



Citation: *VM v Minister of Employment and Social Development*, 2021 SST 844

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

Decision

Appellant: V. M.
Representative: R. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated December 9, 2020 (issued
by Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Videoconference

Hearing date: October 22, 2021

Hearing participants: Appellant
Appellant's spouse
Appellant's son and representative
Respondent's representative
Translator

Decision date: November 8, 2021

File number: GP-21-424

Decision

[1] The appeal is dismissed.

[2] The Claimant, V. M., is not eligible for a further period of Old Age Security (“OAS”) Benefits and Guaranteed Income Supplement (“GIS”). This decision explains why I am dismissing the appeal.

Overview

[3] The Claimant was born in 1947 in Tbilisi Georgia. He came to Canada in August 2004 and took up residence at that time.¹ In May 2016, the Claimant and his partner took a planned vacation to visit with their daughter in Russia. The intention was to stay 1.5 months and then to return to Canada. Sadly, that did not happen. Instead, the Claimant underwent a series of five surgeries on his lower back to deal with significant impairments that he suffered from an accident while visiting Russia.

[4] The Claimant’s son and his power of attorney submitted an application for the OAS pension and the GIS on November 15, 2019. He says that he is entitled to the benefit upon submitting his application because he had a sufficient period of residency. He further submits that he was only outside of Canada from 2016 to 2020 because he was too ill from his multiple surgeries to fly home. In other words that he continued to maintain his residency in Canada while convalescing in Russia.

[5] The Minister says that the information in the Claimant’s file showed that he was not in Canada at the time his application was denied. Further that because he had less than the 20 years of residence required to be entitled to payment of the pension outside of Canada, he was not entitled to payment at that time.

What the Claimant must prove

[6] For the Claimant to succeed, he must prove he was not absent from Canada for a period greater than six consecutive months.²

¹ The issue of residence between 2004 and May 2016 is not at issue in this appeal.

² OAS Section 9(1)

Reasons for my decision

[7] The *Old Age Security Act* provides for payment of a partial OAS pension where the applicant is not eligible for a full pension. To receive a partial OAS pension, applicants must have resided in Canada for a minimum of 10 years after the age of 18, but less than 40 years. If the applicant has not resided in Canada for at least 20 years, they have to had resided in Canada on the day before the Minister approves their application.

[8] This requirement is described in section 3(2) of the OAS Act.³

[9] The Minister conceded that the absence of the Claimant and his spouse at the time of application was of a temporary nature and that both could be considered Canadian residents for the purpose of approving their applications for OAS pensions.⁴

[10] However, the Minister argues that the operation of section 9 of the OAS precludes the Claimant and his spouse from receiving the OAS pension while absent from Canada beyond the sixth month following the month of departure.

[11] This decision turns on the application of Section 9 of the OAS Act.

[12] Section 9(1) of the OAS Act states the following:

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

³ **3.(2) *Payment of partial pension*** - Subject to this Act and the regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and
(a) has attained sixty-five years of age; and
(b) 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 ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

⁴ GD6-7

Canada after those six months shall be suspended, but payment may be resumed with the month in which the pensioner returns to Canada.

[13] The Minister submitted that its position was that the Claimant was entitled to a partial pension of 11/40ths as of December 2018. However, because he remained outside of Canada at that time, and had been since May 2016, he could not commence receipt of payment until he returned to Canada in 2020.

[14] On this point, the Minister wrote that Service Canada is limited by both Section 3(2)(b) and Section 9(1) and was therefore unable to pay the Claimant the OAS pension and the GIS until he returned to Canada.⁵

Oral Hearing Evidence

[15] At the oral hearing, I heard from both the Claimant's spouse and from the Ministerial representative. The Claimant's spouse explained to me that she did not intend to stay in Russia for four years but was required to because of the poor health of her husband.

[16] The Ministerial representative agreed. She acknowledged that the Claimant was severely compromised by his health. She noted that it was evident that the Claimant and his spouse were only able to return to Canada because of special accommodations put in place because of Covid-19.

[17] The Ministerial representative did not dispute that the Claimant's intention was to stay 1.5 months and further that they returned to Canada as soon as possible.

[18] The Ministerial representative confirmed the concession made in its submissions that the Claimant and his spouse's residency continued in Canada even while being present in Russia.

⁵ GD2-8

A Pensioner must be present in Canada at the time of application

[19] Section 9(1) of the OAS clearly sets out the requirements for commencing receipt of an OAS benefit. The OAS details that a pensioner who is absent for more than six months will have their pension suspended during an absence from Canada. In reviewing section 9(1) it is clear that this section considers only the presence in Canada and not residence.

[20] The only exception to suspending a person's pension after six months of being outside of Canada is where the total residence has been 20 years after age 18. Neither the Minister nor the Tribunal have the discretion to create variances even in cases of hardship, for example where the recipient became seriously ill while visiting abroad.⁶

[21] In this case, the Claimant did not have a total residence in Canada of 20 years and therefore the Tribunal cannot vary the requirement set out in section 9 of the OAS.

[22] While I acknowledge the hardship faced by the Claimant and that none of this was his fault, I am unable to overturn the decision of the Minister as there is no exception to the requirement of being present in Canada at the time of application when total residence in Canada is less than 20 years.

Conclusion

[23] I find that the Claimant isn't eligible for a greater period of benefits under the OAS as he was not present in Canada until March 2020.

[24] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section

⁶ *R-35014 v. MHRD; R-40776 v. MHRD* (Aug 19, 1999) (RT)