



Citation: *MW v Minister of Employment and Social Development*, 2021 SST 912

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: (Claimant) M. W.
Respondent: (Minister) Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 19, 2020 (issued
by Service Canada)

Tribunal member: Raymond Raphael
Type of hearing: Teleconference
Hearing date: September 7, 2021
Hearing participants: Appellant
Decision date: September 18, 2021
File number: GP-21-391

DECISION

[1] The Claimant is not entitled to an *Old Age Security* (OAS) pension. She has not established that she resided in Canada for at least 20 years after the age of 18.

OVERVIEW

[2] The Claimant was born in the United States in June 1952. She turned 65 years of age in June 2017. She initially applied for an OAS pension in June 2019. On that application she stated that she has been a resident of Canada from September 1978 to 2009.¹ She submitted a second application in August 2019. On that application she stated that she had been a resident of Canada from 1977 to 1982 and then (from no date) until 1999. After 1999, she resided in the U.S. She noted that her residence in Canada was “extremely complicated” because her work as an entertainer required her to be abroad.²

[3] In December 2019, the Minister denied her first application because she had not submitted additional documents the government asked for to support her residence in Canada.³ The Claimant did not request a reconsideration of that denial. In January 2020, the Minister dismissed her second application because she had again failed to submit requested additional documentation.⁴

[4] In November 2020, the Minister denied the Claimant’s request for reconsideration. The Minister stated that it could not determine how long the Claimant resided in Canada because she did not submit any documentation to prove her dates of residence.⁵ The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[5] The Minister recognizes that the Claimant may have considered Canada to be her “home base” from which she travelled as a professional entertainer. However, she has not established that she resided in Canada for any length of time.

¹ GD2-8,10

² GD2-32

³ GD2-54

⁴ GD2-61

⁵ GD7-9

ISSUE

[6] I must determine whether the Claimant has established that she was a resident of Canada, and if so, for how long.

ANALYSIS

[7] A full OAS pension is paid to individuals who have resided in Canada for at least 40 years after the age of 18.⁶ If a person has not resided in Canada for at least 40 years, the legislation provides for the possibility of a partial pension. To be eligible for a partial pension, a person must have resided in Canada for at least ten years.⁷ The amount of the partial pension bears the same relation to the full monthly pension as their period of residence does to 40 years. The amount is rounded down to the lower multiple of a year.⁸ So, for example, if a person resided in Canada after the age of 18 for ten years and nine months (and also meets the other eligibility requirements), then the person will be eligible for a partial OAS pension of 10/40ths. For persons no longer residing in Canada, the minimum period is 20 years.

[8] The OAS Regulations distinguish between the concepts of residency in Canada and presence in Canada. A person resides in Canada if they make their home and ordinarily live in any part of Canada.⁹ A person is present in Canada when they are physically present in any part of Canada.¹⁰

[9] I must weigh all the facts of the case and the Claimant's circumstances. The Claimant's intention to live in Canada is not enough on its own to show residence. The determination of residency is a factual issue that requires an examination of the whole context of the Claimant's circumstances.

⁶ Subparagraph 3(1)(c)(iii) of the OAS Act

⁷ Paragraph 3(2)(b) of the OAS Act.

⁸ Sections 3(3) and (4) of the OAS Act

⁹ Paragraph 21(1)(a) of the OAS Regulations

¹⁰ Paragraph 21(1)(b) of the OAS Regulations

[10] I must consider a number of factors when determining if the Claimant made her home and ordinarily lived in Canada during the disputed period (September 1978 to 1999). These factors include, but are not limited to¹¹:

- the Claimant's lifestyle and ties in Canada (personal property, social ties, medical coverage, driver's license, rental lease, tax records, etc.) compared to her ties in another country;
- the regularity and length of her stays in Canada;
- the frequency and length of her absences from Canada; and
- her mode of living, or whether she was sufficiently deep rooted and settled in Canada.

The Claimant has not established that she was a resident of Canada

[11] The Claimant is a professional singer/entertainer. She had bookings in the United States, Canada, Western Europe, Japan, and on cruise ships. She states that she was a resident of Canada from 1977 to 1999 for the following reasons:

- First, her "home base" was Canada. She had to travel outside of Canada because of her work.
- She was married to a member of the Canadian military from December 1982 until his death in 1985. She believes that her husband's residence in Nova Scotia should be considered to also be her residence.
- After 1986, she came to Canada every six months. She usually stayed for one to two weeks at a hotel in Fort Erie. She was on the waiting list for a military apartment and she planned to live in Fort Erie permanently.

[12] On numerous occasions the Minister wrote to the Claimant requesting evidence of her period of residence in Canada. In addition, I conducted two case conferences. I told the Claimant she needed to provide evidence of her residence in Canada. Although the Claimant filed documentation, this established only that she had been

¹¹ *Canada (MHRD) v Ding*, 2005 FC 76 and *Duncan v Canada (AG)*, 2013 FC 319.

present in Canada for indeterminate periods, mostly for the purpose of performing. None of the documents showed that she ever had a deep rooted and settled attachment to Canada.¹²

[13] At the hearing, the Claimant failed to provide clear evidence about her claimed residence in Canada. She was mostly focused on the tragic death of her husband in a 1985 accident, the recent death of her mother, and medical issues that she is now experiencing. However, those matters are not relevant to her claim for an OAS pension. She repeatedly stated that Canada was her “home base” – but, it was unclear what she meant by this.

[14] Her first booking in Canada was at a hotel in Toronto for three to four months in 1977. During this period, she performed and lived at the hotel. After this, she rented a room in a house in Toronto. After 1986, she stayed at her manager’s apartment when in Toronto. She was booked at other locations in Ontario and Nova Scotia. She also had bookings in the United States, Europe, Japan, and on cruise ships. She couldn’t remember how long she stayed at these locations in Toronto other than to say this was for more than a few weeks. She could not remember if she gave up the rentals during periods she performed outside Toronto.

[15] She stated that during her marriage (1982 to 1985) she and her husband both travelled for work. She performed “all over”. When not travelling, she would sometimes visit her husband in Nova Scotia and he would sometimes visit her at her parents’ house in Florida. She said she had two home bases – one in Florida and one in Nova Scotia. She could not remember how often she visited her husband in Nova Scotia.

[16] She could not remember how often she performed in Canada after 1986. In 1986, she started to come back to Canada every six months. She would stay in Fort Erie at a hotel for one or two weeks. She had an account at the Royal Bank there but she could not say what monies were being deposited to the account. She opened the account because she was planning to live permanently in Fort Erie. She went for

¹² See GD10, Minister’s submissions, paras 27 & 31; GD14, Minister’s post-hearing addendum to submissions, para 4.

physiotherapy there but on only two occasions – in July 1995 and May 2000.¹³ She was trying to find a permanent place to live there – she was put on the list for “military” apartments there. But, she never lived in Fort Erie.

[17] The Claimant acknowledged the following facts:

- Her pension cheques were deposited to her bank account in the U.S.
- Her pension cheques were mailed to her parent’s home in the U.S.
- She had a U.S. driver’s license and never had a Canadian driver’s license.
- She filed income tax returns in Canada only during 1977 to 1979. After this, all of her income tax returns were filed in the U.S.
- She never owned property in Canada.
- Her 1977 income slip for her performance at the Toronto hotel was mailed to her to an address in the U.S.¹⁴
- May and November 1978 letters from Revenue Canada were mailed to her to an address in the U.S.¹⁵
- Her 1978 US and New York state income tax returns noted that her home address was in the U.S.¹⁶
- A 1980 U.S. demand for an income tax return was mailed to her to an address in the US.¹⁷
- She was treated by a gynecologist in the U.S. on a regular basis from April 1982 to February 2000.¹⁸
- An envelope mailed around 1985 was addressed to her to an address in the U.S.¹⁹

¹³ GD13-10

¹⁴ GD13-43

¹⁵ GD13-45, 47

¹⁶ GD13-50,55

¹⁷ GD13-61

¹⁸ GD13-13

¹⁹ GD2-80

[18] The Claimant has the burden of proof. She has not established that it is more likely than not that she was a resident of (as opposed to being only present in) Canada for any period of time. In order to qualify for the OAS pension she had to establish that she resided in Canada for at least 20 years.

CONCLUSION

[19] The appeal is dismissed

Raymond Raphael
Member, General Division - Income Security