



Citation: *AM v Minister of Employment and Social Development*, 2022 SST 712

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

## Decision

**Appellant:** A. M.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated July 6, 2021 (issued by Service Canada)

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**Tribunal member:** Jide Afolabi

**Type of hearing:** Videoconference

**Hearing date:** June 22, 2022

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** July 4, 2022

**File number:** GP-21-2114

## Decision

[1] The appeal is dismissed.

[2] The Appellant, A. M., was notified of auto-enrollment for his Old Age Security (OAS) pension, did not decline that auto-enrollment, and did not request to cancel his OAS pension in favour of a deferral until after the legislated time limit.

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

## The facts

[4] The Appellant is 67 years old. He was born on X.

[5] On October 18, 2018, the Minister sent him a letter advising him of the intent to auto-enroll him for the OAS pension. The letter also advised that if he did not want his pension to start on the month after his 65<sup>th</sup> birthday, he could contact Employment and Social Development Canada (Service Canada) to relay his preference.<sup>1</sup>

[6] On September 3, 2019, the Minister sent him a reminder letter indicating that his pension would start automatically on the month after his 65<sup>th</sup> birthday, and outlining the step he could take to decline auto-enrollment.<sup>2</sup>

[7] On October 10, 2019, the Minister sent the Appellant an entitlement letter advising him of the monthly amount of his OAS pension, and of when he would start receiving the pension. Similar to the two previous letters, this letter also provided the Appellant with the step he could take if he disagreed with the Minister's decision.<sup>3</sup>

[8] Shortly after the end of 2019, a T4A (OAS) slip was sent to the Appellant by the Canada Revenue Agency (CRA). The slip showed that, due to the Appellant's high earnings, his entire OAS pension had been clawed back as income tax. As a result, he

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<sup>1</sup> See GD2-20.

<sup>2</sup> See GD2-24.

<sup>3</sup> See GD2-27.

never received bank account deposits that may have led him to question Service Canada about why the government was giving him money.<sup>4</sup>

[9] Shortly after the end of 2020, another T4A (OAS) slip was sent to the Appellant by the CRA. On February 16, 2021, the Appellant called Service Canada about this second slip. According to the Appellant, he called to inquire as he “had not seen one of these T4A (OAS) before and wanted to understand it”. It was over the course of the call that he realized he had been auto-enrolled for his OAS pension.<sup>5</sup>

[10] The Minister’s three letters and the CRA’s two slips were sent by ordinary mail to the same address – the one the Minister and the CRA had on file for the Appellant. As of March 2021, it remained the Appellant’s address. At no time over the course of the Tribunal’s proceedings did the Appellant say that he had moved or otherwise changed his address.<sup>6</sup>

[11] The Appellant says that he did not receive the Minister’s three letters, and the CRA’s first slip.

[12] The Minister says that the Appellant must have received at least one of the three letters, or the first slip sent by the CRA.

## **What the law says**

### **– Notification of auto-enrollment**

[13] Subsection 5(5) of the *Old Age Security Act (OAS Act)* says that if the Minister intends to auto-enroll someone for the OAS pension, the Minister “shall notify the person in writing of that intention”.

[14] Since the word “notify” is not defined in the *OAS Act*, I can rely on the common meaning of the word as would be contained in a dictionary. The Cambridge Dictionary

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<sup>4</sup> See GD2-11. The evidence shows that this document was mailed, but the date of mailing is not provided.

<sup>5</sup> See GD2-13 and GD2-18. The evidence similarly shows that this document was mailed, but the date of mailing is not provided.

<sup>6</sup> See GD2-15.

defines “notify” as “to tell someone officially about something”. The Oxford Dictionary contains a very similar definition.<sup>7</sup>

– **Declining auto-enrollment or cancelling payments**

[15] Subsection 5(7) of the *OAS Act* says that a person the Minister has notified may decline auto-enrollment “before the day on which they attain 65 years of age”.

[16] Subsection 26.1(1) of the *Old Age Security Regulations (OAS Regulations)* says that if OAS pension payments have started, a person may request that they be cancelled “no later than six months after the day on which payment of the pension ... begins”.

[17] So, a person who has been auto-enrolled for the OAS pension has two opportunities to turn it down – by notice to the Minister before the day the person becomes a 65 year-old, or by request to the Minister within six months of the start of payments.

– **Notification options in the *OAS Act***

[18] Parliament gave specific notification instructions for at least two scenarios that relate to the OAS pension. So,

- information concerning some tax matters must be sent by registered mail to a person’s last known address
- personal service backed up by an affidavit is to be used if the law specifically requires it<sup>8</sup>

[19] This tells me that if Parliament also wanted to give specific instructions about how the Minister must notify a person of auto-enrollment, Parliament would have done

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<sup>7</sup> See <https://dictionary.cambridge.org/dictionary/english/notify> and <https://www.oxfordlearnersdictionaries.com/definition/english/notify>

<sup>8</sup> See subsection 37(2.9) of the *OAS Act*, and subsection 40(3) of the *OAS Regulations*.

so. The fact that Parliament simply said the Minister must “notify” means that Parliament wanted the Minister to have a broad range of options.

[20] In notifying a person in writing about auto-enrollment for the OAS pension, the options open to the Minister would include

- ordinary mail
- registered mail or courier
- personal service, which is also known as “process service”, and is typically backed up by an affidavit
- email
- posting to a person’s online account, like the CRA’s My Account
- text to a person’s smart phone

– **What must be proven**

[21] The “onus” is on the Minister to prove that a person has been notified of auto-enrollment. That is, Parliament has placed the responsibility on the Minister to do it, and to prove that it has been done.

[22] In a matter such as this, concerning a benefit administered by the government, the legal requirement is proof on a “balance of probabilities”. That means the Minister must prove that it is more likely than not that a person has been notified of auto-enrollment. This can be compared against the legal requirement to prove something “beyond a reasonable doubt” – which is a tougher requirement, and which is not the requirement that applies to issues concerning an OAS pension.<sup>9</sup>

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<sup>9</sup> See *F.H. v. McDougall*, [2008] 3 S.C.R. 41; and *Stetler v. Ontario Flue-Cured Tobacco Growers’ Marketing Board*, 2005 CanLII 24217 (ON CA).

[23] Probability matters, and while conclusive evidence would be nice, it is not required.

[24] If the Minister wants to increase the probability that a person has received a notification of auto-enrollment, the Minister could repeat the written notices sent to that person. That could mean one of the following approaches:

- using one of the six options I listed earlier, repeated two or more times
- using a combination of any two or more of those six options, with each done once
- using a combination of any two or more of those six options, repeated two or more times

## **What this case is about**

[25] Looking at the facts and looking at the law, it is clear that I have to decide two things:

- whether, on a balance of probabilities, the Minister fulfilled the requirement to notify the Appellant of auto-enrollment for his OAS pension
- if the Minister fulfilled that requirement, whether the Appellant is entitled to decline auto-enrollment after attaining 65 years of age, or to cancel his OAS pension more than 6 months after the payments started

## **Reasons for my decision**

### **– The Minister fulfilled the requirement to notify the Appellant**

[26] The law specifically says that the notification of auto-enrollment for the OAS pension must be in writing. It cannot, for example, be by way of a phone call, or by way of an in-person appointment at a Service Canada office.

[27] Regardless of how it is done, whether by ordinary mail or courier or online account login, the one thing that all types of written notification have in common is that they rely on knowledge of the contact information of the person to be notified.

[28] So, by specifying that the Minister must notify persons in writing about auto-enrollment for the OAS pension, the law actually, implicitly, places a prior requirement on Canadians – to ensure that their contact information with Service Canada is up to date, so that the Minister can rely on it.

[29] In this case, the Appellant has not stated that his mailing address was different from the one used by Service Canada and by the CRA. In fact, he used that mailing address in corresponding with Service Canada about his OAS pension cancellation request.<sup>10</sup>

[30] With the correct mailing address available, the Minister chose one of the steps I described earlier to increase the probability that the Appellant would receive the notification of his auto-enrollment. The option the Minister chose was to repeat ordinary mail notification twice after the first instance. This is the reason behind the Minister's assertion that, "on a balance of probabilities, the Appellant likely received at least one of these pieces of correspondence"; as well as the assertion that the Minister "has not received any returned or undeliverable mail for the Appellant".<sup>11</sup>

[31] The Appellant has responded that Canada Post makes mistakes – mail is not accurately delivered "100% of the time". In support of his assertion, the Appellant referred to a 2016 survey which found that "91% of Canadian Citizens and 83% of Canadian Businesses were satisfied with the services of Canada Post".<sup>12</sup>

[32] The Appellant did not supply actual evidence of Canada Post's ordinary mail delivery rate. However, keeping in mind that the relevant requirement is proof on a balance of probabilities, the satisfaction percentage referred to by the Appellant – 91% for the general public – still represents a very high probability of delivery if taken as a

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<sup>10</sup> See GD2-18.

<sup>11</sup> See GD4-8.

<sup>12</sup> See GD1-5.

rough proxy for the ordinary mail delivery rate. The probability of non-delivery is further reduced if a second notice is mailed, and reduced further still if a third notice is mailed – as was the case here. I agree with the Minister – on a balance of probabilities, it is likely that the Appellant received at least one of the three letters sent to him.

[33] Despite this very high probability of successful written notification, the Appellant insists that he did not know that he had been auto-enrolled for his OAS pension. In addition, during the hearing, the Appellant stated that he is diligent in the handling of the mail he receives, and even more so with government mail.<sup>13</sup>

[34] I believe the Appellant when he says that he did not know he had been auto-enrolled. However, the evidence suggests to me that this concerns a step beyond the dictionary definition of notification, which is to “tell someone officially about something”. Telling, hearing (or reading), and understanding are three different things. An official responsible for notification must give notice, but it is up to the person receiving notification to take notice and understand its implications. So, using examples relevant to written notification:

- an official may notify someone by ordinary mail or email, but it is up to the person to open, read, and understand the mail
- an official may notify someone by text, but it is up to the person to open the text, read what it says, click on any included link, and understand the information at the internet site the link leads to

[35] Assuming that just one of the three pieces of ordinary mail sent by the Minister made its way to the Appellant, the grounds still exist for me to surmise – despite the Appellant’s statement that he is diligent in the handling of mail – that the Appellant must have failed to take notice of at least that one, critical piece of mail. It may have been misplaced, or not opened, or handled by someone else in the household, or opened and cursorily scanned without an understanding or appreciation of its implications. Whatever the case, the focus must ultimately rest with what the Minister has proven – that on a

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<sup>13</sup> Refer to the oral recording of the hearing.



balance of probabilities, it is likely that the Appellant received one of the three letters sent to him.

– **It is too late for the Appellant to decline or cancel his OAS pension**

[36] Unfortunately, the *OAS Act* and the *OAS Regulations* are not flexible on the question of whether a person can extend the deadline to decline or cancel their OAS pension.

[37] As I have mentioned earlier, a person who has been auto-enrolled for the OAS pension has two opportunities to turn it down – by notice to the Minister before the day the person becomes a 65 year-old, or by request to the Minister within six months of the start of payments.

[38] In this case, the Appellant did not make use of either of the two possible opportunities within its required time limit. As a result, he is now without a recourse – he must keep receiving his OAS pension.

[39] Remarks made in “obiter” are remarks that do not concern the legal reasoning that support a conclusion. A remark I am compelled to make in obiter about this case is that it may be useful for the Minister to apply a test of means or earning capacity to how auto-enrollment is implemented. A person, like the Appellant, who is over 65 years of age but wishes to continue working for a wage so high it would result in a full tax claw-back of OAS pension payments, should not have been selected for auto-enrollment.

## **Conclusion**

[40] I find that the Appellant was notified of auto-enrollment for his OAS pension, did not decline that auto-enrollment, and did not request to cancel his OAS pension in favour of a deferral until after the legislated time limit.

[41] This means the appeal is dismissed.

Jide Afolabi

Member, General Division – Income Security Section