Citation: *AM v Minister of Employment and Social Development*, 2021 SST 907

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	A. M.
Representative:	J. M.
Respondent:	Minister of Employment and Social Development
Decision under appeal:	Minister of Employment and Social Development reconsideration decision (GD2-3 to 7) dated September 16, 2020 (issued by Service Canada)
Tribunal member:	François Guérin
Type of hearing:	Teleconference
Hearing date:	September 23, 2021
Hearing participants:	Appellant Appellant's representative Interpreter Punjabi-English
Decision date:	November 23, 2021
File number:	GP-20-1554

Decision

[1] The appeal is dismissed.

[2] The Minister has broad powers to reassess eligibility after an application is approved and payments have initially started.

[3] The appellant (A. M.) WAS NOT a resident of Canada from April 18th, 2008 to February 12th, 2013.

[4] The appellant WAS a resident of Canada from February 13th, 2013 to May 31st, 2016.

[5] The appellant WAS a resident of Canada from June 1st, 2016 to September 23rd, 2021.

[6] The date of eligibility of the OAS partial pension as requested by the appellant in his OAS application cannot be changed and remains June 1st, 2016.

[7] I find that as of June 1st, 2016, the appellant was eligible to receive a partial OAS pension of 3/40th based on his residence in Canada during the period from February 13th, 2013 to May 31st, 2016 totalized with 9 years of pension services as per the Agreement with India.

Overview

[8] The appellant was born in India on X.[1] He entered Canada for the first time on April 18th, 2008 at the age of almost 61 years old. He reached the age of 65 on X. He became a permanent resident (PR) on February 13th, 2013. He submitted an OAS pension application on May 26th, 2017.[2] On August 13th, 2019, the Respondent (also referred to as the Minister) first approved his application for a partial OAS pension of 3/40th based on his residence in Canada from February 13th, 2013 to May 31st, 2016,

[1] GD2-8 and GD2-35
[2] GD2-35 to 36 and 40 to 42

totalized with 9 years of pension services as per the Agreement on Social Security between Canada and the Republic of India (Agreement).[3]

[9] The appellant submitted a request for reconsideration of the decision on August 29th, 2019 submitting additional stays in Canada from April 18th, 2008 to February 13th, 2013 to be considered in the calculation of his OAS partial pension.[4] The Minister amended the original calculation of residence and adjusted the OAS partial pension to 8/40th of a full pension.[5]

[10] The appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on October 16th, 2020.[6]

[11] Given the delay between the date the appellant submitted his OAS application (May 26th, 2017) and the date of the Minister's decision (August 13th, 2019), the appellant asked that the date of eligibility be changed to take into consideration the delay and grant him additional residence in Canada.

[12] The Minister submitted a settlement offer to the appellant on January 12th, 2021. The appellant rejected the offer on January 26th, 2021.[7]

What is the appellant's position?

[13] The appellant disagrees with the residence decision made by the Minister and submits that he has been a resident of Canada since his first entry in Canada on April 18th, 2008 and that he has continuously resided in Canada since then.

[14] The appellant believes that he submitted a request in writing to the Minister within the legal timeline in order to change his date of eligibility to his OAS partial pension. He wants the effective date of his pension to be the date the Minister made

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[3] GD2-15 to 17 and GD5-4, paragraph 7
[4] GD2-14
[5] GD2-3 to 7 and GD5-4, paragraph 9
[6] GD1
[7] GD4

his decision, even the reconsideration decision, and that the calculation of his years of residence in Canada goes as far as the date of the Minister's final decision.

What is the Minister's position?

[15] The Minister believes that his decision letter dated August 13th, 2019 is correct and that the appellant is eligible to a partial OAS pension of 3/40th based on his residence in Canada during the period from February 13th, 2013 to May 31st, 2016 totalized with 9 years of pension services as per the Agreement and that his date of eligibility for an OAS partial pension has been correctly determined.[8]

What the appellant must prove

[16] For the appellant to succeed, he must prove that he was a resident of Canada for at least 10 years since he turned 18 years old and that he was a resident of Canada on the day preceding the day on which his application is approved. [9]

[17] The appellant must also prove that he submitted a request in writing to the Minister to change the date of eligibility to his OAS partial pension within the legal timeline.

Matters I have to consider first

The Minister wasn't at the hearing

[18] A hearing can go ahead without the Minister if the Tribunal is satisfied that the Minister received notice of the hearing.[10] The Notice of Hearing was emailed to the Minister on August 6th, 2021 through the normal communication channel between the Tribunal and the Minister. Therefore, I am satisfied that the Minister had received the Notice of Hearing. The hearing took place as scheduled but without the Minister.

The appellant had a Representative at the hearing

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[8] GD5-2, paragraph 2
[9] *Old Age Security Act,* section 3(2)
[10] *Social Security Tribunal Regulations,* section 12(1)

[19] The appellant's son, J. M., represented his father at the hearing. He confirmed that he was not remunerated. He also testified at the hearing as he has first hand knowledge of the family's residence situation. He was affirmed accordingly. The appellant was present during the whole hearing and responded to the questions with the assistance of his son at time and through an interpreter in the Punjabi language. The Tribunal reminded the parties that the nature of the hearing is informal.

Interpreter present at the hearing

[20] The appellant requested an interpreter for the Punjabi language. The appeal proceeded in English with the use of a Punjabi interpreter.

Reasons for my decision

Credibility of the appellant

[21] The appellant came across as a very nice and trustworthy person. He answered questions completely however, the Tribunal noted that the appellant has his own interpretation of certain words. For example, in his mind, residence is where his family is. The appellant is very close to his family and his sons were in Canada even before his first date of entry in Canada on April 18th, 2002. Therefore, he considers his residence was in Canada since that date.[11]

[22] The Tribunal asked the appellant why he feels that he has more ties to Canada than he has to India given he came to Canada when he was almost 61 years old. He responded that it is because all his immediate family is here and has settled in Canada.

[23] The Tribunal asked the appellant why, despite his family being here, he goes regularly to India for very long periods. He answered that winter is very hard and that he does not like the snow. The Tribunal also asked the appellant why he feels that he is more rooted to Canada than to India given he was almost 61 years old when he arrived in Canada and that he seems to always be pulled back to India. If the cold and the snow is the reason why he goes back to India, he could go to other places instead. He

[11] GD2-130

responded that he has been to Mexico, the UAE, and the Caribbean, however, in India he has a vacation home and it is less expensive than going to other places.

[24] The Tribunal asked the appellant why he changed the name of his home to "vacation home" in the questionnaire he submitted to the Minister given he has had this home for forty year. He responded that before 2008, his family was also living in that house, but because his immediate family had moved to Canada, his attachment was more with Canada so his ties were here.

[25] The Tribunal brought to the appellant's attention that the letters sent to him by the Employees' Provident Fund Organization (EPFO) dated March 26th, 2009[12] was sent to his address in India. However, he submits that he was a resident of Canada. The Tribunal asked the appellant why they sent that letter to his Indian address and not his address in Canada and why he did not change his residence address with the EPFO to his address in Canada if he now lives in Canada. He responded that it was because it was the address on file and that they need an Indian address. He testified that this Indian organization never sends correspondence to a foreign address. He admitted that he was on vacation in India at that time and that he had requested to send this letter to his Indian address.

[26] The Tribunal asked the appellant why his Retired Employee ID Card from the Food Corporation of India issued on February 9th, 2010[13] shows a residential address with his Indian address. The appellant responded that it was because they had this address on file. The Tribunal asked the appellant why he did not change his residential address with them. He responded that it's because they had that address. The Tribunal asked the appellant why he has no issue correcting errors from the Government of Canada but not from his previous employer. He then responded that it was overlooked and that when the card was issued to him he did not pay attention. When the Tribunal asked the appellant why he submitted an incorrect document to the Government of Canada, he responded that the information is correct and that it is his

[12] GD2-25
[13] GD2-88 to 89

mailing address and that this mailing address is still in operation. His son clarified that this organization does not mail documents to addresses outside of India. He also confirmed that this address is also used as a mailing address and suggested that the translation may be incorrect.

[27] The Tribunal noted that another letter dated December 27th, 2018[14] from EPFO copied to the appellant also shows the appellant's address as his Indian address. The appellant's son insisted that this organization does not send correspondence to mailing addresses out of India and they will not change their system. The Tribunal pointed out to the appellant's son that on a Pension Enquiry Details Report[15] printed December 27th, 2018 the appellant "present" address and his "permanent" address are the same and in India. The appellant's son maintained that even as of today their record will show this Indian address as their computer system does not allow to reference an address outside India. However, the Tribunal pointed out to the appellant that a letter dated January 3rd, 2013[16] from EPFO showed a manually written address in Canada and suggested that if EPFO is aware of an international address they can override their system and manually write the correct address on their correspondence. The appellant's son clarified that it took him and his father about a year of negotiation to get them to agree to send this letter and it was sent via Speed Post. The appellant's son pointed out that it was a one-off letter drafted by a person in charge not generated by the system and that their address was hand-written.

[28] The Tribunal asked the appellant why he was saying during his testimony that he was going on vacation to his country of citizenship where he had resided for 61 years and that he was going to India on vacation from Canada, a country that had not yet accepted him as a permanent resident. He responded that it was because all his family was in Canada and that's why he considered India as his vacation home.

[29] The Tribunal can only conclude that the appellant has his own interpretation of the concept of residence. The Tribunal will prefer using the generally accepted

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[14] GD2-90
[15] GD2-91 to 92
[16] GD2-93

definition of the *OAS Act* as opposed to the declaration made in writing or the testimony of the appellant in this regard.

Who is entitled to an OAS pension?

[30] A partial pension may be paid to a pensioner. The pensioner must have attained sixty-five years of age and have resided in Canada for an aggregate period of at least 10 years after attaining eighteen years of age. If the pensioner is not a resident of Canada the day preceding the approval of a pension, this person must have resided in Canada for at least 20 years after attaining eighteen years of age.[17]

[31] For the purpose of the *OAS Act* and its regulations, **a person resides in Canada if he makes his home and ordinarily lives in any part of Canada**. This concept is different from presence in Canada. A person is present in Canada when he is physically present in any part of Canada.[18] A person can be present in Canada without being a resident of Canada.

[32] Residency is a factual issue that requires an examination of the whole context of the individual. **The subjective intentions of the person are not decisive in determining residency.** The *Ding*[19] decision established a non-exhaustive list of factors to consider to guide the Tribunal when determining residency :

a. Ties in the form of personal property;

b. Social ties;

c. Other ties to Canada (medical coverage, driver's licence, rental lease, tax records, etc.);

d. Ties in another country;

[17] *Old Age Security Act*. Section 3(2)
[18] *Old Age Security Regulations*, Paragraph 21(1)
[19] *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

e. Regularity and length of stays in Canada in relations to the frequency and duration of absences from Canada;

f. Lifestyle and mode of living of the person or is the person living in Canada significantly rooted in Canada.[20]

[33] The appellant must prove on the balance of probabilities that he was a resident of Canada during the relevant period.[21]

Agreement on Social Security between Canada and the Republic of India

[34] Section 40 of the *OAS Act* permits the Minister to enter into reciprocal agreements with the governments of other countries, and this provision contemplates that **such agreements might affect eligibility for pensions**.

[35] Subsection 21(5.3) of the *OAS Regulations* states that where, by virtue of an agreement entered into under subsection 40(1) of the *OAS Act*, a person is subject to the legislation of a country other than Canada, that person **shall**, for the purposes of the *Act* and the *OAS Regulations*, be deemed **not to be resident of Canada**.

[36] Pursuant to section 40 of the *OAS Act*, Canada has entered into a number or reciprocal agreements, including an agreement with the Republic of India (India).

[37] The Agreement with India was signed in New Delhi on November 6th, 2012, and was proclaimed into force on August 1st, 2015. It is officially known as the Agreement on Social Security between Canada and the Republic of India (the Agreement).

[38] Part 3, Article 12 of the Agreement states that **If a person is not eligible for a benefit because he or she has not accumulated sufficient creditable periods under the legislation of a Contracting State, the eligibility of the person for that benefit shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap.** This is the

[20] *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76
[21] *De Carolis v Canada (AG)*, 2013 FC 366

section of the Agreement that helped the appellant to open his right to be eligible to an OAS partial pension.

Does the Minister have broad powers to reassess eligibility after an application is approved and payments have initially started?

[39] The Minister has broad powers to reassess eligibility after an application is approved and payments have initially started.

[40] Revisiting an initial decision may be an extraordinary remedy. It may also be a necessary power the Minister needs to accomplish the purpose of the statute. This is an issue in this matter.

[41] On September 24th, 2021, the Tribunal wrote to the parties. The Tribunal asked the parties their written submissions on whether the legal principles set out in two Social Security Tribunal Appeal Division decisions applied to this case.[22] More specifically, the Tribunal asked the parties "Does the Minister have jurisdiction to change its initial decisions granting an OAS pension"? The Tribunal requested these submissions by Friday, October 29th, 2021.

[42] The appellant submitted his response on October 10th, 2021[23] and the Minister did not submit a response. The Tribunal shared the appellant's response with the Minister in order to provide his submission in this regard and the Minister did not make any comments pertaining to the appellant's response.

[43] The appellant believes that the legal principles set out in the Social Security Tribunal Appeal Division apply in this case.[24]

[44] The Minister did not make any submission regarding this question.

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[22] *B.R. v. Minister of Employment and Social Benefits, 2018 SST 844 and Minister of Employment and Social Development v. M.B., AD-20-596*
[23] GD7
[24] GD7-1

[45] In B.R., the Appeal Division "agrees that the Minister has broad powers to insist that claimants provide documents proving their eligibility for an OAS pension before its approval. According to the Appeal Division's interpretation of section 23 of the OAS Regulations, however, the Minister is not authorized to go back and change its initial eligibility decision. Once a pensioner's OAS pension has been approved, section 23 of the OAS Regulations only authorizes the Minister to investigate the person's ongoing entitlement to benefits, including the amount of their benefits».[25]

[46] However, there is a new decision of the Appeal Division.[26] In this decision, the appeal member found at paragraphs 1 and 2 that "…The Minister of Employment and Social Development Canada (Minister) **has an implied discretionary power to reopen her initial Old Age Security (OAS) decisions"** and that the Minister properly exercised her discretion when revisiting previous approvals of the Respondent's GIS.

[47] Although in those decisions the Appeal Division concluded on a 2 steps process, the Tribunal must 1- examine whether the Minister applied its discretion (to re-open decision) judicially and 2 – if the answer is no, that the Minister didn't apply their discretion judicially, then the Tribunal has to make the decision the Minister should have made.

[48] A discretionary power must be exercised "judicially". This means that a discretionary decision will be set aside if the decision-maker "acted in bad faith or for an improper purpose or motive, took into account irrelevant factor or ignored a relevant factor or acted in a discriminatory manner." In this matter, I believe that the Minister exercised her discretion judicially because it was part of a reconsideration decision process initiated by the appellant and that the appellant refused a settlement offer made by the Minister. Therefore, the answer to the first question is "yes" and I do not need to answer the second question.

[49] The basic rules for interpreting a law require the decision maker to read the words of the legislation in their context, in their grammatical and ordinary sense,

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[25] *B.R. v Minister of Employment and Social Development,* 2018 SST 844, paragraph 68
[26] *Minister of Employment and Social Development v A.L.*, AD-21-60 and AD-21-132/133

together with the scheme of the act, the object of the act, and the Parliament's intention. Recently, the Federal Court of Appeal described the rules for statutory interpretation as: "[A]n administrative decision maker's interpretation of a statutory provision must be consistent with the text, the context and the purpose of the provision."[27]

[50] The rules for interpreting a regulation require that it be interpreted in a way that furthers the purpose of the act as a whole. The Supreme Court of Canada says that the intent of a law "transcends and governs" the intent of the regulation.[28]

[51] The Tribunal is aware of another decision called *R.S. v Minister of Employment and Social Development (R.S.)*.[29] The Tribunal agrees with the reasoning in this decision specifically paragraphs 32 to 38 and only dealing with that member's statutory interpretation. The broad powers afforded to the Minister help to balance the goals of honoring the altruist nature of the OAS benefits by avoiding undue delay in processing applications with the need to safeguard the OAS purse strings by denying payment to those not entitled.

[52] The objects of the *OAS Act*, including its altruistic purpose, have been highlighted by the Federal Court as follows:[30]

> I would describe the OAS regime as altruistic in purpose. Unlike the Canada Pension Plan [R.S.C., 1985, c. C-8], OAS benefits are universal and non-contributory, based exclusively on residence in Canada. This type of legislation fulfills a broad-minded social goal, one that might even be described as typical of the Canadian social landscape. It should therefore be construed liberally, and persons should not be lightly disentitled to OAS benefits.

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[27] *Canada (Attorney General) v Redman*, 2020 FCA 209, relying on the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII)
[28] *Bristol-Myers Squibb Co. v Canada (Attorney General),* 2005 SCC 26 at para. 38
[29] 2018 SST 1350
[30] *Canada (Minister of Human Resources Development) v. Stiel*, 2006 FC 466 at para. 28

[53] This interpretation of the Federal Court seems to contemplate the fact that one can be disentitled to OAS benefits. This, however, should not be done lightly. Furthermore, this interpretation of the Federal Court emphasizes the difference between the OAS, a universal and non-contributory scheme, and the Canada Pension Plan (CPP). Comparing the vocabulary used in the OAS and the vocabulary used in the CPP and the Employment Insurance Act would be an error. These schemes have philosophical differences in nature, the first one being universal and the latter two serving only contributors' needs. By using the words "Unlike the Canada Pension Plan" in the above quoted interpretation, the Federal Court decision shows that these two programs should be treated differently.

[54] As mentioned in *R.S.,* the legislation dealing with suspension, or cessation of a benefit, presume a benefit was payable to the recipient in the first place. In cases where a recipient did not qualify to receive the pension or benefit in the first place is quite different. In the case before me, the number of years of Canadian residence calculated in the first decision to open the right to a partial OAS pension of 3/40th, was changed to 8/40th in the reconsideration decision and changed back to 3/40th after the Minister discovered later an error was made. This is the position maintained by the Minister in its submission to the Tribunal.

[55] I believe Parliament was clear when it provided the Minister with broad powers in revisiting eligibility and seeking overpayment. Despite the fact that the Government of Canada pays both the OAS pension and GIS benefits, all taxpayers are funding OAS pensions and GIS benefits. These powers under the *Regulations* are "necessary" as they balance the need to avoid undue delay in processing applications with the need to protect the public purse and deny pension and benefit payments to those applicants not entitled.

[56] I find that the Minister's power to reassess eligibility is broad and extends to cases where there is no suggestion of fraud or misrepresentation.

The appellant's ties to Canada and to India

[57] I will now consider the factors established in the *Ding* decision in my analysis in order to decide when the appellant was a resident of Canada. To come to my conclusion, I will use the documents submitted by both parties up to the date of this decision and the testimonies I have heard at the hearing.

[58] The appellant has definitely strong ties to Canada. Even though he was born in India, he has applied for his Canadian citizenship in April 2020 and is now a Canadian citizen since July 2021. He testified that the first time of his life that he physically entered Canada was on April 18th, 2008 at the age of almost 61 years old. His son, already in Canada, has sponsored him to come to Canada back in 2007. The appellant first entered Canada with a visitor's visa. He had already decided to settle in Canada before his first trip to Canada because all of his immediate family, his sons, daughters-in-law and grand-children, were already in Canada. He became a permanent resident of Canada on February 13th, 2013.

[59] He testified that he is no longer a citizen of India as India does not recognize dual citizenship. He has not formally renounced Indian citizenship at this time, however his current Indian passport was officially cancelled and he has notified the Indian Consulate that he now has the Canadian citizenship. The Tribunal asked the appellant in a questionnaire received by the Minister on February 8th, 2019 why he submitted that he was going to renew his Indian passport.[31] His son responded that this information was correct at the time as the appellant had not started the Canadian citizenship process yet.

[60] The appellant testified that he is not the owner of the house where he resides in Canada. His son testified that he is the owner of the property and that he purchased it around September 2013. Before, he owned a townhouse that he purchased around June 2008. The son was and is responsible for the payment of all public utilities at both houses. The appellant has only had one public utility account under his name since his

[31] GD2-121

first entry in Canada in 2008, which is a monthly cell phone account. It has always been with the same cell phone provider however, the company changed name or ownership over the years.

[61] In India, the appellant has what he refers to as a “vacation house”. He has been the owner of this house for about 40 years. It is paid in full and is registered under his name only. Public utilities, water and electricity, are registered under his name as well. When he comes to Canada he suspends the services. He reactivates it when he goes back to India. Nobody lives in the house when he is in Canada. It is for his own use. When the Tribunal asked him what is the difference between a “vacation house” and a residence. He responded that his main residence is in Canada and when he goes to India it is his “vacation house”. He also responded that some time he goes there (India) alone and his whole family is in Canada.

[62] The appellant testified that he has two sons, one grand-son and two grand-daughters in Canada. His wife is also in Canada. They are still a couple but she lives with her other son to take care of their grand-daughters and he lives with his son taking care of his grand-son. The appellant testified that he does not have family in India anymore. When asked by the Tribunal to clarify, he answered that his parents and his brother died. He still has nephews and nieces in India. His immediate family in is Canada.

[63] He testified that he has been covered under the BC provincial health plan (abbreviated as “MSP” in BC) since 2013.[32] Before 2013, he was buying a private medical plan. When the Tribunal asked the appellant why his MSP coverage did not start as of 2008, his son answered that because his father was not a permanent resident yet and that he had to purchase a private medical plan to cover his medical needs. The appellant’s son confirmed that it was true that under Canadian laws he did not qualify to be covered because he was not a permanent resident however, it has nothing to do with residency per say as this is the law and that his father was here with his immediate family. Furthermore, the appellant’s son submitted that his father had

[32] GD2-124

already applied for permanent residence in 2007 and his father was in the queue for processing to get his permanent residence status. The appellant testified that in India he was covered under a private medical plan. He also had medical coverage when he was employed as a government employee. There is no medical coverage when employees retire.

[64] The appellant testified that he has a driver's license in Canada and that he received it after he became a permanent resident in Canada. He has a car and car insurance in Canada since 2015. That was the first car he owned in Canada. He does not have a car in India any more. He had a car in India when he was working. He no longer has a car in India as he has moved to Canada. He does not remember when his Indian driver's license expired.

[65] The appellant testified that he does not have any real estate or investments in Canada. He has had some mutual funds, GICs, bank accounts and a credit card with the TD Bank and RBC since 2008. He open these accounts with his passport as he did not have a Social Insurance Number (SIN). It was a joint bank account with his wife but his investment accounts and his credit card are only under his name. He does not remember if he had a co-signer. He was asked to leave money as a collateral for his credit card. His son clarified that he was only asked for a security deposit and that this requirement was waived later. He received his SIN card in 2013 after he became a permanent resident. He purchased a life insurance policy in 2013 that he kept for about two years as he did not consider it useful any longer. In India, he has a bank account that was opened about 40 years ago. He also has a credit card. He uses them when he in on vacation in India. He does not own any real estate investment other than his "vacation home" that he has owned for about 40 years.

[66] The appellant testified that he contributed to the CPP in Canada. He testified that he worked in Canada from 2013 to 2020 as a fruit picker at a greenhouse. He worked for different companies every year. They were making all required deductions. He testified that he now receives a small CPP pension. He also paid EI and received this benefit when he was eligible. He testified that he did not work in Canada from 2008

to 2013 as he was not a permanent resident. He testified that he did not file income tax returns in Canada from 2008 to 2012. He started filing his taxes in 2013. He files them every year and on time. He testified that he stopped working in Canada in 2020. He testified that he was filing income tax in India when he was working. He has not filed income tax declarations in India since he retired as he does not meet the minimum income required to file income tax despite his Indian pension.

[67] The appellant testified that he only travels between Canada and India for extended travels. He also went to the United Arab Emirates (UAE) from India for a short trip paid by his son. He also went to the United States for a short one week trip also paid by his son. He normally travels to India by himself normally in wintertime. His wife stays in Canada to look after the grand-children. When he is in India he stays at his home. He uses his Indian passport when he travels. He explained that he now needs a visa to enter India as a non-resident Indian. His next trip to India will be the first time he travels with such a visa so he stated that he is still not completely sure of the rules. His stays in India should be limited to three months depending on the type of visa he will be issued. He testified that he can still keep his current house but cannot purchase any agricultural land. The appellant testified that he has never stayed in Canada a complete year since his first entry in Canada in 2008 except last year because of the COVID pandemic.

[68] This is a list of the appellant's entries and exits from Canada and India. It was compiled from the Reconsideration Request submitted by the appellant[33], the appellant's questionnaire dated January 4th, 2019[34] and the Canada Border Services Agency (CBSA) Traveller History Report dated July 28th, 2017.[35] At the hearing, the appellant testified about his travel to India from March 3rd, 2019 to the date of the hearing, September 23rd, 2021 after verifying the entry and exit stamps in his passport.

Start Date	**End Date**	**Country**	**Duration**	**Comments (if necessary)**

[33] GD2-14
[34] GD2-124 to 125
[35] GD2-145 to 148

2008-04-18	2008-10-14	Canada	180 days	GD2-14 and GD2-145 to 148
2008-10-15	2009-04-27	India	195 days	
2009-04-28	2009-10-07	Canada	163 days	
2009-10-08	2010-05-07	India	212 days	
2010-05-08	2010-10-28	Canada	174 days	
2010-10-29	2011-05-10	India	194 days	
2011-05-11	2011-11-08	Canada	182 days	
2011-11-09	2012-02-28	India	112 days	
2012-02-29	2012-04-26	Canada	58 days	
2012-04-27	2012-05-29	India	33 days	
2012-05-30	2012-11-11	Canada	166 days	
2012-11-12	2013-01-29	India	79 days	
2013-01-30	2013-02-12	Canada	**	
2013-02-13			**	Landed – PR Douglas Border Crossing from Blaine, WA to Surrey, BC GD2-175
2013-02-13	2013-10-25	Canada	269 days	
2013-10-26	2014-03-02	India	128 days	GD2-124/125 and GD2-145 to 148
2014-03-03	2014-10-03	Canada	215 days	
2014-10-04	2015-02-19	India	139 days	
2015-02-20	2015-06-13	Canada	114 days	
2015-06-14	2015-06-28	India	15 days	
2015-06-29	2015-10-22	Canada	116 days	
2015-10-23	2016-02-14	India	115 days	
2016-02-15	2016-10-15	Canada	244 days	
2016-10-16	2017-02-17	India / UAE	125 days	
2017-02-18	2017-09-30	Canada	225 days	Incl. 1 week in USA
2017-10-01	2018-03-01	India	152 days	
2018-03-02	2018-10-27	Canada	240 days	
2018-10-28	2019-03-02	India	126 days	
2019-03-03	2019-11-12	Canada	255 days	
2019-11-13	2020-01-23	India	72 days	At hearing
2020-01-24	2021-11-23	Canada	670 days	Including 1 week in USA

[69] The appellant testified that he does not do any volunteer work in Canada and is not a member of any organization except the Sikh Temple. He goes with friends to the park and they exercise. He spends his days working in his big kitchen garden in the

backyard. He also looks after his grand-children. He takes them to school and tutor them. In India, he also has a kitchen garden in the backyard, his hobby, and simply relax. He produces his own organic food both in Canada and in India. He also loves to cook. In India, he also goes with friends to the park and they exercise. He also admitted that he has more friends in India but quickly responded that family is more important than friends.

[70] In Canada, he gets together with his family and friends for occasions and regular gatherings every now and then. He does the same when he is in India.

Appellant's residence in Canada

– **The appellant was NOT a resident of Canada from April 18th, 2008 until February 12th, 2013**

[71] The Tribunal finds that, on the balance of probabilities, the appellant was not a resident of Canada from April 18th, 2008 until February 12th, 2013.

[72] The Tribunal can see that the appellant has some ties with Canada given his immediate family is in Canada, sponsored him to come to Canada and he was in the middle of the sponsorship process however, the Tribunal finds that the balance had not yet shifted in order to demonstrate that the appellant had more ties to Canada than to India. The appellant had only minimal administrative ties with private institutions in Canada, such as bank accounts, few investments and a credit card. This will change when the appellant will be landed on February 13th, 2013 and be granted permanent residence in Canada.

[73] The appellant still had a house in India. He also had a bank account where his Indian pension was deposited and a credit card in India. Furthermore, between April 18th, 2008 and February 12th, 2013, as demonstrated in the table above, the appellant spent longer time periods in India that he did in Canada, especially until February 28th, 2012 where one can see the balance was starting to tilt towards Canada.

[74] The factors pertaining to the appellant's other ties to Canada, Regularity and length of stays in Canada in relations to the frequency and duration of absences from

Canada and pertaining to the lifestyle and mode of living of the person or if the person living in Canada significantly rooted, in Canada are very important in the eyes of the Tribunal. The Tribunal believes that, on the balance of probabilities, the appellant's lifestyle and main anchor are still in India compared to Canada. The Tribunal finds that, on the balance of probabilities, the appellant was not a resident of Canada from April 18th, 2008 to February 12th, 2013.

The appellant WAS a resident of Canada from February 13th, 2013 to May 31st, 2016

[75] The Tribunal finds that, on the balance of probabilities, the appellant was a resident of Canada from February 13th, 2013 to May 31st, 2016.

[76] The Tribunal finds that, as of February 13th, 2013, the appellant's ties with Canada are stronger than with India. His immediate family is in Canada. He is now officially a permanent resident of Canada which allows him to get a SIN Card, a provincial health coverage and a driver's license. The appellant testified that he obtained all those when he became a permanent resident. The appellant also testified that he started working, contributing to CPP and EI, and had started filing Canadian income tax. All these ties contributed to the appellant establishing deeper roots to Canada.

[77] The appellant may have kept his house in India, may still have a bank account where his Indian pension is deposited and a credit card in India however, the Tribunal clearly sees that from February 13th, 2013 onward, the appellant spends more time in Canada than he spends in India. The factors pertaining to the Regularity and length of stays in Canada in relations to the frequency and duration of absences from Canada and pertaining to the lifestyle and mode of living of the person or if the person living in Canada significantly rooted, in Canada are very important in the eyes of the Tribunal and help the balance shift towards a Canadian residence for the appellant.

[78] The Tribunal agrees with the Minister's calculation of the appellant's residence and finds that, on the balance of probabilities, the appellant was a resident of Canada during this period.

The appellant WAS a resident of Canada from June 1st, 2016 to September 23rd, 2021

[79] The Tribunal finds that, on the balance of probabilities, the appellant was a resident of Canada from June 1st, 2016 to September 23rd, 2021, the date of the hearing.

[80] The Tribunal believes that there is enough evidence in this matter to support that the appellant was a resident of Canada from June 1st, 2016 to September 23rd, 2021. The appellant resides with his son in Canada. His immediate family is also in Canada, including his wife, his two sons and his grand-children. The appellant has investments, a bank account and a credit card in Canada. He is now a Canadian citizen since July 2021.

[81] The Tribunal may have kept his house in India and may still have a bank account where his Indian pension is deposited and a credit card in India however, the Tribunal clearly sees that since June 1st, 2016, the appellant spends more time In Canada than he spends in India. Therefore, the factors pertaining to the Regularity and length of stays in Canada in relations to the frequency and duration of absences from Canada and pertaining to the lifestyle and mode of living of the person or is the person living in Canada significantly rooted, in Canada are very important in the eyes of the Tribunal. The Tribunal can see that, on the balance of probabilities, the appellant's lifestyle and main anchor are now more rooted in Canada than in India.

Change of effective date of OAS pension

[82] In his Notice of Appeal to the Tribunal, the appellant was asking that "the date of start of my pension be modified to "sanction date" of case instead of date of eligibility".[36]

[36] GD1-4, Part 6

As the Tribunal was not clear on the meaning of “sanction date”, the Tribunal asked the appellant to clarify what he meant.

[83] The Minister received the appellant’s OAS application on May 26th, 2017.[37] In his application, the appellant checked that he wanted his pension to start as soon as he qualified.[38] The *OAS Act* allows a maximum retroactivity payment of 11 months.[39] In the appellant’s case, this means that he qualified for a partial OAS pension as of June 1st, 2016.

[84] The Minister calculated the appellant’s partial OAS pension based on a residence from February 13th, 2013 to May 31st, 2016, for a total of 3 years, 3 months and 19 days. This makes the appellant eligible to receive a partial OAS pension of 3/40th of a full OAS pension.[40]

[85] The appellant testified that he was under the impression that the Minister’s decision would take only a few months to be rendered. He told the Tribunal that because of the delay in the part of the Minister to issue a decision further to his OAS application, he should be given the benefit of this period to increase the number of years of residence in Canada and, therefore, increase the amount of his partial OAS pension. This is consistent with the understanding of the Minister following a phone call with the appellant on December 10th, 2020.[41] Therefore, the appellant is asking for a change in the effective date of his OAS pension. He wants the effective date to be the date the Minister made his decision, even the reconsideration decision, and that the calculation of his years of residence in Canada goes as far as the date of the Minister’s final decision.

[86] Payment of an OAS pension starts the month after the application has been approved. The approval is effective when all the eligibility requirements are met, like

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[37] GD2-25 to 36 and 40 to 42
[38] GD2-36, question 10
[39] *Old Age Security Act*, Section 8
[40] GD2-20 to 21
[41] GD5-4, paragraph 10

reaching the age of 65 and meeting residency requirements.[42] The Minister received the appellant's OAS application on May 26th, 2017. On that date, the appellant was 70 years old and the Minister had determined that he met the residency requirements. The *OAS Act* allows a maximum retroactivity payment of 11 months.[43] Therefore, the earliest effective date, or when the appellant qualified to receive an OAS pension, was June 2016. In his OAS pension application, the appellant asked that his pension starts "as soon as I qualify".[44]

[87] In his response to a questionnaire received by the Minister on October 9th, 2018,[45] the appellant made the following statement: "The date of start of my pension be modified to sanction date of case instead of date of eligibility". However, the Tribunal notes that on the date this statement was made to the Minister, the application was still under review and no decision had been issued yet. The appellant testified that the Minister did not ask him additional information further to this statement and before issuing his decision.

[88] The Minister issued its decision on August 13th, 2019.[46] This decision included the following information: the effective date of the partial OAS pension (June 2016); the portion of the partial OAS pension (3/40th of a full pension); and the month in which the payment was issued (September 2019). The Tribunal has no reason to believe that the Minister did not take into consideration the statement made by the appellant in his questionnaire given the Minister used the information in this questionnaire to assess the eligibility of the appellant for its decision of August 13th, 2019.

[89] On August 29th, 2019, the appellant submitted a reconsideration request to the Minister.[47] The issue raised in the appellant's reconsideration request was the omission

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[42] *Old Age Security Regulation*, Section 5
[43] *Old Age Security Act*, Section 8
[44] GD2-36, question 10
[45] GD2-37 to 39
[46] GD2-15 to 17
[47] GD2-14

of stays in Canada from April 18th, 2008 to February 13th, 2013. There was no mention about the date of eligibility.

[90] The Tribunal asked the appellant why he did not ask the Minister in his reconsideration request to change the date of eligibility for his pension. The appellant replied that it was because he asked for it in writing on October 9th, 2018 and that the Minister had not responded yet to this request. So when the Tribunal clarified that the Minister responded on August 13th, 2019, the appellant said that because the Minister did not reply specifically respond to his request. The appellant's son clarified that in his father's mind, his father was under the impression that his request was still being reconsidered. However, the Tribunal finds that the Minister was still investigating the file in its entirety when the appellant submitted the questionnaire and that the Minister did not have to answer specifically to each of the appellant's communication. The Minister provided a complete decision of his investigation, including all communications by the appellant, in his decision of August 13th, 2019.

[91] Subsections 9.3(1) & (2) of the *OAS Act* and 26.1(1) & (2) of the *OAS Regulations* stipulate that an OAS pension application cannot be cancelled if the request is made more than six months after the day on which payment of the pension began. In this matter, the payment began no later than September 30th, 2019. The appellant had until March 31st, 2020 to submit a request in writing to the Minister to cancel his OAS application.

[92] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the *OAS Act*.

[93] The Appellant testified that he had not submitted a request in writing to the Minister to review the date of eligibility of his OAS pension after receiving the decision letter from the Minister and after payment began. However, he testified that he had discussed this issue over the phone with the Minister. This is evidenced in the Minister's submission as taking place on December 10th, 2020. However, this date is

after the time limit set out in the *OAS Act*. The Federal Court held the Minister has no obligation to warn an applicant of a deadline clearly outlined in the *OAS Act*.[48]

[94] The Tribunal finds that the payment of the OAS pension to the appellant began no later than September 30th, 2019. The appellant had until March 31st, 2020 to submit a request in writing to the Minister to cancel his OAS application. He did not do so. Therefore, the date of eligibility as requested by the appellant in his OAS application cannot be cancelled.

Conclusion

[95] I find that the Minister has broad powers to reassess eligibility after an application is approved and payments have initially started.

[96] I find that the appellant WAS NOT a resident of Canada from April 18th, 2008 to February 12th, 2013.

[97] I find that the appellant WAS a resident of Canada from February 13th, 2013 to May 31st, 2016.

[98] I find that the appellant WAS a resident of Canada from June 1st, 2016 to September 23rd, 2021.

[99] I find that as of June 1st, 2016, the appellant was eligible to receive a partial OAS pension of 3/40th based on his residence in Canada during the period from February 13th, 2013 to May 31st, 2016 totalized with 9 years of pension services as per the Agreement with India.[49]

[100] The date of eligibility of the OAS partial pension as requested by the appellant in his OAS application cannot be changed and remains June 1st, 2016.

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[48] Canada (MHRD) v. Reisinger (Estate), 2004 FC 893
[49] GD2-15 to 17 and GD5-4, paragraph 7

[101] This means the appeal is dismissed.

François Guérin
Member, General Division – Income Security Section