



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *GS v Minister of Employment and Social Development*, 2021 SST 996

Tribunal File Number: GP-19-1701

BETWEEN:

**G. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: François Guérin

HEARD ON: March 13, 2021, and April 22, 2021

DATE OF DECISION: October 27, 2021

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed in part.

[2] The Minister has jurisdiction to re-decide an applicant's eligibility without having to allege or prove fraud or false statements.

[3] The Appellant was a resident of Canada under the *Old Age Security Act* (OAS Act) from May 31, 1995, to February 10, 2007, for a total of 11 years, 8 months, and 10 days.

[4] The Appellant was not eligible for an Allowance benefit for the period from April 2006 to July 2006.

[5] The Appellant was eligible for a partial Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) from August 2006 to August 2007, that is, six months after the end of her Canadian residence as determined in this decision.

[6] The Appellant is not eligible for a partial OAS pension from September 2007 to June 2018 because she was not a resident of Canada and did not yet have the minimum 20 years of residence in Canada needed after the age of 18 to be able to receive that partial OAS pension outside Canada.

### **OVERVIEW**

[7] The Appellant was born in Algeria on July 27, 1941. She first entered Canada on May 31, 1995, at the age of 54. She applied for an OAS pension on November 15, 2006. She also applied for the Allowance, on March 1, 2007. Following these applications, the Appellant received an Allowance benefit for the period from April 2006 to July 2006. A partial OAS pension of 11/40 and the GIS were approved; the Appellant received them during the period from August 2006 to August 2018.

[8] Following an investigation, the Respondent found that the Appellant had only seven years of Canadian residence and did not meet the minimum requirement to be eligible for benefits.<sup>1</sup> The Minister is asking her to pay back overpayments of \$3,502.45 for the Allowance for the period from April 2006 to July 2006, and of \$21,563.24 for the OAS and \$136,139.72 for the GIS for the period from August 2006 to August 2018.

[9] The Appellant asked the Respondent to reconsider that decision. The Respondent upheld it.

[10] The Appellant appealed that decision to the Tribunal.<sup>2</sup>

### **PRELIMINARY MATTER**

[11] The hearing took place in two parts due to technical problems when it was time to start the initial hearing, and due to the length of the parties' testimony.

[12] Two of the Appellant's daughters were at the hearing: M. and Z. They were sworn in, and they testified.

[13] At the hearing, the Tribunal told the parties that it wanted to add an issue, specifically, whether the Minister has jurisdiction to re-decide the Appellant's eligibility for the Allowance, OAS pension, and GIS benefit. The Tribunal gave the parties until June 4, 2021, to file their submissions.<sup>3</sup> The Minister filed its submissions on this issue on June 4, 2021.<sup>4</sup> The Appellant filed her submissions with the Tribunal on June 10, 2021.<sup>5</sup>

[14] On June 14, 2021, the Tribunal shared the submissions with the parties and gave them until July 2, 2021, to file additional written submissions. On July 2, 2021, the Minister responded to the Tribunal, saying that it had no further submissions to file.<sup>6</sup>

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<sup>1</sup> GD4-2, paragraph 3

<sup>2</sup> GD1

<sup>3</sup> GD12

<sup>4</sup> GD13, GD14, GD15, and GD16

<sup>5</sup> GD17

<sup>6</sup> GD20

Given the volume of documents filed by the Minister, the Appellant asked the Tribunal to give her until July 23, 2021, to respond to them.<sup>7</sup> The Tribunal agreed, and the Appellant sent her additional written submissions on July 19, 2021.<sup>8</sup>

[15] At the hearing, the Tribunal also asked the Appellant to file additional documents from Air Algérie confirming her trips to Algeria for the period from 2007 to 2010 and since 2018. The Tribunal gave her until June 4, 2021, to file the documents. On June 10, 2021,<sup>9</sup> it received her submission informing it that Air Algérie had not responded to her multiple requests. **Because of this, it is impossible to establish the Appellant's trips to Algeria since July 19, 2018, and this decision will cover only her Canadian residence up to that date.**

#### **WHAT ARE THE ISSUES?**

[16] Does the Minister have jurisdiction to re-decide the Appellant's eligibility for the Allowance, OAS pension, and GIS benefit?

[17] Has the Appellant been a resident of Canada under the OAS Act since October 13, 2002?

[18] Is the Appellant eligible for an Allowance benefit for the period from April 2006 to July 2006?

[19] Is the Appellant eligible for a partial OAS pension and the GIS benefit from August 2006?

#### **WHAT IS THE RESPONDENT'S POSITION?**

[20] The Respondent argues that the Appellant was a resident of Canada under the OAS Act from May 31, 1995, to October 12, 2002, for a total of 7 years and 135 days of Canadian residence. After investigating, the Minister takes the view that the Appellant

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<sup>7</sup> GD18

<sup>8</sup> GD21

<sup>9</sup> GD17

has only been present in Canada since October 13, 2002. Additionally, she no longer qualifies for the Allowance for the period from April 2006 to July 2006, since her partner is no longer eligible for the OAS pension or the GIS benefit. A Reconsideration Decision Letter to that effect was sent to Mr. H.'s estate on July 16, 2019,<sup>10</sup> and the estate did not respond to it within the time limit.

## **WHAT IS THE APPELLANT'S POSITION?**

[21] The Appellant argues that she has been a resident of Canada under the OAS Act continuously since she first entered Canada on May 31, 1995, and that she is eligible for the Allowance, OAS, and GIS.

## **ANALYSIS**

### **Does the Minister have jurisdiction to re-decide the Appellant's eligibility for the Allowance, OAS pension, and GIS benefit?**

[22] Revisiting an initial decision by the Minister is an extraordinary remedy. However, it may be necessary to use it to meet the objectives of the OAS Act. That is the case here.

[23] In its submission, the Minister argues that the language of section 23 of the *Old Age Security Regulations* (OAS Regulations) allows it to assess an applicant's eligibility for benefits "at any time." Section 23 of the OAS Regulations reads as follows:

**23 (1)** The Minister, at any time before or after approval of an application or after the requirement for an application is waived, may require the applicant, the person who applied on the applicant's behalf, the beneficiary or the person who receives payment on the applicant's behalf, as the case may be, to make available or allow to be made available further information or evidence regarding the eligibility of the applicant or the beneficiary for a benefit.

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<sup>10</sup> GD1-4

(2) The Minister may at any time make an investigation into the eligibility of a person to receive a benefit including the capacity of a beneficiary to manage his own affairs.

The words “at any time” mean that, when the Minister exercises its authority, its decisions are not final. The Minister relies on section 23.1 of the OAS Regulations and on an expert report prepared by Elizabeth Charron, Senior Legislation Officer. The purpose of section 23, previously section 12, is to give the Minister the discretion to make inquiries to make sure an applicant or beneficiary is eligible for the pension or benefits. In this case, the Minister takes the view that the Appellant was receiving benefits she was not entitled to.

[24] The Appellant argues that section 23 of the OAS Regulations does not allow the Minister to change its initial eligibility decisions. In the Appellant’s view, the words “at any time” do not allow revising an initial decision about a benefit when there is otherwise no clear statutory authority. The Appellant says that the OAS Act gives no such authority and that this is a significant difference from other legislation, such as the *Employment Insurance Act* and the *Canada Pension Plan*.<sup>11</sup> So, in this case, the Appellant takes the view that the Minister cannot revisit its initial decision about her eligibility.

[25] In *BR*, the Appeal Division “agree[s] [...] that the Minister has broad powers to insist that claimants provide documents proving their eligibility for an OAS pension before its approval. Once an OAS pension has been approved, however, [the Appeal Division] do[es] not interpret section 23 of the OAS Regulations as authorizing the Minister to go back and change its initial eligibility decision. Rather, once a pensioner’s OAS pension has been approved, section 23 of the OAS Regulations only authorizes the Minister to investigate that person’s ongoing entitlement to benefits, including the amount of their benefits.”<sup>12</sup>

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<sup>11</sup> GD17

<sup>12</sup> *BR v Minister of Employment and Social Development*, 2018 SST 844 at para 68

[26] However, the basic rules for interpreting a law require the decision-maker to read the words of the legislation in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament.<sup>13</sup> Recently, the Federal Court of Appeal described the rules for interpreting a law like this: “[t]he merits of an administrative decision maker’s interpretation of a statutory provision must be consistent with the text, context and purpose of the provision.”<sup>14</sup>

[27] The rules for interpreting a regulation require that it be interpreted in a way that furthers the purpose of the act as a whole. The Supreme Court of Canada says that the intent of a law “transcends and governs” the intent of the regulation.<sup>15</sup>

[28] In *RS*, the General Division dismissed the notion that the Minister’s power to determine eligibility is extraordinary and inconsistent with a liberal interpretation of the OAS legislation.<sup>16</sup> The Tribunal agrees with the reasoning in that decision, especially paragraphs 32 to 38. The Minister’s power is broad and appropriately balances the goals of paying OAS benefits and pensions and doing so quickly with the need to safeguard the public purse.

[29] The purpose of the OAS Act, including its altruistic nature, is put in proper context in a Federal Court decision:<sup>17</sup>

I would describe the OAS regime as altruistic in purpose. Unlike the Canada Pension Plan, OAS benefits are universal and non-contributory, based exclusively on residence in Canada. This type of legislation fulfills a broad-minded social goal, one that might even be described as typical of the Canadian social landscape. It should therefore be construed liberally, and persons should not be lightly disentitled to OAS benefits.

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<sup>13</sup> The Supreme Court of Canada explained this in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 227.

<sup>14</sup> *Canada (Attorney General) v Redman*, 2020 FCA 209, relying on the Supreme Court of Canada decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII)

<sup>15</sup> *Bristol-Myers Squibb Co. v Canada (Attorney General)*, 2005 SCC 26 at para 38

<sup>16</sup> *RS v Minister of Employment and Social Development*, 2018 SST 1350

<sup>17</sup> *Canada (Minister of Human Resources Development) v Stiel*, 2006 FC 466 at para 28

[30] This interpretation from the Federal Court seems to consider the fact that a person may be denied OAS benefits. However, it should not be done lightly. Also, this interpretation from the Federal Court emphasizes the differences between OAS benefits, which are universal and non-contributory, and the Canada Pension Plan (CPP), to which a beneficiary must contribute. So, it would be a mistake to compare the wording and purpose of the OAS Act to the wording and purposes of the CPP and the *Employment Insurance Act*. By their very nature, these regimes are built differently. The first has universal and non-contributory benefits, while the other two meet the needs of their contributors. By using the words “[u]nlike the Canada Pension Plan” in the quote above, the Federal Court shows that these programs have to be treated differently.

[31] As mentioned in *RS*, legislation dealing with suspension of a benefit, or cessation of a benefit, first presumes that the benefit was payable in the first place. Cases where a recipient did not meet the eligibility criteria for a pension or benefit are quite different. As was the case in *RS*, the pension and benefits were not payable when payments began, given that the Appellant did not meet the minimum requirement of 10 years of residence in Canada to qualify.

[32] I believe that Parliament was clear when it gave the Minister the powers to reconsider eligibility decisions and then request repayment of pensions or benefits that were overpaid. Although the Government of Canada is the one that pays OAS pensions and Allowance and GIS benefits, taxpayers are the ones who fund them. These regulatory powers are necessary because they allow the Minister to pay out benefits quickly by avoiding undue delay in processing applications, and [*sic*] the need to safeguard the public purse by denying payment of pensions and benefits to ineligible applicants.

[33] I am not bound to follow the reasoning in decisions from the Tribunal’s Appeal Division, and I find that the Minister has jurisdiction to re-decide an applicant’s eligibility without having to allege or prove fraud or false statements.



## What I Have to Decide

[34] This means that I have to decide when the Appellant has resided in Canada under the OAS Act since October 13, 2002, to establish her eligibility for the Allowance, OAS, and GIS.<sup>18</sup>

## Case Law and Canadian Residence

[35] **The burden of proof, on a balance of probabilities, rests on the Appellant.**<sup>19</sup>

[36] The Allowance benefit is a monthly benefit paid to persons aged between 60 and 64 whose partner (spouse or common-law partner) is a low-income OAS pensioner **who also qualifies for the GIS.**<sup>20</sup> The Allowance is adjusted if there is a change in the income reported.

[37] Section 19 of the OAS Act provides for the payment of the Allowance benefit to eligible persons according to the provisions of the OAS Act and Regulations. No allowance benefit may be paid unless an application has been made. A partner who is eligible for an Allowance benefit has to apply annually to qualify.

[38] According to sections 21 and 22 of the OAS Act, a pensioner's income is based on their income for the base calendar year. With conjugal partners, the income of both partners is used to determine the amount of the Allowance payable to the eligible partner.

[39] The OAS Act says that a partial pension may be paid to a pensioner over the age of 65 if they resided in Canada for at least 10 years after the age of 18, and if they were residing in Canada on the day before the day their application was approved. If the pensioner is no longer a resident of Canada, they need at least 20 years of residence in Canada after the age of 18 to be able to receive this pension outside Canada.<sup>21</sup>

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<sup>18</sup> *Old Age Security Regulations*, sections 5(2) and 5(11)(2)(a) [sic]

<sup>19</sup> *De Carolis v Canada (Attorney General)*, 2013 FC 366

<sup>20</sup> *Old Age Security Act* (OAS Act), section 19(1)

<sup>21</sup> Section 3(2) of the OAS Act

[40] For the purposes of the OAS Act, a person resides in Canada if they make their home **and** ordinarily live in any part of Canada. This is distinct from the concept of presence. A person is present in Canada when they are physically present in any part of Canada.<sup>22</sup> **A person can be present in Canada without being a resident of Canada.**

[41] Residence is a question of fact to be determined on the particular facts of each case. **A person's intentions are not decisive.** The decision *Ding*<sup>23</sup> sets out a non-exhaustive list of factors to be considered to guide the Tribunal in deciding the issue of residence:

- a. ties in the form of personal property
- b. social ties in Canada
- c. other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.)
- d. ties in another country;
- e. regularity and length of stays in Canada versus the frequency and length of absences from Canada
- f. the person's mode of living, or whether the person living in Canada is substantially deep-rooted

[42] The Appellant has to prove that it is more likely than not that she now meets the OAS Act's minimum requirement of 10 years of Canadian residence to be eligible for the OAS and GIS.

The Tribunal spoke with the Appellant to establish her ties to Canada in accordance with *Ding*.<sup>24</sup>

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<sup>22</sup> Section 21(1) of the *Old Age Security Regulations*

<sup>23</sup> *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76

<sup>24</sup> *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76

### **The Appellant's Credibility and Reliability**

[43] When she testified, the Appellant was pleasant. She gave fairly detailed answers but, as she said, her memory was not always the best, especially when it came to giving exact dates. However, she did her best to explain the sequence of events and the reasons for her assertions.

[44] The Tribunal also notes that the Appellant did not always answer the questions put to her; however, when they were clarified, she gave appropriate explanations.

[45] The Appellant submitted to the Minister a questionnaire giving dates for her time in Algeria from 2006 to 2016.<sup>25</sup> But at the hearing, her daughter M. admitted to being the one who completed the questionnaire in the presence of her sister and mother, from memory and to the best of their knowledge based on the statement that the Appellant and her husband usually went to Algeria for about two months in the summer, and based on certain events or special occasions. The Tribunal notes, however, that the Appellant was actually in Algeria on some of the dates she claimed to be in Canada. For example, her Canadian passport was renewed in Algiers on March 25, 2014,<sup>26</sup> and she testified being in Canada. In addition, these dates do not match the list of flights submitted by Air Algérie since 2010.<sup>27</sup> For these reasons, the Tribunal prefers not to place much weight on the dates the Appellant provided in the questionnaire.

[46] The Appellant mentioned having problems with the Respondent's evidence. For example, the Respondent provided a receipt for an Air Algérie plane ticket dated September 10, 2002.<sup>28</sup> The Appellant confirmed that, before Air Algérie flights to and from Montréal began on June 15, 2007, she would use Royal Air Maroc and have a layover in Casablanca when travelling to Algeria. Since June 2007, she has been using Air Algérie, which offers direct, non-stop service. She submitted an article from the

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<sup>25</sup> GD2-16

<sup>26</sup> GD2-153

<sup>27</sup> GD2-101

<sup>28</sup> GD2-92

newspaper *La Presse* confirming this.<sup>29</sup> The Respondent suggested that the Air Algérie ticket might have been for a code-share or subcontracted flight from another airline to operate the flight. In the Tribunal's view, the invoice would have disclosed such a situation by identifying the airline that provided the service. But this article raises a reasonable doubt in the Tribunal's mind concerning the Respondent's information about flights prior to June 15, 2007, and especially the receipt for a flight from Algiers to Montréal on September 10, 2002, with a return flight to Algiers on October 12, 2002,<sup>30</sup> and given that the Appellant's Canada Border Services Agency (CBSA) travel history shows no entry into Canada on September 10, 2002.<sup>31</sup> However, the Tribunal notes that the Appellant is the one who provided the receipt to the investigator.<sup>32</sup> The Tribunal prefers not to place much weight on this receipt as evidence of entering or leaving Canada on September 10 and October 12, 2002.

[47] The Tribunal notes that, for the ticket purchased in Algiers for the Algiers-Montréal flight on January 25, 2007, with a return flight to Algiers on February 15, 2007,<sup>33</sup> the CBSA travel history corroborates the entry into Canada on January 25, 2007.<sup>34</sup> However, the Tribunal prefers not to place much weight on this trip given the reasonable doubt the Appellant raised because of the April 23, 2007, *La Presse* article indicating that Air Algérie flights between Algiers and Montréal did not begin until June 15, 2007.

[48] The Appellant submitted three Canadian passport applications, one in Montréal in 2002,<sup>35</sup> and two in Algiers in 2009<sup>36</sup> and 2014.<sup>37</sup>

[49] On her 2002 passport application, which she signed, she identified a home address in Montréal. She testified not remembering whether she was the one who

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<sup>29</sup> GD10-32 to GD10-34

<sup>30</sup> GD2-92

<sup>31</sup> GD2-91

<sup>32</sup> GD2-59

<sup>33</sup> GD2-97

<sup>34</sup> GD2-91

<sup>35</sup> GD2-104 to GD2-109

<sup>36</sup> GD2-110 to GD2-123

<sup>37</sup> GD2-124 to GD2-131

completed the form, but she confirmed that it was her address. She testified that she completed her 2002 Canadian passport application ahead of a trip to Algeria on March 23, 2002, her first since arriving in Canada in 1995, which she confirmed at the hearing. The Tribunal accepts March 23, 2002, as the date she left Canada to travel to Algeria. The Tribunal notes, however, that after March 23, 2002, November 28, 2003, is the first confirmed date of entry into Canada in the CBSA travel history.<sup>38</sup> In addition, between those two dates, the Tribunal notes that the Appellant had no medical visits covered by RAMQ [Quebec's health insurance board].<sup>39</sup> However, she submitted to the Tribunal photographs showing that she was in Canada on December 31, 2002, for the birth of a grandson<sup>40</sup> and on October 18, 2003, for her daughter's convocation.<sup>41</sup> This information leaves a reasonable doubt in the Tribunal's mind about the trips that took place during that period and their length.

[50] When the Tribunal asked her why she waited two years before applying to renew her passport after her 2002 passport had expired in 2007, she replied that it was because she was here in Canada. The Tribunal places little weight on this statement because it contradicts what the Appellant indicated in a questionnaire submitted to the Minister<sup>42</sup> and because, on her 2009 Canadian passport application issued in Algiers and dated February 11, 2009, the Appellant indicated that she had resided in Algeria in the last two years.

[51] On her 2009 and 2014 passport applications, which she signed, she identified a home address in Algiers and confirmed that her address in the last two years was the same as her home address, the same on both applications. She did not remember whether she was the one who completed those forms, but she confirmed that it was the address of her spouse's house in Algeria. Asked about this, she said that she had simply made a careless mistake and that she had indicated that address because she was in Algeria. The Tribunal prefers to place more weight on the Appellant's statements

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<sup>38</sup> GD2-91

<sup>39</sup> GD2-80

<sup>40</sup> GD10-3, GD10-5, and GD10-7

<sup>41</sup> GD10-18, GD10-20, and GD10-21

<sup>42</sup> GD2-16

of residence on her 2009 and 2014 passport applications. This is because she made them twice at different times and because she confirmed, in another section of those forms, that she had lived at that address for at least two years before signing the February 11, 2009, passport application, meaning at least since February 11, 2007.

[52] As for why she renewed her Canadian passport in Algeria, the Appellant testified that, when travelling to Algeria, she travels with both of her passports but enters the country with her Algerian passport. Regarding her February 11, 2009, application, she submitted that she entered Algeria by showing her Algerian passport and did not realize that her Canadian passport had already expired. Her daughter Z. also explained that, in Algeria, a citizen can still enter the country with an expired passport. Regarding the renewal of her Canadian passport in Algeria in 2014, the Appellant replied that she did not know.

[53] The Tribunal notes that, according to the CBSA report, the Appellant entered Canada on November 13, 2007, even though her Canadian passport issued in 2002 had expired on March 5, 2007,<sup>43</sup> and she no longer had a valid Canadian passport. Asked about this, she said she did not remember which passport she entered Canada with at the time. Her daughter argued that the November 13, 2007, entry in the CBSA report is an error and should be in January 2007. The Tribunal notes that the RAMQ report<sup>44</sup> mentions insured services provided on June 8, 2007, and November 15, 2007, two days after the Appellant entered Canada on November 13, 2007. The Tribunal also notes that she did not report an entry in January 2007 in the questionnaire she submitted<sup>45</sup> and that, in it, she indicated that she was in Algeria from June to July 2007.<sup>46</sup>

[54] The Appellant submitted two decisions from Quebec's administrative housing tribunal (TAL), dated April 11, 2017 (February 8, 2017, hearing),<sup>47</sup> and February 15,

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<sup>43</sup> GD2-109

<sup>44</sup> GD2-83

<sup>45</sup> GD2-16

<sup>46</sup> GD2-16

<sup>47</sup> GD10-30 and GD10-31

2021 (January 18, 2021, hearing),<sup>48</sup> to show to the Tribunal the size of the house in Montréal. The Tribunal notes in the latter TAL decision a comment that the lessee raised doubts about the lawfulness of the cohabitation of the lessor's mother in the house.<sup>49</sup> Asked about this, the Appellant's daughter argued that the lessee was trying to stack the odds in her favour and that this did not mean that it was true. She also argued that, during that period, her mother was staying with her sister, who had undergone eye surgery and needed help. That sister testified that she had surgery in 1995, 1997, 2010, 2016, 2017, and 2019. However, this comment in the TAL decision leaves the Tribunal in doubt.

[55] For this reason, to establish the Appellant's residence in Canada, the Tribunal prefers to accept the objective information on the list of her flights with Air Algérie since 2010,<sup>50</sup> the RAMQ visit history,<sup>51</sup> the CBSA traveller history<sup>52</sup> (dates that match the Air Algérie ticket list), and, especially, the information the Appellant herself provided on her 2009 and 2014 passport applications. The Tribunal finds that the Appellant was acting in good faith when she completed her 2009 and 2014 passport applications, given that the same address is shown on both forms and that the information concerning that address is confirmed later in the questionnaires when the Appellant indicated that she had lived there in the two years before signing those forms.

### **Has the Appellant been a resident of Canada under the OAS Act since October 13, 2002?**

#### **The Appellant's Ties in Canada and in Algeria**

[56] The Appellant testified never having moved to Algeria since October 2002. She takes the view that her residence has always been in Canada since she first entered in 1995. She lived in an apartment that her spouse rented until her son S. bought a house on X Street in 2003. She has lived in that house since then.

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<sup>48</sup> GD10-26 to GD10-29

<sup>49</sup> GD10-27, paragraph 17

<sup>50</sup> GD2-101

<sup>51</sup> GD2-73 to GD2-88

<sup>52</sup> GD2-91

[57] The Appellant testified that she married T. H. on August 9, 1960, in accordance with Algerian law, under the regime of separation of property and without a marriage contract. She testified to living according to Algerian tradition. Her role was to see to the family's welfare and to keep house. Her husband was responsible for all contracts and for meeting the family's financial needs. She has never signed a lease or had utility accounts in her name, either in Canada or in Algeria. Her spouse is the one who bought their house in Algeria in 1984 and signed all the documents. On paper, he still owns the house, even though he is now deceased. The Appellant testified that, if they had divorced during their marriage, according to Algerian law, the husband would have had to pay his fair share to his wife as well as child support. Her husband is also the one who signed their lease in Canada alone.

[58] When their son S. bought his first house in Canada, the Appellant and her spouse moved in with him in July 2003, after their lease ended. According to Algerian tradition, it is up to the children to look after their parents when they get older. It was the son who took care of everything for his parents at the time and, after he went back to Algeria, the job of looking after the parents fell to the daughter M., who bought S.'s house in 2007. The parents appreciated staying in the same place, where they kept the same room.

[59] The Appellant testified that she was late applying for the Allowance because she did not know she was entitled to it and that her husband is the one who normally took care of everything.

[60] In the file concerning the Appellant's spouse, the Respondent issued a decision about his residence in October 2018. The Respondent testified that a reconsideration decision was sent on July 16, 2019,<sup>53</sup> to the appellant's estate, giving the estate the opportunity to appeal to the Social Security Tribunal's General Division. No appeal was filed in that case. The Appellant's daughter testified that no estate [executor] has been appointed and that a lawyer had suggested waiting until the Appellant's file was

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<sup>53</sup> GD1-4



resolved before proceeding in the file of the Appellant's late spouse. However, the Tribunal notes that the decision in that file is considered final because there was no timely response.

[61] M., the Appellant's daughter, testified that she worked for the same employer from 2003 to 2017 and that her mother watched her children while she was at work. Her mother started living with her brother in 2003. When she bought her brother's house in 2007 to live there with her spouse and two children, her mother, who was already living there, kept her room.

[62] The Appellant's daughter testified that her father had surgery in October 2012 and became severely depressed afterward. In 2013, he was diagnosed with Alzheimer's. During their trip in February 2015, her parents were not supposed to stay in Algeria. But her father had a stroke, his doctor in Algeria told him not to fly back to Canada, and he died there after a second stroke. As a result, the Appellant, a practising Muslim, had to observe iddah in Algeria for four months and 10 days, in accordance with her religious practice. She returned to Canada two days after the end of the iddah. M. testified that, from October 2012, her father wanted to spend more time in Algeria and would say that he did not want to die in Canada.

[63] Z., the Appellant's second daughter, testified that she had always lived with her parents until her marriage in 2000. Her first son was born in 2002. Z. testified that, because of her problems related to partial blindness, the Appellant has always supported her, including when her children were born.

[64] The Appellant testified that her son C., born in 1972, lives in the house in Algeria. He is the one who pays the utilities for the house. C. has never come to settle in Canada. The Appellant testified that her husband still owns the house on paper, even though he is now deceased.

[65] I will now look at the factors mentioned earlier in more detail to determine whether the Appellant has been a resident of Canada under the OAS Act since October 13, 2002.

- a. Ties in the form of personal property: The Appellant testified having had no property of her own, either in Canada or in Algeria, since 2002. The furniture in her room is her daughter's. When in Algeria, she sleeps in the same room as her grandchildren. She also spends a few days visiting her siblings who are still in Algeria. In 2003, she got her own room (with her husband when he was alive) in the home of her son S., and then in the home of her daughter M., who bought the house in 2007. For the past couple of years (since 2019), she has shared her room with one of her granddaughters, who is a nurse. At the second hearing, the Appellant clarified that her belongings, such as her household items and tableware, are part of the common property of her daughter's household.
- b. Social ties: The Appellant was married. She was always with her spouse after they got married in 1960, both in Canada and in Algeria, until his death. She always travelled with him, except on one occasion, when her sister died in 2013. From 2002 to 2006, four of her five children lived in Canada. One of them (F.) returned to live in Algeria definitively in 2005, and another (S.) returned to Algeria definitively in 2007, which M. confirmed. At the second hearing, the Appellant and her daughter corrected this statement, saying that F. had left around April 2006. So, since 2007, the Appellant has had three children (S. [sic], S., and F.) and 14 grandchildren in Algeria. She has only 2 daughters (Z. and M.) and 7 grandchildren left in Canada. She has only a few relatives in France, and they are only in-laws. She testified that she has many friends in Canada that she sees on special occasions, such as weddings, and during summer picnics. She testified having even more friends in Algeria. She does much the same things with her friends, whether in

Canada or in Algeria. However, according to her, it is [translation] “even better in Algeria because it is nice and hot and people get together in the afternoon.”

- c. Other ties in Canada: The Appellant testified that she has and has had absolutely nothing in Canada. No investments or pension funds of any kind, no insurance plans, whether life, car, or home. She has and has had nothing in Algeria either. She has never had a car or a driver's licence, either in Canada or in Algeria. She testified that she and her husband received social assistance from around 2002 to 2006, until her spouse qualified for OAS in December 2005. According to the testimony heard, they received social assistance until March 2007. The Respondent clarified that, in March 2007, the OAS pension of the Appellant's spouse was approved retroactively to December 2005. Legal subrogation was made in favour of the social assistance program for the period from December 2005 to March 2007. So, the Tribunal notes that Quebec's social assistance program recognized the eligibility of the Appellant's spouse for payments until March 2007, that is, until the Respondent approved the OAS application.
- d. Ties to Algeria: The Appellant testified that, when she travels to Algeria, she enters the country with her Algerian passport. Her spouse kept a house in Algeria after he left Algeria for Canada. The house is still in her spouse's name on paper, even though he is now deceased. The Appellant's son lives there and pays the utilities for the house. The Appellant testified that she has no personal property left in Algeria. She has never had a bank account in Algeria. Her husband had medical coverage in Algeria (health card), but she did not. If ill, she would see the doctor and pay for her prescriptions. She does not have a pension fund, credit card, or anything in Algeria. She has never worked except to look after her children and her home, which is typical of the traditional Algerian women of her generation.
- e. Regularity and length of stays in Canada versus the frequency and length of absences from Canada: At the hearing, the Appellant admitted that, from

2012 to 2018, she was in Algeria longer than in Canada. She testified that she was her husband's caregiver and that he preferred to be in Algeria, especially after his surgery and because of his problems related to dementia and Alzheimer's. The Appellant's sister also died there in 2013, as did her brother-in-law. In addition, after her spouse died, as a practising Muslim, she had to observe iddah. She testified to always travelling with her husband, except in 2013, when her sister died. When the Tribunal asked her why her plane tickets are Algiers-Montréal-Algiers and not Montréal-Algiers-Montréal, she testified that she buys her plane tickets in Algiers because it costs less than buying them in Montréal. She testified that, when he was alive, her husband made the decisions about their trips to Algeria and their length. At the hearing, she testified that she last entered Canada on March 3, 2019 or 2020, and that she has not gone back to Algeria since. The following table shows when she entered and left Canada and Algeria. It is based on the tickets from the Air Algérie travel history<sup>54</sup> that the investigator obtained from the airline with the Appellant's consent.<sup>55</sup>

<b>Start date</b>	<b>End date</b>	<b>Country</b>	<b>Length</b>	<b>Comment (if necessary)</b>
2010-10-29	2010-12-28	Canada	61 days	GD2-101
2010-12-29	2011-05-06	Algeria	128 days	
2011-05-06	2011-06-07	Canada	32 days	
2011-06-08	2011-12-13	Algeria	188 days	
2011-12-13	2012-01-13	Canada	31 days	
2012-01-14	2012-08-31	Algeria	230 days	
2012-08-31	2012-11-03	Canada	64 days	
2012-11-04	2013-06-14	Algeria	222 days	
2013-06-14	2013-07-14	Canada	30 days	
2013-07-15	2014-03-25	Algeria	253 days	
2014-03-25	2014-05-14	Canada	67 days	
2014-05-15	2015-01-10	Algeria	240 days	
2015-01-10	2015-02-10	Canada	31 days	
2015-02-11	2016-03-01	Algeria	384 days	
2016-03-01	2016-05-28	Canada	88 days	

<sup>54</sup> GD2-101

<sup>55</sup> GD2-98

2016-05-29	2016-07-17	Algeria	49 days	
2016-07-17	2016-08-19	Canada	33 days	
2016-08-20	2016-11-12	Algeria	84 days	
2016-11-12	2017-02-11	Canada	91 days	
2017-02-12	2017-04-14	Algeria	61 days	
2017-04-14	2017-06-17	Canada	64 days	
2017-06-18	2017-11-11	Algeria	146 days	
2017-11-11	2018-01-27	Canada	77 days	
2018-01-28	2018-06-19	Algeria	220 days	
2018-06-19	2018-07-19	Canada	30 days	GD2-101
2018-07-20	Uncertain	Algeria		
Uncertain	Hearing date	Canada		

- f. The person's mode of living, or whether the person living in Canada is substantially deep-rooted: When M.'s children were younger, the Appellant would pick them up from school and look after them, which allowed M. to work overtime. The Appellant testified that she also went to her mosque and the local youth club (community centre). She testified that, during the day, she would go to organizations to bring back food, and to the supermarket. She testified that, when in Algeria, she would spend time with her friends and family, with her visits sometimes lasting a few days. She sews, crochets, and knits. Now that she is more tired and sick, she spends more time resting and taking care of herself. She testified that she is better in Canada. In her view, she has more freedom here, and she does activities with her daughters. She testified that she feels she has had more ties to Canada since 2002 given that she has her daughters and grandchildren here, that she has friends here, and that she has gotten used to Canada, has integrated here, and that she is safe here. She testified that her children in Algeria are married and have children and that she does not see them as much.

**Period from October 13, 2002, to February 10, 2007**

[66] The Tribunal finds, on a balance of probabilities, that the Appellant was a resident of Canada under the OAS Act.

[67] The Tribunal understands the cultural and social dynamics of the Appellant's role as wife and person responsible for the household, while her spouse was responsible for all contracts, whether for mortgages, public accounts, or legal registrations. The Tribunal is also aware of the Appellant's limited physical and financial assets in her particular situation. For these reasons, the Tribunal finds, on a balance of probabilities, that the Appellant was a resident of Canada under the OAS Act from October 13, 2002, to February 10, 2007. During that period, she had a lease with her spouse until June 30, 2003. After that, she, along with her spouse, moved in with her son S., who looked after them. Until late March 2007, Quebec's social assistance program paid her and her husband last-resort assistance. Most of her children were still in Canada at the time, with F. and S. having gone back to Algeria around April 2006 and in 2007, respectively, to get married and have children themselves.

[68] Although the Appellant and her spouse still have a house in the latter's name in Algeria, the Tribunal is of the view that the last-resort assistance payments from Quebec's social assistance program and the fact that most of the couple's immediate family is also in Canada show stronger ties to Canada than to Algeria and tilt the scales toward Canadian residence until February 10, 2007. The Tribunal is also of the view that the Appellant has cast a reasonable doubt in the Tribunal's mind regarding her presence in Canada until February 10, 2007.

[69] However, the situation changed on February 11, 2007, with the Appellant's admission on her 2009 Canadian passport application made in Algiers. On her application, she admitted to residing in Algeria on February 11, 2009, and to having lived there for at least two years before signing the application. Asked about this, she testified that she had given an address in Algeria because she was there, only to later say that it was a mistake. The Tribunal prefers the information she provided on her 2009

and 2014 Canadian passport applications, and it places significant weight on these admissions on her passport applications.

**Period from February 11, 2007, to July 19, 2018**

[70] The Tribunal finds, on a balance of probabilities, that the Appellant was not a resident of Canada under the OAS Act from February 11, 2007, to July 19, 2018.

[71] On her 2009 and 2014 Canadian passport applications, which she signed herself, the Appellant not only identified the same home address in Algiers but also confirmed having lived there in the two years before signing those applications. The Tribunal understands that she might have made a mistake when providing her home address on one passport application, but she did this twice while also confirming in another section of those same forms that she had lived there in the two years before signing those passport applications. Because of this, the Tribunal finds it unlikely that she made a mistake.

[72] The Tribunal cannot help but note that, although the Appellant has some ties to Canada, her ties to Algeria have been stronger since February 11, 2007. On that date, she admitted to having her residence in Algeria on her 2009 Canadian passport application, which she submitted in Algiers. However, that is just one of the factors from *Ding* that the Tribunal has to consider. In addition, the date of February 11, 2007, roughly coincides with the return of two of her children to Algeria. Because of her marriage, she still has a house in Algeria, which is still in her husband's name on paper despite his death, compared with a room in the home of one of her two daughters in Montréal. Moreover, most of her immediate family is in Algeria. The Tribunal also notes that she has regularly spent time in Algeria since March 23, 2002, and that her trips are frequent and lengthy, lasting as long as 384 consecutive days when her spouse died in 2015. In particular, based on the table above, from October 29, 2010, to July 19, 2018, she spent a total of 699 days in Canada, compared with 2,205 in Algeria. Plus, her plane tickets, issued in Algiers, are Algiers-Montréal-Algiers rather than Montréal-Algiers-Montréal.

[73] The Tribunal is satisfied, on a balance of probabilities, that the Appellant was not a resident of Canada under the OAS Act from February 11, 2007, to July 19, 2018, her last documented date of departure from Canada.<sup>56</sup>

[74] A pensioner who is no longer a resident of Canada needs at least 20 years of residence in Canada after the age of 18 to be able to receive the pension outside Canada.<sup>57</sup> **The Tribunal finds that, on the day her application was approved (her 65th birthday), the Appellant had a total of 11 years of Canadian residence. This means that she was eligible for a partial OAS pension of 11/40 from August 2006 to August 2007. Without 20 years of residence after the age of 18, she is not eligible to receive a partial OAS pension for more than six months after she stopped residing in Canada on February 11, 2007, meaning beyond August 2007. She also is not eligible for the GIS benefit as of September 2007.**

## CONCLUSION

[75] Although the Tribunal understands, from a cultural standpoint, the Appellant's situation in her role as a traditional Muslim wife of her generation, the Tribunal has to make a decision in accordance with the OAS Act.

[76] The Minister has jurisdiction to re-decide an applicant's eligibility without having to allege or prove fraud or false statements.

[77] The Tribunal finds, on a balance of probabilities, that the Appellant was a resident of Canada under the OAS Act from May 31, 1995, to February 10, 2007, for a total of 11 years, 8 months, and 11 days.

[78] The Appellant was not eligible for an Allowance benefit for the period from April 2006 to July 2006, since her spouse was not eligible for the OAS and GIS. This is because he, or an estate, did not dispute the Minister's decision within the time limit.

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<sup>56</sup> GD2-101 and GD2-168

<sup>57</sup> Section 3(2) of the OAS Act



[79] The Appellant was eligible for a partial OAS pension and the GIS from August 2006 to August 2007, that is, six months after the end of her Canadian residence as determined in this decision.

[80] The Appellant is not eligible for a partial OAS pension from September 2007 to June 2018, her last documented date of departure from Canada being July 19, 2018,<sup>58</sup> because she was not a resident of Canada and did not yet have the minimum 20 years of residence in Canada needed after the age of 18 to be able to receive that partial OAS pension outside Canada.

[81] The appeal is allowed in part.

François Guérin  
Member, General Division – Income Security

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<sup>58</sup> GD2-101 and GD2-168