



Citation: *LL v Minister of Employment and Social Development*, 2021 SST 770

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. L.

Respondent: Minister of Employment and Social Development

Decisions under appeal: General Division decision dated June 16, 2021
(GP-20-586)

And

General Division decision dated June 16, 2021
(GP-20-976)

Tribunal member: Janet Lew

Decision date: December 15, 2021

File numbers: AD-21-298

And

AD-21-299

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

Overview

[2] The Applicant, L. L. (Claimant), is appealing the General Division decisions dated June 16, 2021 (Tribunal File Numbers: GP-20-586 and GP-20-976). The General Division found that the Respondent, the Minister of Employment and Social Development (Minister), had the authority to change its August 2015 decision to pay the Claimant a full Old Age Security pension and Guaranteed Income Supplement.

[3] The General Division also found that the Claimant had stopped residing in Canada in September 1999. As a result, the General Division determined that the Claimant was not eligible for a full Old Age Security pension or for the Guaranteed Income Supplement. Rather, it found that the Claimant was eligible for a partial pension—at 32/40ths of the full amount.

[4] The General Division concluded that the Claimant had been overpaid. It also concluded that it did not have any authority to review the Minister's decision to forgive the debt, even if there had been an administrative error, or if it would cause undue hardship. The General Division found that only the Minister holds this power.

[5] The Claimant questions whether the General Division applied the correct criteria when it found that he needed 40 years of Canadian residency for a full pension. He believes that 20 years of residency may have been enough to qualify for a full pension.

[6] Otherwise, the Claimant does not deny the General Division's finding that he lived in Canada for most of his life, other than from September 20, 1999, to February 11, 2014. Indeed, he notes that he provided this information on his application for the Old Age Security pension.¹

¹ See Claimant's application for Old Age Security pension, at GD2R-5.

[7] The Claimant says that, although he advised the Minister that he was not resident in Canada for this timeframe, the Minister nevertheless determined that he was eligible for a full pension and for the supplement. So, he says that he should not be held responsible for the Minister's error in paying him a full pension and the supplement. The Claimant maintains that the overpayments should be forgiven.

[8] I have to decide whether the appeal has a reasonable chance of success.² Having a reasonable chance of success is the same thing as having an arguable case.³

Issues

[9] The issues are as follows:

- a) Is there an arguable case that the General Division made an error of law when it required the Claimant to have 40 years of Canadian residency to qualify for a full Old Age Security pension?
- b) Is there an arguable case that the General Division should have forgiven the Claimant's debt?

Analysis

[10] The Appeal Division must grant permission to appeal unless the appeal "has no reasonable chance of success." A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal or certain type of factual error.⁴

[11] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error and, if so, decides how to fix that error.

² Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I have to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

³ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that had been made in a perverse or capricious manner, or without regard for the evidence before it.

Is there an arguable case that the General Division made a legal error when it found that the Claimant had to have 40 years of Canadian residency to qualify for a full pension?

[12] The Claimant argues that the General Division made an error of law when it required him to have 40 years of Canadian residency to qualify for a full Old Age Security pension. The Claimant says that, in past, only 20 years of Canadian residency was needed to qualify for a full pension. He believes that the 20-year residency requirement may have applied in his case.

[13] The Claimant relies, in part, on Service Canada's letter of October 10, 2018. An investigator wrote, "A pensioner who has resided in Canada for at least twenty years since his/her eighteenth birthday may be paid his/her basic Old Age Security pension anywhere outside Canada indefinitely. This is also true for the payment of a partial pension."⁵

[14] This letter does not establish eligibility for a full pension with 20 years of residency. The letter simply states that the payment of either a full or partial pension may be paid outside Canada to a pensioner. It can be paid indefinitely. However, the pensioner had to have resided in Canada for at least twenty years since his/her 18th birthday.

[15] Section 3(1) of the *Old Age Security Act* states when a full pension may be paid. A full monthly pension may be paid to:

- (a) every person who was a pensioner on July 1, 1977;
- (b) every person who
 - (i) on July 1, 1977 was not a pensioner but had attained twenty-five years of age and resided in Canada or, if that person did not reside in Canada, had resided in Canada for any period after attaining eighteen years of age or possessed a valid immigration visa,
 - (ii) has attained sixty-five years of age, and

⁵ See Service Canada letter dated October 10, 2018, at GD2-41.

- (iii) has resided in Canada for the ten years immediately preceding the day on which that person's application is approved or, if that person has not so resided, has, after attaining eighteen years of age, been present in Canada prior to those ten years for an aggregate period of at least equal to three times the aggregate periods of absence from Canada during those ten years, and has resided in Canada for at least one year immediately preceding the day on which that person's application is approved; and
- (c) every person who
 - (i) was not a pensioner on July 1, 1977,
 - (ii) has attained sixty-five years of age, and
 - (iii) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least forty years.

[16] I have checked the legislative history of the *Old Age Security Act* dating to 2003, long before the Claimant applied for a pension in May 2014. Each version of the *Old Age Security Act* has always required residency of at least forty years. More importantly, the version of the *Old Age Security Act* at the time the Claimant applied for the pension required 40 years of Canadian residency.

[17] I am not satisfied that there is an arguable case that the General Division made a legal error when it required the Claimant to have 40 years of Canadian residency to qualify for a full pension.

Is there an arguable case that the General Division should have forgiven the Claimant's debt?

[18] The Claimant argues that there is overpayment because of an administrative error. He says that if he did not qualify for a full pension based on the information that he provided in his application, then the Minister should not have approved his application for a full pension and the supplement in the first place.

[19] The Claimant argues that the General Division should have forgiven his debt. He claims that he is and will continue to suffer financial hardship, as he is now unable to pay his utility bills or buy essentials.

[20] The General Division noted that the Minister decided against waiving the overpayments of Old Age Security pension and the supplement. The Minister decided this in March 2020, after determining that it had not made any administrative errors.⁶

[21] The General Division found that it did not have any authority to decide whether the Minister should have forgiven any of the Claimant's debts from overpayment of the Old Age Security pension or the Guaranteed Income Supplement.⁷

[22] The General Division found that the Claimant could not appeal the Minister's decision to the Social Security Tribunal. The General Division wrote that the Claimant's option was to make an application for judicial review at the Federal Court of Canada on this particular issue. The General Division noted that the Claimant had already received this information, from the Minister and the General Division and Appeal Division, in other appeals.

[23] The General Division correctly noted the applicable section of the *Old Age Security Act*. Section 37(4) of the *Old Age Security Act* lets the Minister waive all or any portion of the amount for excess of the benefit payment. The section does not confer any power on the General Division to waive any overpayments.

[24] In a case called *Tucker*,⁸ the Federal Court of Appeal found that the Review Tribunal (the predecessor to the General Division) had no jurisdiction to entertain an appeal from the Minister's decision made under paragraph 37(4)(d) not to remit any or all of the overpayments.

⁶ See Service Canada letter dated March 26, 2020, at GD2-71 to GD2-72.

⁷ See General Division decision, at paras 29 to 32.

⁸ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

[25] The Court of Appeal also said that a claimant's remedy in regards to any decisions made by the Minister under section 37(4) of the *Old Age Security Act* is to make an application for judicial review in the Federal Court.

[26] I am not satisfied that there is an arguable case that the General Division should have reviewed the Minister's decision against forgiving the debt. I am not satisfied either that the General Division should have forgiven the debt. The General Division simply did not have the power to do either.

[27] That said, I note that the Claimant says he is experiencing hardship and having problems paying his bills and buying essentials. It is unclear whether the Claimant has asked the Minister for a waiver of the overpayment, or any portion of it, based on undue hardship. This option may be open to the Claimant under section 37(4)(c) of the *Old Age Security Act*.

Conclusion

[28] The appeal does not have a reasonable chance of success. Therefore, permission to appeal is refused. This means that the appeal will not go ahead.

Janet Lew
Member, Appeal Division