



Citation: *RM v Minister of Employment and Social Development*, 2021 SST 689

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: R. M.

Respondent: Minister of Employment and Social Development
Representative: Attila Hadjirezaie

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 11, 2021 (issued by
Service Canada)

Tribunal member: Jean Lazure

Type of hearing: Teleconference

Hearing date: September 17, 2021

Hearing participants: Appellant

Decision date: October 31, 2021

File number: GP-21-1120

Decision

[1] I am allowing the appeal in part.

[2] The Claimant, R. M., is entitled to a partial pension of 16/40ths under the *Old Age Security Act* (OAS Act), payable beginning July 2014.

Overview

[3] The Minister received the Claimant's application for an Old Age Security (OAS) pension on August 28, 2013¹. The Minister denied the application because he decided the Claimant had not resided in Canada since August 1996. The Minister upheld his original decision and denied the application on reconsideration.

[4] Since the Minister deemed the Claimant was not a resident of Canada upon his application, the Claimant needed 20 years of residence in Canada to qualify for an OAS pension, while the Minister recognized just 16². This period includes years that the Claimant spent living in the United States and that he was able to use towards qualifying for an OAS pension. This still left him short of the 20-year requirement.

[5] The Claimant appealed the Minister's decision to the Tribunal's General Division. On February 24, 2021, the General Division dismissed his appeal³.

[6] The Claimant appealed this decision to the Appeal Division of the Tribunal. On May 11, 2011, the Appeal Division issued a decision⁴ ratifying an agreement between the parties, giving permission to the Claimant to appeal, and allowing his appeal in line with the following settlement:

“a) The General Division made an error of law. Although it was relevant, the General Division did not consider whether the Claimant re-established his residence in Canada after August 2013.

¹ This is found in the file on page GD2-38.

² This is found in the file on page GD5-31.

³ *RM v. Minister of Employment and Social Development*, GP-19-1953.

⁴ *RM v. Minister of Employment and Social Development*, AD-21-123.

b) As a result, it is appropriate to give the Claimant permission to appeal, allow his appeal, and return the appeal to the General Division. The General Division will decide whether the Claimant resided in Canada after August 2013, and the consequences of that decision on his eligibility for an OAS pension.

c) I am returning the appeal to the General Division with these directions:

- The appeal will be assigned to a different General Division member; and
- The new General Division member will give the Claimant a reasonable amount of time to file new and updated information about his residence in Canada after August 2013. The new General Division member will schedule a case management conference to discuss this question.”

[7] The Claimant filed new evidence about his residence in Canada after August 2013⁵. The Minister filed no submissions after these filings by the Claimant.

Issue

[8] The OAS Act allows claimants to receive a partial pension when they are not eligible for a full pension. A claimant must have resided in Canada for a minimum of ten years after the age of 18 but less than 40 years in order to receive a partial pension.⁶ The calculation of a partial pension is 1/40th of the full pension for each complete year of residence in Canada after the age of 18.⁷

[9] As indicated by the Appeal Division in its decision dated May 11, 2021, “The Claimant’s residence in Canada after 2013 is relevant to this case. For example, if the Claimant re-established his residence in Canada – even after submitting his application

⁵ These are documents IS02, IS03, and IS04 in the file. They included 1,043 pages.

⁶ Subsection 3(2) *Old Age Security Act*.

⁷ Subsection 3(3) *Old Age Security Act*.

– then he needs just 10 (instead of 20) years of residence in Canada to qualify for an OAS pension.”⁸

[10] Therefore, the issue before me is whether the Claimant resided in Canada after August 2013, and if so, when?

Reasons for my decision

[11] I find that the Claimant has been a resident of Canada since June 1, 2014.

[12] The applicable legal criteria for residence are set out in *Canada (Minister of Human Resources) Development v. Ding*.⁹ I am to consider several factors in determining whether the residence conditions have been met:

- ties in the form of personal property;
- social ties in Canada;
- other fiscal ties in Canada (medical coverage, driver’s licence, rental lease, tax records, etc.);
- ties in another country;
- regularity and length of visits to Canada, as well as the frequency and length of absences from Canada;
- and the lifestyle of the person or his establishment in Canada.

[13] The Claimant has the burden to prove Canadian residence.¹⁰

⁸ See note 4, page 2.

⁹ FC 76.

¹⁰ A Claimant must prove that it is **more likely than not** that he/she was a resident of Canada, per *De Carolis v. Canada (Attorney General)*, 2013 FC 366, and *L-79404 v. MSD* (2004) (RT).

The Claimant has been a resident of Canada since June 1, 2014

– Documentary evidence

[14] The Claimant filed the following documentary evidence related to his residence after August 2013 :

- A list of his visits to McGill University Health Centre, where the Claimant sought health care from 2013 to 2021¹¹;
- A declaration under oath by himself and his ex-wife and now common-law spouse¹²;
- A lease dated June 1, 2014¹³, with renewal notice¹⁴;
- His notices of assessment from 2013 to 2021¹⁵;
- His cellular telephone statements from January 2016 to April 2021¹⁶;
- His CIBC bank account statements from January 2015 to December 2020¹⁷;
- His BMO bank accounts statements from January 2015 to December 2020¹⁸;
- His Hudson's Bay credit card statements from June 2016 to July 2020¹⁹;

[15] As for his visits to the McGill University Health Centre, the visits numbered as follows: 11 in 2013, 6 in 2014, 3 in 2015, 6 in 2016, 7 in 2017, 13 in 2018, 7 in 2019, 13 in 2020, and 9 in 2021. I note that the 2013 visits, while frequent, occurred between June and September.

¹¹ Pages IS02-06 to IS02-44.

¹² Page IS02-45.

¹³ Page IS02-46.

¹⁴ Page IS02-56.

¹⁵ Pages IS02-57 to IS02-102.

¹⁶ Pages IS02-103 to IS02-194, IS03-3 to IS03-218, and IS04-3 to IS4-65.

¹⁷ Pages IS4-66 to IS4-257.

¹⁸ Pages IS4-258 to IS4-425.

¹⁹ Pages IS4-426 to IS4-631.

[16] The declaration under oath states that the Claimant and A. M. are de facto spouses and they have both stayed at the same address – X in Montreal – since June 1, 2014. The lease for this condo is included, as well as a renewal notice.

[17] After the General Division noted that there was “no assessment information on the income tax returns from 2004 to 2012”²⁰, the Claimant filed his notices of assessment from 2013 to 2021.

[18] Also, I note significant activity from 2015 onwards in his bank accounts, and from 2016 onwards for his cellular telephone account and his credit card account. The Claimant did say upon providing his cellular telephone records that earlier records (January 2013 to December 2015) were available but at a significant cost to him²¹.

[19] Finally, I note that my colleague in the previous General Division decision had noted that the Claimant had a Quebec driver’s licence valid from July 2013 to October 2017, and a Canadian passport issued in Montreal valid from 2013 to 2018²².

– **Testimonial evidence**

[20] The Claimant testified at the hearing that he and his ex-wife and now common-law partner moved into a condo at X in Montreal on June 1, 2014. As indicated above, he had provided the lease for this condo.

[21] The Claimant indicated he and his partner were “getting older, the house there was big for a family of two, my wife and myself, we decided it’s far more practical, we moved to a place, it’s a much smaller apartment...”.

[22] The Claimant said they moved there from X, in Outremont, in Montreal – their old address. He believes they had lived there since 1989.

²⁰ See note 3, page 6.

²¹ Page IS03-01.

²² See note 3, page 6.

[23] The Claimant testified that since 2013, his trips abroad have been fewer and farther between. He indicated he has been tending to his common-law partner, who has had significant health issues since 2013.

[24] The Claimant said his partner was diagnosed with Alzheimer's disease in 2016, but already, her health was failing as she was having problems with her throat. His partner had to undergo two operations within 3-4 months in 2013, the last one in October 2013 – both in Montreal hospitals. The Claimant testified he had to attend to her fully during this time.

[25] The Claimant indicated that from 2013 to 2015, he “did a few trips overseas, but again, they were trips, a few months at a time, but definitely much less than...I had to conform to the medical requirements, that is not to really have a certain time to be absent”. He said that his father, who resided in Jordan, was extremely old and he had to check on him every now and then.

[26] The Claimant testified he used to travel more for professional purposes, but that he has been largely unemployed for a long time. He has just been “doing a little consulting here and there, just little jobs, very much by remote control, if you would, nothing really dramatic”. The Claimant indicated that “since 2016 he is staying put”.

[27] The Claimant said he has three children: one living in Montreal, married with no children yet; one in Dubai, married with children; and one in London, married with no children. He testified that the grandchildren come to visit from Dubai to Montreal every year.

[28] The Claimant indicated he used to own property in Jordan but does not anymore. He said that he and his wife used to own certain things that they declared in their landing statement in Canada, but that most of those have been liquidated since then.

– **Findings**

[29] As I indicated above, I believe the Claimant has been a resident of Canada since June 1, 2014.

[30] The evidence I have for 2013 is limited. The only documentary evidence I have substantiates medical visits that are concentrated in six months of that year, as well as a notice of assessment, a driver's licence and a Canadian passport for 2013.

[31] For June 1, 2014 onwards, I have a lease for a condo in Montreal. For 2015 onwards, I have significant economic activity in two bank accounts, one credit card, and significant cellular telephone activity. This is in addition to the aforementioned Claimant's notices of assessment, driver's licence and Canadian passport. I also have the Claimant's testimony.

[32] I find that the Claimant's testimony supports continuous residency in Canada since June 1, 2014. I find that the evidence, including the Claimant's testimony, does not bridge the gap between August 2013 and June 2014. After this last date, the lease and significant economic activity help move the Claimant's evidence beyond the balance of probabilities. I find the evidence supports a date of Canadian residence of June 1, 2014, and continuous residency since then.

Conclusion

[33] The Claimant had established 16 years of Canadian residency as of his application on August 28, 2013. However, per the General Division's original decision, he was not a Canadian resident on that date. The Claimant became a resident of Canada on June 1, 2014, and has been since then. He is therefore entitled to a partial pension of 16/40ths under the *Old Age Security Act*, payable beginning July 2014.

[34] This means the appeal is allowed in part.

Jean Lazure
Member, General Division – Income Security Section