



[TRANSLATION]

Citation: *Minister of Employment and Social Development v SL*, 2022 SST 655

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Minister of Employment and Social Development  
**Representative:** Jessica Grant

**Respondent:** S. L.  
**Representative:** T. S.

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**Decision under appeal:** General Division decision dated  
November 17, 2021 (GP-19-584)

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**Tribunal member:** Jude Samson

**Type of hearing:** Teleconference  
**Hearing date:** May 6, 2022  
**Hearing participant:** Appellant's representative

**Decision date:** July 14, 2022  
**File number:** AD-22-104

## Decision

[1] The appeal is allowed.

## Overview

[2] S. L. is the Applicant in this case. In November 2006, the Minister of Employment and Social Development (Minister) approved his applications for an Old Age Security pension and the Guaranteed Income Supplement. As part of its decisions, the Minister found that the Applicant had resided in Canada from May 17, 1982, to October 24, 2004, and since June 16, 2006.<sup>1</sup>

[3] In 2016, the Minister launched an investigation into the Applicant's residence in Canada. In 2018, following its investigation, the Minister concluded that the Applicant hadn't resided in Canada since November 1, 2008.<sup>2</sup>

[4] As a result, the Minister found that the Applicant wasn't entitled to the Guaranteed Income Supplement benefits he had received from June 2009 to June 2017—an amount of over \$95,000.

[5] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division found that the Minister wasn't entitled to recover the benefits it had paid to the Applicant.

[6] The Minister is now appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division made errors of law.

[7] The Minister is right. In the circumstances, I am allowing the appeal and giving the decision that the General Division should have given.

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<sup>1</sup> In this context, "residence" has a very specific meaning. Section 21(1) of the *Old Age Security Regulations* defines whether a person **resides** in Canada or is **present** in Canada.

<sup>2</sup> The Minister later changed its position and instead argued that the Applicant had stopped residing in Canada on November 10, 2010: See the Minister's submissions (GD3 in the appeal record) at paragraphs 2, 20, 24, and 30.

[8] The Applicant didn't reside in Canada from November 10, 2010, to June 15, 2017. He started residing in Canada again on June 16, 2017.

## **Preliminary matter**

### **The hearing took place without the Applicant**

[9] I am satisfied that the Applicant was aware of the hearing, even though he didn't attend. So, I went ahead with the hearing without him present.

[10] The Applicant had given the Tribunal his contact information in his Notice of Appeal to the General Division.<sup>3</sup> In that same document, he named his nephew as his representative and provided his contact information, including an email address.<sup>4</sup>

[11] The Applicant was responsible for notifying the Tribunal of any change in his contact information without delay.<sup>5</sup> He was reminded of this responsibility in almost every letter from the Tribunal.

[12] From the beginning, the Tribunal had a very hard time contacting the Applicant. Many mailings were returned.

[13] However, the Tribunal was able to send documents to his representative, both by mail and by email, and was able to leave messages on his voice mail. In the Notice of Appeal, he confirmed that he was responsible for providing the Applicant with all information related to his appeal.<sup>6</sup>

[14] So, I find that the Applicant was aware of the hearing.

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<sup>3</sup> See GD1-3.

<sup>4</sup> See GD1-5.

<sup>5</sup> See section 6 of the *Social Security Tribunal Regulations*.

<sup>6</sup> See GD1-5.

## Issues

[15] I have to decide the following issues:

- a) Did the General Division make errors of law when it found that the General Division didn't have the power to reassess its November 2006 decision?
- b) If so, how should I fix the General Division's error?

## Analysis

[16] I can intervene in this case only if the General Division made at least one of the errors set out in the law.<sup>7</sup> Based on the wording of the law, any error of law could trigger my powers to intervene.

### **The General Division made errors of law when it found that the Minister could not reassess its November 2006 decision**

[17] Before the General Division, the Minister framed the issue under appeal as being whether the Applicant was entitled to the Guaranteed Income Supplement payments he had received after June 2011. The answer to that question depends on whether he resided in Canada from November 2010 onward.

[18] Instead, the General Division found that the Minister could not revisit its initial decision of November 2006 approving the Applicant's applications for benefits. In addition, it found that the Minister's subsequent decision on the Applicant's eligibility for the Guaranteed Income Supplement could only have a forward (forward-looking) effect. This meant that the Minister wasn't entitled to recover the benefits it had paid to the Applicant.<sup>8</sup>

[19] In its decision, the General Division made two errors of law.

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<sup>7</sup> These errors (also known as "grounds of appeal") are listed under section 58(1) of the *Department of Employment and Social Development Act*.

<sup>8</sup> According to the General Division, the Minister admitted that the Applicant had started residing in Canada again in June 2017.

[20] First, the initial decision from 2006 wasn't reassessed in the Minister's subsequent decisions. So, it wasn't the subject of the appeal before the General Division. The Minister's initial decision was made in late 2006, and the Minister disputed the Applicant's residence in Canada only from November 2008 onward.

[21] Second, the General Division made an error of law by interpreting the scope of the Minister's powers too narrowly.

[22] The General Division concluded that the Minister didn't have the power to reassess its past decisions. When reaching its conclusion, the General Division relied on decisions in which the Tribunal had found that there were significant limits on the Minister's power to change past decisions.<sup>9</sup>

[23] But after the General Division finalized its decision in this case, the Federal Court of Appeal concluded that the Minister has broad powers to investigate and reassess.<sup>10</sup> The Federal Court of Appeal said the following in paragraph 106 of its decision:

Put simply, the investigative authority under section 23 of the Regulations allows the Minister to reassess an individual's eligibility for benefits where, for example, new information surfaces, or where errors, misrepresentation or even fraud has occurred, ensuring that only those entitled to benefits actually receive them. Section 37 of the Act allows the Minister to recover benefits that were improperly paid to a claimant.

[24] I have to follow the decisions of the Federal Court of Appeal. As a result, I find that the General Division made an error of law by interpreting the scope of the Minister's powers too narrowly.

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<sup>9</sup> In particular, the General Division relied on *BR v Minister of Employment and Social Development*, 2018 SST 844; and *MB v Minister of Employment and Social Development*, 2021 SST 8.

<sup>10</sup> See *Canada (Attorney General) v Burke*, 2022 FCA 44.

## **I will give the decision that the General Division should have given**

[25] At the hearing, the Minister argued that I should give the decision the General Division should have given.<sup>11</sup> I agree. This means that I can decide when the Applicant resided in Canada.

[26] Although the Applicant didn't attend either of the hearings before the Tribunal, he was aware of them and chose not to attend.

### **– The relevant period: November 10, 2010, to June 15, 2017**

[27] At first, the Minister found that the Applicant had stopped residing in Canada in November 2008. But it reconsidered its decision again. Before the General Division, the Minister argued that the Applicant had stopped residing in Canada on November 10, 2010.

[28] The General Division found that the Applicant had re-established residence in Canada on June 16, 2017.<sup>12</sup> The Minister hasn't disputed this finding before the Appeal Division.<sup>13</sup>

[29] This means that the relevant period is from November 10, 2010, to June 15, 2017.

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<sup>11</sup> Sections 59(1) and 64(1) of the *Department of Employment and Social Development Act* give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16 to 18.

<sup>12</sup> See the General Division decision at paragraphs 41 and 43. See also GD2-24 and GD3-16.

<sup>13</sup> See AD1 and AD2.

– **The legal test for residence in Canada**

[30] To reside in Canada, the Applicant needed to make his home and ordinarily live in any part of Canada.<sup>14</sup> When assessing his status, I considered the following factors to decide to which country his ties were stronger:<sup>15</sup>

- his personal property in Canada
- his social ties in Canada
- his other ties in Canada
- his ties in another country
- the number and length of his stays in Canada
- the number and length of his absences from Canada
- his lifestyle and establishment in Canada

[31] The weight given to each factor can vary from case to case.<sup>16</sup> In addition, assessing a person's residence requires an examination of the person's whole context.<sup>17</sup>

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<sup>14</sup> See section 21(1) of the *Old Age Security Regulations*.

<sup>15</sup> This is a plain language version of the relevant factors (although others may be added as appropriate). These factors appear in many decisions, including *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paragraph 31.

<sup>16</sup> This is stated in *Singer v Canada (Attorney General)*, 2010 FC 607, affirmed by 2011 FCA 178.

<sup>17</sup> This is stated in *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at paragraph 58; and *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277 at paragraph 32.

– **The Applicant hasn't shown that he resided in Canada from November 10, 2010, to June 15, 2017**

[32] When assessing the Applicant's residence, I considered his whole context, including his financial status.<sup>18</sup> On this point, I note that the Applicant has a low income.<sup>19</sup>

[33] So, I didn't expect the Applicant to own a house or a car. On the contrary, he reported having no significant personal assets and no place of his own, either in Canada or in his home country.<sup>20</sup>

[34] In any event, I admit that the Applicant was able to maintain some ties to Canada during the relevant period. For example, he:

- filed his annual federal income tax returns<sup>21</sup>
- was eligible for provincial health insurance<sup>22</sup>
- renewed his Canadian passport<sup>23</sup>

[35] However, these factors have to be balanced against the fact that the Applicant doesn't speak English and speaks only a little French.<sup>24</sup> This suggests that he isn't well established in Canada.

[36] In addition, the Minister argues that I have to place significant weight on the number and length of the Applicant's absences from Canada during this period.

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<sup>18</sup> The relevance of this factor is explained in *JB v Minister of Employment and Social Development*, 2019 SST 1000 at paragraphs 35 to 37.

<sup>19</sup> See the Applicant's income tax return information at GD2-143 to GD2-149.

<sup>20</sup> See GD2-29.

<sup>21</sup> See GD2-143 to GD2-149.

<sup>22</sup> See GD2-109 and GD2-110.

<sup>23</sup> See GD2-64 and GD2-65.

<sup>24</sup> See GD2-32.



[37] On this point, the Minister prepared a table that covers many pieces of evidence and shows how the Applicant was absent from Canada:<sup>25</sup>

- from November 10, 2010, to May 4, 2012
- from May 30, 2012, to June 23, 2013
- from January 19, 2014, to July 16, 2014
- from January 30, 2015, to June 17, 2015
- from October 6, 2015, to June 16, 2017

[38] This means that the Applicant was in Canada for roughly 18 months compared with the 61 months he was absent from Canada.

[39] This table is consistent with my assessment of the evidence in the appeal record. Moreover, I agree that significant weight should be placed on this factor in light of all the circumstances of this case.

[40] As a result, the Applicant's frequent and lengthy absences prevent me from concluding that he resided in Canada during the relevant period.

## **Conclusion**

[41] Overall, I have found that the General Division made errors of law when it found that the Minister could not reassess its November 2006 decision. These errors justify my intervention in this case and allow me to give the decision the General Division should have given.

[42] I find that the Applicant didn't reside in Canada from November 10, 2010, to June 15, 2017. He re-established residence in Canada on June 16, 2017.

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<sup>25</sup> The table is at GD3-27 and GD3-28. The evidence is listed in paragraph 27 of GD3-15.

[43] My finding has the following impact on the Applicant's eligibility for Old Age Security benefits:

- The Applicant's eligibility for a partial Old Age Security pension isn't in issue. Since the Applicant has over 20 years of residence in Canada, this pension is exportable.<sup>26</sup> This means that he is entitled to this pension regardless of his residence and regardless of the length of his absences from Canada.
- The Applicant isn't eligible for the Guaranteed Income Supplement from June 2011 to May 2017.<sup>27</sup>
- The Applicant is eligible for the Guaranteed Income Supplement from June 2017. He may stop being eligible for this benefit if he stops residing in Canada or is absent from Canada for more than six months.<sup>28</sup>

[44] In the circumstances, I am allowing the Minister's appeal.

Jude Samson  
Member, Appeal Division

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<sup>26</sup> See sections 9(2) and 9(4) of the *Old Age Security Act*.

<sup>27</sup> Since the Applicant stopped residing in Canada in November 2010, he was still eligible for the Guaranteed Income Supplement that month and for the following six months.

<sup>28</sup> See sections 11(7)(b) and 11(7)(d) of the *Old Age Security Act*.