



Citation: *SN v Minister of Employment and Social Development*, 2021 SST 625

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant:	S. N.
Representative:	Parmjit Boparai
Respondent:	Minister of Employment and Social Development
Representative:	Lisa Carroll
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated April 22, 2021 (issued by Service Canada)
Tribunal member:	George Tsakalis
Type of hearing:	On the record
Decision date:	September 15, 2021
File number:	GP-21-1254

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant, S. N., was born in 1938. She came to Canada in 2006 and later obtained Canadian citizenship.

[3] The Claimant applied for an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) in September 2019.¹

[4] The Minister of Employment and Social Development (the Minister) awarded the Claimant a partial OAS pension and the GIS. The Minister concluded that the Claimant achieved 10 years of Canadian residence in January 2021. The Minister began paying the Claimant partial OAS pension and GIS benefits in February 2021.²

[5] The Claimant appealed the Minister's decision to the General Division of the Social Security Tribunal. The Claimant argues that she achieved 10 years of Canadian residence in October 2020. This means she should have begun receiving her partial OAS pension and GIS benefits in November 2020, and not February 2021.³

What the Claimant must prove

[6] For the Claimant to succeed, she must prove she had achieved 10 years of Canadian residency in October 2020.

[7] To receive a partial OAS pension while living in Canada, claimants must be at least 65 years old and must have resided in Canada for at least 10 years since age 18.⁴

[8] To be eligible for the GIS, claimants must meet several requirements, which include being a resident of Canada and receiving a full or partial OAS pension.⁵

¹ See GD2-3-11

² See GD2-60

³ See GD1-5-6

⁴ See subsection 3(2) OAS Act

⁵ See subsections 11(1)(2) and (7) OAS Act

Matters I have to consider first

[9] I decided to call a Case Conference. After reviewing the file, I agreed with the Minister that the Claimant achieved 10 years of Canadian residency in January 2021 and that her benefit payments should begin in February 2021.⁶

[10] We held a Case Conference on September 14, 2021. The Claimant did not attend the Case Conference. The Claimant's daughter attended the Case Conference as the Claimant's representative. A representative for the Minister also attended the Case Conference.

[11] The Claimant's daughter said she made submissions about when the Claimant should begin receiving her benefits in the Notice of Appeal. She was satisfied with me making a decision based on the records that were contained in the file. The Minister's representative was also satisfied with me making an on the record decision.

Reasons for my decision

[12] I find that the Minister properly decided that the Claimant achieved 10 years of Canadian residence in January 2021. This means that she was entitled to receive her partial OAS pension and GIS benefits starting in February 2021. I reached this decision by considering the following issues:

- When did the Claimant achieve 10 years of Canadian residency?
- When should the Claimant begin receiving her partial OAS benefits and GIS benefits?
- **When did the Claimant achieve ten years of Canadian residency?**

[13] After reviewing the documents provided by the parties, I find that the Claimant achieved 10 years of Canadian residence in January 2021.

⁶ See GD3

[14] The Claimant completed a residence history when she applied for the OAS pension and the GIS in September 2019.⁷

[15] The Claimant said and I find that she resided in Canada on the following days:

- August 8, 2006 to April 11, 2007;
- March 28, 2009 to September 2, 2012;
- February 27, 2014 to March 10, 2015; and
- March 12, 2016 to present

[16] The Claimant submitted that she met the 10 year residency requirement as of October 2020. I disagree with this submission.

[17] The Minister provided a residence calculation sheet. The residence calculation sheet showed how the Minister concluded that the Claimant achieved 10 years of Canadian residence in January 2021.⁸

[18] I have reviewed the Minister's calculation and I agree that it properly calculated 10 years of Canadian residence for the Claimant as of January 2021.

[19] The OAS Regulations say that in certain circumstances, a claimant's absences from Canada do not interrupt their residence in Canada. These circumstances include temporary absences from Canada that are no longer than one year or when a claimant is outside Canada attending a school or university, or where they are employed outside Canada doing certain types of jobs.⁹

[20] I reviewed the OAS Regulations to see if the Claimant met the 10 year residence requirement before January 2021. But the OAS Regulations do not assist the Claimant. This is because the Claimant's absences from Canada, after she became a resident in

⁷ See GD2-5

⁸ See GD2-59

⁹ See subsections 21(4) and (5) OAS Regulations

August 2006, were longer than one year. The Claimant also did not attend school or work outside Canada during her absences. She told the Minister that she visited family when she was outside Canada.¹⁰

[21] Having found that the Claimant met the 10 year residency requirement as of January 2021, I will now turn my attention to the start date of the Claimant's partial OAS pension and GIS benefits.

- **When should the Claimant begin receiving her partial OAS benefits and GIS benefits?**

[22] According to the OAS Regulations, the date of approval for an OAS pension is the latest of the following dates¹¹:

- the day that is one year before the day on which the application was received (which in this case is September 2018);
- the day on which Claimant attained the age of 65 years (which in this case is July 2003);
- the day on which the Claimant became qualified for an OAS pension (which in this case is January 2021);
- the month immediately before the date specified in writing by the Claimant (the Claimant did not specify a date in her application).

[23] I find that the Minister properly decided a January 2021 approval date in accordance with the OAS Act Regulations.

[24] The OAS Act sets out the rule for when OAS pension payments start where a claimant was older than 65 when the Minister received the application. The OAS Act says that the payment of the pension starts the month after which the application is approved.¹² In this case, the Minister approved the application in January 2021, which

¹⁰ See GD2-40

¹¹ See subsection 5(2) OAS Act Regulations

¹² See subsection 8(1) OAS Act

means that the Claimant's partial OAS pension payment starts in February 2021. The Claimant's GIS benefit payments also started in February 2021 because that was when she began receiving her partial OAS pension.¹³

Conclusion

[25] I find that the Minister properly decided that the Claimant achieved 10 years of Canadian residence in January 2021. I find that the Claimant's partial OAS pension and GIS benefits properly started in February 2021.

[26] This means the appeal is dismissed.

George Tsakalis
Member, General Division – Income Security Section

¹³ See subsection 11(1)(2)(4) and (7) OAS Act