Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *SP v Minister of Employment and Social Development and SC v Minister of Employment and Social Development*, 2020 SST 1251

Tribunal File Number: AD-19-837

BETWEEN:

**S. P.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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Tribunal File Number: AD-19-837

BETWEEN:

**S. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

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Canada

DECISION BY: Jude Samson

DATE OF DECISION: May 28, 2020

## DECISION AND REASONS

### DECISION

[1] I am allowing these appeals. I am also sending the files back to the General Division for it to decide the outstanding issues described below.

### OVERVIEW

[2] S. C. and S. P. are the Claimants in this case. They are also husband and wife. The Minister of Employment and Social Development (Minister) paid them Old Age Security (OAS) benefits for many years. S. C. received an OAS pension, along with the Guaranteed Income Supplement, starting in 2011. And S. P. started receiving the Allowance a few years later.

[3] The Minister began investigating the Claimants' files in 2015. As part of that process, S. C. told an investigator that he was out of the country when the Minister invited him to apply for OAS benefits. So he asked his son to complete the application, using information that he provided. The son signed his father's name on the application and submitted it in November 2010.

[4] When the Minister discovered that S. C.'s son had signed his application form, it decided that the form was invalid. This decision had very serious consequences for S. C. and for S. P., even though there were no concerns about her paperwork.

[5] The Claimants quickly reapplied for OAS benefits in June 2017, after learning that the Minister considered S. C.'s November 2010 application to be invalid. The Minister approved those applications. But the Minister also decided that the Claimants were not entitled to any of the benefits they had received before July 2016. This created an overpayment on their accounts of nearly $100,000.

[6] The Claimants appealed the Minister's decision to the Tribunal's General Division, but it dismissed their appeals. In short, the General Division concluded that the November 2010 application was invalid because S. C.'s son had no formal authority to sign on his father's behalf.

[7] The Claimants are now appealing the General Division decision to the Tribunal's Appeal Division. Respectfully, I agree that the General Division misapplied the law to the facts of this case. As a result, I will give the decision that the General Division should have given: S. C.'s November 2010 application is valid and meets the necessary legal requirements.

[8] However, I am returning these files to the General Division to decide specific questions, which I have listed below.

## THE APPEALS ARE JOINED

[9] I am joining the Claimants' appeals because[1]

a) they both depend on the validity of S. C.'s November 2010 application;

b) no injustice is likely to be caused by joining the appeals; and

c) after raising the issue in my leave to appeal decision, none of the parties objected to the appeals being joined.[2]

[10] The documents I referred to below are from S. C.'s file.

## ISSUES

[11] In this decision, I focused on the following questions:

a) Did the General Division commit an error of law by failing to interpret the words "by or on behalf of", as they appear in the *Old Age Security Act* (OAS Act) and *Old Age Security Regulations* (OAS Regulations)?

b) Did S. C.'s November 2010 application meet the requirements of the OAS Act and OAS Regulations?

c) Who should decide the outstanding issues in these appeals?

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[1] Section 13 of the *Social Security Tribunal Regulations* gives me the power to deal with two or more appeals jointly.
[2] See paragraph 43 of the Minister's submission, on page AD5-21.

## ANALYSIS

[12] I must follow the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, I can intervene in this case only if the General Division committed a relevant error.[3]

[13] In the paragraphs below, I focused on whether the General Division decision contains an error of law.[4] Based on the wording of the DESD Act, any error of this type could allow me to intervene in this case.[5]

### The General Division committed an error of law by failing to interpret the words "by or on behalf of".

[14] There are several requirements that S. C. had to meet to receive an OAS pension. These requirements are set out in the OAS Act and OAS Regulations. For example:

a) Section 5(1) of the OAS Act says that an application must be made "by or on behalf of" an applicant; and

b) Section 3(2) of the OAS Regulations says that an application is considered to have been made when the Minister receives an application form completed "by or on behalf of" an applicant.

[15] The Minister can also insist that applicants use a specific form.[6]

[16] The Minister received S. C.'s application on the appropriate form. But it was his son who had completed and submitted the form.

[17] The last page of the application form had a place for S. C.'s signature.[7] If somebody else was signing the application on S. C.'s behalf, then the form instructed that person to provide

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[3] The relevant errors, formally known as grounds of appeal, are listed under section 58(1) of the DESD Act.
[4] Section 58(1)(b) of the DESD Act gives me the power to intervene in a case if the General Division misapplies the law, whether or not the error appears on the face of the record.
[5] The focus on the words of the DESD Act is explained in *Canada (Attorney General) v Jean*, 2015 FCA 242 at para 19.
[6] See section 35 of the OAS Act and section 3(1) of the OAS Regulations.
[7] The signature is on page GD2-381.

proof that S. C. had authorized them to do so. The form also directed this person to contact Service Canada to learn what documents it would accept as proof of authorization.

[18] However, S. C.'s son did not sign his own name on the application form. Nor did he submit proof that his father had authorized him to submit the form on his behalf. Instead, S. C.'s son signed his father's name on the form.

[19] S. C. nevertheless argues that his son submitted the application with his express verbal authorization. As a result, he met the requirements of the OAS Act and OAS Regulations because his son completed and submitted the application form on his behalf.

[20] The General Division disagreed. It concluded that the November 2010 application form was not submitted by or on behalf of S. C. Rather, the form was submitted by a person who, at S. C.'s request, signed as if he were S. C. In particular, the General Division emphasized that S. C. had not provided his son with a power of attorney or any other formal authority to sign on his behalf.[8]

[21] The Minister argues that the General Division reached the right decision. However, it seemed to arrive at that conclusion in a very different way. Indeed, the Minister bases its arguments on various sections of the OAS Act, OAS Regulations, the *Civil Code of Québec*, and certain ministerial policies. But few of these authorities are mentioned, let alone analyzed, in the General Division decision.

[22] Respectfully, I have concluded that the General Division committed an error of law in this case. The correct interpretation of the words "by or on behalf of" is critical to the outcome of this case.

[23] The General Division effectively gave a narrow interpretation to the words "by or on behalf of". According to its interpretation, the only people who can make and submit an application on another person's behalf are those who have some sort of formal written authority to do so. In my view, the General Division needed to interpret the relevant sections of the OAS Act and OAS Regulations before coming to that conclusion.

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[8] General Division decision at paragraph 12.

[24] By failing to do so, the General Division committed an error of law, as described under section 58(1)(b) of the DESD Act.

**The November 2010 application meets the requirements of the OAS Act and OAS Regulations.**

[25] In light of the General Division's error, I decided to provide my own interpretation of the legal requirements in question and give the decision that the General Division should have given.[9] I will therefore assess whether S. C.'s son submitted the November 2010 application on his father's behalf.

[26] I decided that this was the best way of correcting the General Division's error because the issues I will consider are mostly legal in nature. In addition, the parties agree on the relevant facts relating to these issues.

[27] The Minister argues that S. C. could not verbally authorize his son to submit an application for OAS benefits on his behalf just because it was convenient to do so. Instead, the Minister submits that third party authorizations can be used only when the Minister considers them to be necessary and in the proper form.

[28] Concerning the need for a third party authorization, the Minister focuses on applicants who are unable to manage their own affairs and apply for OAS benefits on their own. In support of this argument, the Minister relies on its power to make regulations, as described in section 34(o) of the OAS Act:

> **34** The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and, without restricting the generality of the foregoing, may make regulations
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> […]
>
> **(o)** providing for the making of any application or statement, or the doing of any other act or thing required or permitted by this Act, by any person or agency, and for the payment of a benefit to any person or agency, on behalf of any other person or beneficiary if it is established in any manner and by any evidence that may be prescribed by the regulations that the other person or beneficiary is, by reason of

[9] My powers to correct an error are set out in section 59(1) of the DESD Act.

> infirmity, illness, insanity or other cause, incapable of managing their own affairs, and prescribing the manner in which any benefit authorized to be paid to the person or agency shall be administered and expended for the benefit of the other person or beneficiary and accounted for;

[29] This power finds expression in section 4(1) of the OAS Regulations, which says this:

> **4 (1)** Where the Minister considers that a person is unable for a sufficient reason to make a request for a reconsideration or to make an appeal, an application, a statement or a notice, the request for reconsideration, appeal, application, statement or notice may be made on that person's behalf by a responsible person or agency.

[30] The Minister also relies on its policy entitled "Third Party Administration", though this policy does not seem to be available to the public.[10] According to this policy, the Minister must assess the form or validity of a third party authorization. It follows, therefore, that these authorizations must be in writing.

[31] The Minister also submits that third party authorizations must comply with provincial laws: in this case, article 2130 of the *Civil Code of Québec.*

[32] In short, the Minister is arguing that there are limited circumstances in which one person can submit an OAS application on another person's behalf.

[33] I respectfully reject the Minister's arguments. In my view, S. C.'s son submitted the November 2010 application on his father's behalf. As a result, it met the requirements of the OAS Act and OAS Regulations.

[34] To reach this conclusion, I examined the text, context, and purpose of the words "by or on behalf of", as they appear in section 5(1) of the OAS Act and section 3(2) of the OAS Regulations.[11]

a) The text of these provisions is clear and unrestricted. An applicant can submit their own application or authorize a representative to submit the application on their behalf.

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[10] The French version of this policy starts at page AD5-191.
[11] This approach to statutory interpretation is set out in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 121.

These provisions do not give the Minister the power to assess the reasons why the applicant used a representative to submit their application. An applicant, however, remains responsible for the information that their representative provides to the Minister.

b) The legal provisions the Minister relied on do not provide the appropriate context for interpreting section 5(1) of the OAS Act and section 3(2) of the OAS Regulations. The provisions highlighted by the Minister—especially section 34(o) of the OAS Act and section 4(1) of OAS Regulations—concern a particular subset of applicants: those who are unable to manage their own affairs. These are among the most vulnerable applicants. The OAS Act and OAS Regulations include special provisions so that these people can still access their benefits, even if they are unable to make their own applications or appoint their own representatives. The same considerations do not apply to people who have the ability to make their own applications and to appoint their own representatives.

c) A broad interpretation of the relevant provisions is also consistent with the purpose of the OAS regime. Indeed, the courts have discussed the OAS regime's altruistic purpose, and decided that the OAS Act should be construed liberally, so that people are not lightly disentitled to its benefits.[12] In fact, the trend has been towards making it easier and easier for people to apply for their OAS benefits. The OAS program automatically enrolls some people, and others are able to apply online.

[35] I recognize that the Minister was entitled to set the form that S. C. needed to use when submitting his application and that the signature portion of S. C.'s November 2010 application was completed incorrectly.

[36] However, 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

[12] These principles emerge from cases like *Canada (Minister of Human Resources Development) v Stiel*, 2006 FC 466 at para 28; *Collins v Canada*, [2000] 2 FC 3 (TD), aff'd 2002 FCA 82 at para 40; and *Ward v Canada (Human Resources and Social Development)*, 2008 TCC 25 at para 8.

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.

[37] In other words, if the Minister had discovered the problem with the November 2010 application form around the time that it was made, would the Minister have immediately declared the application invalid or would it have provided S. C. with the opportunity to correct the problem?

[38] At the hearing before me, the Minister's representative also argued that, by submitting his application incorrectly, S. C. caused the Minister to make a wrong decision. And because of that wrong decision, the Claimants benefited from OAS benefits to which they were not entitled.

[39] I cannot accept this argument. There is no evidence that the Minister would have assessed S. C.'s application any differently, even if it had realized that the application was signed by S. C.'s son. Rather, the Minister assessed the November 2010 application in the way that it saw fit and found that S. C. was eligible for OAS benefits.

[40] I also recognize that S. C. did not provide his son with a formal written authorization of any kind. However, the Minister's representative could not point me to a section of the OAS Act, the OAS Regulations, or the *Civil Code of Québec* that requires authorizations to be in writing.

[41] Instead, the Minister's representative emphasized the language on the OAS application form and the requirements of a ministerial policy. However, forms and internal policies are not part of the law and cannot create additional obligations that do not exist in the law.

[42] In this case, it is undisputed that S. C. told his son what to write on his application form and instructed him to submit it to the Minister. As a result, I find that S. C.'s son submitted the November 2010 application on his father's behalf and met the requirements of the OAS Act and OAS Regulations.

**The General Division should decide the outstanding issues in these appeals.**

[43] Even if the November 2010 application is valid, as I concluded above, the Minister argues that it still overpaid S. C.'s OAS benefits by about $37,000.[13] However, that finding reduces S. P.' overpayment to zero.

[44] The reason for the remaining overpayment concerns another eligibility requirement. To obtain OAS benefits, the Claimants also needed to reside in Canada for a certain number of years. And while the Minister was considering the Claimants' June 2017 applications, it also reassessed the length of their residence in Canada.

[45] As part of that reassessment, the Minister concluded that S. C. had not resided in Canada from December 19, 1994, to April 13, 2010, which delayed his eligibility for OAS benefits. The Minister argues that the new assessment of S. C.'s residence applies, regardless of whether the November 2010 application is valid.

[46] Assessing a person's residence in Canada is a common task that the Tribunal undertakes. It involves a detailed assessment of the strength of a person's ties to Canada over time. And in this case, the relevant period stretches back many years.

[47] At the General Division level, however, everyone focused on the validity of the November 2010 application form. Indeed, the General Division hearing was less than 13 minutes long.

[48] Since I have found the November 2010 application to be valid, however, an important issue arises concerning the limits of the Minister's powers. For example, there are previous cases in which I concluded that the Minister does not have the power to change an initial eligibility (or approval) decision.[14] I based those decisions on an interpretation of section 23 of the OAS Regulations.

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[13] See paragraph 24 of the Minister's submission, on page AD5-13.
[14] *BR v Minister of Employment and Social Development*, 2018 SST 844, and *MA v Minister of Employment and Social Development*, 2020 SST 269. One of my colleagues recently came to the same conclusion in *Minister of Employment and Social Development v JG* (14 May 2020), AD-19-835 (SST).

[49] The Claimants raised this issue when they asked how the Minister could wait seven years to reassess their case.[15] And justice requires that the Tribunal now consider this possible limit on the Minister's powers.[16]

[50] Depending on the answer to that question, the Claimants might also be able to prove that they had more years of residence in Canada than what the Minister has already recognized. In fairness to the parties, however, the General Division should consider these issues first, since only it has the power to accept any new evidence that the parties might want to advance.

[51] As a result, I am returning these files to the General Division, with the following directions and issues to decide:

a) In this case, did the Minister have the power to change its initial approval decision, made in August 2011?[17]

b) If the Minister was able to change its initial approval decision, when did S. C. and S. P. reside in Canada?

c) The General Division will hold a pre-hearing conference at which time the parties can discuss the impacts of this decision and refine, or even abandon, some of the issues above. If requested, the General Division will also provide the parties with a reasonable amount of time to file new evidence and submissions.

[52] In addition, the parties could try to negotiate an appropriate resolution to the remaining issues in these appeals.

## CONCLUSION

[53] I am allowing these appeals. I concluded that the General Division committed an error of law by failing to interpret the words "by or on behalf of" in the OAS Act and OAS Regulations. I gave my own interpretation of those words and concluded that S. C.'s son validly submitted the

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[15] Page GD1-2.
[16] The Tribunal's obligation to raise issues is discussed in cases like *Ching v Canada (Citizenship and Immigration)*, 2015 FC 725 at paras 65–71, and *Adamson v Canada (Human Rights Commission)*, 2015 FCA 153 at para 89.
[17] The date of the approval decision appears on page GD2-381, but the decision itself is not in the record.

November 2010 application on his father's behalf. However, I also identified some outstanding issues, which I am asking the General Division to decide.

Jude Samson
Member, Appeal Division

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| HEARD ON: | April 29, 2020 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | S. P. and S. C., Appellants<br>Suzette Bernard and Marcus Dirnberger (observer), Representatives for the Respondent |