Citation: *HW v Minister of Employment and Social Development and CJ*, 2021 SST 858

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant (Claimant):	H. W.
Representative:	S. L.
Respondent:	Minister of Employment and Social Development
Added Party:	C. J.
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated February 25, 2021 (issued by Service Canada)

Tribunal member:	Pierre Vanderhout
Type of hearing:	Videoconference
Hearing date:	December 14, 2021
Hearing participant:	Appellant's representative
Decision date:	December 17, 2021
File number:	GP-21-1267

Decision

[1] The appeal is allowed.

[2] The Claimant, H. W., had an additional period of Canadian residence from June 25, 2006, to July 6, 2007. This means she was eligible for a 10/40^{ths} Old Age Security ("OAS") pension effective July 2016, instead of August 2017. This decision explains why I am allowing the appeal.

Overview

[3] The Claimant is nearly 87 years old. She spent most of her life in Taiwan. She now lives with her 87-year-old husband and her son's family in Richmond Hill, Ontario. In 2004, her daughter J. applied to sponsor the Claimant and her husband as family class immigrants to Canada. However, the waiting time for this class was long: it took three years to get approval. Using a visitor's visa, the Claimant first entered Canada on June 25, 2006. She remained in Canada and re-entered Canada as a permanent resident on July 7, 2007.

[4] The Claimant applied for the OAS pension in February 2016. The Minister granted her a 10/40^{ths} OAS pension, effective August 2017. The Minister found she had been resident in Canada since July 7, 2007, and became eligible for an OAS pension after completing 10 years of Canadian residency in July 2017. The Claimant appealed that decision, because she believed the period from June 25, 2006, to July 6, 2007, should also count as Canadian residency. If accepted, this would make her eligible for a 10/40^{ths} OAS pension as of July 2016.

[5] The Claimant says she intended to live in Canada permanently when she first arrived in June 2006. Together with her husband, she did many things that strongly point to residency in Canada starting in June 2006. She opened a bank account, executed a Will, and bought a house in Oshawa, Ontario. After her initial arrival in June 2006, she did not leave Canada before becoming a permanent resident in July 2007.

The Claimant also says the Minister placed undue weight on two "incorrect" answers in a Questionnaire signed by her on April 19, 2017 (the "April 2017 Questionnaire").[1]

[6] The Minister says the Claimant only intended to live permanently in Canada as of July 7, 2007. The Minister relied on the Claimant's answers in the April 2017 Questionnaire. The Minister said the Claimant's other evidence did not support residency in Canada before July 7, 2007.

What the Claimant must prove

[7] For the Claimant to succeed, she must prove she resided in Canada before July 7, 2007. This could advance her initial eligibility date for an OAS pension.

Matters I have to consider first

The appeal was heard with another appeal

[8] This appeal was heard at the same time as the appeal by the Claimant's husband.[2] The facts and issues are virtually identical in the two appeals. In addition, some documents were only filed in one of the appeals, despite being potentially applicable to both appeals. As a result, it was most efficient to hear the appeals together. However, I am issuing separate decisions for each appeal.

The Claimant wasn't at the hearing

[9] A hearing can go ahead without the Claimant if she got the notice of hearing.[3] I decided that the Claimant got the notice of hearing because her representative Shumei Lin discussed it with the Tribunal before the hearing date. The Tribunal sent the notice of hearing to the representative by e-mail on November 19, 2021. It was deemed received on November 22, 2021.[4]

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[1] GD2-14
[2] Tribunal file GP-21-1266.
[3] Section 12 of the *Social Security Tribunal Regulations* sets out this rule.
[4] An e-mailed document is deemed to have been received the next business day. See s. 19 of the *Social Security Tribunal Regulations*.

[10] The Claimant's representative knew that the Claimant was not going to attend, but still wanted the hearing to proceed. The Claimant suffers from dementia and would not have been able to participate meaningfully in the hearing. An e-mail sent to the Tribunal before the hearing confirmed this.[5] Given the nature of dementia, her illness was unlikely to improve. So, the hearing took place when it was scheduled, but without the Claimant.

[11] Ms. Lin attended the hearing and gave evidence. Although representatives are typically not allowed to give evidence, I allowed Ms. Lin to do so because she is a representative in name only. She is not a legal professional. She is the Claimant's daughter-in-law and has lived with the Claimant for approximately 20 years (including several years in Taiwan). She also prepared many of the documents that the Claimant or her husband signed.

Reasons for my decision

[12] I need to determine whether the Claimant was resident in Canada before July 7, 2007. It is important to distinguish being "resident" in Canada from merely being "present" in Canada. A person resides in Canada if she "makes her home and ordinarily lives in any part of Canada." This is different from merely being physically present in Canada.[6] A person can be present in Canada without being resident in Canada.

[13] While being "present" in Canada does not decide the Claimant's appeal, it is still an important factor. I accept that the Claimant was present in Canada throughout the period from June 25, 2006, to July 6, 2007. She said she didn't leave Canada (other than to re-enter as a permanent resident on July 7, 2007) until May 2012, when she visited Taiwan for just under three months. Her passports support this assertion.[7]

[14] Although presence is important in determining residence, it is not the only factor. Residence is a factual issue that requires looking at the Claimant's "big picture". The

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[5] GD5-1
[6] See s. 21(1) of the *Old Age Security Regulations.*
[7] GD2-24 and GD2-26.

Federal Court of Canada says I should consider the following factors (known as the "Ding Factors"):[8]

(a) ties in the form of personal property;
(b) social ties in Canada;
(c) other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.);
(d) ties in another country;
(e) regularity and length of stay in Canada, and the frequency and length of absences from Canada; and
(f) the person's mode of living, or whether the person living in Canada is sufficiently deep-rooted and settled.

[15] I will now apply the Ding Factors to the facts of this case.

Applying the Ding Factors

[16] The Claimant established important personal property ties to Canada before July 7, 2007. Together with her husband, she set up a bank account on August 14, 2006.[9] She and her husband bought a house on Highgate Avenue in Oshawa on September 15, 2006.[10] They also both executed Ontario wills on September 13, 2006. While copies of those wills were not filed, the wills presumably set out what would happen to their personal property upon their deaths.[11]

[17] Both the Claimant and her husband had some social ties in Canada. Their son and one of their daughters, and their families, live in Canada. The Claimant and her husband have lived with their son's family since arriving in Canada. While much of their social interaction has been with family members, they also had Mandarin-speaking friends who lived nearby in Oshawa. They also socialized with Canadian friends of their daughter.

[18] The Claimant has some other ties in Canada. While she and her husband lived with their son and daughter-in-law, they leased their Oshawa home to a tenant on

[8] See *Canada (MHRD) v. Ding*, 2005 FC 76.
[9] GD3-117
[10] GD3-120
[11] GD3-118 and GD1-119

September 28, 2006.[12] They also insured that home in September 2006.[13] The Claimant filed a tax return for the 2007 tax year.[14]

[19] The Claimant has some ties to Taiwan, as she lived there for the first 71 years of her life and her other three daughters still live there. However, her home in Taiwan was sold in 2006. The proceeds of that sale were used to buy the Oshawa home.

[20] The Claimant stayed in Canada for the entire period in question (between June 25, 2006, and July 6, 2007). She only left Canada on July 7, 2007, but immediately re-entered as a permanent resident.

[21] Despite only being in Canada on a visitor's visa, the Claimant's mode of living in Canada was quite deep-rooted and settled. She arrived in Canada on a one-way plane ticket.[15] She lived with her son's family and soon bought a house in the same city. She no longer owned a home in Taiwan. She was awaiting the 2004 application outcome to become a permanent resident of Canada. She was sponsored by her daughter J., who formally met all the sponsorship requirements on September 6, 2006.[16]

[22] Taken together, I am satisfied that the Claimant's Ding Factors significantly favour Canadian residence from June 25, 2006, to July 6, 2007. The Claimant clearly desired a new life in Canada and took many steps to reach that goal.

[23] However, before finalizing my decision, I will take a closer look at the April 2017 Questionnaire.

– **The April 2017 Questionnaire**

[24] The Minister placed considerable weight on the April 2017 Questionnaire. S. L. actually completed it. After completing the April 2017 Questionnaire, S. L. reviewed it in Mandarin with the Claimant. The Claimant then signed it.

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[12] GD3-139
[13] GD3-133
[14] GD2-253
[15] GD2-15
[16] GD3-8

[25] The Minister focused on the following two questions and answers[17]:

> Q: “When did you decide to live permanently in Canada?”
> A: “July 7, 2007”
>
> Q: “When you entered Canada on June 25, 2006, did you intend to live here permanently?”
> A: “No.”

[26] If accepted without reference to the other evidence, these answers would certainly impact the Claimant’s Ding Factors. They conflict with the Claimant’s apparent intention to live permanently in Canada from her initial arrival on June 25, 2006. This would make her mode of living much less deep-rooted and settled. However, for the following reasons, I do not assign much weight to these responses.

[27] Firstly, the Claimant almost immediately recanted these responses. In June 2017, she said the proper answer was that she decided to live permanently in Canada on June 25, 2006. She said she did not originally give that answer because she thought people with a visitor’s visa were not supposed to say they intended to live in Canada permanently.[18] Afterwards, she continued stating that those two answers on the April 2017 Questionnaire were incorrect.[19]

[28] Secondly, S. L.’s explanation of the error is persuasive. She completed the April 2017 Questionnaire on the Claimant’s behalf. Although the Claimant signed the April 2017 Questionnaire, she has minimal English skills and relies on others for paperwork. S. L. is familiar with immigration matters, due to her work history in Canada. She knew that holders of a visitor’s visa must respect the conditions of admission and leave Canada by the end of the authorized period. She thought an intention to live in Canada permanently while holding a visitor’s visa would not be legal. S. L. also assumed that

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[17] GD2-14
[18] GD3-164
[19] GD3-168 (August 2018), GD1-10 and GD1-19 (both June 2021)

the questions' reference to "permanently" meant that the Claimant needed permanent resident status.[20]

[29] Revising an unfavourable answer is rarely persuasive. However, in this case, I accept that the Claimant (through S. L.) simply made an error. The Claimant and her husband were very careful to follow the laws of Canada. For example, they filed paperwork and remitted taxes on their rental income before they had permanent resident status. At the hearing, S. L. admitted she might have "overthought" when she filled out the April 2017 Questionnaire.

[30] I also considered the context of the error. The Claimant and her husband sold their home in Taiwan around the time they entered Canada on visitor visas. They bought a house right after arriving, signed wills, and set up bank accounts. They had applied for permanent residency more than two years before, and re-entered Canada as permanent residents right after receiving their permanent resident visas.[21] Except for two answers on the April 2017 Questionnaire, the evidence strongly points to an intention to live in Canada permanently from June 25, 2006. Ultimately, I find that all the other evidence outweighs those two answers.

[31] As a result, despite the April 2017 Questionnaire, I accept that the Claimant was resident in Canada from June 25, 2006, to July 6, 2007.

Timing and amount of payments

[32] As noted, the Claimant resided in Canada from June 25, 2006, to July 6, 2007. This is on top of the already-admitted residency that began on July 7, 2007, and continued to at least July 2017.

[33] When the Claimant applied for the OAS pension in February 2016, she said she wanted it to start as soon as she qualified.[22] To be eligible for a partial OAS pension, a person residing in Canada must accumulate at least 10 years of residency.[23] This

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[20] GD1-10.
[21] GD3-15, GD3-35, and GD3-42.
[22] GD2-10
[23] See s. 3(2) of the *Old Age Security Act*.

means that the Claimant met the residency requirements for an OAS pension by June 24, 2016. The Minister has not disputed that she met the other requirements. For example, she reached age 65 and was legally resident in Canada well before 2016.

[34] An OAS pension is payable the month after the eligibility requirements are met.[24] It follows that the Claimant's OAS pension starts as of July 2016.

[35] The monthly amount of an OAS pension is 1/40th of a full monthly pension, for each full year of residence in Canada after age 18.[25] The Claimant had 10 years of residency by June 24, 2016. As a result, she was entitled to a 10/40^{ths} of a full OAS pension when it commenced in July 2016. However, the Minister only paid her a 10/40^{ths} pension as of August 2017. This means she is entitled to additional OAS pension payments from July 2016 to July 2017.

[36] I am not making any findings on the Claimant's potential entitlement to the Guaranteed Income Supplement ("GIS") from July 2016 to July 2017. The reconsideration decision did not address this issue.[26] However, as the Claimant asked for the GIS in her February 2016 OAS pension application[27], the Minister should address this.

Conclusion

[37] I find that the Claimant was eligible for a 10/40^{ths} OAS pension effective July 2016. This is 13 months earlier than the August 2017 effective date previously granted by the Minister.

[38] This means the appeal is allowed.

Pierre Vanderhout
Member, General Division – Income Security Section

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[24] See s. 8 of the *Old Age Security Act*.
[25] See s. 3(3) of the *Old Age Security Act*.
[26] GD3-294
[27] GD2-10