS Act

<sup>7</sup> *B.R. v. MESD*, 2018 SST 844, at paras. 41-43

- b) “The law favours finality, and pensioners legitimately expect that they can rely on the Minister’s eligibility decision.” If the Minister had the power to revisit the initial eligibility decision, it was reasonable to expect clear statutory language to that effect. Such clear statutory language, which is found in other benefits-conferring legislation, is absent from the provisions of the OAS Act and *Regulations*.<sup>8</sup>
- c) For example, the OAS Act does not give the Minister the authority to rescind or amend an initial eligibility decision based on “new facts” (facts that could not have been discovered at the time the Minister made its initial eligibility decision).<sup>9</sup>
- d) The OAS Act does not give the Governor in Council the authority to create regulations that would allow the Minister to change previous eligibility decisions.<sup>10</sup>
- e) In cases of fraud, the Minister’s remedy is to pursue summary conviction or assess a financial penalty.<sup>11</sup>
- f) The Act allows for the possibility that a pensioner’s eligibility for OAS or GIS benefits, or the amount of their benefits, might change over time.<sup>12</sup>

## ***II. The authority to investigate does not give authority to reassess***

[25] Section 23(1) of the OAS Regulations provides that the Minister may, at any time before or after the approval of an application require the applicant to make available, or allow to be made available, further information regarding the eligibility of the applicant. Section 23(2) of the OAS Regulations provides that the Minister may investigate at any time the eligibility of a person to receive a benefit.

[26] The fact Parliament gave the Minister broad powers to investigate, does not also give the authority to change an initial eligibility decision. Clear statutory language is necessary for the

---

<sup>8</sup> *B.R. v. MESD*, 2018 SST 844, at para. 56-62

<sup>9</sup> *B.R. v. MESD*, 2018 SST 844, at para. 59

<sup>10</sup> Section 34(j) of the OAS Act

<sup>11</sup> Sections 44 and 44.1 of the OAS Act

<sup>12</sup> *B.R. v. MESD*, 2018 SST 844, at para. 55

Minister to have that power. Investigatory powers are not powers to reassess. There are many reasons why the Minister may need such broad powers of investigation. These include:

- a) determining whether a beneficiary continues to be entitled to a benefit,<sup>13</sup>
- b) determining whether payment should be suspended,<sup>14</sup>
- c) determining whether a beneficiary has received a payment, or excess payment, to which they were not entitled,<sup>15</sup> and
- d) determining whether a penalty should be imposed on a person who knowingly made a false or misleading statement in their application.<sup>16</sup>

### ***III. Reassessment without authority causes significant unfairness***

[27] *BR* refers to the “significant unfairness and tremendous stress” that pensioners experience because of ministerial reassessments of entitlements under the OAS Act and *Regulations*. Ministerial requests for repayment – sometimes occurring years after the initial decision – can result in pensioners being liable to reimburse overpayments of \$100,000 or more.<sup>17</sup> It is not difficult to appreciate the significant unfairness or tremendous stress the Claimant experienced when she learned of the Minister’s decision that created an unexpected and extraordinary debt of over \$121,000.00 paid over 16 years.

[28] In addition to the debt, the circumstances are such that it would be very difficult if not impossible for the Claimant to re-prove her entitlement. CH is deceased and cannot confirm the period he lived with the Claimant. The Claimant cannot recall completing and submitting forms especially for the time after CH’s death when she was overwhelmed with grief. Documents she can obtain have inconsistent and potentially unreliable information. Finally, the Claimant’s health and memory are failing her and she is not in a position to respond to the Minister’s decision to reassess her entitlement.

---

<sup>13</sup> Sections 5(3), 14, 15 of the OAS Act

<sup>14</sup> Section 34(j) of the OAS Act

<sup>15</sup> Section 37(1) of the OAS Act

<sup>16</sup> Section 44.1(1) of the OAS Act

<sup>17</sup> *B.R. v. MESD*, 2018 SST 844, at paras 78-80



***IV. Evidence does not show fraud or intentional misrepresentation***

[29] The Minister did not make or pursue allegations of fraud against the Claimant. In addition, I find information in the file fails to prove the Claimant knowingly misrepresented her relationship with CH in communications with the Minister. With the passage of time and difficult personal circumstances, it is not reasonable or fair to expect her to be able to find evidence to challenge the Minister's decisions.

[30] BR spoke of cases where there may be alleged fraud or where a claimant knowingly gives false information or misleads the Minister. The Minister may have some recourse in cases such as those but that does not apply in this appeal. The Minister did not submit evidence that the Claimant knowingly gave false or misleading information. The Minister could have pursued a claim that the Claimant knowingly gave false or misleading information. There is authority for the Minister to pursue remedy under the OAS Act.<sup>18</sup>

***V. The Claimant was entitled to the GIS when the Minister approved her applications***

[31] The Minister has the authority to recover payment when the amount paid was incorrectly calculated or where the beneficiaries received payments after they are no longer entitled to benefits.<sup>19</sup>

[32] There is no evidence the Minister calculated the GIS incorrectly. The Claimant was entitled to receive the benefits once the Minister approved her application. This is true even if the Minister felt the initial approval was, with the benefit of hindsight, mistaken. This does not mean that the Minister can subsequently change the decision and recover payments from past years.

[33] The fact that the Minister may reassess entitlement to GIS benefits each year does not mean the Claimant's entitlement for previous years remains open for review and change. When the Minister makes a decision about entitlement for a particular year it is final. The Minister can review the Claimant's information to determine entitlement for the next or subsequent period but the

---

<sup>18</sup> Sections 44 and 44.1(1) of the OAS Act

<sup>19</sup> Section 37(2) of the OAS Act

previous period or periods are final unless they are appealed or otherwise changed within the authority of the law.

[34] As discussed in BR, the law favours finality. It is not fair to allow a pensioner's monthly income to be so uncertain. Pensioners could not rely on a monthly pension even after the Minister approves and pays it. Unexpectedly, they can find themselves in significant debt and their monthly pensions reduced for years while the Minister recovers the "debt".

[35] One would expect clear authority in the legislation to allow the Minister to revisit and change eligibility decisions. The legislation and Regulations do not give clear authority for the Minister to change initial decisions even though the Minister may investigate entitlement to ongoing benefits. I do not suggest the Minister cannot decide entitlement to ongoing GIS benefits or take other action when a claimant knowingly makes false or misleading statements. Those circumstances do not exist in this appeal. The Minister did not have the authority to reassess and change previous decisions about the Claimant's eligibility to a GIS from July 2000 to June 2016.

## **CONCLUSION**

[36] The appeal is allowed.

Anne S. Clark  
Member, General Division - Income Security