



Citation: *TT v Minister of Employment and Social Development*, 2022 SST 531

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

Decision

Appellant: T. T.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 2, 2021 (issued
by Service Canada)

Tribunal member: Virginia Saunders

Decision date: May 26, 2022

File number: GP-22-95

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. T., is eligible for a partial Old Age Security (OAS) pension of 15/40, with an actuarial adjustment (percentage increase) of 36%.

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

Overview

[4] The Appellant moved to Canada in July 2000. She has lived in Canada ever since. She applied for an OAS pension in January 2021, the month she turned 70. She said she wanted her pension to start in February 2021.¹

[5] The Minister of Employment and Social Development (Minister) granted the Appellant a partial pension of 15/40, effective February 2021. This was based on the Appellant's residing in Canada for 15 full years from July 2000 to when she turned 65 in January 2016. The Minister increased the pension amount by 36% because the Appellant didn't start receiving it until she turned 70. The Appellant was to receive \$313.83 per month. The amount would increase with the cost of living.²

[6] The Appellant says her pension should be higher, for the following reasons:³

- She should receive a pension of 20/40, based on 20 full years of residence in Canada from July 2000 to January 2021.
- She should **also** get the 36% increase for deferring her pension to age 70.
- Service Canada told her that her pension would be at least \$400.00 per month.

¹ See GD2-3-5.

² See GD7-2-5 for the initial decision. The Appellant asked the Minister to reconsider. The reconsideration decision is at GD2-39-41.

³ See GD1-1-2.

What I have to decide

[7] I have to decide if the Appellant is receiving the correct amount for her OAS pension.

Reasons for my decision

[8] I find that the Appellant is entitled to a pension of 15/40, with an increase of 36%.

[9] Here are the reasons for my decision.

The law doesn't allow additional residence and a percentage increase

[10] The Appellant's pension can't be based on additional residence **and** a percentage increase. She can only choose one of these options.

[11] The earliest an OAS pension can start is the month after a person turns 65.⁴ But they can decide to start their pension later so they can get a higher amount. The law calls this "voluntary deferral." If the person is already eligible for a partial pension, the law gives them two choices:

1. Their pension can be based on the number of years they resided in Canada up to the day their application is approved, or
2. The pension can be increased by .6% for each month after turning 65 that they waited to receive it.⁵

– The first choice (additional residence)

[12] The first choice comes from the rule about the size of a partial pension. It says a partial pension is based on the number of full years (out of 40) that a person resided in Canada after they turned 18 until their pension application is approved.⁶ If the person

⁴ See section 8 of the OAS Act and section 5 of the *Old Age Security Regulations* (OAS Regulations).

⁵ See section 7.1(2) of the OAS Act.

⁶ See sections 3(2) to 3(4) OAS Act. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

chooses to have their pension start after age 65, their application is approved as of the month before the date they chose to have the pension start.⁷

[13] The Appellant chose to have her pension start in February 2021. So her application was approved as of January 2021. By that time, she had resided in Canada for over 20 years. This means that, if she picked the first choice, she was eligible to receive a partial pension of 20/40. (Only full years count. The period of residence is rounded down to the last full year.⁸)

– **The second choice (percentage increase)**

[14] The second choice comes from a different rule. This rule says the percentage increase is based on what the person would receive when they **qualified** for the pension, not when their application was approved.⁹ This means that if the pension is increased because of voluntary deferral, it is based on what the person would have received when they first qualified. Any years of residence after that are not counted.

[15] The Appellant qualified for her pension in January 2016. That was the month she turned 65. By that time, she had resided in Canada for 15 full years. So she was entitled to a partial pension of 15/40 at the time she qualified. Under the second choice, she would be entitled to a .6% increase in the 15/40 pension for each month from February 2016 to January 2021, when her application was approved. That added up to a 36% increase.

– **The Appellant can't have both choices**

[16] The Appellant says she should get the benefit of both these choices. But the law doesn't allow it. Each choice is a way to calculate a partial pension. Each results in a different pension amount. The law tells the Minister to pay the higher amount, unless a person decides otherwise (that is, to take the lower amount).¹⁰ This shows the choices can't be combined. If the Appellant gets the extra years of residence, she doesn't get

⁷ See section 8 of the OAS Act and section 5(2) of the *Old Age Security Regulations* (OAS Regulations).

⁸ See section 3(4) of the OAS Act.

⁹ See section 7.1(2) of the OAS Act. It says the amount of the deferred pension is “as it is calculated in accordance with subsection 3(3) ... at the time that they qualified for that pension...”

¹⁰ See sections 7.1(3)(b) and (c) of the OAS Act.

the increase that comes from deferring the pension. If she gets the increase from deferring the pension, she doesn't get the extra years of residence.

The Appellant didn't choose which amount to receive

[17] The Appellant didn't choose which amount she wanted, so the Minister decided, correctly, to pay her the higher amount.

[18] The Minister wrote to the Appellant in April 2021 to say it had approved her pension application, with payments to start as of February 2021. She would get \$313.83 per month based on the percentage increase, because it was the higher amount. If she chose to have her pension based on additional residence, she would get \$307.69 per month. The Minister told the Appellant that if she wanted to get the lower amount, she could ask for it in writing.¹¹

[19] The Appellant has never asked the Minister for the lower amount.¹²

[20] The Appellant did say she was concerned that if the pension was based on 15 years of residence, she wouldn't be eligible to receive it if she left Canada. This is because an OAS pension can't be paid to a person who stops residing in or is absent from Canada for more than six months, unless they have 20 years of prior residence.¹³

[21] However, the Minister assured the Appellant that this wouldn't happen. Although the extra five years of residence don't affect the amount of her pension, they do count when deciding if her pension can be paid if she leaves or stops residing in Canada.¹⁴

[22] The Appellant didn't decide otherwise, so the Minister was right to start paying her pension based on the percentage increase because it was the higher of the two possible amounts.¹⁵

¹¹ See GD7-2-3.

¹² I also discussed this possibility with the Appellant at a pre-hearing conference. The Minister's representative again invited her to ask for the lower amount if she wanted. See GD14-5.

¹³ See sections 9(1) to 9(4) of the OAS Act.

¹⁴ See GD7-3. The Minister repeated this at GD14-5 and at the prehearing conference.

¹⁵ See section 7.1(3) of the OAS Act. The Minister's calculation of the amounts is at GD2-15.

– **Information from Service Canada doesn't affect the pension amount**

[23] The Minister investigated and agreed that someone at Service Canada told the Appellant she would get at least \$400.00 per month for her pension, based on 20 years of residence and the percentage increase.¹⁶ But in deciding the amount of the Appellant's pension, I have to do what the law says, not what a government employee told her.

[24] The Minister has the power to fix mistakes by government employees if they cause someone to lose all or part of a benefit.¹⁷ The Minister decided the Appellant didn't lose anything. This is because she received the wrong information **after** she applied, and because she has received all the benefits she was owed based on her wish to have her pension start in February 2021.¹⁸

[25] The Tribunal doesn't have any authority over this process. I can't question the Minister's decision about what happened, or what the result was. The only thing I can do is decide if the Minister followed the law when it calculated and paid the Appellant her OAS pension.

Conclusion

[26] I find that the Appellant is eligible for a partial OAS pension of 15/40, with an actuarial adjustment of 36%.

[27] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section

¹⁶ See GD14-5.

¹⁷ See section 32 of the OAS Act.

¹⁸ See GD14-5.