



Citation: *KS v Minister of Employment and Social Development*, 2020 SST 1100

Tribunal File Number: GP-19-1772

BETWEEN:

**K. S.**

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: Raymond Raphael

Claimant represented by: Parbinder Bhangu

Minister represented by: Wendy LeClerc

Videoconference hearing on: December 3, 2020

Date of decision: December 12, 2020

## DECISION

[1] The Claimant is entitled to a partial *Old Age Security* (OAS) pension of 10/40<sup>th</sup> of the full OAS pension with payment starting as of June 2019. He is also entitled to the *Guaranteed Income Supplement* (GIS) with payments starting as of that date.

[2] He is not entitled to have payments start as of an earlier date. This is because he was not a resident of Canada from August 1, 2006 to July 17, 2008 or from December 17, 2008 to December 5, 2009.

## OVERVIEW

[3] The Claimant was born in India in X. On June 7, 2006, he came to Canada. In March 2017, he applied for the OAS pension. In June 2017, he applied for the GIS benefits. He does not qualify for the GIS unless an OAS pension is payable to him. In April 2018, the Minister denied both applications on the basis that the Claimant did not have a sufficient period of residency in Canada to qualify for an OAS pension.<sup>1</sup>

[4] On the advice of the Minister, the Claimant resubmitted both applications in May 2018.<sup>2</sup> In March 2019, the Minister again denied both applications. Its position was that the Claimant was ineligible for OAS because he had only 7 years and 196 days residence in Canada by March 30, 2019. The Minister told the Claimant that he would be eligible for OAS if he continued to reside in Canada until September 29, 2021.<sup>3</sup> In September 2018, the Claimant requested a reconsideration.<sup>4</sup> In July 2019, the Minister denied the Claimant's request for reconsideration.<sup>5</sup> The Claimant appealed to the Social Security Tribunal.

[5] To qualify for the partial OAS pension, the Claimant must establish that he was at least 65 years old, that he resided in Canada for at least 10 years, and that he resided in Canada on the day before the Minister approved his application.<sup>6</sup> To qualify for the GIS he must meet the

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<sup>1</sup> GD2-89 to 90

<sup>2</sup> GD2-91 to 98

<sup>3</sup> GD2-133 to 135

<sup>4</sup> GD2-136 to 141.

<sup>5</sup> GD1-13 to 15

<sup>6</sup> Section 3(2)(b)(iii) of the OAS

income requirements, be a resident of Canada, not be absent from Canada for more than six months, and be receiving the OAS pension.

### **PREHEARING CONFERENCE**

[6] I conducted a prehearing conference on November 12, 2020. In the course of this matter, the parties changed their positions about the issues on several occasions. However, at the prehearing conference they agreed that only two periods were in dispute. The first is from August 1, 2006 to July 17, 2008. The second is from December 17, 2008 to December 5, 2009. The Claimant acknowledges that he was in India during both periods. His position is that his residence in Canada was not interrupted during either of those periods. The reason for this is that he became ill and on his doctor's advice was not able to return to Canada. The Minister's position is that the Claimant's residence in Canada was interrupted during both periods.

[7] If the Claimant's position is accepted, he was entitled to both the 10/40<sup>th</sup> OAS pension and the GIS benefits, effective July 2016. If the Minister's position is accepted, he was not entitled to them until June 2019.

### **ISSUE**

[8] What is the effective date for payment of the Claimant's OAS pension and GIS benefits?

### **ANALYSIS**

[9] To decide if the Claimant resided in Canada during the disputed periods, I must determine whether he made his home and ordinarily lived in Canada.<sup>7</sup> Being physically present in Canada is different from residing in Canada.<sup>8</sup>

[10] I must weigh all the facts of the case and the Claimant's circumstances. The Claimant's intention to live in Canada is not enough on its own to show residence. The determination of

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<sup>7</sup> Section 21(1) of the OAS

<sup>8</sup> Section 21 of the OAS

residency is a factual issue that requires an examination of the whole context of the Claimant's circumstances.<sup>9</sup>

[11] I must consider factors such as:

- the Claimant's lifestyle and ties in Canada (personal property, social ties, medical coverage, driver's license, rental lease, tax records, etc.) compared to his ties in India;
- the regularity and length of his stays in Canada;
- the frequency and length of his absences from Canada; and
- his mode of living, or whether he was sufficiently deep rooted and settled in Canada.

[12] The Claimant testified that he and his wife came to Canada in June 2006. Their son sponsored them. After they stayed with their son for a short period, they learned that the Claimant's mother-in-law was ill. In August 2006, they went back to India to see her. They only intended to stay about 3-4 months. However, in January 2007 the Claimant became ill.<sup>10</sup> He had stomach problems and vomited blood. He was in the hospital for about a month and a half. He also had heart problems. He saw Dr. Chawla on a regular basis. Dr. Chawla advised him not to travel. This was because he was very weak, had lost a lot of blood, had difficulty walking, and had no energy. He was not able to return to Toronto until July 2008. By then, his condition had improved and Dr. Chawla cleared him to go back. After he returned to Canada, he saw his son's family doctor, Dr. Bossie, for both his stomach and heart problems. Dr. Bossie sent him to a specialist.

[13] The Claimant testified that in December 2008, he returned to India to attend a nephew's wedding. In April 2009, he suffered a heart attack. He was in the hospital for 15 to 20 days. Dr. Chawla treated him. He was advised to take "complete rest." After another 3-4 months, he suffered bleeding problems. He was in the hospital for 8-10 days. He was very weak. Dr. Chawla told him not to travel back to Canada. He returned to Canada in December 2009, after Dr.

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<sup>9</sup> *Canada (MHRD) v Ding*, 2005 FC 76 and *Duncan v Canada (AG)*, 2013 FC 319.

<sup>10</sup> GD2-56

Chawla said he could. He followed up with doctors in Canada for treatment of his heart condition and had heart surgery here.

[14] The most significant difficulty with the Claimant's position is that he has provided no medical documents to support his position that he was too ill to return to Canada during either of the disputed periods. The only records he has produced are prescriptions from Dr. Chawla and a lab report.<sup>11</sup> The Claimant states that he was not able to obtain medical documentation because the Oxford Hospital has closed and he has been unable to locate Dr. Chawla. I do not find these explanations persuasive.

[15] Even if a hospital closes, its records do not disappear. There is no reason why the Claimant would not have been able to locate Dr. Chawla. Further, the Claimant did not provide any medical documentation for his treatment after his return to Canada. This medical documentation would likely have included narrative histories relating to his conditions in India. The Claimant has the burden of proof. His failure to provide supporting medical documentation was a significant factor in my deciding that he had failed to establish that he was a resident of Canada during the disputed period.

[16] In addition, the Claimant did not establish that he was "deep rooted" in Canada prior to returning to India for the disputed periods. He had been in Canada for less than two months before he returned to India in August 2006. He stayed in India until July 2008 – a period of almost two years. He was then in Canada for only six months before returning to India in December 2008. He stayed in India for close to a year until December 2009. He lived with his son while in Canada.

[17] There is no evidence of his establishing any other significant ties in Canada during the period from August 2006 to December 2009. In a June 2017 Questionnaire the Claimant stated that during this period he<sup>12</sup>:

- lived with family or a friend already in Canada;

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<sup>11</sup> GD3-10 to 22

<sup>12</sup> GD2-57 to 65

- did not keep a place of residence in Canada that was exclusively his and his wife's;
- did not maintain public utility statements in Canada;
- did not travel to India with a return ticket; and
- did not bring any belongings with him to Canada from India other than clothing and personal hygiene items.

[18] The Claimant has failed to establish that he was a resident of Canada during the periods from August 2006 to July 2008 and December 2008 to December 2009. He did not have 10-years residence in Canada until May 2019. The Minister correctly determined that he was entitled to a 10/40<sup>th</sup> OAS pension effective June 2019. It also correctly decided that he was entitled to the GIS benefits starting in June 2019.<sup>13</sup>

## **CONCLUSION**

[19] The appeal is dismissed

Raymond Raphael  
Member, General Division - Income Security

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<sup>13</sup> GD6-2 to 4