



[TRANSLATION]

Citation: *LR v Minister of Employment and Social Development*, 2021 SST 684

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant:

L. R.

Respondent:

Minister of Employment and Social Development

Decision under appeal:

Minister of Employment and Social Development
reconsideration decision dated December 20, 2017
(issued by Service Canada)

Tribunal member:

Antoinette Cardillo

Type of hearing:

On the merits

Decision date:

September 23, 2021

File number :

GP-20-625

Decision

[1] The appeal is dismissed.

[2] L. R., the Appellant, is not eligible to receive Old Age Security (OAS) pension benefits for his period of incarceration in a federal penitentiary, in accordance with the *Old Age Security Act* (OAS Act).¹

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Minister received the Appellant's OAS pension application in February 2017.² On October 30, 2017,³ the Minister informed him that his application had been approved but that his benefits could not start; they would be suspended because he was incarcerated. The Appellant requested a reconsideration of the decision. The Minister upheld its initial decision.⁴ On February 28, 2018, the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).⁵

[5] The OAS Act was changed and, as of January 1, 2011, an OAS pension, the Guaranteed Income Supplement, and an allowance are no longer payable during periods of incarceration. Section 5(3) of the OAS Act says that no pension may be paid for a period of incarceration—exclusive of the first month of that period—to a person who is subject to a sentence of imprisonment:

- (a) that is to be served in a penitentiary by virtue of any Act of Parliament; or
- (b) that exceeds 90 days and is to be served in a prison, as defined in subsection 2(1) of the *Prisons and Reformatories Act*, if the government of the province in which the prison is located has entered into an agreement under section 41 of the *Department of Employment and Social Development Act*.

¹ Section 5(3) of the *Old Age Security Act* (OAS Act).

² GD2-8.

³ GD2-6.

⁴ GD1-10.

⁵ GD1.

Preliminary matters

[6] When the Appellant filed his appeal in February 2018, he raised arguments under the *Canadian Charter of Rights and Freedoms* (Charter). The process in place for cases raising constitutional arguments was followed. On January 15, 2019, I made an interlocutory decision indicating that the Appellant's submissions did not meet the requirements of the *Social Security Tribunal Regulations* (Regulations).⁶ On November 29, 2019, I made a decision on the merits finding that the Appellant was not eligible to receive OAS pension benefits while he was incarcerated in a federal penitentiary within the meaning of section 5(3) of the OAS Act. The Appellant appealed that decision to the Tribunal's Appeal Division.

[7] On March 3, 2020, the Appeal Division allowed the appeal, and the matter was returned to me to reconsider the issue taking into account the Appellant's submissions, including those of November 10, 2019. The Tribunal had not received them, even though the Appellant had sent them. The Appeal Division also indicated that I should specify to the Appellant which condition of section 20(1)(a) of the Regulations had not been met so that he could correct his notice of constitutional challenge.

[8] On July 23, 2020,⁷ following the decision of the Tribunal's Appeal Division, the Appellant was sent a letter saying that his submissions⁸ related to the constitutional issue were lacking and that they did not meet the requirements of section 20(1)(a) of the Regulations. The Appellant had until September 11, 2020, to correct his constitutional notice and provide his submissions. The Tribunal received the Appellant's submissions on August 31, 2020.⁹ On June 4, 2021, I made an interlocutory decision, and I found that the Appellant's notice of constitutional challenge did not meet the requirements of the Regulations. This meant that the Appellant could not pursue his constitutional challenge, and he was informed that his appeal would proceed as a regular appeal.

⁶ Section 20(1)(a) of the *Social Security Tribunal Regulations*.

⁷ IS1.

⁸ November 16, 2018, submissions.

⁹ IS3.

[9] On June 11, 2021,¹⁰ a letter was sent to the Appellant, and I gave him the opportunity to make additional submissions on the merits of the appeal before a decision was made. He had until July 9, 2021, and the Appellant filed submissions on July 7, 2021.¹¹

[10] I am now making a decision on the record because the Appellant has asked that the entire appeal process and all communications from the Tribunal be done in writing.

Issue

[11] I have to decide whether the Appellant is entitled to OAS pension benefits for the time he was incarcerated in a federal penitentiary.

Reasons for my decision

[12] According to the information on file, the Appellant turned 65 in January 2013. The Minister received the Appellant's OAS pension application in February 2017, and it was approved in October 2017, with payments starting in January 2018.

[13] On October 30, 2017, the Minister sent the Appellant a letter informing him that, although his OAS pension application had been approved, his benefits could not start because he was incarcerated.¹² The letter explained that OAS pension benefits could not be paid to individuals incarcerated due to a sentence of imprisonment of two years or more in a federal penitentiary or a sentence of imprisonment of more than 90 days in a provincial prison where an information sharing agreement had been negotiated.

[14] The Appellant was incarcerated in a federal penitentiary in 1999,¹³ and he was released in October 2020.¹⁴

¹⁰ IS8.

¹¹ IS11.

¹² GD2-6.

¹³ GD2-9.

¹⁴ IS7.

[15] The Appellant made many submissions.¹⁵ The points his submissions raise that are related to the constitutional challenge, such as the requests for documents and the references to case law, were addressed in my interlocutory decision of June 4, 2021. On the issue of the suspension of his OAS pension benefits, in summary, the Appellant alleges in his submissions that the changes to the OAS Act came into force after his incarceration and that these changes do not apply to him. The Appellant also alleges that suspending OAS pension benefits during a period of incarceration creates a second sentence. He wants OAS pension benefits from January 2013 to September 2020.

[16] After considering the evidence, the submissions, and section 5(3) of the OAS Act, I find that the Appellant cannot receive OAS pension benefits for the period from his incarceration until his release¹⁶ for the following reasons:

- 1) The Appellant was incarcerated in a federal penitentiary from 1999 to 2020.
- 2) He applied for an OAS pension in February 2017. His application was approved in October 2017, after the changes to the OAS Act had come into force, so these changes apply to OAS pension applications submitted after the effective date of the changes.

Conclusion

[17] Because the Appellant was incarcerated in a federal penitentiary, section 5(3) of the OAS Act applies. The Appellant cannot be paid OAS pension benefits for the period from his incarceration until his release.

[18] This means that the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section

¹⁵ GD3, GD4, GD6, AD1, IS3, IS7, IS11.

¹⁶ Section 8(2.1) of the OAS Act.