Citation: *MG v Minister of Employment and Social Development*, 2022 SST 1432

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	M. G.
Respondent:	Minister of Employment and Social Development
Representative:	Érélégna Bernard

Decision under appeal:	General Division decision dated August 18, 2022 (GP-22-842)

Tribunal member:	Neil Nawaz
Type of hearing:	On the Record
Decision date:	December 13, 2022
File number:	AD-22-747

Decision

[1] The appeal is dismissed. The General Division did not make any errors when it found that the Claimant is not entitled to additional benefits.

Overview

[2] The Claimant is an Old Age Security pensioner who has been periodically receiving the Guaranteed Income Supplement (GIS) since 2013. In some years, the Claimant, or his accountant, did not file income tax returns with the Canada Revenue Agency (CRA). With no information about the Claimant's income, Service Canada did not automatically renew his GIS for those years. When the Claimant filed his income taxes years later, Service Canada restored his GIS but paid him only 11 months of retroactive benefits.[1]

[3] The Claimant thought that he was entitled to more GIS back payments. He appealed Service Canada's decision to the Social Security Tribunal. The Tribunal's General Division summarily dismissed the appeal because it saw no reasonable chance of success for the Claimant's arguments. The General Division found that the Minister had acted within the law by limiting the Claimant's retroactive GIS payments.

[4] The Claimant is now appealing the summary dismissal to the Tribunal's Appeal Division. He asks for a "fair" decision and suggests that the General Division failed to take the following factors into account:

- He wasn't able to file income tax returns in some years due to medical reasons beyond his control;
- As an immigrant and senior citizen, he didn't realize that not filing income tax returns would lead to the termination of his GIS;

[1] See Service Canada's reconsideration decision letter dated November 30, 2021. It summarizes the Claimant's GIS application and entitlement history. Among other things, it indicates that the Claimant filed no income tax returns between March 2017 and December 2020. On the latter date, the Claimant filed taxes for the missing years. Service Canada then approved the Claimant for the GIS back to January 2020, which it said was maximum period of retroactivity allowed by law.

- He was further delayed in taking action by the pandemic;
- Once his GIS eligibility was restored, no one told him that his back payments would be limited; and
- The 11-month limit doesn't align with CRA's policies, which allow income tax return to re-assessed for up to seven years after filing.

[5] The Claimant also refers to a previously submitted letter, in which his accountant asked the Tribunal to grant his client additional benefits because of extenuating circumstances.[2]

[6] I have decided that there is no need for an oral hearing in this case. The issues are clear, and so are the relevant facts and the applicable law. This decision is based on my review of the documents already on file—the Claimant's submissions, as well as the information that was available to the General Division.

Issues

[7] 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 use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[3]

[8] As I see them, the issues in this appeal are as follows:

- Did the General Division apply the correct test for summary dismissal?
- Was the General Division wrong to find no way around the 11-month retroactive payment limit?

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[2] See letter dated August 17, 2022 from Andrew Walsh, CPA, GD6-2.
[3] See *Department of Employment and Social Development Act* (DESDA), section 58(1).

- Do any of the Claimant's reasons for appealing have merit?

[9] 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 General Division did not make any errors.

Analysis

[10] The Claimant comes to the Appeal Division repeating essentially the same arguments that he made at the General Division. He says that extenuating circumstances—his age, his medical condition, the pandemic—prevented him from filing his income tax returns on a timely basis.

[11] However, to succeed at the Appeal Division, a claimant must do more than simply re-argue their case. Claimants must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law.

[12] The Claimant has not persuaded me that the General Division made any errors.

The General Division applied the correct test for summary dismissal

[13] The General Division disposed of the Claimant's appeal in the appropriate way. In its decision, the General Division correctly stated that it could summarily dismiss an appeal if it had no reasonable chance of success.[4] I am satisfied that the General Division understood the legal test and properly applied it to the facts.

[14] The threshold for summary dismissal is high.[5] It is not enough to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. A decision-maker must determine whether it is **plain and obvious** on the record that the appeal is bound to fail.[6] The question is **not** whether the decision-maker must dismiss the appeal after giving full consideration to the facts, the case law, and the parties'

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[4] See General Division decision, paragraph 9, citing DESDA section 53(1).
[5] See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v Canada (Attorney General)*, 2004 FCA 264.
[6] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

arguments. Rather, the question is whether the appeal is **destined to fail**, regardless of whatever evidence or arguments might be submitted at a hearing.

[15] In this case, the General Division dismissed the Claimant's appeal because it could find no error in how the Minister applied the relevant provisions of the *Old Age Security Act* (OASA). In doing so, the General Division correctly applied a high threshold, concluding that the appeal had no reasonable chance of success. For reasons that I will explain in more detail, it was plain and obvious on the record that the Claimant was bound to fail.

There is no way around the 11-month retroactive payment limit

[16] The General Division assessed the record and concluded that, having effectively re-applied for the GIS in December 2020, the Claimant was limited to 11 months of retroactive payments.

[17] This restriction is mandated by law. As the General Division correctly noted, section 11(7)(a) of the OASA limits payment of the GIS to no "more than 11 months before the month in which the application is received" by the Minister. There are no allowances or exceptions. The Claimant's reasons for not filing his tax returns are therefore rendered irrelevant, as are his medical problems or any other factor such as the pandemic. As a result, the Claimant was statute-barred from receiving payment any earlier than January 2020.

None of the Claimant's reasons for appealing have merit

[18] Having reviewed its decision, I am satisfied that the General Division did not breach any principle of natural justice or commit an error of fact or law.

[19] As much as I may sympathize with the Claimant, my hands are tied by the OASA and the laws that govern the Tribunal. In its decision, the General Division considered whether it had the discretion to simply order a "fair" result. In the end, it decided that it did not, and I see no reason to interfere with this conclusion.

[20] The Claimant finds it unfair that senior citizens such as himself are denied a benefit merely because they may have been delayed—for understandable reasons—in filing their taxes, yet this is the outcome that Parliament prescribed when it enacted the OASA. As administrative tribunals, both the General Division and the Appeal Division are limited to the powers conferred by their enabling legislation. We lack the power to simply ignore the letter of the law and order a solution that we might think is fair.

[21] Such power, known as "equity," has traditionally been reserved to the courts, although even they typically exercise it only if there is no adequate remedy at law. In a case called *Esler*,[7] for example, the Federal Court reversed an attempt by the General Division's predecessor tribunal to extend retroactive OASA benefits beyond the legislative limitation, stating: "The Review Tribunal is a pure creature of statute and as such, has no inherent equitable jurisdiction which would allow it to ignore the clear legislative provision contained in subsection 8(2) of the Act and use the principle of fairness to grant retroactive benefits in excess of the statutory limit."[8]

Conclusion

[22] The Claimant has not shown how the General Division erred in upholding the Minister's decision to limit retroactive GIS payments.

[23] The appeal is therefore dismissed.

Member, Appeal Division

[7] See *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.
[8] Here, the Federal Court was talking about section 8(2) of the OASA, which limits retroactive payment of the OAS pension to one year before the date of application. The principle applies just as well to section 11(7).