



Citation: *RS v Minister of Employment and Social Development*, 2022 SST 1056

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** R. S.

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

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**Decision under appeal:** General Division decision dated September 2, 2022  
(GP-22-440)

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**Tribunal member:** Neil Nawaz

**Decision date:** October 17, 2022

**File number:** AD-22-664

## Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

## Overview

[2] The Claimant, R. S., is seeking an Old Age Security Allowance for the Survivor (Allowance).

[3] The Claimant's first wife passed away in August 1998. The Claimant married his second wife in October 2000. Before turning 60 in September 2021, the Claimant applied for the Allowance.<sup>1</sup>

[4] The Minister denied the application because, in her view, the Claimant could not be a survivor if he had remarried. The Claimant appealed the Minister's denial to the Social Security Tribunal.

[5] The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It agreed with the Minister that, under the terms of the *Old Age Security Act* (OASA), the Claimant was ineligible for the Allowance.

[6] The Claimant applied for permission to appeal to the Appeal Division. In his application, he said that, with his second wife in a group home, he was having trouble making ends meet.

[7] The Tribunal sent a letter to the Claimant reminding him that the Appeal Division can only look at specific types of error on the part of the General Division. The Tribunal asked the Claimant to provide further reasons for his appeal within a reasonable timeframe.<sup>2</sup>

[8] In a letter dated October 9, 2022, the Claimant replied that his monthly Canada Pension Plan cheque was not enough to cover his expenses. He said that his financial

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<sup>1</sup> See Claimant's application for the allowance dated June 21, 2021, GD2R-13.

<sup>2</sup> See Tribunal's letter requesting additional information dated October 4, 2022.

situation was especially severe because the Office of the Public Guardian took his wife's benefits to pay for her accommodation.<sup>3</sup>

## Issue

[9] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>4</sup>

[10] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>5</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>6</sup> This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>7</sup>

[11] I have to decide whether the Claimant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

## Analysis

[12] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant does not have a reasonable chance of success on appeal.

[13] The eligibility requirements for the Allowance are set out in section 21 of the OASA. This provision states that an Allowance may be paid to a survivor who has reached 60 but not age 65, who has resided in Canada for at least 10 years, and who has legal resident status on the date before the day the application is approved.

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<sup>3</sup> See Applicant's correspondence dated October 9, 2022, AD10B.

<sup>4</sup> See *Department of Employment and Social Development Act* (DESDA), section 58(1).

<sup>5</sup> See DESDA, sections 56(1) and 58(3).

<sup>6</sup> See DESDA, section 58(2).

<sup>7</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[14] The term “survivor” is defined in section 2 of the OASA to mean a person whose spouse or common-law partner has died and who has not thereafter become the spouse or common-law partner of another person.

[15] According to this definition, a person who has remarried after being widowed cannot receive an Allowance. I don’t see an arguable case that the General Division made an error in how it interpreted the law.

[16] I am aware that the Claimant has financial difficulties, but that is not something the Tribunal can consider. The General Division was bound to follow the letter of the law, and so am I. Neither of us can disregard the explicit terms of the OASA and award benefits to claimants simply because we sympathize with them. The Claimant may regard this outcome as unfair, but we can only exercise the powers granted to us by the Tribunal’s enabling statute.<sup>8</sup>

## Conclusion

[17] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, permission to appeal is refused.



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Member, Appeal Division

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<sup>8</sup> *Pincombe v Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA).