



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *The Estate of MB v Minister of Employment and Social Development*, 2021 SST 604

Tribunal File Number: GP-19-882

BETWEEN:

**The Estate of M. B.**

The Appellant's estate

and

**Minister of Employment and Social Development**

Minister

---

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

---

DECISION BY: Antoinette Cardillo

HEARD ON: February 23, 2021

DATE OF DECISION: March 31, 2021

## **DECISION**

The Appellant's estate is not eligible to receive Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS) benefits between April 2008 and August 2016, for the reasons that follow.

## **OVERVIEW**

[1] The Minister received the Appellant's OAS pension application on August 11, 2004,<sup>1</sup> and an application for GIS benefits. The Appellant was awarded a 10/40ths partial pension, and the OAS pension and GIS benefits started in July 2005. On January 3, 2008, the Appellant's curator informed the Minister that the Appellant had left Canada on September 20, 2007, but that, in his opinion, he had been abducted. On March 25, 2008, the Minister informed the Appellant that the OAS pension and GIS benefits would be suspended effective April 2008, six months after his departure from Canada. The Appellant's estate requested a reconsideration of the Minister's decision. The Minister upheld its original decision, and the Appellant's estate appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

## **ISSUE**

[2] I have to decide whether the Appellant's estate is entitled to be paid an OAS pension for the period from April 2008 to July 2016 and to GIS benefits for the period from April 2008 to August 2016.

## **APPLICABLE PROVISIONS**

### ***Old Age Security Pension***

[3] A full OAS pension is paid to individuals who have resided in Canada for at least 40 years after age 18.<sup>2</sup> If a person has not resided in Canada for at least 40 years, the law

---

<sup>1</sup> GD2-126.

<sup>2</sup> Section 3(1) of the *Old Age Security Act* (OAS Act).

provides for the possibility of a partial pension. To be eligible for a partial pension, a person must have resided in Canada for at least 10 years.<sup>3</sup>

[4] If a person stops living in Canada and wants to receive an OAS pension while living in another country, the person must have resided in Canada for at least 20 years after age 18.<sup>4</sup>

### ***Guaranteed Income Supplement***

[5] The GIS is an income-tested monthly benefit based on marital status that is paid to individuals who receive the OAS pension and reside in Canada. If a GIS recipient leaves Canada, that person can receive the GIS for only six months after the month of departure. This is the case regardless of how many years of residence in Canada the person has.<sup>5</sup>

### ***Residence***

[6] The *Old Age Security Regulations* (OAS Regulations) govern the issue of whether a person resides in Canada or is only present in Canada. A person resides in Canada if they make their home and ordinarily live in any part of Canada. A person is present in Canada when they are physically present in any part of Canada.<sup>6</sup>

## **ANALYSIS**

### ***i. Documentary Evidence***

[7] On August 20, 2007,<sup>7</sup> the Appellant's son was appointed provisional curator to the Appellant's property and person until the institution of protective supervision for the Appellant. On September 25, 2007,<sup>8</sup> the curator informed the Minister that the Appellant had left Canada on September 20, 2007, but that, in his opinion, he had been abducted. He added that he had notified Montréal police.

---

<sup>3</sup> Section 3(2) of the OAS Act.

<sup>4</sup> Sections 3(2)(b) and 9(4) of the OAS Act.

<sup>5</sup> Section 11(7) of the OAS Act.

<sup>6</sup> Section 21 of the *Old Age Security Regulations*.

<sup>7</sup> GD2-77 and GD1-64.

<sup>8</sup> GD2-43.

[8] The Minister suspended the OAS pension and GIS benefits in April 2008, the sixth month after the Appellant's departure from Canada, not including the month of departure, in accordance with the *Old Age Security Act* (OAS Act).

[9] On April 11, 2016,<sup>9</sup> the curator sent the Minister a letter asking for payment of all of the Appellant's OAS pension and GIS benefits from 2008 to 2016. According to the curator, the Minister wrongly considered the Appellant (the curator's father) a non-resident. He indicated that, in 2007, after a judgment of provisional curatorship by the Superior Court of Québec, the Court had appointed him curator mainly to prevent the Appellant from being taken out of the country. However, without the family's knowledge, the Appellant was taken to Iran in September 2007; he had been abducted. According to the curator, the Appellant could not consent to travel, and the most recent Iranian police report clearly showed the state the Appellant was in: He was being held captive.

[10] He went on to say that he had just been appointed curator to the Appellant's property retroactively to 2007, following proceedings taken to recognize the 2007 Canadian judgment in Iran. Previously, the Appellant was recognized as a person of full age capable of making decisions and, notably, of giving financial mandates and signing documents saying [translation] "that he did not want to see his family" and that the family did not have access to the residence he was being kept in.

[11] On June 26, 2016,<sup>10</sup> the Minister sent the curator a letter saying that, in 2008, the Minister's office was informed that the Appellant had left Canada on September 20, 2007. To receive an OAS pension outside Canada indefinitely, an applicant must have lived in Canada for at least 20 years after their 18th birthday, which was not the case for the Appellant, based on his file. Therefore, he had received the OAS pension outside Canada only for the month he left and the following six months. The benefits then stopped in April 2008. The Minister would start paying the OAS pension again the month he returned to live in Canada if he could prove that his absence from Canada was temporary and that he had not changed his country of residence. The Minister added that an absence that does not exceed one year is considered temporary. If an

---

<sup>9</sup> GD2-64.

<sup>10</sup> GD2-58.

absence exceeds one year, it is considered permanent, and it interrupts the period of residence in Canada. The Appellant's residence in Canada amounted to 12/40ths, from December 30, 1988, to May 13, 1990, and from December 1, 1996, to September 20, 2007.

[12] On August 12, 2016,<sup>11</sup> the curator informed the Minister that the Appellant had been back in Canada since August 11, 2016, and he reiterated his request for retroactive payment of the OAS pension and GIS benefits from 2007 to 2016. On August 14, 2016, the Appellant passed away.<sup>12</sup> The estate's representative (also curator) submitted the Montréal police reports saying that the Appellant had gone missing and, later, that he had been located in Iran in 2007.<sup>13</sup> He also submitted additional evidence about the proceedings undertaken in Iran to bring the Appellant home.<sup>14</sup>

### *ii. Minister's Position*

[13] The Minister argues that the evidence does not support the finding that the Appellant's estate is entitled to be paid an OAS pension for the period from April 2008 to July 2016 or to GIS benefits for the period from April 2008 to August 2016, because the Appellant did not have a total of 20 years of residence in Canada when he left Canada for an extended absence.

### *iii. The Hearing*

[14] At the hearing, the estate's representative explained that the Appellant had left Canada without his consent, that he had been abducted. He had undertaken proceedings in Iran from 2008 until 2016 to be able to go get the Appellant and bring him back to Canada. The Iranian police report indicates that the Appellant had been the victim of crimes. During all those years, he had been able to see his father only once.

[15] At the hearing and in the documentary evidence, the estate's representative referred to the *Civil Code of Québec* and to different international conventions. I want to point out that, as I

---

<sup>11</sup> GD2-41.

<sup>12</sup> GD2-44.

<sup>13</sup> GD1-23 to 33, and GD2-89.

<sup>14</sup> GD13.

already mentioned at the hearing, the *Civil Code of Québec* and the conventions referenced do not apply in the circumstances.

***iv. Residence – A Factual Issue and the Tribunal’s Jurisdiction***

[16] I have to interpret and apply the legislative provisions as they are set out in the OAS Act and Regulations.

[17] So, under the OAS Act, payment of the OAS pension is suspended when a person is absent from Canada for six consecutive months, exclusive of the month they left Canada, unless they have resided in Canada for at least 20 years after age 18. The pension is also suspended six months after the end of the month the pensioner stopped living in Canada, and resumes with the month the pensioner becomes resident in Canada again, unless they have 20 years of residence in Canada.

[18] The GIS is payable to an OAS pension recipient who resides in Canada. The GIS is not payable to a person who is absent from Canada for six consecutive months, exclusive of the month they left Canada. In addition, it is not payable six months after a person has stopped residing in Canada.

[19] The Federal Court has considered the issue of residence in Canada. In *Singh*,<sup>15</sup> the Court stated the following:

[29] [...] It is trite law that residency is a factual issue that requires an examination of the whole context of the individual under scrutiny: *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paras 57-58 [*Ding*]. Intent does not equate to residence for the purpose of the [OAS Act].

[20] The decisions *Ding* (above) and *Duncan*<sup>16</sup> also discuss the concepts of residence and domicile:

[49] In *Ding*, above, this Court carefully canvassed the relationship between a claimant’s intentions and the approach taken by the courts

---

<sup>15</sup> *Singh v Canada (AG)*, 2013 FC 437.

<sup>16</sup> *Duncan v Canada (Attorney General)*, 2013 FC 319.

when dealing with the concept of residence in the context of the *ITA*. In that regard, Justice Russell found that “considerable care has been taken to distinguish between a change of “domicile” (which depends upon the will of the individual) and a change of “residence” which depends upon factual issues that are external to the individual[’]s intentions” (para 57).

[50] Justice Russell goes on to conclude that residency is a factual issue that requires an examination of the whole context of the individual and that it constitutes a reviewable error to focus on a claimant’s “obvious intentions” to the exclusion of other factors in a case that could lead to a contrary conclusion. [...]

[51] As described above, residence, however one is to interpret it, must be contrasted with the notion of domicile, which is focused on the intention of an individual. The wording of paragraph 21(1)(a) of the *OAS Regulations* makes the factual component of the definition of residence under the *OASA* even clearer. In tying the notion of residence to a person’s home (“demeure” in the French version) and using the words “ordinarily lives” (“vit ordinairement” in the French version), there can be no doubt that a person will have to establish that Canada is or was, for the amount of time required by the Act, the place where he or she is factually anchored.

[21] In addition, *Ding* sets out a non-exhaustive list of factors to be considered to guide the Tribunal in deciding the issue of residence:

- a. ties in the form of personal property
- b. social ties in Canada
- c. other ties in Canada (medical coverage, driver’s licence, rental lease, tax records, etc.)
- d. ties in another country
- e. regularity and length of stays in Canada compared with the frequency and length of absences from Canada
- f. the person’s mode of living, or whether the person living in Canada is substantially deep-rooted

[22] It is therefore clear that, according to the *OAS Act* and case law, residence is a factual issue that requires an examination of the whole context of the claimant’s circumstances. I am aware of the situation described by the estate’s representative concerning the Appellant’s circumstances in Iran. However, according to the documentary evidence and the estate’s

representative, the Appellant was not in Canada after September 2007. Iran was the place where the Appellant was factually anchored between 2008 and 2016. Although he had family in Canada, specifically children, he had no other ties in Canada after September 2007.

[23] I also have to consider the OAS Regulations, which say that a person resides in Canada if they make their home and ordinarily live in any part of Canada. Based on the facts, the Appellant did not ordinarily live in Canada after September 2007. As a result, I cannot find that the Appellant was a resident of Canada after he left.

[24] In 2007, the Appellant perhaps did not intend to leave Canada permanently, or he was kept outside Canada against his will. However, as mentioned, I have to interpret and apply the provisions of the law as they are set out in the OAS Act and Regulations. I cannot apply the principles of fairness to circumvent the requirements of the OAS Act and Regulations. I have to consider and determine the Appellant's residence based on the facts.

[25] Based on the facts, the Appellant was not a resident of Canada under the OAS Act and Regulations between April 2008 and August 2016.

## **CONCLUSION**

[26] The Appellant's estate is not eligible for OAS pension and GIS benefits after April 2008.

[27] The appeal is dismissed.

Antoinette Cardillo  
Member, General Division – Income Security