



Citation: *CB v Minister of Employment and Social Development*, 2021 SST 965

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

Decision

Appellant: C. B.
Representative: Gilbert Nadon

Respondent: Minister of Employment and Social Development
Representative: Attila Hadjirezaie

Decision under appeal: Minister of Employment and Social Development reconsideration decision() dated October 11, 2019 (issued by Service Canada)

Tribunal member: Jean Lazure

Type of hearing: Videoconference
Hearing date: March 23, 2021
Hearing participants: Appellant
Appellant's representative
Respondent

Decision date: August 22, 2021
File number: GP-19-1729

Decision

[1] The appeal is allowed in part.

[2] I find that the Minister did not have the power to reassess his decision dated March 12, 2013. I also find the Claimant ceased being eligible for the Allowance for the Survivor on October 23, 2018.

[3] This decision explains why I am allowing the appeal, in part since I am finding the Claimant is no longer eligible for the Allowance for the Survivor.

Overview

[4] The Claimant is a 69 year-old man as of the date of this decision.

[5] On March 30, 2011, the Minister received his Application for an Allowance for the Survivor¹. On December 3, 2012, after an investigation commenced in July 2011, the Minister denied this Application². On February 26, 2013, the Claimant asked for reconsideration of this decision³.

[6] On March 12, 2013, the Minister reconsidered his initial decision of December 3, 2012, and approved the Application for Allowance for the Survivor⁴. This letter contained the following paragraph: "We took in consideration that the Quebec pension plan department has already granted to you the surviving benefit and also you provided documents showing the address of the Late J. D."⁵

[7] In October 2016, the Minister received information that the Claimant's QPP surviving spouse pension had been revised by Retraite Québec and that he was no longer eligible for it. On November 10, 2016, the Minister followed up with the Claimant

¹ This is found in the file on page GD2-3.

² This is found in the file on page GD2-101.

³ This is found in the file on page GD2-103.

⁴ This is found in the file on page GD2-115.

⁵ Page GD2-115.

and required “additional information regarding your marital status”⁶ and subsequently commenced an investigation.

[8] On October 23, 2018, following this investigation, the Minister sent the Claimant a letter informing him that “The information in your file shows that you never been (*sic*) living in a common-law relationship with another person for more than 12 consecutive months. Therefore, you were not eligible for this benefit.”⁷ The Minister asked the Claimant to refund an overpayment of \$20,477.61 for the period of June 2012 to May 2017.

[9] On November 29, 2018, the Claimant followed up with a letter from his counsel asking for the reconsideration of this decision.⁸

[10] On October 11, 2019, the Minister issued a Reconsideration Decision Letter⁹, again maintaining the original decision.

[11] On October 21, 2019, the Claimant appealed that last decision to our Tribunal¹⁰.

Issues

[12] There are two issues in this appeal:

[13] First, did the Minister have the power to reassess his decision dated March 12, 2013?

[14] Second, did the Claimant ever cease being eligible for the Allowance for the Survivor, and if so, when?

⁶ This is found in the file on page GD2-86.

⁷ This is found in the file on page GD2-124.

⁸ This is found in the file on page GD2-122.

⁹ This is found in the file on page GD2-131.

¹⁰ This is found in the file on page GD1-1.

Reasons for my decision

[15] I find that the Minister did not have the power to reassess his decision dated March 12, 2013. I also find the Claimant ceased being eligible for the Allowance for the Survivor on October 23, 2018. These are my reasons below.

The Minister did not have the power to reassess his decision dated March 12, 2013

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

– Claimant's arguments

[17] The Claimant contends that I should follow the decisions that stemmed from the B.R. decision of our Tribunal's Appeal decision¹¹, which first ruled that the Minister does not have the power to reassess an initial eligibility decision.

– Minister's arguments

[18] 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.

[19] The Minister also contends that Retraite Québec has authority to investigate and reassess claimants' eligibility to QPP benefits and power to claim overpayments, as does the OAS framework.

[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 General Division decision R.S.¹² and R.D.¹³

[21] The Minister finally contends that should I choose to follow B.R. and decisions which stemmed from it, there is fraud or misleading statements in this case, which allow the Minister to revisit his initial decision and demand that an overpayment be repaid.

¹¹ *B.R. v. Minister of Employment and Social Development*, 2018 SST 844.

¹² *R.S. v. Minister of Employment and Social Development*, 2018 SST 1350.

¹³ *R.D. v. Minister of Employment and Social Development*, GP-18-1472, found in the file on pages GD8-557 to GD8-594.

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

[22] 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”¹⁴.

[23] 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.”¹⁵ I find the B.R. decision well reasoned and I am inclined to follow it.

[24] As I said above, the Minister would rather I follow the General Division decisions in R.S. and R.D. 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.”¹⁶

[25] 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.

[26] My General Division colleague in R.D. uses the above quote from R.S. and further states that he is “not compelled to follow the reasoning in the AD decision and I

¹⁴ *B.R. v. Minister of Employment and Social Development*, page 20.

¹⁵ *B.R. v. Minister of Employment and Social Development*, page 16.

¹⁶ *R.S. v. Minister of Employment and Social Development*, page 10.

find that the Minister's power to reassess eligibility is broad and extends to cases where there is no suggestion of fraud or misrepresentation."¹⁷

[27] I have the benefit of having read a more recent decision of our Appeal Division in M.B.¹⁸ 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."

[28] 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)."¹⁹

[29] 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."²⁰

¹⁷ Page GD8-560.

¹⁸ *M.B. v. Minister of Employment and Social Development*, 2021 SST 8.

¹⁹ *B.R. v. Minister of Employment and Social Development*, page 19.

²⁰ *M.B. v. Minister of Employment and Social Development*, page 28.

[30] 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 – which the Minister also refers to in his submissions - is thorough and compelling. I am inclined to follow it as well.

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

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

[32] 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 General Division colleagues in R.S. and R.D. did not follow B.R. due to such a fundamental disagreement.

[33] 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."²¹

[34] 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 Minister's arguments related to Retraite Québec and fraud**

[35] The Minister contended in his submissions that Retraite Québec has authority to investigate and reassess claimants' eligibility to QPP benefits and power to claim overpayments, as does the OAS framework.

²¹ *M.B. v. Minister of Employment and Social Development*, page 16.

[36] The Claimant also submitted a decision by the Tribunal administratif du Québec pertaining to Retraite Québec and the Quebec Pension Plan legislative framework.

[37] I am not bound by decisions by a provincial administrative tribunal having to do with a completely different legislative framework. The Minister may have wanted to act in conformity with facts uncovered by Retraite Québec, but I do not find the above arguments compelling or relevant.

[38] The Minister also contended in his submissions that should I choose to follow B.R. and decisions which stemmed from it, there is fraud or misleading statements in this case, which allow the Minister to revisit its initial decision and demand that an overpayment be repaid.

[39] As I will discuss below, I find the Claimant's evidence of a common-law relationship weak. However, weak evidence does not constitute misleading or fraudulent evidence.

[40] And of note, the Minister's initial submissions in this case²² contain no mention of fraud or misleading statements. This is the language used in these submissions to qualify the Claimant's evidence, or lack thereof:

- "The appellant's file was later reviewed and the Minister has determined that **the documentary evidence submitted by the appellant was not sufficient** to support his allege (*sic*) marital status. As the union **was not proven**..."²³
- "As the appellant **did not submit additional documents** to support his allege (*sic*) marital status, the Minister referred the appellant's file to his integrity department to review the appellant's eligibility to the ALWS."²⁴

²² These are found in the file from page GD4-1 to GD4-22.

²³ Pages" GD4-2 and GD4-3.

²⁴ Page GD4-9.

- “On October 23, 2018, the appellant’s eligibility to the ALWS was revised and overturned, as it was stated that the common law union between the appellant and the late J. D. **was not proven**.”²⁵
- “However, the Minister notes that the appellant **failed to provide evidence** of a common-law relationship in order to meet the fourth criterion.”²⁶
- “Despite the fact that on two occasions, the appellant contacted the Minister, to confirm that he was waiting for documents to support his marital status, **he did not provide new information**. The investigator’s review concludes there are (*sic*) **no new evidence** to change the recommendations already made. Therefore, the appellant’s eligibility to the ALWS was revised and overturned, as it was stated that the common law union between the appellant and the late J. D. **was not proven**.”²⁷
- “Given the fact that **the appellant did not submit new elements**, the Minister found that he was not meeting the eligibility requirements.”²⁸
- “The appellant **failed to prove** that he met the marital status requirement to qualify for an ALWS benefit.”²⁹ (I added bold and underline to the above quotes)

[41] I find that there is no evidence of fraud or misleading statements in this case. I find the Minister mischaracterized evidence provided by the Claimant in his submissions, and that his conclusion of fraud or misleading statements is an overreach.

²⁵ Page GD4-9.

²⁶ Page GD4-12.

²⁷ Page GD4-13.

²⁸ Page GD4-14.

²⁹ Page GD4-14.

The Claimant ceased being eligible for the Allowance for the Survivor on October 23, 2018

[42] I find the Claimant ceased being eligible for the Allowance for the Survivor on October 23, 2018. These are my reasons.

– The evidence of a common-law relationship is weak

[43] I agree with the Minister that at most, the documentary evidence provided by the Claimant confirms that he and J. D. shared the same address. It does not support a common-law relationship and fails to establish the Claimant's marital status as such. I also note that the Claimant chose not to testify at the hearing to provide further evidence.

– The Minister's decision of October 23, 2018, has no retroactive effect

[44] However, the Minister was aware of such weak evidence when he approved the ALWS benefit on March 12, 2013. As outlined in the Minister's initial submissions, "the decision was mainly based on the fact that the appellant was receiving a Survivor's pension from the QPP and **on the documents that confirmed he was sharing the same address as the late J. D.** (*sic*)."³⁰ (I added bold and underline to the above quote)

[45] The Minister was still aware of this weak evidence on November 10, 2016, when he sent a letter to the Claimant: "...we require additional information regarding your marital status."³¹

[46] It is only two years later, on October 23, 2018, that the Minister finally informs the Claimant that he does not "meet all the eligibility requirements of the *Old Age Security Act*."³²

³⁰ Page GD4-8.

³¹ Page GD2-86.

³² Page GD2-124.

[47] As I said above, our Appeal Division's decisions in M.B. and B.R. find that a Minister's decision on entitlement, based on fraud or misleading statements, could be retroactive, while a decision on eligibility could only have a forward effect.

[48] For reasons I stated above, I have chosen to follow our Appeal Division's decisions in M.B. and B.R. I have also found that there is no evidence of fraud or misleading statements in this case.

[49] I conclude that the Minister's decision of October 23, 2018, has no retroactive effect. The Claimant ceased being eligible for the Allowance for the Survivor on that day.

CONCLUSION

[50] I find that the Minister did not have the power to reassess his eligibility decision dated March 12, 2013. I also find the Claimant ceased being eligible for the Allowance for the Survivor on October 23, 2018.

[51] This means the appeal is allowed in part.

Jean Lazure
Member, General Division – Income Security Section