



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *NM v Minister of Employment and Social Development*, 2021 SST 124

Tribunal File Number: GP-20-799

BETWEEN:

N. M.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Date of decision: February 4, 2021

DECISION

[1] I am allowing the appeal in part. The Claimant, N. M., is entitled to a partial pension of 10/40ths under the *Old Age Security Act* (OAS Act), payable beginning May 2020. These are my reasons.

OVERVIEW

[2] The Claimant was born in Tanzania in February 1952. She moved to Canada in February 1976, and became a Canadian citizen in 1980. She left Canada in July 1984. She mostly lived in Kenya after that.

[3] The Claimant applied for an OAS pension in December 2018. In the application, she said she had lived in Canada from 1976 to 1984, and from 2017 to the present.¹ She later provided a residence history in which she said she resided in Canada during the following periods:

- February 1976 to July 1984
- July 1986 to February 1987
- April to September 2017
- October 2018 to the present (which was February 2019, the date she completed the questionnaire).²

[4] The Claimant says she continues to reside in Canada.

[5] A person has to reside in Canada for at least ten years after turning eighteen to be eligible for an OAS pension. If they reside outside Canada when the application is approved, they need twenty years of prior residence.³

[6] The Minister of Employment and Social Development (the Minister) denied the Claimant's application, because she had not provided evidence to show she had resided in Canada more than eight years.⁴

¹ GD2-6

² GD2-14

³ Subsection 3(2) of the *Old Age Security Act* sets out this rule.

⁴ The initial decision is at page GD2-20-21. The reconsideration decision is at page GD2-36-37.

[7] The Claimant appealed to the General Division of the Social Security Tribunal. She says that the periods of residence noted above add up to more than ten years, so she is entitled to an OAS pension.

WHAT I HAVE TO DECIDE

[8] The Minister accepts the Claimant resided in Canada from February 1, 1976, to July 15, 1984.⁵ I agree with that. I still have to decide if the Claimant resided in Canada any time after that, and if she is eligible for an OAS pension.

REASONS FOR MY DECISION

[9] I find the Claimant did not reside in Canada for all the periods she claimed. She resided in Canada from February 1, 1976, to July 15, 1984; and has resided here since October 12, 2018. She became eligible for a partial pension in April 2020, with payment to begin the following month. I reached my decision by considering the following issues.

The test for residence

[10] To decide if the Claimant resided in Canada, I have to look at whether she made her home and ordinarily lived in any part of Canada.⁶ That means I have to look at things like:

- lifestyle and ties in Canada (personal property, social ties, medical coverage, driver's license, rental lease, tax records, etc.) compared to ties in another country;
- regularity and length of stays in Canada;
- frequency and length of absences from Canada.⁷

⁵ In the initial decision (page GD2-20) the Minister said the Claimant had eight complete years of residence. The Minister's calculation of the Claimant's residence is at page GD2-19. The Minister then changed the date the Claimant's residence began, to February 1, 1976, rather than February 15, upon receiving information from Immigration, Refugees and Citizenship Canada (pages GD2-35; GD10-1).

⁶ Paragraph 21(1)(a) *Old Age Security Regulations*

⁷ The Federal Court of Canada said this in *Canada (MHRD) v Ding*, 2005 FC 76, and *De Carolis v Canada (AG)*, 2013 FC 319.

[11] The Minister does not have to prove the Claimant did not live in Canada. The Claimant has to prove on a balance of probabilities (or, that it is more likely than not) that she resided in Canada for the time she claims.⁸

The Claimant did not reside in Canada in 1986-1987

[12] I do not agree with the Claimant's argument that she resided in Canada from July 1986 to February 1987.

[13] When the Claimant came to Canada in 1986 she only brought clothing. She left the rest in Kenya, because she could not carry everything. She stayed with friends in Canada. She did not pay rent or contribute to household expenses, but she helped with housework. She did not get medical coverage or use any medical services. She did not do any volunteer work, or join any clubs or associations. She stayed home, did the housework, watched television, went for walks, and visited other friends. She did not work in Canada during this period, so she did not pay income tax. She did not open a bank account or buy property in Canada.⁹

[14] The only document tying the Claimant to Canada in 1986 is an Ontario driver's licence issued April 21, 1986.¹⁰ That is before the date the Claimant says she moved back to Canada. It was probably reissued automatically from when she lived here before. Even if the Claimant had to be present in Ontario when the licence was issued (which would mean she was wrong about returning to Canada in July), the fact that she was able to get a driver's licence is not enough to establish residence.

[15] During this period, the Claimant had few ties to Canada. She had more ties to Kenya. That is shown by the fact that she had no permanent address, did not take steps to open bank accounts or get medical coverage, and returned to Kenya when she could not find a job.

The Claimant did not reside in Canada in 2017

⁸ *De Carolis v. Canada (Attorney General)*, 2013 FC 366

⁹ GD11-3-5

¹⁰ GD12-2

[16] I have reached a similar conclusion for the second period – April to September 2017. I accept that the Claimant moved to Canada in 2017 after separating from her husband in Kenya. I accept her evidence that she left no property or bank accounts in Kenya. She had opened a bank account in Canada in 2010 or 2012. She said she applied for Canada Pension Plan in April 2017, and began receiving it that June. She said she applied for Ontario medical coverage in May. Her coverage started in July 2017.¹¹ She provided evidence of an appointment with a settlement worker in X in July 2017.¹²

[17] But the Claimant did not settle in Canada. Her living arrangements were the same as the last time she was in Canada. She stayed with friends (“couch-hopping”) and helped with housework. She did not work. She did not volunteer. Because she had no money, she did not immediately get her driver’s licence. She spent her time doing housework, going to prayers, and visiting friends.¹³

[18] It is significant that the Claimant did not find her own apartment or apply for subsidized housing during this period. She did not apply for her OAS pension, although by this time she was 65 years old and, by her calculations, would have met the residence requirements within the year. She said she applied for social assistance in April 2017, but she did not pursue it when she received no response. She went back to Kenya in September, because her son was sick. She stayed there for more than a year. This shows she had a greater connection to Kenya.

[19] The Claimant may have genuinely wanted to reside in Canada. However, intentions or wishes are not enough. In 1986-1987 and in 2017, the Claimant was present in Canada. But she did not establish Canada as the place where she ordinarily lived and made her home before she returned to Kenya.

The Claimant has resided in Canada since October 2018

[20] The Claimant began residing in Canada again in October 2018, and continues to reside here. She has not been able to provide a document showing her date of entry. I accept that she has had a hard time finding documents because of her health, her initial living arrangements, and

¹¹ GD11-10

¹² GD12-3

¹³ GD11-5-7

the COVID19 pandemic. I believe what she says. The few documents she has been able to find support her position. She applied for housing in X on October 12, 2018.¹⁴ She applied for her OAS pension that December, from a Canadian address. She responded to requests for further information in a timely way, which indicates she was probably still at her address. She said she began receiving social assistance in 2018.¹⁵ She got a new driver's licence in March 2019.¹⁶ She said she moved into subsidized housing in May 2019. She has been getting treatment for breast cancer since April 2020.¹⁷

[21] After returning to Canada in October 2018, the Claimant took steps to establish herself. This time, she was able to stay. Therefore I find her residence began on October 12, 2018. I chose that date because it is the date the Claimant applied for subsidized housing. It is the earliest evidence that she was in the country and making arrangements to reside here.

[22] The Minister only calculated the Claimant's residence up to March 19, 2019, when it denied her application. I am not limited to that. The Tribunal may dismiss an appeal or "confirm, rescind or vary a decision of the Minister" or "give the decision that the Minister. . .should have given".¹⁸ The OAS law does not say a pension application expires if not approved within a certain time. The Minister could have made a decision on any relevant periods of residence up to the date of the reconsideration decision. On appeal, the Tribunal has the same power, up to the hearing date. In this case, that would be January 3, 2021, when the Claimant submitted her answers to my questions.

WHEN PAYMENT OF THE CLAIMANT'S PENSION BEGINS

[23] From February 1, 1976, to July 15, 1984, the Claimant resided in Canada for 8 years and 166 days. She needed another 1 year and 199 days of residence to meet the 10 year requirement for an OAS pension. Counting from October 12, 2018, the Claimant met the residence requirement on April 28, 2020.

¹⁴ GD11-10-13

¹⁵ GD11-9

¹⁶ GD12-3

¹⁷ GD3-4, 5, 10; GD8-1

¹⁸ Subsection 54(1) *Department of Employment and Social Development Act*

[24] The Claimant qualified for an OAS pension on April 28, 2020. On that date she had already reached age 65, she had resided in Canada for at least 10 years after turning 18, and she was residing in Canada on the preceding day.¹⁹

[25] The amount of a partial pension is calculated based on the number of years out of 40 that a person resided in Canada after turning 18.²⁰ Because the Claimant resided in Canada for 10 years when she qualified for the pension, she is entitled to a partial pension of 10/40ths of the full amount.

[26] The approval date for the Claimant's OAS pension was April 28, 2020, the date she qualified. Payment begins the following month, in May 2020.²¹

CONCLUSION

[27] The appeal is allowed, in part.

Virginia Saunders
Member, General Division - Income Security

¹⁹ These requirements are set out in subsection 3(2) of the *Old Age Security Act*.

²⁰ Subsection 3(3) *Old Age Security Act*

²¹ Subsections 8(1) and 8(2) *Old Age Security Act*; subsection 5(1) *Old Age Security Regulations*