



Citation: *ED v Minister of Employment and Social Development*, 2022 SST 721

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

## Decision

**Appellant:** E. D.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated June 1, 2021 (issued by  
Service Canada)

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**Tribunal member:** Connie Dyck

**Type of hearing:** Videoconference

**Hearing date:** June 30, 2022

**Hearing participants:** Appellant

**Decision date:** July 19, 2022

**File number:** GP-21-1805

## **Decision**

[1] The appeal is allowed.

[2] The Appellant, (E. D.) is eligible to cancel his Old Age Security (OAS) pension. This decision explains why I am allowing the appeal.

## **Overview**

[3] The Appellant was selected for automatic enrolment of his OAS pension starting May 2020, the month after his 65<sup>th</sup> birthday. The Minister of Employment and Social Development (Minister) says it sent several letters to the Appellant telling him of its intention to automatically approve his OAS pension. The Minister received no notice from the Appellant that he wished to delay the start of his OAS pension.

[4] The Appellant says he did not receive the Minister's letters. His OAS pension started in May 2020. However, because of the OAS recovery tax, Canada Revenue Agency (CRA) withheld the entire amount. The monthly amount he received was zero and no deposits were made into his bank account. He didn't know he was receiving an OAS pension until he received a T4A slip early the next year.

[5] The Appellant asked the Minister to cancel his OAS pension. The Minister denied this request because it was past the six months allowed for cancellation. The Appellant appealed to the Social Security Tribunal (Tribunal).

## **Issue at the Hearing**

[6] The Appellant was the only party that attended the hearing. He gave testimony and submissions. I adjourned the hearing to decide if I needed further submissions from the Minister. I have concluded that I do not. The Minister has provided its position on whether the Appellant was notified of its intention to automatically approve his OAS

pension.<sup>1</sup> I believe I have all of the information required to make a decision in this appeal.

## **Issue**

[7] I have to decide whether the Appellant is eligible to cancel his OAS pension after it started in May 2020.

### **The request to cancel the OAS pension was late**

[8] The *Old Age Security Act* (OAS Act) allows individuals to cancel their pension no later than six months after the day the pension starts.<sup>2</sup> The Appellant requested his OAS pension be cancelled on March 29, 2021, which was more than six months after the pension started.<sup>3</sup>

### **The Minister has to notify the Appellant of its intention to waive the requirement for an OAS application**

[9] The Minister submits that when the Appellant was selected for automatic enrolment of his OAS pension, he was notified by mail. The letters were sent in May 2019, February 2020, and April 2020.<sup>4</sup>

[10] The Appellant submits that he did not receive these letters and was therefore not notified that his OAS pension would start in May 2020.

[11] There are three cumulative criteria the Minister must meet to pay a pension.<sup>5</sup>

- i. The person is qualified under subsection 3(1) or (2) of the OAS Act;
- ii. An application therefor has been made by or on behalf of that person and the application has been approved, and;

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<sup>1</sup> These submissions are at GD 3 and GD 5.

<sup>2</sup> See Section 9.3 of the *Old Age Security Act* and Section 26.1 of the *Old Age Security Regulations*.

<sup>3</sup> This letter is at GD 2-23.

<sup>4</sup> Copies of these letters are at GD 2-3 – GD 2-12.

<sup>5</sup> See the *Old Age Security Act* subsection 5(1).

- iii. Except as provided in this Act, no pension may be paid to any person in respect of any period prior to the day on which that person's application is approved.

[12] The Minister is allowed to waive the second criteria. This means the Minister did have the authority to automatically enrol the Appellant for the OAS pension.

[13] However, "if the Minister intends to waive the requirement for an application in respect of a person" they must notify the person in writing of that intention. They must also provide them with the information on which the Minister intends to rely to approve the payment of a pension.<sup>6</sup>

[14] This means if a person is not notified with the information required, the Minister can't waive the requirement for an application and can't pay a pension.

### **The Minister did not notify the Appellant**

[15] I find, on a balance of probabilities, that the Minister did not notify the Appellant that it intended to waive the requirement for an application and provide him with the information on which the Minister intended to rely. As a result, the Minister did not have the legal authority to pay the Appellant's OAS pension.

[16] The Appellant claims that, due to poor mail delivery service, he did not receive notification of the Minister's intention to automatically enroll him for OAS. He was therefore unaware he was required to "opt out" of the automatic enrolment of his pension.

[17] The Minister submits that while the Appellant's mail delivery service may be "spotty", it is not the Minister's responsibility to make arrangements for this. The Minister relied on the mailing address information provided by the Appellant when determining where to send correspondence.

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<sup>6</sup> See subsection 5(4) of the Old Age Security Act.

[18] This is a unique situation. The Minister assumed that Canada Post delivered its letters to the Appellant and therefore he was notified of the Minister's intention to waive the requirement for an application along with the information on which the Minister relied. However, there is no evidence that the Appellant received the letters.

[19] The Oxford Language Dictionary defines "notify" as "become aware of". Because the CRA withheld the Appellant's OAS pension, he could not have been aware that he was receiving it. I find that it is more likely than not, that the Appellant did not receive the letters of May 2019, February 2020, and April 2020. Therefore, he could not possibly "become aware of" the notice. I made this decision relying on the evidence outlined below.

[20] The Appellant's evidence regarding mail delivery in his town is credible. He is not simply claiming he didn't receive the May 2019, February 2020, and April 2020 letters of the Minister. He has provided a longer history that supports mail is not delivered or received on a regular basis or it is delivered to the wrong address.

[21] He said it took five months for him to receive a credit card after cancelling a previous one.<sup>7</sup> The Appellant says the mail delivery issue was brought to the attention of his Member of Parliament in the past. He has also submitted three short surveys from residents of X, Manitoba (where he lives) who confirm that mail is delivered late, not at all, or to the wrong address.<sup>8</sup>

[22] He has to drive approximately 30-40 kilometres from La Salle to Winnipeg to mail a parcel or buy stamps.<sup>9</sup> He made a special trip to Winnipeg to mail the March 29, 2021, letter requesting that his OAS pension be cancelled. He also made the trip to Winnipeg again on April 19, 2021, to mail his request for reconsideration. This was because the local mail service is unreliable.<sup>10</sup>

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<sup>7</sup> This information is at GD 1-11.

<sup>8</sup> This is at GD 4.

<sup>9</sup> This information is at GD 1-5.

<sup>10</sup> This information is at GD 1-11.

[23] The Minister made a reconsideration decision on June 1, 2021, and mailed it to the Appellant.<sup>11</sup> But again, the Appellant did not receive it. He only became aware of the reconsideration decision when he called Service Canada on August 19, 2021.<sup>12</sup> This time, the Appellant could follow-up with a phone call to Service Canada because he knew a reconsideration decision was coming. However, he was not aware that he would be automatically enrolled for an OAS pension, so he would not have been able to call Service Canada or “opt-out”.

[24] The Minister submitted that the Appellant did receive its April 7, 2021, letter on April 19, 2021.<sup>13</sup> The Appellant confirmed this at the hearing. However, even this letter was delivered twelve days after it was mailed. In any event, the fact that the Appellant received one letter is not evidence that he received the May 2019, February 2020, and April 2020 letters notifying him of the Minister’s intention of automatic enrolment.

[25] Therefore, the Appellant was never notified of the Minister’s intention to waive the requirement for an application. This means the Minister didn’t have the legal authority to begin paying the Appellant’s OAS pension. For this reason, I find that the Appellant asked to have the pension cancelled within the time limit set out in the OAS Act.

## **Conclusion**

[26] I find that the Appellant is eligible to cancel his OAS pension.

[27] This means the appeal is allowed.

Connie Dyck

Member, General Division – Income Security Section

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<sup>11</sup> The reconsideration decision is at GD 2-25.

<sup>12</sup> This information is at GD 1-5.

<sup>13</sup> This is at GD 2-22.