



Citation: *Minister of Employment and Social Development v HB*, 2022 SST 362

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Minister of Employment and Social Development  
**Representative:** Rebekah Ferriss

**Respondent:** H. B.  
**Representative:** Patrick Ferland

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**Decision under appeal:** General Division decision dated August 21, 2021  
(GP-20-30)

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**Tribunal member:** Shirley Netten

**Type of hearing:** Teleconference

**Hearing date:** March 1, 2022

**Hearing participants:** Appellant's representative  
Respondent's representative

**Decision date:** May 9, 2022

**File number:** AD-21-411

## Decision

[1] The appeal is allowed.

## Overview

[2] In May 2002, H. B. (Claimant) was granted several benefits under the *Old Age Security Act* (OASA): the Allowance, from June 2001 to June 2002; a partial Old Age Security (OAS) pension effective July 2002; and the Guaranteed Income Supplement (GIS) effective July 2002. The Claimant continued to receive the OAS pension and the GIS (approved annually) until payments were suspended in August 2013.

[3] Following an investigation, the Minister of Employment and Social Development (Minister) revisited the previous decisions. The Minister decided that the Claimant had only lived in Canada from December 1989 to December 2001, and had not qualified for any of her benefits.

[4] On appeal, the General Division found that the Minister did not have the power to reopen the May 2002 decision. The General Division also found that the Claimant had resided in Canada from December 1989 to July 2011.

[5] The Minister now appeals to the Appeal Division. The Minister accepts the General Division's finding about residency, but says that the General Division made errors about the Minister's authority to reassess its OASA decisions. The Claimant now concedes that the Minister could reassess her eligibility for the GIS starting in February 2012.

## The parties agree on the outcome of the appeal

[6] Although there is no specific agreement on the errors made by the General Division, both parties agree that the Claimant resided in Canada until July 2011 and that the Minister had the authority to reassess the Claimant's eligibility for the GIS. Both parties further agree that the Claimant was not entitled to the GIS she received from February 2012 to August 2013, but that she is entitled to continue receiving her partial OAS pension.

## **I accept the proposed outcome**

[7] The General Division decided that the Minister could not reassess the initial entitlement decision from May 2002. This was an error of law: the General Division misinterpreted the OASA. And, the General Division did not decide whether the Minister could reassess the annual GIS entitlement decisions from 2011, 2012 and 2013. This was an error of jurisdiction: the General Division did not decide an issue it had to decide (in light of its finding on residency). These errors allow the Appeal Division to intervene, and to give the decision the General Division should have given.<sup>1</sup>

[8] The Federal Court of Appeal has confirmed that the Minister has the power to reassess eligibility for benefits under the OASA.<sup>2</sup> The Minister had to revisit the Claimant's GIS eligibility retrospectively, because the Claimant reported her change of residence after the fact. There is no question of an improper exercise of discretion in this case.<sup>3</sup> I agree with the parties that the Minister could revisit the question of the Claimant's GIS entitlement.

[9] The parties accept the General Division's finding of fact that the Claimant resided in Canada from December 1989 to July 2011. The Claimant was entitled to the GIS for six months after leaving Canada, until January 2012.<sup>4</sup> She was not entitled to the GIS thereafter. This means that she was overpaid the GIS from February 2012 to August 2013.<sup>5</sup>

[10] The OAS pension is payable outside of Canada to a pensioner who has resided in Canada for at least 20 years after the age of 18. Since the Claimant met this requirement, she is entitled to a resumption of her partial OAS pension from September 2013.<sup>6</sup>

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<sup>1</sup> *Department of Employment and Social Development Act*, sections 58(1)(a) and (b), 59(1)

<sup>2</sup> *Canada (Attorney General) v Burke*, 2022 FCA 44

<sup>3</sup> This appeal is similar to *Minister of Employment and Social Development v AL*, 2021 SST 573

<sup>4</sup> See section 11(7)(c) and (d) of the OASA.

<sup>5</sup> This is an overpayment of \$19,540.41.

<sup>6</sup> The Claimant has agreed to have her GIS overpayment deducted from her retroactive and prospective OAS pension payments until the debt is paid off.

## Conclusion

[11] The appeal is allowed. The General Division made errors of law and jurisdiction. The General Division's decision is replaced with the following:

- the Claimant resided in Canada from December 1989 to July 2011;
- the Minister had the authority to revisit the Claimant's annual GIS entitlement decisions from 2011, 2012 and 2013;
- the Claimant was not entitled to the GIS she received from February 2012 to August 2013 (inclusive); and
- the Claimant is entitled to the resumption of her partial OAS pension from September 2013 and ongoing.

Shirley Netten  
Member, Appeal Division