Citation: *HB v Minister of Employment and Social Development*, 2021 SST 962

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	H. B.
Representative:	Patrick Ferland
Respondent:	Minister of Employment and Social Development
Representative:	Samaneh Frounchi
Decision under appeal:	Minister of Employment and Social Development reconsideration decision() dated September 17, 2019 (issued by Service Canada)
Tribunal member:	Jean Lazure
Type of hearing:	
Decision date:	August 21, 2021
File number:	GP-20-30

Decision

[1] The appeal is allowed.

[2] I find that the Minister did not have the power to reassess his decision dated May 15, 2002. I also find that the Claimant ceased being a resident of Canada in July 2011.

[3] This decision explains why I am allowing the appeal.

Overview

[4] The Claimant is an 84 year-old woman as of the date of this decision.

[5] On May 1, 2002, the Minister received her Application for the Old Age Security pension, Allowance and Allowance for the Survivor[1]. On May 15, 2002, the Minister approved an Allowance, effective retroactively in June 2001, as well as an OAS pension of 12/40ths, effective in July 2002[2]. The Claimant reached the age of 65 in June 2002 and the Allowance was converted to an OAS pension and Guaranteed Income Supplement (GIS).

[6] On May 17, 2016, following an investigation commenced in September 2013, the Minister sent the Claimant a letter informing her that she was "never eligible to receive the Allowance, the Old Age Security pension and the Guaranteed Income Supplement."[3] The Minister asked the Claimant to refund an overpayment of $135,247.13 for the period of June 2001 to August 2013.

[7] The Claimant followed up with a letter from herself dated August 9, 2016[4], and a letter from her counsel dated September 9, 2016[5], both essentially asking for more time. The Minister considered these letters as a request for reconsideration and issued a

[1] This is found in the file on page GD2-3.
[2] This is found in a note in the Claimant's file on page GD5-29.
[3] This is found in the file on pages GD1-35 and GD2-294.
[4] This is found in the file on pages GD1-37 and GD2-299.
[5] This is found in the file on pages GD1-38 and GD2-300.

Reconsideration Decision Letter on February 9, 2017[6], which maintained the original decision of May 17, 2016.

[8] On May 18, 2017, to safeguard her rights, the Claimant filed for both reconsideration[7] and for an appeal of the Minister's Reconsideration Decision Letter dated February 9, 2017[8]. As the matter was pending before our Tribunal, the Minister would not address the matter of reconsideration[9].

[9] On December 9, 2018, my colleague Pierre Vandenhout of this Tribunal granted the Claimant's appeal[10] and found that the Reconsideration Decision Letter of February 9, 2017, was not a valid reconsideration decision. He found that the letters dated August 9, and September 9, 2016, were not valid reconsideration requests.

[10] On January 23, 2019, the Claimant reiterated her request for reconsideration of the original decision dated May 17, 2016[11]. On September 17, 2019, the Minister issued a Reconsideration Decision Letter[12], again maintaining the original decision.

[11] On December 13, 2019, the Claimant appealed that last decision to our Tribunal[13].

Issues

[12] There are two issues in this appeal:

[13] First, did the Minister have the power to reassess his decision dated May 15, 2002?

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[6] This is found in the file on pages GD1-42 and GD2-308.
[7] This is found in the file on pages GD1-47 and GD2-310.
[8] This is found in the file on pages GD1-78 and GD2-321.
[9] This letter from the Minister is found in the file on page GD1-82.
[10] This is found in the file on pages GD1-166 and GD2-572.
[11] This is found in the file on page GD1-172.
[12] This is found in the file on pages GD1-29 and GD2-809.
[13] This is found in the file on page GD1-19.

[14] Second, did the Claimant ever cease being a resident of Canada, and if so, when?

Reasons for my decision

[15] I find that the Minister did not have the power to reassess his decision dated May 15, 2002. I also find the Claimant ceased being a resident of Canada in July 2011. These are my reasons below.

The Minister did not have the power to reassess his decision dated May 15, 2002

[16] I will first summarily review the parties' arguments.

– **Claimant's arguments**

[17] The Claimant contends, "As recent decisions of this Tribunal amply demonstrate, the Minister did not have the power to change the Approval Decision issued in June 2002 in order to seek reimbursement of the benefits paid to the Appellant up to that date"[14].

[18] The Claimant contends that I should follow the decisions that stemmed from the B.R. decision of our Tribunal's Appeal decision[15], which first ruled that the Minister does not have the power to reassess an initial eligibility decision.

– **Minister's arguments**

[19] The Minister contends that Section 23 of the *Old Age Security Regulations* grants him authority to investigate and assess the eligibility of claimants to benefits at any time.

[14] This is found in the file on page GD6-9.
[15] *B.R.* v. *Minister of Employment and Social Development*, 2018 SST 844.

[20] The Minister contends that I am not bound by past decisions of this Tribunal. At the same time, the Minister wants me to follow a General Division decision named R.S.[16]

– **Why I prefer the B.R. and M.B. decisions to R.S.**

[21] Our Appeal Division, in B.R., after an exhaustive review of the enabling legislation – the *Old Age Security Act* and *Old Age Security Regulations* - and relevant case law, concluded that short of fraud or new facts, the Minister may not revisit an initial decision to "cancel an OAS benefit and demand that monies paid out be reimbursed"[17].

[22] I find the Appeal Division's analysis compelling, most notably of the language used in the enabling legislation, including the concept of cessation. I agree that "the power that the Minister claims to have – to change previous decisions at any time and for any reason – is extraordinary."[18] I find the B.R. decision well reasoned and I am inclined to follow it.

[23] As I said above, the Minister would rather I follow the General Division decision in R.S. Our General Division in R.S. ruled that it is "necessary" for the Minister to have the power to revisit initial decisions in order to:

> "…help to balance the goals of honoring the altruist nature of OAS benefits conferring legislation, by avoiding undue delay in processing applications with the need to safeguard the OAS purse strings by denying payment of benefits to those not entitled."[19]

[24] I read my colleague's decision to defend the argument that only those entitled should be receiving OAS benefits, and that the Minister's power to reassess is a necessary protection in that regard.

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[16] *R.S.* v. *Minister of Employment and Social Development*, 2018 SST 1350.
[17] *B.R.* v. *Minister of Employment and Social Development,* page 20.
[18] *B.R.* v. *Minister of Employment and Social Development*, page 16.
[19] *R.S.* v. *Minister of Employment and Social Development,* page 10.

[25] I have the benefit of having read a more recent decision of our Appeal Division in M.B.[20] In this decision, our Appeal Division interpreted the words “entitlement” and “eligibility” in order to circumscribe the Minister’s powers as to an initial decision: “Fraudulent applications nullify entitlement. New facts affect new decisions on eligibility."

[26] I read the Appeal Division’s decision in M.B. to state that a Minister’s decision on entitlement, based on fraud, could be retroactive, while a decision on eligibility could only have a forward effect. This conclusion is also found in B.R.: “And once applications are approved, the Minister can continue to assess a pensioner’s ongoing eligibility for benefits (or their amount).”[21]

[27] As to the above argument put forth in R.S., I believe our Appeal Division in M.B. disposes of the argument as to the “necessity” of the Minister’s power to reassess initial eligibility or entitlement decisions to prevent persons not entitled to benefits from receiving them:

> “[131] In schemes designed to assist seniors with basic fundamental income security, there may be times when a person receives a benefit and, later, more information becomes available showing that they should not have received it. We live with that outcome because, in benefits-conferring schemes, getting benefits to those who need them requires an application process that moves with the speed and efficiency suited to the task.
>
> [132] The OAS Act and Regulations are part of a social safety net for seniors. I cannot infer there is a power to reassess initial eligibility and collect giant overpayments when the legislation does not clearly state it.” [22]

[28] The Appeal Division’s analysis in M.B., of the above wording (“entitlement” vs. “eligibility”, but also of Parliament’s intention in regards to the OAS Act, is thorough and compelling. I am inclined to follow it as well.

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[20] *M.B.* v. *Minister of Employment and Social Development,* 2021 SST 8.
[21] *B.R.* v. *Minister of Employment and Social Development,* page 19.
[22] *M.B.* v. *Minister of Employment and Social Development,* page 28.

- **Why I choose to be bound by these Appeal Divisions decisions**

[29] The Minister argues that I am not bound by past decisions. This is true, and includes decisions by our Appeal Division.

[30] However, there are important reasons why I may choose to follow such decisions. Consistency in our Tribunal is one such reason, but I would not want to be consistent with decisions I fundamentally disagreed with. My colleague in R.S. did not follow B.R. due to such a fundamental disagreement.

[31] I find that our Appeal Division's decisions in B.R. and M.B. to be most consistent with the purpose or object of the OAS Act. I concur with our Appeal Division in M.B. that "…the object and purpose of the OAS Act are to provide modest income support for seniors in recognition of their contributions to Canada. This object and purpose do not require a mistake-free assessment."[23]

[32] I believe that in interpreting the Minister's powers, our Appeal Division's decisions in B.R. and M.B. essentially grant the benefit of the doubt to the Claimant because the enabling legislation is not specific enough. I believe this is most consistent with the altruistic purpose or object of the OAS Act. It is why I choose to follow them.

The Claimant ceased being a Canadian resident in July 2011

[33] Considering I found that the Minister could not revisit his decision of May 15, 2002, I should not have to weigh the evidence in regards to the Claimant's residency in Canada. However, since it is clear the Claimant ceased to be a resident of Canada, I believe it is important for me to make a finding on this issue. I will summarily review the parties' arguments on this point.

– **Claimant's arguments**

[34] The Claimant contends that she resided in Canada "continuously from December 1989 until her departure from the country in 2011. She had by then accumulated over

[23] *M.B.* v. *Minister of Employment and Social Development,* page 16.

22 years of continuous residence in Canada and therefore remained entitled to the benefits she received under the OAS Act"[24].

– **Minister's arguments**

[35] The Minister contends that the evidence indicates a lack of ties to Canada after 2001.

– **I am convinced that the Claimant was a resident of Canada between until 2011**

[36] I am swayed by the Claimant's arguments and evidence. I find her affidavits dated May 18, 2017[25], August 22, 2017[26], and August 13, 2019[27], compelling. I find her explanations as to her frequent travels – to take part in academic conferences and to visit her children - believable. I am also convinced by her recollections of the extensive health care her husband and herself received in Canada.

[37] I also find the summary of facts put forth by the Claimant's representative in his submissions[28] to be most exhaustive and, as such, compelling.

[38] I contrast the above with the evidence put forth by the Minister, mostly the following:

- inferences from inconsistencies or lack of entries in the Lovell phone directory;
- inferences from incomplete evidence of the Claimant's travels;
- inferences from partial Visa credit card statements; and
- inferences from the Claimant's supposed non-cooperation, which was understandable considering she had effectively moved to Palestine.

[24] This is found in the file on page GD6-9.
[25] This is found in the file on page GD1-58.
[26] This is found in the file on page GD1-65.
[27] This is found in the file on page GD1-194.
[28] This is found in the file on pages GD6-17 to GD6-29.

[39] I agree with the Claimant's counsel that "the Minister is essentially asking the Tribunal to dismiss the sworn and uncontradicted evidence of Appellant based on suppositions and inferences."[29]

[40] I find that the preponderance of the evidence supports the Claimant being a resident of Canada between December 1989 and June 2011.

– **There is an admission that the Claimant ceased to be a resident of Canada in July 2011**

[41] As to when the Claimant ceased to be a resident of Canada, the Claimant admits, both in her affidavit dated May 18, 2017[30], as well as in her submissions[31], that she ceased to be a resident of Canada in July 2011. This is when she left Canada with her husband to attend a conference in Germany, and then settled in Palestine after her husband's death in August 2012. The Claimant only returned to Canada in June 2013 to clean out her apartment.

[42] Considering this clear and unambiguous admission, which appears in both the Claimant's evidence and submissions, I find the Claimant ceased to be a resident of Canada in July 2011.

CONCLUSION

[43] I find that the Minister did not have the power to reassess his eligibility decision dated May 15, 2002. I also find that the Claimant ceased being a resident of Canada in July 2011.

[44] This means the appeal is allowed.

Jean Lazure

Member, General Division – Income Security Section

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[29] Page GD6-32.
[30] Paragraphs 44 to 47, page GD1-63.
[31] Paragraphs 99 and following, page GD6-28.