



Citation: *SB v Minister of Employment and Social Development and HY*, 2022 SST 80

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. B.
Representative: S. C.

Respondent: Minister of Employment and Social Development

Added Party: H. Y.

Decision under appeal: General Division decision dated October 29, 2021
(GP-20-1014)

Tribunal member: Neil Nawaz

Decision date: February 8, 2022

File number: AD-22-63

Decision

[1] Permission to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The Applicant is an Old Age Security (OAS) pensioner who receives the Guaranteed Income Supplement (GIS). In April 2019, the Added Party, who is the Applicant's wife, also applied for the OAS pension and GIS.

[3] The Minister, through her Service Canada arm, approved the applications and started paying Added Party an OAS pension and GIS retroactive to April 2018—one year prior to the application date and the maximum allowed under the law. At the same time, Service Canada recalculated the Applicant's GIS from April 2018 to April 2019. The recalculation led Service Canada to assess the Applicant with a \$6,113 overpayment because, until April 2019, he had been receiving the GIS as if he had been married to a non-pensioner.

[4] The Applicant appealed Service Canada's assessment to the General Division of the Social Security Tribunal. He argued that there was no overpayment from April 2018 to April 2019 because his wife did not actually receive her OAS and GIS benefits until April 2019. He also asked the General Division to consider his financial circumstances and to use its discretion to cancel the assessed overpayment.

[5] The General Division held a hearing by teleconference and dismissed the appeal. It said that the Minister was right to recalculate the Applicant's GIS entitlement back to April 2018 once his wife became entitled to the same benefit as of that date. The General Division also said that it lacked any discretionary authority to order the Minister to forgive debts to the Crown.

[6] The Applicant is now asking for permission to appeal the General Division's decision. He made the following points:

- The General Division did not take into account the fact that his wife should have been deemed eligible for the OAS pension and GIS as of January 2018 (her 65th birthday), rather than April 2018;
- The General Division did not take into account interest on amounts that Service Canada owed to his wife going back to April 2018; and
- The General Division did not take into account the financial hardship that he and his wife will endure if Service Canada is permitted to recover the alleged overpayment.

[7] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant does not have an arguable case.

Issue

[8] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.² At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.³ This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.⁴

[9] In this appeal, I had to decide whether the Applicant had an arguable case.

¹ *Department of Employment and Social Development Act* (DESDA), section 58(1).

² DESDA, sections 56(1) and 58(3).

³ DESDA, section 58(2).

⁴ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Analysis

[10] The Applicant comes to the Appeal Division repeating many of the same arguments that he made at the General Division. He insists that, since his wife was not approved for OAS benefits until April 2019, he could not have been overpaid during the preceding year. He argues that the GIS was designed to help financially needy senior citizens like him and his wife.

[11] I don't see a case for these arguments.

[12] To succeed at the Appeal Division, an applicant must do more than simply reargue his case. An applicant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law.

[13] In this case, the General Division decided that the Minister had the legal right to reassess the Applicant's OAS and GIS entitlements once his wife was approved for the same benefits. The General Division explained that such a reassessment was limited to 12 months preceding his wife's approval date, which corresponds to the maximum period of retroactive payment permitted under the law. As the General Division correctly noted, when the Added Party's status changed as of April 2018, so did the Applicant's. On that date, he went from being married to a non-pensioner to being married to a pensioner. I don't see how the General Division erred in determining that the Applicant, as an individual, was entitled to a lower pension in the year before to his wife's OAS pension and GIS approvals.

[14] As for the Applicant's other claims, I don't see an arguable case for them either. The Applicant criticizes the General Division for not considering his wife's claim that she was entitled to OAS benefits sooner than April 2018. However, that claim is outside the scope of this appeal. The Applicant also claims that his wife is owed interest on her OAS and GIS back payments. Again, that is not a subject for the Applicant's appeal but for one brought by his wife. In any case, the Applicant has not previously raised this issue, so the General Division can't be faulted for having never considered it. Moreover,

there is no provision in the *Old Age Security Act* or any of its associated regulations that provides for the payment of interest on retroactive amounts.

[15] Finally, I don't see an arguable case that the General Division ignored the Applicant's financial circumstances. Indeed, the presiding member specifically addressed the Applicant's plea that he faced money troubles but found that the General Division had no authority to waive the overpayment.⁵ I sympathize with the Applicant, but the General Division was bound to follow the letter of the law, and so am I. This Tribunal is not a court but a statutory decision-maker, and it cannot simply order the Minister to waive its demand for repayment on compassionate grounds.⁶

Conclusion

[16] The Applicant has not identified any grounds of appeal that have a reasonable chance of success.

[17] Permission to appeal is refused.



Member, Appeal Division

⁵ See General Division decision, paragraphs 21–24.

⁶ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.