



Citation: *LC v Minister of Employment and Social Development*, 2022 SST 965

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

Decision

Appellant: L. C.
Representative: E. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated April 15, 2021 (issued by
Service Canada)

Tribunal member: Carol Wilton

Type of hearing: Videoconference

Hearing date: May 27, 2022

Hearing participant: Appellant's representative

Decision date: May 30, 2022

File number: GP-21-1518

DECISION

[1] The Appellant, L. C., is not entitled to an increase in the amount of her *Old Age Security* (OAS) pension.

[2] These reasons explain why I am dismissing the appeal.

Overview

[3] The Appellant moved to Canada in June 1996. She turned 65 in August 2015. She could have applied for an OAS pension at that time, but she did not. She waited until July 2020.¹ The Minister approved the application, with payment effective as of September 2020. The Appellant began receiving a partial pension of 19/40ths, based on her 19 years of residence in Canada to age 65. The Minister also stated that it increased the amount of the pension by 36% because the Appellant had waited five years to apply for it.

[4] On reconsideration, the Minister maintained its position that the Appellant had received the maximum allowable amount of the OAS pension.² The Appellant appealed the reconsideration decision to the General Division of the Social Security Tribunal (Tribunal).

[5] The Appellant says her pension amount should be higher. She says she should get credit for her years of residence in Canada between when she turned 65 and when she applied for the pension in 2020. She also thinks she should get appropriate credit for deferring payment of the pension to 2020.³

[6] The Minister says the Appellant can get credit for additional residence, or benefit from deferral, but she cannot do both.⁴

¹ GD2-8

² GD1-21

³ Subsection 7.1(2) of the OAS Act states that a partial monthly pension is increased by .6% for each month after the age of 65 up until the time the application is approved.

⁴ Minister's submission, February 4, 2022, GD3

[7] The Appellant also asked that I award her damages for psychological injuries the Minister inflicted on her, and grant her a default judgment because the Minister did not attend the hearing.

Matters I must consider first

[8] The Appellant has mental health issues. She decided not to appear at the hearing. Her husband, E. C., appeared on her behalf. He holds a power of attorney for her⁵ and was her representative.

What I have to decide

[9] Is the Appellant receiving the maximum allowable amount of her partial OAS pension?

[10] Do I have the authority to award damages or to grant a default judgment in favour of the Appellant?

The Minister awarded the Appellant the maximum OAS pension to which she was entitled

[11] The Minister correctly decided the Appellant was entitled to a partial OAS pension of 19/40ths increased by 36% and payable as of September 2020.

[12] The Minister calculates an appellant's OAS entitlement by dividing the number of years of residence in Canada by 40, then multiplying the resulting figure by the full OAS rate at the first eligibility date.⁶

⁵ GD2-21

⁶ This is the latest of: the requested start date, the appellant's 65th birthday, the date she established residence, or 11 months before the Minister received the application. The latest of these is the requested start date of September 2020.

[13] The Minister stated that the full OAS rate at the first eligibility date was \$613.53.⁷ Using the formula in the previous paragraph, the base number for the Appellant's OAS payment was \$291.43.⁸

The Appellant was entitled to a pension of 19/40ths increased by 36%

[14] The Appellant qualified to receive an OAS pension in September 2015. Because she did not apply for it until July 2020, she was entitled to an increase in the pension amount. There were two ways that could happen:

Option 1: She would get credit for extra years of residence up to the day before the application was approved; or

Option 2: She would get an increase of .6% for each month she deferred her pension, starting in July 2013 (when the deferral law first came into force) and ending with the month her application was approved.⁹

[15] If a person gets the extra years of residence, they do not get the increase that comes from deferring the pension. The OAS Act says the amount of the deferred pension is "as it is calculated in accordance with subsection 3(3) at the time that they become qualified for the pension."¹⁰ That means if the pension is increased because of deferral, it is based on the pension amount the person would have received when they first qualified. Years of residence after that are not counted.

[16] Under Option 1, the Appellant was eligible for a partial pension of 24/40ths. That was based on 24 full years of residence in Canada from June 1996 to August 2020 (the day before the application was approved).¹¹ The Minister determined that under Option 1, the Appellant would be entitled to \$368.12 per month.

⁷ GD2-40

⁸ GD2-11

⁹ Subsections 3(3), 7.1(2) and 7.1(4) *Old Age Security Act*

¹⁰ Subsection 7.1(2) *Old Age Security Act*

¹¹ The OAS only counts full years when calculating the amount of a partial pension: subsection 3(4) of the *Old Age Security Act*

[17] Under Option 2, the Appellant's pension would increase by .6% for each month she deferred her pension after she turned 65. She was entitled to 60 months of this increase, for a total of 36%. The Minister determined that the Appellant was entitled to 19/40ths of a full OAS pension, because she had 19 full years of residence in Canada when she first qualified in August 2015. With the actuarial adjustment, the Appellant was entitled to a monthly OAS payment of \$396.34.¹²

[18] Unless a person decides otherwise, the Minister bases their pension amount on whichever of these two options gives the higher amount.¹³ Using the date the Appellant's application was approved, the Minister calculated that under Option 1 she would receive about \$28 less per month than she would under Option 2.¹⁴ The Appellant did not say anywhere that she wanted to receive the lower amount, so the Minister granted her pension using Option 2.

[19] A pension is payable beginning with the month after the Minister approves the application.¹⁵ The Minister approved the Appellant's pension in August 2020, and her payments started in September 2020.

I cannot award the Appellant damages or a default judgment

[20] The Tribunal is created by law. My jurisdiction (authority) is limited to the powers granted by the Tribunal's enabling legislation.¹⁶

[21] The Tribunal's enabling legislation gives me authority to decide whether the Minister correctly calculated the amount of the Appellant's OAS payment. It does not give me the authority to award the Appellant damages. Therefore, I am unable to award the Appellant damages for "psychological injury inflicted on her by the [Minister]," or for "her injured dignity and self-respect."¹⁷

¹² GD2-42

¹³ Subsection 7.1(3) *Old Age Security Act*

¹⁴ See the Minister's calculations at GD2-19

¹⁵ Subsection 8(1) *Old Age Security Act*

¹⁶ See subsection 64(1) of the *Department of Employment and Social Development Act*.

¹⁷ GD1-8

[22] The Appellant's representative also requested that I decide in the Appellant's favour based on the Minister's failure to appear at the hearing (default judgment). Again, there is no provision in the legislation that would allow me to do this.

[23] The Tribunal's *Regulations* say that I may proceed if a party fails to appear at the hearing, if I am satisfied that the party received the notice of hearing.¹⁸ I am satisfied that the Minister received the notice of hearing.¹⁹ In addition, the Minister provided submissions to the Tribunal.²⁰

CONCLUSION

[24] The Minister calculated the Appellant's OAS pension so as to give her the maximum amount to which she was entitled.

[25] The appeal is dismissed.

Carol Wilton
Member, General Division - Income Security

¹⁸ Subsection 12(1) of the *Social Security Tribunal Regulations*

¹⁹ The Tribunal emailed the notice of hearing to the Minister: GD A.

²⁰ GD3