



Citation: *SB v Minister of Employment and Social Development and HY*, 2021 SST 894

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

Decision

Appellant: S. B.
Representative: S. C.

Respondent: Minister of Employment and Social Development

Added Party: H. Y.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 11, 2020 (issued by
Service Canada)

Tribunal member: George Tsakalis

Type of hearing: Teleconference

Hearing date: September 28, 2021

Hearing participants: Appellant
Appellant's representative
Added Party
Added Party's representative
Korean interpreter

Decision date: October 29, 2021

File number: GP-20-1014

Decision

[1] The appeal is dismissed.

Overview

[2] S. B. is the Claimant in this case. His spouse, H. Y. is the Added Party.

[3] The Claimant had been receiving the Guaranteed Income Supplement (GIS) as a pensioner who had been married or common-law to a non-pensioner spouse until April 2019. That was when the Minister of Employment and Social Development (the Minister) approved the Added Party's application for an Old Age Security (OAS) pension and the GIS. The Minister started paying the Added Party an OAS pension and the GIS back to April 2018. This meant that the Claimant's GIS benefits had to be recalculated for the period of April 2018 to April 2019. The Claimant owed the Minister \$6,113.34 in GIS benefits after the Minister recalculated his GIS benefits.

[4] The Claimant believed that the Minister acted incorrectly when it did this. He asked the Minister to reconsider its decision. The Minister refused to do so.

[5] The Claimant appealed the Minister's reconsideration decision to the Social Security Tribunal's General Division.

[6] The Claimant says that he cannot afford to live on reduced benefits. He is asking for a waiver of the \$6,113.34 overpayment because of the financial difficulty he and the Added Party are experiencing. He also argues 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.

[7] The Minister says that it acted properly. The Claimant originally collected the GIS at a higher rate from April 2018 to April 2019 because the Added Party was not receiving benefits. When the Minister approved the Added Party's entitlement to an OAS pension and the GIS with an April 2018 start date, it had to recalculate the Claimant's GIS benefits from April 2018 to April 2019. In May 2019, the Minister paid

the Added Party all of her OAS and GIS benefits that it owed to her from April 2018 to April 2019. This resulted in the Claimant receiving an overpayment of \$6,113.34 in GIS benefits from April 2018 to April 2019. This is because the GIS is based on a claimant's income and marital status. The Added Party receiving the GIS from April 2018 to April 2019 meant that the Claimant was entitled to less GIS for that period.

Preliminary Matter and Issue

[8] The Claimant and the Added Party submitted a document to the Tribunal before the hearing. The document said they were appealing an initial decision of the Minister from July 2021 that said they were not entitled to GIS benefits from July 2021 to June 2022.¹

[9] I advised the Claimant and the Added Party that I had no jurisdiction to decide the issue of their GIS benefit entitlement from July 2021 to June 2022.

[10] In order for the Tribunal to hear appeals in OAS and GIS cases, a claimant has to ask the Minister to reconsider its initial decision. If the Minister refuses to reconsider its initial decision, a claimant can then appeal the reconsideration decision to the Tribunal.² The Minister never made a reconsideration decision about the Claimant and the Added Party's GIS entitlement from July 2021 to June 2022. I therefore have no jurisdiction to deal with that issue.

[11] The issue that I have jurisdiction over is whether the Minister properly recalculated the Claimant's GIS benefits from April 2018 to April 2019.

Analysis

¹ See GD7

² See section 28 OAS Act

[12] The GIS benefit is a monthly benefit granted under the OAS Act. It is paid to someone receiving an OAS pension who has little or no income.³

[13] In order to receive the GIS, claimants:

- Must be receiving an OAS pension;
- Must apply for the GIS every year;
- Must be a resident of Canada;
- Must have an actual income that does not exceed certain limits.⁴

[14] The GIS is based on income, marital status and the type of benefit each spouse receives.⁵

[15] The OAS Act and OAS Regulations contain provisions that authorize the Minister to recover benefits that a claimant was not entitled to receive.⁶

The Minister properly recalculated the Claimant's GIS benefits from April 2018 to April 2019

[16] The Claimant and his representative argued there was no overpayment from April 2018 to April 2019 because the Added Party did not begin receiving benefits until April 2019.

[17] I disagree with this argument.

[18] In May 2019, the Minister sent the Added Party a payment for all OAS and GIS benefits that it owed her from April 2018 to April 2019.⁷ The Added Party may not have begun receiving her benefits until May 2019, but the Minister had paid her benefits

³ See section 11 OAS Act and see the Federal Court's decision in *Langlois v. Canada (Attorney General)*, 2018 FC 1108

⁴ See subsections 11(1)(2)(4) and (7) OAS Act and section 10 OAS Act Regulations

⁵ See section 12 OAS Act

⁶ See section 37 OAS Act and section 27 OAS Act Regulations

⁷ See GD2R-72

owing back to April 2018. This meant that the Minister had to recalculate the Claimant's GIS benefits because the Added Party began earning income as of April 2018.

[19] I do not see that the Minister did anything wrong in this case. The documents show that the Added Party did not earn income before April 2018, which meant that the Claimant received GIS at a higher rate. When the Added Party began receiving income, the Claimant's GIS had to be recalculated.

[20] The Minister provided detailed calculations as to how it recalculated the Claimant's GIS from April 2018 to April 2019, and his subsequent overpayment.⁸ I do not see any errors in the Minister's calculations and the Claimant and his representative did not point out any specific calculation errors.

I do not have jurisdiction to waive the overpayment

[21] The Claimant asked for a waiver of the overpayment because of financial difficulty.⁹ The Claimant filed documents that showed the poor financial circumstances that he and the Added Party find themselves in.¹⁰

[22] The laws says that I only have authority or jurisdiction to decide whether any benefit is payable or the amount of the benefit.¹¹

[23] The Tribunal is created by legislation and only has the powers granted to it by its governing statute. I must interpret and apply the law as it is set out in the OAS Act. I cannot make decisions on compassionate grounds. This means that I cannot waive the overpayment.

[24] If the Claimant wishes to have the overpayment waived or reduced, he will have to ask the Minister. If the Claimant believes that the Minister provided erroneous advice or made an administrative error, he can pursue this type of claim through an application

⁸ See GD2R-70-71 and GD2R-81-82

⁹ See GD1-6

¹⁰ See GD5 and GD6

¹¹ See sections 27 and 28 OAS Act

to the Minister under section 32 of the OAS Act. The Tribunal does not have jurisdiction to deal with issues of administrative error or erroneous advice.

CONCLUSION

[25] The appeal is dismissed.

George Tsakalis
Member, General Division – Income Security Section