



Citation: *RS v Minister of Employment and Social Development*, 2022 SST 1057

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: R. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 16, 2022 (issued
by Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Teleconference

Hearing date: August 29, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: September 2, 2022

File number: GP-22-440

Decision

[1] The appeal is dismissed.

[2] The Appellant, R. S., isn't eligible for an Allowance for the Survivor ("allowance") under the *Old Age Security Act* (OAS Act). This decision explains why I am dismissing the appeal.

Overview

[3] The facts of the Appellant's marital history are not in dispute. The Appellant married R. S. (the Appellant's "first wife") on July 2, 1997.¹ The Appellant's first wife died on August 18, 1998.² The Appellant married D. S. (the Appellant's "second wife") on October 7, 2000.³

[4] The Appellant applied for an allowance on June 21, 2021.⁴ The Minister of Employment and Social Development (Minister) denied the application.⁵ The Appellant appealed to the Social Security Tribunal's General Division. The Appellant says that he is the survivor of his first wife. He says that his second wife has been in a group home since July 2013. He says that his benefits are not enough to live on.

What the Appellant must prove

[5] For the Appellant to succeed, he must prove he is the survivor of his first wife as defined by the OAS Act.

¹ See GD2R-19.

² See GD2R-20.

³ See GD2R-29.

⁴ See GDR2-13 to GD2R-16.

⁵ See GDR2-21 to GDR2-22.

Reasons for my decision

[6] The OAS Act defines survivor as a person whose spouse or common-law partner has died and who has not become the spouse or common-law partner of another person.⁶

[7] The Appellant remarried after his first wife died. That means he was no longer the survivor of his first wife, as defined by the OAS Act. As a result, he isn't entitled to an allowance.

[8] The Appellant says that his benefits are not enough to live on.

[9] He explained that his second wife is in a group home and would not return home. He said she gets her benefits and he gets his. He said he cannot survive based on his current level of income.

[10] He said that he still files his income tax as a widower.

[11] The Tribunal is created by legislation (law). That means that I have to interpret and apply the law as it is. I cannot change or ignore the law, even if it causes problems for the Appellant.

Conclusion

[12] I find that the Appellant isn't eligible for an allowance because he is not a survivor.

[13] This means the appeal is dismissed.

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

⁶ See section 2 of the *Old Age Security Act*.