



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Minister of Employment and Social Development v CA*, 2021 SST 212

Tribunal File Number: AD-21-142

BETWEEN:

Minister of Employment and Social Development

Applicant

and

C. A.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 21, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted, and the appeal is allowed.

OVERVIEW

[2] The Respondent was born in Canada and turned 65 on May X, 2003. He submitted an Old Age Security (OAS) pension application in which he asked to be considered for the Guaranteed Income Supplement (GIS). The Applicant (Minister) approved the Respondent's OAS and GIS applications and began to pay him a full 40/40ths pension and the GIS in June 2003, the month after the month of his 65th birthday, at the single rate.

[3] After doing a routine check with the Canada Revenue Agency, the Minister conducted an investigation. It found that the Respondent had not been eligible for the GIS since August 2007 because he stopped being a resident of Canada on January 23, 2007, and because he got married in Morocco on October 14, 2014. The Minister considered that the Respondent's residential ties and bonds had been stronger in Morocco since January 23, 2007. However, the Respondent kept his full 40/40ths OAS pension, since it is payable outside Canada. The Respondent appealed the Minister's decision concerning his eligibility for the GIS.

[4] The General Division found that the Respondent was eligible to receive the GIS first from February 2015 to May 2016, inclusive, and then from March 2019, after his return to Canada.

[5] In support of its application for leave to appeal, the Minister argues that the General Division made an error of law when it determined the starting months of the Respondent's eligibility for the GIS.

[6] I have to decide whether to grant leave to appeal and whether the General Division made an error of law.

[7] I am granting leave to appeal. The Minister's appeal is allowed.

ISSUES

[8] Should leave to appeal be granted?

[9] Did the General Division make an error of law when it determined the starting months of the Respondent's eligibility for the GIS?

ANALYSIS

Appeal Division's Mandate

[10] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[11] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[12] Therefore, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

Should leave to appeal be granted?

Did the General Division make an error of law when it determined the starting months of the Respondent's eligibility for the GIS?

[13] The Tribunal held a settlement conference.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[14] In support of its application for leave to appeal, the Minister relies on section 58(1)(b) of the DESD Act.

[15] The Minister does not dispute the General Division's findings on the Respondent's periods of residence. However, it disputes the starting months of the Respondent's eligibility for the GIS.

[16] The Minister submits that the General Division made an error of law when it determined that the Respondent was eligible for GIS benefits as of February 2015 and March 2019. It argues that the Respondent was eligible for GIS benefits as soon as he re-established his residence in Canada, the months he returned to Canada, that is, in January 2015 and in February 2019.

[17] The Respondent agrees with the Minister's submissions.

[18] The Tribunal has interpreted sections 11(7)(c) and 11(7)(d) of the *Old Age Security Act* (OAS Act)² as meaning that GIS payments may resume as soon as the pensioner returns to Canada as a resident.³ The Tribunal has followed this principle in several decisions.⁴ The Tribunal has also determined that, under section 11(7)(c) of the OAS Act, a claimant would have been entitled to receive the GIS for the month they left Canada and for six months after that.⁵

[19] For the reasons above, I am of the view that the General Division made an error of law when it determined the starting months of the Respondent's eligibility for the GIS. Leave to appeal should be granted, and the Minister's appeal should be allowed.

CONCLUSION

[20] Leave to appeal is granted, and the appeal is allowed.

² RSC 1985, c O-9.

³ *AA v Minister of Employment and Social Development*, 2019 SST 797 at para 17.

⁴ *CM v Minister of Employment and Social Development*, 2020 SST 632 at paras 31 to 33; *MA v Minister of Employment and Social Development*, 2020 SST 269 at paras 129 and 130; *KS and VS v Minister of Employment and Social Development*, 2019 SST 1339 at paras 22 to 24.

⁵ *The Estate of MN v Minister of Employment and Social Development*, 2018 SST 1035 at para 9.

[21] The General Division's findings on the Respondent's periods of residence are not in dispute. However, the Respondent was eligible for GIS benefits as soon as he re-established his residence in Canada, the months he returned to Canada, that is, in January 2015 and in February 2019.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVES:	C. A., self-represented Hilary Perry, for the Applicant
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