



[TRANSLATION]

Citation: *The Estate of MB v Minister of Employment and Social Development*, 2021 SST 603

Social Security Tribunal of Canada Appeal Division

Decision

| | |
|------------------------|-----------------------------------------------|
| Appellant: | The Estate of M. B. |
| Representative: | F. B. |
| Respondent: | Minister of Employment and Social Development |
| Representative: | Suzette Bernard |

| | |
|-------------------------------|---------------------------------------------------------------|
| Decision under appeal: | General Division decision dated March 31, 2021 (GP-19-882) |
|-------------------------------|---------------------------------------------------------------|

| | |
|------------------------------|-----------------------------------------------------------|
| Tribunal member: | Pierre Lafontaine |
| Type of hearing: | Videoconference |
| Hearing date: | September 28, 2021 |
| Hearing participants: | Appellant's representative Respondent's representative |
| Decision date: | October 20, 2021 |
| File number: | AD-21-231 |

Decision

[1] The appeal is dismissed.

Overview

[2] On August 11, 2004, the Respondent (Minister) received an application for an Old Age Security (OAS) pension and an application for Guaranteed Income Supplement (GIS) benefits from M. B., who died on August 14, 2016. He was awarded a 10/40ths partial pension, and the OAS pension and GIS benefits started in July 2005.

[3] On August 20, 2007, the Superior Court of Québec ruled on a motion for provisional designation of a curator for a person of full age. The Court designated F. B. as curator to the property and person of his father, the late M. B.

[4] On September 25, 2007, the curator informed the Minister that his father had left the country, possibly by abduction. The incident was reported to the Montréal police.

[5] On March 25, 2008, the Minister told the curator that his father's OAS pension and GIS benefits would be suspended effective April 2008, six months after his departure from Canada.

[6] On April 11, 2016, the curator sent the Minister a letter asking for payment of all of the late M. B.'s OAS pension and GIS benefits from 2008 to 2016. According to the curator, the Minister wrongly considered his father a non-resident, given his abduction.

[7] On August 11, 2016, the curator reported that the late M. B. had been brought back to Canada after his abduction in September 2007. He passed away three days after returning to Canada.

[8] On September 13, 2016, M. B.'s estate (Appellant) requested a reconsideration of the Minister's decision.

[9] On February 21, 2019, the Minister upheld its original decision, and the Appellant appealed the reconsideration decision to the General Division.

[10] The General Division found that the late M. B. was not a resident of Canada under the *Old Age Security Act* and the *Old Age Security Regulations* between April 2008 and August 2016. It found that the late M. B. was not eligible for OAS pension and GIS benefits from April 2008.

[11] Leave (permission) to appeal was granted. The Appellant argues that the General Division hearing was unfair. It also argues that the General Division made an error of law.

[12] I have to decide whether the General Division failed to observe a principle of natural justice or made an error of law.

Issues

[13] Issue 1: Did the General Division make an error when it found that the Appellant was not eligible to receive OAS and GIS benefits for the period between April 2008 and August 2016?

[14] Issue 2: Did the General Division make an error when it dismissed the Appellant's constitutional challenge?

[15] Issue 3: Did the General Division fail to observe a principle of natural justice?

Analysis

Appeal Division's mandate

[16] 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*.¹

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

[17] 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.

[18] So, 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.

Issue 1: Did the General Division make an error when it found that the Appellant was not eligible to receive OAS and GIS benefits for the period between April 2008 and August 2016?

[19] The Appellant argues that the General Division made an error of law in its interpretation of the notion of residence and of the Federal Court judgments in *Ding*, *Singh*, and *Duncan*.²

[20] The Appellant says that Canada was the late M. B.'s usual place of residence before his abduction. It says that residence is not lost in such a situation and that he is entitled to the pension.

[21] The evidence shows that the late M. B. was found eligible for a pension after filing an application in 2004. He was then awarded a 10/40ths partial pension, and the OAS pension and GIS benefits started in July 2005.

[22] On September 25, 2007, the curator informed the Minister that the late M. B. had left the country, possibly by abduction. The Minister suspended the OAS and GIS benefits effective April 2008, six months after his departure from Canada, not including the month of departure.

² *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76; *Singh v Canada (Attorney General)*, 2013 FC 437; *Duncan v Canada (Attorney General)*, 2013 FC 319.

[23] The General Division found that the late M. B. was not in Canada from September 2007. It found that the late M. B. was not a resident of Canada between April 2008 and August 2016.

[24] Like the Appellant, I am concerned by the General Division's decision on the issue of residence in Canada, since it does not seem to have considered the whole context of the late M. B. But, the decision to stop paying benefits is still valid, given the late M. B.'s extended absence from Canada, even if I were to find that he maintained his residence in Canada.

[25] The law says that, where a pensioner, having left Canada either before or after becoming a pensioner, **has remained outside Canada** after becoming a pensioner for six consecutive months, exclusive of the month in which the pensioner left Canada, payment of the pension **for any period the pensioner continues to be absent from Canada** after those six months shall be suspended, but payment may be resumed with the month in which the pensioner returns to Canada.³

[26] I find that the law does not allow payments to pensioners outside Canada, whether they have taken up residence in another country **or are simply absent from Canada for a significant period.**

[27] The undisputed evidence shows that the late M. B. was absent from Canada from 2008 to 2016. Although the late M. B. was absent from Canada involuntarily and for unfortunate reasons, the fact is that he was outside Canada for an extended period.

[28] But, the law sets out an exception: Payment of the pension may be continued without suspension for any period the pensioner remains outside Canada if the pensioner establishes that **at the time the pensioner left Canada** the pensioner had resided in Canada for at least 20 years after attaining the age of 18 years.⁴

³ Section 9(1) of the *Old Age Security Act* (OAS Act).

⁴ Section 9(2) of the OAS Act.

[29] In other words, people who reside in Canada and are eligible for a pension may have 20 years of residence **by the date of their departure** to continue receiving their pension when outside Canada.⁵

[30] The undisputed evidence shows that the late M. B. did not have at least 20 years of residence in Canada when he left Canada in September 2007. This means that his pension was not portable.

[31] I sympathize with the Appellant. But, the law gives me no discretion—not even for humanitarian reasons—to ignore the clear legislative provision and apply the principle of fairness to grant it retroactive benefits for the time the late M. B. was absent from Canada.

Issue 2: Did the General Division make an error when it dismissed the Appellant’s constitutional challenge?

[32] On appeal, the Appellant has not really focused on the General Division’s dismissal of its constitutional challenge.

[33] Section 20(1)(a) of the *Social Security Tribunal Regulations* (SST Regulations) requires an applicant to set out the provision at issue and provide submissions in support of the issue raised that are specific enough to allow a decision-maker to see the outline of an argument based on the *Canadian Charter of Rights and Freedoms* (Charter).

[34] The General Division found that, although the Appellant had set out the legislative provisions at issue, the supporting submissions were not specific enough to allow it to see the outline of a Charter argument.

[35] After reading the Appellant’s notice of challenge, I am of the view that the General Division’s decision contains no error concerning its interpretation of section 20(1)(a) of the SST Regulations. I agree that the Appellant’s submissions in

⁵ *TA v Minister of Employment and Social Development*, 2019 SST 1573.

support of its constitutional challenge were not specific enough to allow it to see the outline of a Charter argument.

[36] This means that I should not intervene.

Issue 3: Did the General Division fail to observe a principle of natural justice?

[37] The Appellant argues that the General Division did not observe all the principles of fairness and natural justice. It says that it did not have the opportunity to submit its position and, as a result, to be heard.

[38] I find that the Appellant had every opportunity to present its case and justify its position before the General Division, whether in writing or orally at the hearing. It also raised no procedural objection before the General Division. In response to the member's inquiry, the Appellant said that its oral submissions were complete. It also provided additional written submissions after the hearing.

[39] I am of the view that the General Division did not fail to observe a principle of natural justice or procedural fairness.

[40] This means that this ground of appeal should be dismissed.

Conclusion

[41] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division