

[TRANSLATION]

Citation: *EL v Minister of Employment and Social Development*, 2023 SST 72

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

Decision

Appellant: E. L.
Representative: C. L.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 15, 2021
(issued by Service Canada)

Tribunal member: François Guérin

Type of hearing: Teleconference
Hearing date: January 24, 2023
Hearing participants: Appellant
Appellant's representative
Respondent

Decision date: January 30, 2023
File number: GP-22-399

Decision

[1] The appeal is dismissed.

[2] The Social Security Tribunal (Tribunal) doesn't have jurisdiction over the issue of the administrative error. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant, E. L., applied for the Allowance for the Survivor (ALWS) benefit on November 30, 2020.¹ On July 16, 2021, the Respondent (Minister) refused the application for the ALWS because E. L. is over age 65 and because, even using a retroactivity of 11 months from the date of receipt of the application, the Appellant would not meet the requirement to be between the ages of 60 and 64.²

[4] The Appellant says that he sent a first application for the ALWS around July 16, 2019.³ According to him, the Minister made an administrative error by not using this application for the ALWS. The Minister says that the only ALWS application it received from the Appellant was the one received on November 30, 2020.⁴

[5] The Appellant asked the Minister to reconsider this decision.⁵ The Minister upheld the decision on reconsideration.⁶ The Appellant appealed this decision to the Tribunal on February 23, 2022.⁷

What the Appellant has to prove

[6] For the Appellant to succeed, he must prove that the Minister received his application for the ALWS benefit before the date the Minister says it received it—that is, November 30, 2020.

¹ GD2-3 to 6.

² GD3-2 at para 2.

³ GD1-12 to 15.

⁴ GD2-3 to 6.

⁵ GD2-26 to 30.

⁶ GD2-31 to 32.

⁷ GD1.

What is the Minister's position?

[7] The Minister says that it received an application for the ALWS from the Appellant on November 30, 2020. It refused the application because the Appellant is over age 65 and because, even using a retroactivity of 11 months from that date, he would not meet the requirement to be between the ages of 60 and 64 to get the ALWS.⁸

What is the Appellant's position?

[8] At the hearing, the Appellant said that he had sent the Minister an application for the ALWS around July 16, 2019.⁹ The Appellant doesn't dispute the date the Minister received the application for the ALWS. But he says that the Minister must have lost his first application and therefore made an administrative error.

Matter I have to consider first

The Appellant was accompanied at the hearing

[9] The Appellant was accompanied by his brother, C. L. He testified during the appeal because he knows the Appellant's situation regarding his communications with the Minister. He said that he was there during the phone calls with the Minister and that he was assisting his brother in his efforts to get the Old Age Security pension, the Guaranteed Income Supplement, and the ALWS. He was sworn in.

[10] The Tribunal reminded the parties that the hearing was informal.

Reasons for my decision and Tribunal's jurisdiction

[11] At the hearing, the Appellant confirmed that he doesn't dispute that he submitted a second application for the ALWS to the Minister and that it was this application that the Minister used to make its decision. The Appellant's complaint is that he submitted a first application for the ALWS to the Minister around July 16, 2019, and that the Minister didn't use it. So, the Appellant says that the Minister made an administrative error.

⁸ GD3-2 at para 2.

⁹ GD1-12 to 15.

[12] At the hearing, the Minister said that it hadn't reviewed the application in terms of an administrative error and that it hadn't made a decision on this. Once a decision is made on the administrative error, the Appellant will have the right to appeal to the Federal Court. The Tribunal doesn't have jurisdiction to deal with issues of administrative error.¹⁰

[13] Section 32 of the *Old Age Security Act* (Act) sets out the measures the Minister can take when a person has been denied a benefit, or a portion of a benefit, as a result of erroneous advice or administrative error.

[14] However, a decision made under section 32 of the Act is the exclusive responsibility of the Minister and therefore doesn't fall within the Tribunal's jurisdiction.

Conclusion

[15] While I sympathize with the Appellant's situation, I have to make my decision based on the evidence on file, his testimony, and the Act.

[16] Based on the Appellant's testimony, the Tribunal finds that the Tribunal doesn't have jurisdiction over an administrative error.

[17] This means that the appeal is dismissed.

François Guérin
Member, General Division – Income Security Section

¹⁰ See section 32 of the *Old Age Security Act*.