



Citation: *LS v Minister of Employment and Social Development*, 2022 SST 848

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

Decision

Appellant: L. S.
Representative: C. O.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 25, 2021 (issued
by Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: On the record

Decision date: August 15, 2022

File number: GP-22-39

Decision

[1] The appeal is allowed.

[2] I am granting/giving the Appellant an extension of time to ask the Minister to reconsider its decision.

Overview

[3] The Appellant applied for the Guaranteed Income Supplement in May 2019.¹ In a letter dated July 7, 2020 (initial decision), the Minister approved the Appellant's application for the GIS.² The Minister approved the GIS from March 19, 2019. The Appellant disagreed with that decision. She believes she is entitled to the GIS before March 19, 2019.

[4] The Appellant asked the Minister to reconsider its initial decision (request for reconsideration).³ The request for reconsideration is dated November 11, 2020. It is stamped received on November 18, 2020. In the request for reconsideration, the Appellant explains why she missed the 90-day deadline.

[5] In a letter dated October 25, 2021 (reconsideration decision letter), the Minister said, "We cannot consider your reconsideration request because the 90 days have passed."⁴

Matters I have to consider first

Why I decided this appeal on the record

[6] There are different ways I can decide an appeal. I can hold a hearing. I can also decide an appeal on the record. "On the record" means based on documents and

¹ See GD2-9.

² The Minister's initial decision is at GD2-27 to GD2-29.

³ The Appellant's request for reconsideration is at GD2-13 to GD2-15.

⁴ The Minister's reconsideration decision letter is at GD1-1.

submissions provided to the Tribunal.⁵ The *Social Security Tribunal Regulations* provide guidance on how to choose between these two options. The process I choose has to be just, quick, informal, and the least expensive.⁶ A decision on the record can be appropriate:

- when the issues under appeal are not complex
- there are no gaps or unanswered questions on file, and
- credibility is not a main issue.

[7] The issues under appeal are not complex. There is enough information on file for me to decide the issue. The Minister's decisions are on file, and the Appellant made written submissions. There is no indication that credibility is an issue in this appeal. Proceeding on the record is just. It is fair and quick. It is also the most informal and least expensive way to proceed.

An appellant has 90 days to ask the Minister to reconsider a decision

[8] If a person disagrees with the Minister's decision, then that person has 90 days to ask the Minister to reconsider its decision.⁷

[9] If a person waits more than 90 days before asking the Minister to reconsider its decision, then the request for reconsideration is considered to be late.

What the Minister needs to consider when a request for reconsideration is late

[10] The Minister can reconsider a decision even if the request for reconsideration is late. However, the Minister can do this only if it is satisfied that:

⁵ See section 2 of the *Social Security Tribunal Regulations*.

⁶ See section 28 of the *Social Security Tribunal Regulations*.

⁷ See section 27.1 of the *Old Age Security Act*.

- there is a reasonable explanation for requesting a longer period
- the person has demonstrated a continuing intention to request a reconsideration⁸

The Minister must exercise its discretion judicially

[11] The Minister's decision to grant or deny a late reconsideration request is discretionary. The Minister has to exercise its discretion judicially.⁹

[12] This means that the Minister must not have done one of the following:

- acted in bad faith
- acted for an improper purpose or motive
- taken into account an irrelevant factor
- ignored a relevant factor
- acted in a discriminatory manner¹⁰

[13] It is not my role to determine whether the Minister made the correct determination. My role is to determine whether it exercised its discretion in a judicial manner. While the burden is on the Appellant to see that she meets the criteria for extending the time for her to request reconsideration, the Minister bears the burden of demonstrating that it acted in a judicial manner.¹¹

⁸ See Section 29.1(1) of the *Old Age Security Regulations*.

⁹ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

¹⁰ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

¹¹ I am guided by the decision of the Federal Court of Appeal in *Canada (Attorney General) v. Gagnon*, 2004 FCA 351.

What I must decide

[14] I must first decide whether the Appellant's request for reconsideration was late. If it was, then I must decide whether the Minister exercised its discretion judicially when it refused a longer period of time for the Appellant to request a reconsideration.

Reasons for my decision

[15] The Appellant's request for reconsideration was late. The Minister did not act judicially in refusing to give the Appellant more time to make the request. I have decided the Appellant should have more time.

[16] Here are the reasons for my decision.

The Appellant's request for reconsideration was late

[17] In her request for reconsideration, the Appellant was asked, "Is your request for reconsideration being submitted within 90 days after receipt of the decision letter?" The Appellant answered "No".¹²

[18] I accept the Appellant's agreement that she asked for reconsideration after 90 days. This means that her request for reconsideration was late.

The Minister did not exercise its discretion judicially

[19] The Minister did not provide **any** information about how it made its decision. The only information that I have about what it considered is the reconsideration decision letter. In that letter, the Minister said, "[w]e **cannot** consider your reconsideration request because the 90 days have passed"¹³ [emphasis added].

[20] This tells me that the Minister not only did not consider relevant factors, but also did not consider **any** factors other than the fact that the request for reconsideration was

¹² See the Appellant's request for reconsideration at GD2-13.

¹³ See GD1-1.

late. By failing to consider relevant factors, the Minister did not exercise its discretion judicially.

What happens when the Minister does not exercise its discretion judicially?

[21] Since I have found that the Minister did not exercise its discretion judicially, I must now do my own assessment of whether the Appellant's late request for reconsideration should be granted. If I find that it should be granted, then I must refer the matter back to the Minister with a direction to grant the Appellant an extension of time to request a reconsideration. If, on the other hand, I find that the request should not be granted, then I must dismiss the appeal.

The Appellant has provided a reasonable explanation for the delay

[22] In her request for reconsideration, the Appellant explained why the request was late.¹⁴ I will now paraphrase her explanation as follows:

- She was last employed in 1990, and this was her first time managing her own finances and computers.
- Her husband was trying to help her, but he was an American and did not understand Canadian government programs. She also said he had died but not when.
- She also relied on her daughter for assistance, but her daughter moved far from her in October 2020. It took time to get assistance.
- She had difficulty printing forms.
- She had health issues.
- She misunderstood different benefits.

¹⁴ See GD2-13.

- The weather was bad.

[23] The Appellant did not explain how the weather contributed to her delay. Without further explanation, I find that this factor does not provide a reasonable explanation for the delay.

[24] However, I find that all of the other factors are reasonable explanations for the delay. It is easy to understand how these circumstances would delay her submitting her request for reconsideration.

[25] On the same date she made her request, the Appellant also signed a form entitled "Consent to Communicate Information to an Authorized Person."¹⁵ The person named is her daughter. This tells me that she really did need her daughter's help with these matters and took the necessary steps to get the help she needed.

The Appellant had a continuing intention to request a reconsideration

[26] The Appellant believes she is entitled to the GIS before March 19, 2019. She asked the Minister to reconsider its initial decision as soon as she was able to. She signed a consent form to allow her daughter to help her. When her request for reconsideration was denied, she appealed that decision to this Tribunal.

Conclusion

[27] The Minister did not exercise its discretion to consider the Appellant's request judicially. The Appellant provided a reasonable explanation for the delay. She also had a continuing intention to request reconsideration. Therefore, she is allowed more time to request a reconsideration. The Minister must reconsider its initial decision.

[28] This means the appeal is allowed.

Wayne van der Meide
Member, General Division – Income Security Section

¹⁵ See GD2-16.