



Citation: *PS v Minister of Employment and Social Development*, 2021 SST 941

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: P. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 14, 2020 (GD2R-3
to 4 issued by Service Canada)

Tribunal member: François Guérin

Type of hearing: Videoconference

Hearing date: October 7, 2021

Hearing participants: Appellant's representative with Power of Attorney

Decision date: October 14, 2021

File number: GP-20-1840

Decision

[1] The appeal is dismissed.

[2] The appellant, (P. S.), is not eligible to receive a Guaranteed Income Supplement (GIS) for more than six months after the month she left Canada.

Overview

[3] The appellant has been receiving an Old Age Security (OAS) pension and the GIS since November 1998. On May 4th, 2016, the appellant's representative advised the Minister that her mother left Canada on November 18th, 2015. On November 16th, 2016, she advised the Minister that her mother had returned to Canada.

[4] On December 11th, 2019, the appellant's representative advised the Minister that her mother left Canada in August 2018 for the Philippines and had not returned to Canada. The Minister calculated an overpayment for the GIS based on the declaration made by the appellant.¹

[5] On December 27th, 2019, the appellant's representative made a request for reconsideration.² On August 18th, 2020, the Minister requested more information and sent the appellant's representative a questionnaire.³ The appellant's representative responded on September 21st, 2020 including her mother's absences from Canada from 2012.⁴ The Minister used this information for its Reconsideration Decision letter dated October 14th, 2020⁵ and calculated an overpayment in the amount of \$16,886.98 for the periods from June to October 2016, from March 2019 to December 2019, and for July 2020.

[6] The appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).⁶

¹ GD2R – 31 to 32

² GD2R – 5 to 9

³ GD2R – 12 to 14

⁴ GD2R – 15 to

⁵ GD2R – 3 to 4

⁶ GD1

What is the appellant's position?

[7] The appellant's representative believes that repaying the overpayment would place her mother in a more difficult financial situation than she is in already, and that her mother does not have sufficient resources to live adequately. She is asking the Tribunal to use its discretion to erase the overpayment.

What is the Minister's position?

[8] The Minister believes that the appellant is not entitled to receive GIS payments for the periods of June 2016 to October 2016, March 2019 to December 2019 and for the month of July 2020, as the appellant was absent from Canada for more than six months after the month she left Canada.⁷

What the Appellant must prove

[9] For the Appellant to succeed, the appellant must prove that she has not left Canada for more than six months after the month she left Canada.

Matters I have to consider first

The Minister wasn't at the hearing

[10] A hearing can go ahead without the Minister if the Tribunal is satisfied that the Minister received notice of the hearing.⁸ The Notice of Hearing and the New Notice of Hearing were emailed to the Minister respectively on August 20th, 2021 and September 3rd, 2021 through the normal communication channel between the Tribunal and the Minister. Therefore, I decided that the Minister received notice of the hearing and the hearing took place as scheduled but without the Minister.

The appellant had a representative at the hearing

⁷ GD4 – 2, paragraph 1

⁸ *Social Security Tribunal Regulations*, section 12(1)

[11] The appellant's daughter, M. R., represented her mother at the hearing. She confirmed that she was acting as a representative under a Power of Attorney. She also testified at the hearing as she has first hand knowledge of her mother's situation. She was affirmed accordingly.

Reasons for my decision

[12] The GIS provides a supplement to the basic OAS pension and is paid to low-income seniors. Therefore, the GIS depends on income and is calculated on the income of the previous year (reference year). The GIS is adjusted at the time of the tax return if the income reported has change.

[13] Section 11 of the *OAS Act* provides for the payment of a GIS to eligible pensioners according to the provisions of the Act and its regulations. The GIS is only paid at the request of the pensioner. The pensioner must apply annually to qualify.

[14] Section 11(7)(c) of the *OAS Act* states that no supplement shall be paid for any full month of absence following six months of uninterrupted absence from Canada, the month of departure from Canada not being counted.

[15] Section 37(1) of the *OAS Act* states that the overpayment – whether it is a surplus or a benefit to which one is not entitled – must be returned immediately.

[16] At the hearing, the appellant's representative confirmed that the appellant's dates of travel outside of Canada used by the Minister to calculate the overpayment are correct. Therefore, the appellant does not dispute the calculation of the overpayment made by the Minister. The appellant's representative grievance is that her mother's income is limited and that she wants the Minister to use his discretion in order to pay off her debt, since repaying this debt would cause the appellant damage to her already precarious personal finances.

[17] The Federal Court of Appeal confirmed that the Minister has the right to recover any overpayment paid to persons eligible to receive OAS and/or GIS regardless of time

that has elapsed since the date of the overpayment.⁹ Even if the appellant could not repay this debt at present, the Minister could claim it later.

[18] As a legislative entity, the Tribunal has only the powers conferred on it by law. The Tribunal interprets and applies the provisions as set out in the *OAS Act*.

[19] The Minister claims the GIS overpayment from the appellant for the periods of June 2016 to October 2016, March 2019 to December 2019 and for the month of July 2020 as the appellant was absent from Canada for more than six months after the month she left Canada.¹⁰

[20] The appellant does not dispute the dates of travel outside of Canada used by the Minister to calculate the overpayment, but rather argues that she does not have enough money to pay for her expenses, such as prescriptions, physiotherapy, personal support worker and basic necessities of life, and that repaying this amount would cause her financial problems given her limited means.¹¹

[21] The Social Security Tribunal does not have jurisdiction to decide the amount of the overpayment.¹² Only the Minister can decide the amount of the overpayment or an arrangement for its repayment. Therefore, the Tribunal does not have the power to write off a debt to the Minister.

[22] The Tribunal would like to remind the appellant's representative that if she considers that the amount of reimbursement could cause her mother financial difficulties, she can request to the Minister to remit all or a portion of the amount and if unsuccessful can seek judicial review of that decision.

⁹ *Grenier v Canada (Human Resources Development)*. 2008 FCA 130

¹⁰ GD4 – 2, paragraph 1

¹¹ GD1 – 4

¹² *Old Age Security Act*, section 37(2)

Conclusion

[23] Although I am sensitive to the appellant's representative arguments and the fact that her mother cannot return to Canada because of her medical condition, exceptional circumstances preventing a pensioner from returning to Canada do not form part of conditions of GIS eligibility after an absence of more than six consecutive months following the month of departure from Canada. The Tribunal must apply the *OAS Act*.

[24] The appeal is dismissed.

François Guérin
Member, General Division – Income Security Section