



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The Estate of KW v Minister of Employment and Social Development*, 2021 SST 420

Tribunal File Number: GP-20-283

BETWEEN:

The Estate of K. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Shannon Russell

Teleconference hearing on: April 8, 2021

Date of decision: June 5, 2021

Decision

[1] The Claimant's post-mortem application for an Old Age Security (OAS) pension was made on time. This decision explains why I am allowing the appeal.

Overview

[2] D. W. is a 72-year-old man who was married to K. W.. K. W. passed away in January 2018. D. W. represents her Estate.

[3] The Claimant in this appeal is the Estate of K. W.. However, to keep things simple, I will write the decision as though D. W. is the Claimant.

[4] The Claimant says that in June 2018 he went to a Service Canada Centre and submitted a post-mortem application for the OAS pension on behalf of his late spouse. While there, he also signed an Indemnity Agreement. The Claimant says that a Service Canada officer reviewed his application, and returned it to him because the Claimant had not completed one of the sections in the application (i.e. section 18)¹. The Claimant re-submitted the application, but not until February 2019.

[5] The Minister denied the application initially and on reconsideration because the Minister determined the application was made more than one year after K. W. passed away. The Claimant appealed the reconsideration decision to the Social Security Tribunal (SST or Tribunal).

Redactions and Post-Hearing Documents

[6] The Minister filed written submissions in December 2020. With its submissions, the Minister included some notes that it printed from its computer system. However, before sending those notes to the Tribunal, the Minister redacted (or blacked out) portions of the notes².

¹ Section 18 of the application asks the applicant to provide the name and contact information of one person who can confirm the periods of residency in Canada (page GD2-9).

² Pages GD3-9 to GD3-10.

[7] On April 7, 2021, I wrote to the Minister and I asked the Minister to provide the Tribunal with an un-redacted copy of the notes. The Minister was unable to respond to my request before the hearing, and the Minister was unrepresented at the hearing.

[8] The Claimant was at the hearing and he acknowledged having received a copy of the letter I sent to the Minister on April 7, 2021. I told the Claimant that I had not yet received a reply to my letter, and I explained that once I received the Minister's reply I would share it with him so that he could review it and comment on it. The Claimant told me that he wanted to go ahead with the hearing and that he would comment on the Minister's reply once he received it. The hearing proceeded as scheduled.

[9] On April 14, 2021, the Minister provided the Tribunal with an un-redacted copy of its notes³. I sent a copy of the notes to the Claimant and I gave him an opportunity to review them and comment on them. The Claimant provided the Tribunal with his written comments on April 27, 2021⁴.

[10] On April 30, 2021, I wrote to the Minister and explained that I did not feel I had enough information to render a decision. I pointed out that the Claimant had raised arguments that the Minister had not yet replied to. I summarized the Claimant's three main arguments, and I asked the Minister to respond to them⁵.

[11] The Minister provided a written response on May 7, 2021⁶. However, the response was incomplete, as the Minister only addressed two of the three main arguments.

[12] On May 11, 2021, I wrote to the Minister and asked the Minister to reply to the third argument⁷. The Minister provided its response to the third argument on May 14, 2021⁸.

³ Pages GD5-1 to GD5-2

⁴ Pages GD6-1 to GD6-4

⁵ Pages GD7-1 to GD7-4

⁶ Page GD8-1

⁷ Pages GD9-1 to GD9-3

⁸ Page GD10-1

[13] I shared the Minister's response with the Claimant, and I gave the Claimant an opportunity to comment on it⁹. The Claimant provided the Tribunal with his written comments on May 31, 2021¹⁰.

What the law says about applying for a pension

[14] The OAS Act states that no pension may be paid to any person unless an application has been made by or on behalf of that person¹¹. Where required by the Minister, an application must be made on an application form¹².

[15] In the case of death, the OAS Act allows an application for a pension to be made post-mortem. However, the application must be made within one year after the person's death. If the application is made within one year after the person's death, then the application will be deemed to have been received on the date of the person's death.

[16] The exact wording of the provisions is as follows¹³:

29. Application for pension by estate, etc. – (1) Despite anything in this Act, an application for a pension that would have been payable to a deceased person who, before their death, would have been entitled, on approval of an application, to payment of that pension under this Act may be made within one year after the person's death by the estate or succession, by the liquidator, executor or administrator of the estate or succession or heir of that person or by any person that may be prescribed by regulation.

...

(3) *Application deemed to have been received on date of death* – Any application made under subsection (1) is deemed to have been received on the date of the death of the person who, before their death, would have been entitled to payment of the pension.

[17] An application is considered to have been made only when the Minister receives an application form completed by or on behalf of an applicant¹⁴.

⁹ Page GD11-1

¹⁰ Pages GD12-1 to GD12-3

¹¹ Subsection 5(1) of the *Old Age Security Act*.

¹² Section 35 of the *Old Age Security Act* and subsection 3(1) of the *Old Age Security Regulations*.

¹³ Section 29 of the *Old Age Security Act*.

¹⁴ Subsection 3(2) of the *Old Age Security Regulations*.

What the Claimant must prove

[18] To be successful with the appeal, the Claimant must show that he applied for the OAS pension on behalf of his late spouse within one year of her death.

The Claimant applied for the OAS pension within one year of his spouse's death

[19] I have determined that the Claimant applied for the OAS pension on behalf of his late spouse within one year of his spouse's death. The application was made in June 2018. I will now explain how I reached this conclusion.

There is no dispute that the Claimant brought his OAS application to Service Canada in June 2018

[20] The Claimant says that on June 8, 2018 he went to a Service Canada Centre in Yarmouth and submitted an Indemnity Agreement and an OAS application on behalf of his late spouse. To support his argument, the Claimant points to the Indemnity Agreement on file which shows that a Service Canada officer witnessed it on June 8, 2018¹⁵. He says that a Service Canada officer reviewed the documents but did not stamp them as received. The Claimant says the officer then told the Claimant that he needed to complete section 18 of the application and then return the forms to Service Canada¹⁶.

[21] The Minister acknowledges that the Claimant brought his OAS application to Service Canada on June 8, 2018¹⁷.

[22] As there is no dispute that the Claimant brought his OAS application to Service Canada in June 2018, I must now determine whether the application was somehow null, void or invalid because it was not stamped as received by the Minister in June 2018 or because section 18 of the application was incomplete.

¹⁵ Page GD2-5

¹⁶ Page GD2-19 and GD4-6 and GD6-4

¹⁷ Page GD8-1

The date the Minister stamped the application as received is not determinative

[23] The Minister submits that the Claimant's application was late because Service Canada did not stamp it as received in June 2018. Instead, Service Canada stamped all five pages of the application as received on February 8, 2019¹⁸.

[24] I acknowledge that the application was stamped as received on February 8, 2019¹⁹. However, the date the Minister chooses to stamp an application as received is not determinative of when the application was actually made²⁰.

[25] The Minister also submits that the Claimant's application was "reviewed" but not "received" on June 8, 2018²¹. This argument is not compelling. Surely, an application must be received before it can be reviewed.

An application is not invalid simply because it is incomplete

[26] The provisions of the legislation that deal with the application requirements do not set out the consequences of an incomplete application. The legislation does not say, for example, that if a person neglects to complete one section of the application, then the application is automatically null, void or otherwise invalid.

[27] Here is what the SST Appeal Division has said on this point²²:

...the OAS Act and OAS Regulations do not require that applicants complete their forms perfectly. In my leave to appeal decision, for example, I asked for some clarification as to when an application is declared invalid, as opposed to suffering from a more benign irregularity. However, the Minister has not pointed me to any policies or procedures that would result in it declaring an application form to be invalid, even if an essential piece of information is missing or entered incorrectly.

[28] With this in mind, I cannot find that the application was not made simply because the Claimant did not initially complete section 18.

¹⁸ Pages GD3-6 to GD3-7

¹⁹ Pages GD2-6 to GD2-10

²⁰ See, for example, *Mason v. Minister of Employment and Social Development*, 2017 FC 358.

²¹ Page GD8-1

²² *S.P. v. Minister of Employment and Social Development and S.C.*, 2020 SST 449 at paragraph 36.

The purpose of the OAS regime is altruistic

[29] My findings are consistent with the altruistic purpose of the OAS regime. The altruistic purpose means that the provisions of the legislation are to be construed liberally so that people are not lightly disentitled to its benefits²³.

[30] As noted by the SST Appeal Division, there has been a trend towards making it easier and easier for people to apply for OAS benefits. The OAS program automatically enrolls some people, and others are able to apply online.

[31] The Minister's approach to the Claimant's application was unnecessarily rigid, and unsupported by either the legislation or its purpose.

The Minister acknowledges it would have date-stamped the application in June 2018 had the Claimant mailed in the application

[32] The Claimant asks what the Minister would have done had he simply submitted the post-mortem application by mail in June 2018 (instead of submitting it in-person). He suggests that the Minister may have kept the application, stamped it as received in June 2018, and then followed up with him in writing about any missing information²⁴.

[33] The Claimant's argument is a compelling one. I suspect the Minister thinks so too. I say this because this is the argument that the Minister initially chose not to address. After I sent my second request to the Minister asking the Minister to respond to this argument, the Minister acknowledged that the Claimant's application would have been treated differently had he mailed it in. The Minister said this²⁵:

If the appellant's Old Age Security pension application, had been mailed, it would have been date-stamped as received by the Minister. However, because the application was not left with the Minister, it was not processed as a received document.

²³ *Canada (Minister of Human Resources Development) v. Stiel*, 2006 FC 466 at paragraph 28.

²⁴ Page GD6-4

²⁵ Page GD10-1

[34] It does not make sense to me that a person can either meet or not meet the application requirement simply because the person chose one method of submitting the application over another. Certainly, there is no legislative basis for favouring a mailed-in application over one submitted in-person.

Conclusion

[35] The Claimant applied for the OAS pension on behalf of his late spouse in June 2018. The application is therefore deemed to have been received on the date of his spouse's death in January 2018.

[36] It will now be for the Minister to determine whether the late K. W. met the other eligibility requirements for the OAS pension.

[37] The appeal is allowed.

Shannon Russell
Member, General Division - Income Security