



Citation: *NW v Minister of Employment and Social Development*, 2022 SST 1419

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

## Decision

**Appellant:** N. W.  
**Representative:** S. B.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated January 30, 2021 (issued  
by Service Canada)

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**Tribunal member:** Tengteng Gai

**Type of hearing:** Videoconference

**Hearing date:** July 13, 2022

**Hearing participants:** Appellant  
Appellant's representative  
Interpreter

**Decision date:** August 24, 2022

**File number:** GP-21-570

## Decision

[1] The appeal is allowed in part.

[2] The Appellant, N. W., is eligible for a partial Old Age Security (OAS) pension of 10/40 based on 10 years of residence in Canada. Payments start as of March 2021.

[3] This decision explains why I am allowing the appeal in part.

## Overview

[4] The Appellant was born in Egypt on September 11, 1946.

[5] The Appellant has a son in Canada and a daughter in Egypt. She and her husband were sponsored by their son to immigrate to Canada. They arrived to Toronto and became permanent residents on December 9, 2008. Since then, she has spent time in Canada and Egypt. She has dual Egyptian and Canadian citizenship.

[6] The Appellant applied for an OAS pension on March 1, 2019. She wanted her pension to start as soon as she qualified.

[7] The Minister of Employment and Social Development (Minister) refused the Appellant's application.<sup>1</sup> The Minister maintained this decision on reconsideration.<sup>2</sup> The Appellant then appealed the Minister's decision to the Social Security Tribunal's General Division.

[8] The Appellant argues that she has resided in Canada since December 9, 2008.

[9] The Minister doesn't dispute when the Appellant was present in Canada, but argues that she only has 5 years of residence in Canada.<sup>3</sup> This is based on her

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<sup>1</sup> The Minister of Employment and Social Development (Minister) manages the Old Age Security program for the Government of Canada. See the Minister's decision at GD2-21.

<sup>2</sup> See Minister's reconsideration decision at GD2-4.

<sup>3</sup> See Minister's submissions at GD5-2.

residence from January 10, 2011, to June 17, 2016.<sup>4</sup> The Minister argues that there is insufficient evidence to find residence before and after this period.<sup>5</sup>

## **What the Appellant must prove**

[10] To receive a **full** OAS pension, the Appellant has to prove that she resided in Canada for at least 40 years after she turned 18.<sup>6</sup> This rule has some exceptions, but they don't apply to the Appellant.<sup>7</sup>

[11] If the Appellant doesn't qualify for a full OAS pension, she might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18. For example, a person with 10 years of residence receives a partial pension of 10/40 the full amount.

[12] To receive a partial OAS pension, the Appellant has to prove she resided in Canada for at least 10 years after she turned 18.<sup>8</sup>

[13] The Minister already found that she resided in Canada from January 10, 2011, to June 17, 2016.<sup>9</sup> I don't see any reason to change the Minister's decision.

## **Matters I have to consider first**

### **I accept the documents sent in after the hearing**

[14] The Appellant sent post-hearing documents to the Tribunal immediately after the hearing on July 13, 2022.<sup>10</sup> The documents are translated copies of a property lease in Egypt and a certificate showing a monthly Egyptian pension benefit. The lease is for an apartment unit in Cairo for 365 Egyptian pounds a month, or around \$10 Canadian. The

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<sup>4</sup> See Minister's submissions at GD5-11.

<sup>5</sup> See Minister's submissions at GD5-10 and 13.

<sup>6</sup> See section 3(1)(c) of the *Old Age Security Act (OAS Act)*. The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. She must have also applied for the pension. The Appellant has met these requirements.

<sup>7</sup> See section 3(1)(b) of the *OAS Act*.

<sup>8</sup> See section 3(2) of the *OAS Act*.

<sup>9</sup> See Minister's reconsideration decision at GD2-4; and Minister's submissions at GD5-11.

<sup>10</sup> See Appellant's post-hearing documents at GD7.

certificate shows that she receives a pension from her late husband, amounting to 750 Egyptian pounds a month or around \$50 Canadian.

[15] I accept the documents for two reasons. First, they are relevant to this appeal because they show her ties to Egypt. Second, the Minister had the opportunity to respond, but chose not to.

## Reasons for my decision

[16] I find that the Appellant has resided in Canada for at least 10 years.

[17] I considered the Appellant's eligibility from when she immigrated to Canada on December 9, 2008, until the date of the hearing on July 13, 2022.

[18] The Appellant is eligible for a partial OAS pension of 10/40.

[19] The finding that the Appellant resided in Canada for at least 10 years is based on several factors. I explain these factors below.

### The test for residence

[20] Being present in Canada isn't the same as residing in Canada. "Residence" and "presence" each have their own definition. I must use these definitions in making my decision.

[21] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.<sup>11</sup>

[22] A person is **present** in Canada when they are physically present in any part of Canada.<sup>12</sup>

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<sup>11</sup> See section 21(1)(a) of the *Old Age Security Regulations (OAS Regulations)*.

<sup>12</sup> See section 21(1)(b) of the *OAS Regulations*.

[23] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:<sup>13</sup>

- where she had property, like furniture, bank accounts, and business interests
- where she had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where she had other ties, like medical coverage, rental agreements, mortgages, or loans
- where she filed income tax returns
- what ties she had to another country
- how much time she spent in Canada
- how often she was outside Canada, where she went, and how much time she spent there
- what her lifestyle was like in Canada
- what her intentions were

[24] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.<sup>14</sup>

### **The Appellant resided in Canada for at least 10 years**

[25] The Appellant's evidence of ties to Canada and Egypt are limited, especially evidence of property. As such, I place greater weight on her intentions when determining residence. I also acknowledge the cultural and social dynamics of the Appellant's situation, which explains the limited evidence. She testified that they came to Canada after her husband retired because it is traditional for the son to take care of the parents when they get older. They lived with their son and helped with childcare for their grandchildren. She continued to live with her son after her husband passed away

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<sup>13</sup> See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; and *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>14</sup> See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

in August 2014. She has never worked and was financially reliant on her husband and then son for most living expenses and management of her finances.

[26] I find that the Appellant's ties to Egypt are slightly weaker than her ties to Canada. Her stays in Egypt were mostly temporary. She went because of family or inheritance issues. While she maintained a rental unit in Egypt, she did so because of the low cost and not because she intended to reside in Egypt.

[27] I find that the Appellant **resided in Canada** during the following periods for a total of 11 years and 53 days:

- December 9, 2008, to April 11, 2009 (124 days)
- January 10, 2011, to June 17, 2016 (1986 days)
- June 18, 2016 to March 12, 2017 (268 days)
- November 23, 2017, to the date of the hearing on July 13, 2022 (1694 days)

[28] I find that the Appellant **didn't reside in Canada** from April 12, 2009 to January 9, 2011 (638 days) and from March 13, 2017 to November 22, 2017 (255 days).

– **The Appellant resided in Canada from December 9, 2008, to April 11, 2009**

[29] I find that the Appellant established residence in Canada during this period.

[30] I disagree with the Minister's argument that the Appellant didn't intend to reside in Canada.<sup>15</sup> I believe her testimony that she came to Canada with the intent to establish residency and ordinarily live here, so that her son can take care of her.

[31] The Appellant's intention is supported by her ties to Canada. She was in Canada during this period. She filed taxes for 2008 and 2009.<sup>16</sup> She got a health card and received medical treatment in March 2009.<sup>17</sup>

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<sup>15</sup> See Minister's submissions at GD5-10 to 11.

<sup>16</sup> See Canada Revenue Agency (CRA) documents at GD3-44 and 42.

<sup>17</sup> See cardiologist's report at GD6-231; and imaging results at GD6-239.

– **The Appellant’s residence was interrupted from April 12, 2009, to January 9, 2011**

[32] I find that the Appellant didn’t reside in Canada during this period.

[33] The Appellant resumed residence in Egypt. She was in Egypt with her husband for almost two years. She testified that she went back to care for her sick mother, who had nobody else to care for her. This suggests that she intended to reside in Egypt on a more permanent basis to care for her mother. This is supported by the fact that she returned to Canada shortly after her mother passed away in November 2010.

[34] The Appellant’s evidence of ties to Canada is more limited compared to other periods. Although she filed taxes in 2010, this isn’t enough to show residence for this period.<sup>18</sup>

– **The Appellant resumed her residence from January 10, 2011, to June 17, 2016**

[35] I agree with the Minister that the Appellant resumed residence during this period.

[36] The Appellant intended to resume residence in Canada. She no longer had a compelling reason to reside in Egypt after her mother passed away, so she returned to Canada to continue residing with her son.

[37] The Appellant has evidence of ties to Canada during this period. She filed taxes from 2011 to 2016.<sup>19</sup> She resumed medical treatment.<sup>20</sup> She had a phone.<sup>21</sup> She had a bank account with TD and made withdrawals in 2015.<sup>22</sup>

[38] Although she went to Egypt during this period, she has reasonable explanations for her trips. She testified to the following:

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<sup>18</sup> See CRA documents at GD3-56.

<sup>19</sup> See CRA documents at GD3-40, 46, 49, 53, and 39.

<sup>20</sup> See selection of medical documents from 2011 to 2016 at GD6-3, 187, 214, 245, 287, 150, 169.

<sup>21</sup> See phone invoices from 2014 to 2015 at GD3-26, 8, 4, 21, and 18.

<sup>22</sup> See selection of TD statements at GD3-104, 98, and 80.

- June 7, 2012, to February 1, 2013: she attended the wedding of her grandson. Her husband fell and was hospitalized. This delayed their return to Canada.
- From June 15, 2014, to September 28, 2014: she accompanied her husband to Egypt. Her husband was sick and wanted to pass away in Egypt.
- February 12, 2015, to July 30, 2015: her daughter was diagnosed with cancer. She went back temporarily to help with childcare and support her during treatment.
- September 24, 2015, to November 14, 2015: her brother passed away. She flew back to attend his funeral and stayed to resolve issues with the piece of land she inherited.
- February 11, 2016, to April 4, 2016: she went back because she had to appear as a witness in Egyptian court regarding inheritance issues.

– **The Appellant resided in Canada from June 18, 2016 to March 12, 2017**

[39] I find that the Appellant continued to reside in Canada during this period. This is supported by her ties to Canada. She was in Canada during this time. She continued to receive medical treatment.<sup>23</sup> She had a credit card with the Canadian branch of HSBC and used it in December 2016 and January 2017.<sup>24</sup> She filed taxes in 2017.<sup>25</sup>

– **The Appellant didn't reside in Canada from March 13, 2017 to November 22, 2017**

[40] The Appellant hasn't proven that she resided in Canada during this period.

[41] The Appellant was in Egypt for 255 days. At the hearing, she couldn't recall why she was in Egypt. This makes it difficult to assess if she maintained her intention to

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<sup>23</sup> See X-Ray at GD6-231.

<sup>24</sup> See HSBC statement at GD4-8 to 10.

<sup>25</sup> See CRA documents at GD3-39.



reside in Canada. Unfortunately, she doesn't have persuasive evidence of ties to Canada to overcome this issue.

– **The Appellant resided in Canada from November 23, 2017 to the date of the hearing on July 13, 2022**

[42] The Appellant resided in Canada during this period.

[43] The Appellant testified that she only left Canada for three trips to Egypt. I find that she has reasonable explanations for these trips. She testified to the following:

- February 8, 2018 to May 18, 2018: she went back to sign documents for her inheritance.
- July 11, 2018 to December 14, 2018: she went back again to sign documents for her inheritance.
- August 2020 to April 2022: she went back to resolve outstanding inheritance issues. She had to quarantine in Egypt. She got the Chinese COVID-19 vaccine. She had legal issues getting back to Canada because of this vaccine. She was only able to return shortly after she got two doses of the Pfizer vaccine in March 2022.

[44] The Appellant's residence is further supported by evidence that she continued to attend doctor appointments from 2017 to 2020.<sup>26</sup>

[45] I disagree with the Minister's argument that the Appellant wasn't residing in Canada during this period.<sup>27</sup> I acknowledge that she has limited personal property in Canada. However, I give more weight to her intention. Aside from two periods,<sup>28</sup> she intended to reside in Canada with her son. She has reasonable explanations for her travels to Egypt, which for the most part was to attend family functions or resolve legal issues with her inheritance.

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<sup>26</sup> See selection of medical documents at GD6-81, 100, 88, 109, 18, 30, 41, 50, and 51.

<sup>27</sup> See Minister's argument at GD5-13.

<sup>28</sup> April 12, 2009, to January 9, 2011, and March 13, 2017 to November 22, 2017.

## **The Appellant qualified for a partial OAS pension in February 2021**

[46] The Appellant is eligible for a partial OAS pension of 10/40. She qualified for this pension in February 2021. This is when she had resided in Canada for 10 full years after she turned 18. It is also the approval date of her OAS application.<sup>29</sup>

[47] Although the Appellant accumulated more residence in Canada after the approval date, it doesn't change the amount she receives. This is because her OAS pension can't be increased with subsequent years of residence once her application is approved.

## **When payments start**

[48] OAS pension payments start the first month after the pension is approved.<sup>30</sup> The Appellant's pension was approved in February 2021.<sup>31</sup> This means that the Appellant's pension starts in March 2021.

## **Conclusion**

[49] The Appellant is eligible for a partial OAS pension of 10/40.

[50] This means the appeal is allowed in part.

Tengteng Gai

Member, General Division – Income Security Section

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<sup>29</sup> She was already 65 years old, was a Canadian citizen, and had applied for the OAS pension. Sections 3 to 5 of the *OAS Act* set out these requirements.

<sup>30</sup> See section 8(1) of the *OAS Act*.

<sup>31</sup> The law sets out several possible dates for approval of an OAS pension. The approval takes place on the latest of those dates. In the Appellant's case, the latest date was in February 2021. See section 8 of the *OAS Act* and section 5 of the *OAS Regulations*.