



[TRANSLATION]

Citation: *CV v Minister of Employment and Social Development*, 2021 SST 926

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:

C. V.

Respondent:

Minister of Employment and Social Development

Decision under appeal:

Minister of Employment and Social Development
reconsideration decision dated August 19, 2019
(issued by Service Canada)

Tribunal member:

Antoinette Cardillo

Type of hearing:

Questions and answers

Decision date:

November 29, 2021

File number:

GP-19-1475

Decision

[1] The appeal is dismissed.

[2] C. V., the Applicant, is not eligible for the Guaranteed Income Supplement (GIS) for the disputed period in 2018. This decision explains why I am dismissing the appeal.

Overview

[3] The Applicant is 69 years old. He has been receiving a full Old Age Security (OAS) pension since August 2017. The Minister received his GIS application on October 23, 2017,¹ for the period from July 2017 to June 2018. The Minister denied the Applicant the GIS because, based on the evidence,² he had left for France in December 2010.

[4] The Applicant filed a reconsideration request on March 18, 2019.³ In his request, he indicated that he had filed evidence that he had re-established residence in Canada. On August 19, 2019, the Minister reversed its March 18, 2019, decision and awarded the GIS effective the month after the Applicant's 65th birthday, subject to the maximum allowable income. For the period from August 2017 to June 2018, since the Applicant's 2016 income exceeded the maximum allowable for payment of the GIS, he was not eligible for the benefits.

[5] The Applicant filed a notice of appeal with the Tribunal on September 11, 2019, challenging the Minister's refusal to award him the GIS for the 2017–2018 period.⁴ Later, he said that he actually disputed the period from January 2018 to July 2018.⁵ The Applicant also seemed to dispute the Minister's finding that he had maintained his residence in France based on a false document.

¹ GD2-21.

² GD1-8.

³ GD1-10.

⁴ GD1-2.

⁵ GD11.

[6] The Minister said that the Applicant was eligible for a full OAS pension and the GIS based on the annual income he had reported to the Canada Revenue Agency (CRA). The Applicant seemed to dispute the date he had left for France. But, according to the Minister, it had no impact on his OAS pension, since he had been awarded a full pension between July 3, 1970 (according to the criteria of the *Old Age Security Act*, with years of residence being calculated as of the 18th birthday), and the beginning of December 2010. The Applicant was awarded the GIS on reconsideration of the original decision because he had provided evidence that he had re-established residence in Canada from June 26, 2017. So, the Minister finds that it awarded the Applicant both types of benefits (OAS/GIS), subject to the maximum allowable income for the period from August 2017 to June 2018, since his 2016 income exceeded the maximum allowable for payment of the GIS.

Reasons for my decision

[7] The GIS is an income-tested monthly benefit based on marital status that is paid to individuals who receive the OAS pension and reside in Canada. If a GIS recipient leaves Canada, that person can receive the GIS for only six months after the month of departure. This is the case regardless of how many years of residence in Canada the person has.⁶

[8] The GIS is based on an applicant's income for the previous year, calculated in accordance with the *Income Tax Act*. The payment period begins on July 1 of one year and ends on June 30 of the next year.⁷

[9] The Applicant filed an application for an OAS pension on September 15, 2016.⁸

[10] The Minister approved the application and awarded the Applicant a full pension of 40/40 effective August 2017, the month after his 65th birthday. At that time, the Minister had information that the Applicant lived outside Canada, as he had indicated on his application. Afterwards, since the Applicant had filed a GIS application, the status of

⁶ Section 11(7) of the *Old Age Security Act* (OAS Act).

⁷ Sections 2(c), 10, and 13 of the OAS Act.

⁸ GD2-3.

his residence in Canada had to be investigated to approve this new benefit application. The outcome of the investigation showed that the Applicant had stopped being a resident of Canada in December 2010. Though he was still entitled to continue receiving a full OAS pension, the Minister refused his GIS application because he was not a resident of Canada.

[11] Following a reconsideration request, the Minister changed its decision, and, on August 19, 2019,⁹ the Applicant was awarded the GIS effective August 2018 for the period from July 2018 to August 2019.

[12] The Applicant filed a notice of appeal with the Tribunal on September 11, 2019. He said that he disagreed with the Minister's refusal to award him the GIS for the 2017–2018 period.

[13] On October 10, 2019,¹⁰ in response to an inquiry from the Applicant, and on July 30, 2020, in response to the notice of appeal filed with the Tribunal, the Minister¹¹ submitted that the GIS would be payable to the Applicant from August 2017, the month after his 65th birthday, based on his marital status and his income in 2016, subject to the maximum allowable income threshold for the payment period from July 2017 to June 2018. Since the Applicant's 2016 income exceeded the maximum allowable, no GIS could be paid to him from August 2017 to June 2018. However, for the next two periods, from July 2018 to June 2019 and from July 2019 to June 2020, based on the 2017 and 2018 income reported to the CRA, the Minister made a retroactive GIS payment in September 2019 for the period from July 2018 to October 2019. The Minister added that, based on the Applicant's income and marital status, the GIS amounts paid on September 5, 2019, as described in the August 19, 2019, letter, were accurate. However, a problem with the Minister's computer systems prevented payment of the GIS in late September 2019 and for October 2019. A correction was made to the Applicant's file. A GIS payment was made to his account in November 2019.

⁹ GD1-5.

¹⁰ GD5-17.

¹¹ GD6.

[14] On September 16, 2020,¹² the Applicant was sent a letter from the Tribunal to confirm the disputed period—from July 2017 to June 2018, from July 2018 to June 2019, and/or from July 2019 to June 2020—and whether he disputed the income reported in 2016 to the CRA.

[15] On September 19, 2020,¹³ the Applicant responded that the disputed period was from January 2018 to July 2018 because he had not received any GIS benefits, and that he did not dispute the income reported for 2016.

[16] On October 20, 2020, because of these responses, I asked that a notice of hearing by written questions and answers be sent to the Applicant because he had chosen this type of hearing. The notice asked the Applicant to indicate:

- 1) whether, based on the reporting of his income, he felt that an error had been made in calculating his 2016 income
- 2) whether he disputed the date of departure from Canada even though this date had no impact on his OAS pension

[17] On October 29, 2020,¹⁴ the Applicant answered question 1 saying that he did not dispute the 2016 income and that the calculations did not seem incorrect. He answered Question 2 saying that he did not dispute the dates he left/entered Canada in 2010, but that he disputed GD2-440 and GD1-8, which incorrectly established his residence in, or a final departure for, France based on a certain date. However, the error was later corrected at GD5-7.

[18] Following the notice of hearing, the file was placed in abeyance for a while to address a constitutional challenge raised by the Applicant.

¹² GD10.

¹³ GD11.

¹⁴ GD12.

[19] On November 1, 2021, I asked that a letter be sent to the Applicant asking him to reconfirm the period he disputed to receive the GIS before making my decision on the merits and to allow him to make additional submissions, if necessary.

[20] The Applicant did not respond to the questions in the November 1, 2021, letter.

[21] So, I have to decide whether the Applicant is entitled to the GIS from January 2018 to July 2018. According to the Applicant, GD5-7 seems to have addressed the issue of his period of residence in France.

[22] As mentioned, the income used to assess income-tested benefits is from the previous calendar year. In the circumstances, the Applicant qualifies for an OAS pension effective August 2017, the month after his 65th birthday, so he cannot qualify for the GIS before that. The relevant payment period is from July 1, 2017, to June 30, 2018, and the 2016 income had to be used to calculate the GIS benefits.

[23] According to the evidence on file, the Applicant's 2016 income was \$18,094.¹⁵ According to the Applicant, an error did not seem to have been made in calculating his 2016 income, and he did not dispute his 2016 income. The maximum amount to be eligible for the GIS was between \$17,687.99 and \$17,879.99. This means that the Applicant's 2016 income exceeded the maximum allowable. So, no GIS could be paid to him from August 2017 to June 2018, which includes the period disputed in his notice of appeal and the period he later confirmed he was disputing (January 2018 to July 2018).

[24] To clarify, the Applicant could not receive GIS benefits from August 2017 to June 2018; however, since the disputed period includes July 2018, according to the Minister,¹⁶ based on the 2017 and 2018 income reported to the CRA, the Minister paid the Applicant the GIS retroactively in September 2019 for the period from July 2018 to October 2019. So, he apparently received benefits for July 2018.

¹⁵ GD2-302.

¹⁶ GD5-7 and GD6.

Conclusion

[25] I find that the Applicant is not eligible for the GIS for the disputed period in 2018.

[26] This means that the appeal is dismissed.

Antoinette Cardillo

Member, General Division – Income Security Section