



Citation: *IF v Minister of Employment and Social Development*, 2022 SST 1366

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

Decision

Appellant: I. F.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 26, 2021 (issued
by Service Canada)

Tribunal member: Antoinette Cardillo
Type of hearing: On the Record
Decision date: May 12, 2022
File number: GP-22-55

Decision

[1] The Claimant is not entitled to a longer period to request a reconsideration of the Minister's decision. My reasons are explained in this decision.

OVERVIEW

[2] The Claimant's latest application for an Old Age Security (OAS) pension was date stamped by the Minister on May 7, 2019¹.

[3] On May 29, 2019, the Minister approved the old age pension at the rate of 40/40th, with an actuarial adjustment of 8.4%, effective in June 2018, 11 months before the application was received by the Minister.²

[4] The Claimant was dissatisfied with the retroactive payment she had received and requested a reconsideration on May 12, 2021.³

[5] According to the Minister, she did not apply for reconsideration within 90 days of receiving the initial decision. The reconsideration request was received 721 days after the initial decision; it was therefore considered received after one year of the time limit of 90 days and the Minister had to consider four (4) criteria to see whether the reconsideration should be accepted or denied. On October 26, 2021, the Minister denied the Claimant's request for an extension of the 90-day time limit to apply for reconsideration.⁴

[6] The Claimant appealed the Minister's decision to the Social Security Tribunal on January 4, 2022.⁵

¹ GD2-3

² GD2-26

³ GD2-30

⁴ GD2-31 and GD2-33 to 35

⁵ GD1

ISSUE

[7] Did the Minister exercise its discretion judicially when deciding the Claimant was not entitled to a longer period to request a reconsideration?

ANALYSIS

i. What is required of the Minister when exercising discretion?

[8] The authority of the Minister to allow or refuse additional time to make a late request for reconsideration is discretionary. Specifically, the Minister may allow a longer period but is not required to do so as long as the Minister acts judicially. The *Old Age Security Act* (OAS Act) and the *Old Age Security Regulations* (OAS Regulations) set out the proper form including relevant circumstances the Minister must consider when deciding whether to allow a longer period for a person to make a request for reconsideration.

[9] The Minister may allow additional time if satisfied the Claimant has a reasonable explanation for the delay and demonstrated a continuing intention to request the reconsideration. If the reconsideration request comes more than one year after the claimant was notified of the decision, the Minister must also be satisfied that (i) the request has a reasonable chance of success and (ii) no prejudice would be caused to any party by allowing a longer period to make the request. The Minister must consider all four (4) criteria and be satisfied that all are met.⁶

[10] As stated, the Minister's authority to grant or refuse the request must be exercised judicially⁷. A discretionary power is not exercised "judicially" if it can be established that the decision-maker:

- a) acted in bad faith,
- b) acted for an improper purpose or motive,
- c) took into account an irrelevant factor,
- d) ignored a relevant factor, or
- e) acted in a discriminatory manner⁸.

⁶ Subsection 27.1(1) of the OAS Act; subsections 29.1(1) to (3) of the OAS Regulations

⁷ *Canada (A.G.) v. Uppal*, 2008 FCA 388

⁸ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

[11] My role is not to determine the outcome of the reconsideration or if the Minister made the correct decision but whether the discretion was exercised in a judicial manner. The Claimant has the burden of proof in establishing that the Minister failed to do so.

ii. I conclude the Minister exercised the discretion judicially

[12] The Minister had to consider the following four (4) criteria:

a) Reasonable explanation for requesting an extension of time

[13] The Minister considered the Claimant's explanation, including, the period of time she needed to take care of her ill parents, the mourning period, the delays surrounding the settlement of the estate and the difficulty of finding documents following a fire. The Minister concluded that the Claimant had a reasonable explanation for the delay in her request for reconsideration.⁹

b) Continuing intention to request a reconsideration

[14] The Minister considered the Claimant's continuing intention to ask for a reconsideration. The Minister said that the file confirmed that she only contacted the Minister's telephone services once on January 16, 2020, which was well after the May 29, 2019 decision to grant her the OAS pension was made. The Minister added that although this call was outside the normal 90-day period to request a reconsideration, the Claimant was instructed to submit a written request. Her letter of reconsideration was dated April 25, 2021, and there was no indication that the Claimant communicated again by telephone or letter with the Minister regarding her OAS pension. The Minister concluded that the Claimant had not shown a continuing intention to ask for a reconsideration since her initial decision letter contained clear instructions regarding the reconsideration process and that she had also been advised by telephone to submit a written request. She submitted her request more than 90 days after the initial decision and more than one year after she called the Minister's telephone service.

c) Reasonable chance of success

⁹ GD2-30

[15] The Minister had to consider if the request had a reasonable chance of success since the Claimant submitted her request more than one year after the initial decision.

[16] The Claimant's OAS pension was granted on May 29, 2019 with an effective date of June 2018. As the application was received on May 7, 2018, the pension was paid retroactively 11 months after receipt. The Claimant asked for a longer period of retroactivity. Because the *OAS Act* does not provide for more than 11 months of retroactive payments, the Minister determined that the reconsideration had no reasonable chance of success, the decision on the application had been made in accordance with the provisions of the *OAS Act*. The Minister also considered the Claimant's statement in her reconsideration request that she did not apply sooner due to missing documents, which she thought were necessary. According to the Minister, this argument was not supported by the evidence on file since a Certificate of Canadian Citizenship was provided by the Claimant back in December 2011 and that she was informed by an agent that no other documents were required, in March 2012.

d) No prejudice would be caused to the Minister or a party

[17] Finally, the Minister considered the unfairness to the Minister or another party if the extension was allowed. The Minister concluded that there would be no unfairness if the extension was allowed as all the documents were still available to examine the application.

[18] After review of the Minister's letter sent to the Claimant on October 26, 2021 refusing her late reconsideration request, I conclude that it does explain why the Minister denied the request.

[19] Also, the Minister considered the Claimant's explanation for the delay, if it was reasonable and if the Appellant demonstrated a continuing intention to request the reconsideration. In addition, because the request for reconsideration was received more than one year after the initial decision was made, the Minister also considered if the

request had a reasonable chance of success and if there would be prejudice to the Minister or another party if the late request for reconsideration was granted.

[20] In reviewing the file, I found no evidence that the Minister acted in bad faith, acted with an improper purpose or motive, acted in a discriminatory manner when it made its determination, took into account an irrelevant factor or ignored a relevant factor. The Minister advised the Claimant of her right to request a reconsideration within 90 days of her initial request being denied. She was also advised when she called the Minister's telephone service to submit a written request. The evidence confirmed that the Claimant made her request for reconsideration outside the 90-day time period and more than one year after the initial decision was made.

[21] The Minister considered the four (4) criteria to determine whether to allow a longer period for the Claimant to make a reconsideration request as provided in the OAS Act and OAS Regulations.

[22] I conclude that the Minister's discretion was exercised judicially in refusing the Claimant's reconsideration request.

CONCLUSION

[23] The appeal is denied. The Minister's decision to refuse the Claimant's request for a longer period to request reconsideration was made in a judicial manner.

Antoinette Cardillo
Member, General Division – Income Security Section