



Citation: *CG v Minister of Employment and Social Development*, 2021 SST 950

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

Decision

Appellant: C. G.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated June 26, 2020 (issued by
Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Teleconference

Hearing date: October 6, 2021

Hearing participants: Appellant
Appellant's representative

Decision date: October 26, 2021

File number: GP-20-1097

Decision

[1] The appeal is dismissed.

[2] The Claimant, C. G., was not eligible for the Guaranteed Income Supplement (GIS) he received. I do not have the jurisdiction to forgive all or any part of his overpayment.

Overview

[3] The Claimant is a 71-year-old man who began receiving the Old Age Security (OAS) pension and the GIS in July 2014.¹

[4] When the Claimant applied for the OAS pension and the GIS he reported in each application that he is married.² Despite this, the Minister paid the Claimant the GIS as though he was single.

[5] In September 2018, the Minister wrote to the Claimant and informed him that he was not entitled to the GIS monies he had received from July 2014 to May 2018. The Minister explained that since July 2014, the Claimant had been paid the GIS as though he was single. The Minister went on to explain that because the Claimant is married, his eligibility for the GIS should have been determined on the basis of the combined income of him and his spouse. The Minister did not address the fact that the Claimant had reported his marital status as married in his application. Instead, the Minister focused on annual letters the Minister had sent to the Claimant which the Minister says identified the Claimant's marital status as single. The Minister said it was up to the Claimant to advise the Minister that the marital status the Minister had on file was incorrect. The Minister concluded by saying that the Claimant would have to repay the GIS monies he received, an amount totalling \$37,312.65.³

¹ Pages GD2-66, GD2-70, and GD2-73

² Pages GD2-17 and GD2-27. I am aware that the GIS application is for the payment period of July 2013 to June 2014 (i.e. before the date the Claimant started getting his GIS). However, this is the only GIS application on file. In any event, the Minister does not dispute the fact that the Claimant properly reported his marital status.

³ Pages GD2-11 to GD2-12

[6] The Claimant asked the Minister to reconsider its decision. He explained that he was unaware that he was being overpaid. He also said that he does not understand how the mistake was made because he files his income taxes every year. Finally, he said that the money is already spent and he is unable to repay the money without incurring a lot of financial difficulties.⁴

[7] The Minister reconsidered its decision, and in doing so decided to make an amendment. The Minister acknowledged that the Claimant had reported his marital status as married on his OAS application and, because of this, the Minister said it would remit a portion of the overpayment. Specifically, the Minister said it would remit the overpayment for the year July 2014 to June 2015, an amount totalling \$2,654.22. The Minister said it would not remit any monies owed after June 2015 because the Claimant received entitlement letters every year showing the marital status on file, and the Claimant should have notified the Minister of the error. The Minister also said that subsection 15(9) of the OAS Act requires pensioners to notify the Minister when there is a change in marital status, and that it is not sufficient for a pensioner to provide their marital status to the Canada Revenue Agency (CRA).⁵

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

The issue I must decide

[9] During the hearing, the Claimant told me that he does not dispute the fact that he was overpaid. He said he has only one ground of appeal – namely financial hardship. He said he cannot afford to repay the overpayment, and he asked me to help him in any way I can.

[10] I must decide whether I can forgive all or part of the Claimant's overpayment.

⁴ Page GD2-10

⁵ Pages GD2-6 to GD2-7

Matters I had to consider first

- The Claimant was not feeling well at the hearing

[11] At the beginning of the hearing, the Claimant told me that he had a bad toothache and so he wanted his friend (his daughter's father-in-law) to represent him or speak on his behalf.

[12] I asked the Claimant if he felt well enough to proceed with the hearing, and he said he did. However, he again said he wanted his friend to help him.

[13] I allowed the Claimant's friend to help him throughout the hearing. However, where testimony was needed, I made sure that the testimony came directly from the Claimant.

- There is no Added Party

[14] The appeal file includes an application for the Allowance that was made by the Claimant's spouse.⁶ During the hearing, I asked the Claimant if that application was approved and, if so, whether the Minister had also told his spouse that she has an overpayment. This was important to know because if the Minister also claimed an overpayment from the Claimant's spouse, then I would need to add the Claimant's spouse as a party in this proceeding.

[15] The Claimant told me that his spouse's application for the Allowance was not approved, and she therefore has no corresponding overpayment on her account.

[16] Based on this information, I saw no reason to add the Claimant's spouse as a party in this matter. I proceeded with the hearing as scheduled.

⁶ Page GD2-18

Reasons for my decision

The GIS – What it is

[17] The GIS is an income-tested monthly benefit that is paid to individuals who:

- receive the OAS pension;
- have little to no other income; and
- live in Canada.

[18] If a pensioner has a spouse or common-law partner, then the pensioner's eligibility for the GIS is determined based on the combined income of the couple.⁷

I do not have jurisdiction on matters of departmental error

[19] I am sympathetic to the Claimant's circumstances. He correctly reported his marital status on his applications. Despite this, the Minister paid him GIS monies that he was not entitled to.

[20] The OAS Act says that if a person receives a benefit to which that person is not entitled, then that person must return that benefit to the government.⁸

[21] There is a provision in the OAS Act that deals with department error. The provision is section 32 and it is intended to rectify (fix) those situations where a person is denied all or part of a benefit due to departmental error.

[22] I do not have jurisdiction to decide whether the Minister erred and, if so, what remedy should be given.⁹ Claimants who wish to pursue an argument under section 32 need to raise the argument directly with the Minister.

⁷ Section 12 of the *Old Age Security Act*

⁸ Section 37 of the *Old Age Security Act*

⁹ This is explained in a decision called *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

It is not sufficient to notify the Canada Revenue Agency

[23] The Claimant points out that he has reported his marital status as married on his income tax returns since 2014. The suggestion here is that the Minister should have known that he was married and/or that the Claimant satisfied his obligation to correct his marital status by correctly identifying his marital status on each of his income tax returns.

[24] I can see the logic in what the Claimant is saying. However, this is not a reason for me to allow the appeal. The Federal Court of Canada has considered a similar argument in a case called *Barry*.¹⁰ The Court held that a pensioner's obligation to report their marital status requires more than notifying the CRA. A claimant is required to notify the Minister of Employment and Social Development Canada.

I do not have jurisdiction to consider financial hardship

[25] The Claimant told me that he did not know he was being overpaid. He admitted that he did not read the annual entitlement letters the Minister sent him. I believe the Claimant. Even so, I do not have the jurisdiction to remit or forgive all or any part of the Claimant's overpayment. This is true even if repaying the overpayment will cause financial hardship.

[26] The OAS Act allows the Minister, in certain circumstances, to forgive all or part of an overpayment. This can happen, for example, where repayment of the debt would cause undue hardship to the pensioner or where the overpayment resulted from erroneous advice or administrative error.¹¹ However, I do not have the same powers as the Minister. Only the Minister can forgive an overpayment.¹² As such, I do not have the ability to remit or forgive all or any part of the Claimant's overpayment, regardless of how compelling his circumstances might be.

¹⁰ The citation for the *Barry* decision is *Barry v. Canada (Attorney General)*, 2010 FC 1307

¹¹ Paragraphs 37(4)(c) and (d) of the *Old Age Security Act*

¹² This is explained in decisions called *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278 and *M.K. v. Minister of Employment and Social Development*, 2016 SSTADIS 213

Conclusion

[27] The appeal is dismissed.

Shannon Russell
Member, General Division – Income Security Section