



Citation: *MN v Minister of Employment and Social Development*, 2022 SST 861

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: M. N.
Representative: A. N.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 19, 2021 (issued by
Service Canada)

Tribunal member: Adam Picotte

Type of hearing: Teleconference

Hearing date: May 20, 2022

Hearing participants: Appellant
Appellant's representative
Interpreter

Decision date: May 20, 2022

File number: GP-21-2057

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. N., isn't eligible to cancel his Old Age Security benefit. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is 78 years old. He was born in Iran in 1943 and reached the age of 65 on August 16, 2008. He first entered Canada on March 27, 2018 and applied for an Old Age Security benefit on April 11, 2018. The benefit was initially denied, however, he was able to fulfill the minimum requirement for residency by using coverage he obtained through the United States.¹ Upon receipt of this information, the Minister granted the Appellant a benefit on the basis of a partial pension rate of 1/40th.² The Appellant requested a reconsideration of this decision but the decision was maintained. The Appellant then filed a notice of appeal with the Social Security Tribunal on October 20, 2021.

[4] The Appellant says that the application period was an unprecedented time. During this time Covid19 was delaying mail delivery and communication with the Minister was problematic. The Appellant told me that he sent a letter to the Minister on February 8 but did not receive a reconsideration decision until August 16 of that year.

[5] The Appellant says that on an equitable basis, he should be allowed to cancel the OAS and have his additional years of residency count for his pension.

[6] The Appellant further states that the request for reconsideration should count as a request to cancel the OAS pension.

¹ The United States and Canada have a reciprocal agreement that allows citizens of either country to use residency in each country to qualify for benefits in the other. However, this agreement does not enable a pensionable to benefit from this time it is only for the threshold of entitlement.

² GD2-6-8

[7] The Minister says that a request for cancellation of a pension must be made in writing to the Minister no later than six months after the day on which payment of the pension started. As that did not occur in this case, the Appellant cannot cancel his OAS benefit.

What the Appellant must prove

[8] For the Appellant to succeed, he must prove that he made a request in writing to cancel his pension no later than six months after the day on which payment of the pension started.

Reasons for my decision

[9] The Old Age Security Regulations are clear. For a cancellation of a pension an Appellant must make the application in writing to the Minister no later than six months after the day on which payment of the pension started.³

[10] Further any amount already paid must be repaid to the Minister within a further six months after the day on which the request to cancel is made.⁴

[11] The legislation is clear that these criteria must be met in order to cancel an OAS benefit.

[12] I appreciate the arguments that the Appellant raised at the oral hearing. This has created an unfairness for him given his lack of knowledge. He also felt that his reconsideration decision ought to be considered a request to cancel the benefit. However, as the Minister correctly points out, at no place in the request for reconsideration did the Appellant request to cancel his OAS pension benefit. His intent was to obtain a larger partial pension.⁵

[13] The Appellant also argues that a request for reconsideration should be treated as being synonymous to a request for cancellation. I cannot agree on this point. A request

³ Section 26.1 *Old Age Security Act*

⁴ Section 26.1(2)

⁵ GD2-1-34

for reconsideration is, as its name implied meant to reconsider or provide an alternate decision. Cancellation on the other hand is meant to end the effect or presence of something. These are different terms and treated as such in the *Old Age Security Act*.

[14] With respect to using equitable jurisdiction to grant the Appellant's request, I admit that what has happened to the Appellant strikes me as being unfair. He is placed in a precarious situation where he is in receipt of a 1/40th pension. That was clearly not his intent. However, there is nothing he can do to change the situation. With respect to my function as a member of the Tribunal, I am limited in granted his request. The Tribunal lacks in an ability to grant equitable relief. We are only able to make orders in relations to what the legislation provides for. The legislation, here the Old Age Security Act, does not provide for equitable relief and therefore I cannot grant the same.

[15] As a result, I am left to deny the Appellant's appeal. The benefit cannot be cancelled.

Conclusion

[16] I find that the Appellant isn't eligible to cancel his Old Age Security pension.

[17] This means the appeal is dismissed.

Adam Picotte
Member, General Division – Income Security Section