[TRANSLATION]

Citation: *TA v Minister of Employment and Social Development and LA*, 2021 SST 981

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	T. A.
Representative:	Etienne Rolland
Respondent:	Minister of Employment and Social Development
Representative:	Attila Hadjirezaie
Added Party:	L. A.

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated February 8, 2019 (issued by Service Canada)

Tribunal member:	Jean Lazure
Type of hearing:	Videoconference
Hearing date:	April 30, 2021
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	October 25, 2021
File number:	GP-19-755

Decision

[1] The appeal is allowed.

[2] The Minister did not have the power to reassess its November 27, 2007, decision. I also find that the Appellant ceased being a resident of Canada on November 10, 2014.

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

Overview

[4] The Appellant was 78 years old on the day of the hearing.

[5] On February 27, 2007, the Minister received the Appellant's application for an Old Age Security (OAS) pension.[1] On November 27, 2007, the Minister approved the application,[2] finding that the Appellant was entitled to a partial pension of 20/40 from January 2008 and that he was also entitled to the Guaranteed Income Supplement (GIS).

[6] On August 10, 2015, the Minister contacted the Appellant to have him complete a questionnaire and provide information about his trips outside Canada.[3] The GIS benefits were suspended on August 12, 2015,[4] and the OAS benefits, in September 2015.[5]

[7] From September 2015 to February 2018, the investigation ran its course. On February 14, 2018, the Minister sent the Appellant a letter asking him to refund an overpayment of $78,526.40 in OAS and GIS benefits.[6] On April 25, 2018, the Appellant requested a reconsideration of that decision.[7] On February 8, 2019, the Minister issued a Reconsideration Decision Letter[8] maintaining the original decision.

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[1] See GD2-3 in the record.
[2] GD4-23
[3] GD2-32
[4] GD4-23
[5] GD4-5
[6] GD2-306
[7] GD2-521
[8] GD2-524

[8] On May 1, 2019, the Appellant appealed that last decision to our Tribunal.[9]

Issues

[9] There are two issues in this appeal:

[10] First, did the Minister have the power to reassess its November 27, 2007, decision?

[11] Second, did the Appellant cease being a resident of Canada, and if so, when?

Reasons for my decision

[12] I find that the Minister did not have the power to reassess its November 27, 2007, decision. I also find that the Appellant ceased being a resident of Canada on November 10, 2014. These are my reasons below.

The Minister did not have the power to reassess its November 27, 2007, decision

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

– Appellant's arguments

[14] The Appellant argues that the Minister did not have the power to reassess its November 27, 2007, decision. So, he takes the view that I should follow the Tribunal's decisions that stemmed from the decision of our Tribunal's Appeal Division in *BR*,[10] particularly *SF and CF*.[11] *BR* was the Tribunal's first decision to rule that the Minister does not have the power to reassess an initial eligibility decision.

– Minister's arguments

[15] The Minister says that section 23 of the *Old Age Security Regulations* gives it the authority to investigate a person's eligibility and to assess it at any time.

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[9] GD1-1
[10] *BR v Minister of Employment and Social Development*, 2018 SST 844
[11] *SF and CF v Minister of Employment and Social Development*, 2021 SST 23

[16] The Minister argues that I am not bound by other Tribunal decisions. At the same time, the Minister wants me to follow General Division decisions, specifically *RS*[12] and *RD*.[13]

– **Why I prefer *BR* and *MB* to *RS* and *RD***

[17] In *BR*, our Appeal Division, after an exhaustive review of the enabling legislation—the *Old Age Security Act* (OAS Act) and *Old Age Security Regulations*—and relevant case law, found that, short of fraud or new facts, the Minister may not "cancel an OAS benefit and demand that monies already paid out be reimbursed."[14]

[18] I find our Appeal Division's analysis in *BR* compelling, especially concerning the language used in the enabling legislation, including the concept of cessation. I also find 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 *BR* well-reasoned, and I am inclined to follow it.

[19] As I said above, the Minister would rather I follow the General Division decisions in *RS* and *RD*. In *RS*, our General Division ruled that the Minister's powers to revisit initial decisions are necessary 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]

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

[21] In *RD*, my General Division colleague uses the above quote from *RS* and further states that he disagrees with the Appeal Division's decision in *BR*: "I am not compelled

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[12] *RS v Minister of Employment and Social Development*, 2018 SST 1350
[13] *RD v Minister of Employment and Social Development*, GP-18-1472, is at GD11-536 in the record.
[14] *BR v Minister of Employment and Social Development* at para 81
[15] *BR v Minister of Employment and Social Development* at para 61
[16] *RS v Minister of Employment and Social Development* at para 33

to follow the reasoning in the AD decision and I 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]

[22] In addition, I have the benefit of having read *MB*,[18] a more recent decision of our Appeal Division. In this decision, the Appeal Division interpreted the concepts of entitlement to benefits and eligibility in order to determine the Minister's powers as to an initial decision: "Fraudulent applications nullify entitlement. New facts affect new decisions on eligibility."[19]

[23] I read the Appeal Division's decision in *MB* as saying that a Minister's decision on entitlement to benefits, in a case of fraud, could be retroactive, while a decision on eligibility could only have a forward effect. This conclusion is also found in *BR*: "And once applications are approved, the Minister can continue to assess a pensioner's ongoing eligibility for benefits (or their amount)."[20]

[24] As to the argument put forth in *RS*, that is, the "necessity" of the Minister's power to reassess initial eligibility or entitlement decisions to prevent persons not entitled to benefits from receiving them, I believe that the Appeal Division rejected it in *MB*:

> [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 out to those who need them requires an application process that moves with the speed and efficiency suited to the task.
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> [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.[21]

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[17] GD11-539
[18] *MB v Minister of Employment and Social Development*, 2021 SST 8
[19] *MB v Minister of Employment and Social Development* at para 115
[20] *BR v Minister of Employment and Social Development* at para 77
[21] *MB v Minister of Employment and Social Development* at paras 131 and 132

[25] The Appeal Division's analysis in *MB*, of the above wording ("entitlement to benefits" vs. "eligibility"), but also of Parliament's intention, is thorough and compelling. I am inclined to follow it as well.

– **Why I choose to be bound by these Appeal Division decisions**

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

[27] However, there are important reasons why I may choose to follow such decisions. The consistency and predictability of our Tribunal's decisions is one such reason, but I would not want to follow decisions I fundamentally disagreed with. In *RS* and *RD*, my General Division colleagues did not follow *BR* due to such a fundamental disagreement.

[28] I find that the Appeal Division's decisions in *BR* and *MB* to be most consistent with Parliament's intention and the purpose of the OAS Act. I concur with our Appeal Division in *MB* 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 eligibility assessment."[22]

[29] I believe that, in interpreting the Minister's powers in that way, our Appeal Division's decisions in *BR* and *MB* grant the benefit of the doubt to the Appellant because the enabling legislation is not specific enough. I believe this is consistent with the altruistic nature and purpose of the OAS Act. It is why I choose to follow these decisions.

[30] Lastly, I also have the benefit of having read *AL*[23] and *SF and CF*,[24] two recent Appeal Division decisions. These decisions recognize the Minister has having an implied discretionary power to revisit initial decisions regarding the OAS Act. In light of

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[22] *MB v Minister of Employment and Social Development* at para 73
[23] *AL v Minister for Employment and Social Development*, AD-21-60
[24] *SF and CF v Minister of Employment and Social Development*, AD-21-132 and AD-21-133. This decision also upheld the first-level decision, since the Minister had not properly exercised the discretion that the Appeal Division recognizes it as having in those two decisions.

the above, I disagree with these decisions. I find that such a broad power needs to have been explicitly set out in the enabling legislation.

The Appellant ceased being a Canadian resident in November 2014

[31] Considering that I found that the Minister could not revisit its November 27, 2007, decision and that the Appellant's benefits were suspended from August 2015, I should not have to weigh the evidence in regard to the Appellant's Canadian residence before that. However, it is clear that the Appellant ceased to be a resident of Canada, and I will decide this issue. I will summarily review the parties' arguments on this point.

– Appellant's arguments

[32] The Appellant says that he was a resident of Canada continuously from November 1987 until his departure from the country in November 2014. He had by then accumulated over 26 years of continuous residence in Canada, including 20 years at the time of his November 27, 2007, OAS pension application, and remained eligible for the benefits he received under the OAS Act.

– Minister's arguments

[33] The Minister argues that the evidence indicates a lack of ties between the Appellant and Canada after August 1, 2000.

– There is an admission that the Appellant ceased to be a resident of Canada on November 10, 2014

[34] As to when the Appellant ceased to be a resident of Canada, the Appellant admits, in an affidavit dated November 7, 2014,[25] that he and his wife ceased to be residents of Canada on November 10, 2014. This is when he left Canada with his wife to settle in Haiti. The evidence also shows that they had all their personal property shipped over in a contemporary manner.[26]

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[25] GD6-20
[26] See GD6-21 to GD6-34.

[35] Considering this clear and indisputable admission, I find that the Appellant ceased to be a resident of Canada on November 10, 2014.

Conclusion

[36] I find that the Minister did not have the power to reassess its eligibility decision dated November 27, 2007. I also find that the Appellant ceased being a resident of Canada on November 10, 2014.

[37] This means that the appeal is allowed.

Jean Lazure
Member, General Division – Income Security Section