Citation: *RP v Minister of Employment and Social Development*, 2022 SST 1443

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	R. P.
Respondent:	Minister of Employment and Social Development
Representative:	Jordan Fine
Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated April 22, 2020 (issued by Service Canada)

Tribunal member:	Shannon Russell
Type of hearing:	Videoconference
Hearing date:	September 27, 2022
Hearing participants:	Appellant Respondent's representative
Decision date:	December 22, 2022
File number:	GP-20-884

Decision

[1] The appeal is allowed.

[2] The Appellant, R. P., has met the residency requirements for the Guaranteed Income Supplement (GIS) since July 2015.

Overview

[3] The Appellant is a 72-year-old man who applied for an Old Age Security (OAS) pension and the GIS in December 2015.[1]

[4] In his application for the OAS pension, the Appellant reported that he has lived in Canada continuously since his birth.[2] In the sections of the application asking about his home address and his mailing address, the Appellant gave a P.O. Box number in Windsor, Ontario.[3]

[5] Despite the Appellant providing only a P.O. Box as a mailing address, the Minister approved his application for the OAS pension and his application for the GIS.[4] The Appellant began receiving benefits effective July 2015, being the month after his 65th birthday.

[6] In January 2016, the Minister opened an investigation because concerns arose about the Appellant's residence in Canada, among other things. It appeared, for example, that the Appellant ran a transportation company out of Detroit, Michigan.[5]

[7] Throughout the course of the investigation, the Appellant chose not to cooperate. This is despite receiving repeated warnings from the Minister that failure to provide the requested information could result in the suspension of his benefits.

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[1] The OAS pension application is at pages GD2-3 to GD2-7. The GIS application is at page GD2-15.
[2] See pages GD2-4 and GD2-5.
[3] See page GD2-3.
[4] Pages GD2-7, GD2-8, GD2-15, GD1-114.
[5] Page GD40A-8 at paragraph 7, which in turn cites the Report of Investigation at pages GD2-193 to GD2-201.

[8] The Minister ultimately suspended the Appellant's OAS pension and GIS benefits, but not until January 2018.

[9] In May 2018, the Appellant wrote to the Minister and asked the Minister to reconsider the decision to "deny" his OAS pension and GIS benefits.[6] He said that he was not given notice that his pension and benefits would not be paid on January 30, 2018. He added that he called the CPP/OAS toll free number and the person he spoke with refused to tell him why his pension and benefits had stopped being paid.[7]

[10] After some back and forth, the Minister wrote to the Appellant in September 2018 and told him that there was no decision to reconsider because the Minister had not yet made a formal decision.[8] A few weeks later, in October 2018, the Minister provided the Appellant with a formal decision. In that letter, the Minister explained that it suspended the Appellant's benefits in accordance with subsection 9(5) of the OAS Act because the Appellant had not provided documentation to show his ongoing entitlement to the benefits.[9]

[11] On December 4, 2019, the Appellant wrote the Minister and asked for a settlement conference to resolve several issues he had with Service Canada, including an issue with his Social Insurance Number (SIN) records, an issue with Employment Insurance (EI) benefits, and the issue with the OAS pension and GIS benefits.

[12] After more back and forth, the Minister issued a reconsideration decision in April 2020. The Minister told the Appellant that he qualified for the full OAS pension effective July 2015, but not the GIS. The Minister explained that the Appellant was not eligible for the GIS because he had not provided enough proof of his continued residence in Canada since July 2015. The Minister also explained that it owed the Appellant

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[6] There is some suggestion in the evidence that the Appellant had previously asked for a reconsideration in February 2018. See, for example, pages GD1-31, GD10-3, GD42-6 and GD48-5. However, the Appellant's request of February 2018 is not included in the GD2 bundle of documents the Minister sent to the Tribunal pursuant to section 26 of the *Social Security Tribunal Regulations*, and so I don't think the Minister received the Appellant's letter of February 2018. In any event, nothing turns on whether the request for reconsideration was made in February 2018 or May 2018.
[7] See pages GD2-25, GD2-31, GD2-32, and GD2-60 to GD2-62.
[8] See pages GD2-148 to GD2-149.
[9] See pages GD2-150 to GD2-151.

$16,847.10 in OAS monies for the period from January 2018 to April 2020, but that the Appellant owed the Minister $17,564.88 in GIS monies for the period from July 2015 to December 2017. In the end, the Appellant owed only $717.78.[10]

[13] The Appellant appealed the Minister's reconsideration decision of April 2020 to the Social Security Tribunal's General Division.

[14] The Appellant has raised many arguments in support of his appeal. His main argument, however, is that he has resided in Canada, and specifically in the Essex County area, his entire life.

[15] The Minister says that it suspended the Appellant's GIS in January 2018 because the Appellant refused – for nearly two years – to complete a questionnaire and provide information about his residency. The Minister adds that it can suspend an appellant's continuing eligibility to benefits for failing to provide information. On the question of residency, the Minister says that there are reasons to be skeptical of the Appellant's assertion that he has always lived in Canada. However, there are recent decisions from other decision-making bodies that might show the Appellant has resided in Canada, particularly since September 1, 2017.

This appeal has involved significant delay

[16] Before I turn to the issue in this appeal, I should explain that this appeal has incurred significant delay.

[17] In 2019, the Federal Court had this to say about a proceeding involving the Appellant[11]:

> The five-year history that preceded this motion has been consistently – and in many instances needlessly – complicated by continuous correspondence and procedural challenges by the Applicant. At most points there appear to have been simple solutions, with multiple opportunities, to provide the basic eligibility information and documentation required by the government to prove qualification for the social security benefits...

[10] The Minister's reconsideration decision of April 22, 2020 is at pages GD2-40 to GD2-42.
[11] *Potomski* v. *Canada (Attorney General)*, 2019 FC 763 at paragraph 6.

[18] Similar words apply to the history of the proceeding before me.

[19] I see no value in detailing all of the procedural challenges the Appellant has brought since filing his appeal. Suffice it to say, he has filed motion after motion after motion. He has filed appeals of my interlocutory decisions to the Tribunal's Appeal Division. And he has filed appeals of decisions I didn't make.

[20] For example, on May 25, 2020 the Appellant filed a lengthy motion about various procedural issues, including his request that certain individuals be added as parties in this proceeding. On June 22, 2020, the Appellant wrote to the Tribunal and said that if he did not receive a response to his motion before 2:00 p.m. on June 23, 2020 then he would take the position that his request was adjudicated and denied without reasons.[12] He did not receive a response by his self-imposed deadline, and so he filed an appeal with the Appeal Division on June 29, 2020.

What I must decide

[21] At the heart of this appeal is whether the Appellant was eligible for the GIS in July 2015 and continuously since.

[22] The GIS is an income-tested monthly benefit that is paid to individuals who are getting the OAS pension, who have little to no other income, and who reside in Canada.

[23] The reason why the Minister changed its decision about the Appellant's eligibility for the GIS is because the Minister did not have enough evidence to show that the Appellant resided in Canada.

[24] Before I turn to the question of residency, there are two other issues I must consider.

[25] First, I must decide whether any of the Appellant's procedural challenges to the Minister's decisions affect my jurisdiction to hear and decide this appeal.

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[12] See page GD1C-2.

[26] Second, I must decide if the Minister had authority to change its initial decision to award the Appellant the GIS as of July 2015.

What this appeal is not about

The OAS pension

[27] This appeal is not about the Appellant's eligibility for the OAS pension. This is because the Minister explained in its reconsideration decision that it reinstated the Appellant's OAS pension. I take my jurisdiction from what is decided in the Minister's reconsideration decision.[13]

[28] While I am not deciding any matters about the Appellant's OAS pension, I will address one of his concerns. In this regard, the Appellant believes that the Minister lowered his OAS pension. He says his application was initially approved based on the 40-year rule but he was later found eligible for the pension under the 10-year rule.[14]

[29] The Minister did not lower the Appellant's OAS pension. The Minister used the 10-year residency rule to qualify the Appellant for a **full pension**[15], based on his years of residence in Canada from 1968 to 1992 and 2005 to 2015.[16]

Previous appeals to the Tribunal / SIN issues / EI issues

[30] This appeal is also not about any attempts the Appellant made before May 2020 to appeal to the Tribunal or any matters relating to either his SIN or EI.[17]

Charter of Rights and Freedoms

[31] This appeal is not about any arguments the Appellant might have about the *Charter of Rights and Freedoms*.

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[13] Sections 27.1 and 28 of the *Old Age Security Act*.
[14] See page GD42-10.
[15] The 10-year rule is set out in subsection 3(1) of the *Old Age Security Act*.
[16] See page GD2-43.
[17] I explained this in my interlocutory decisions of September 3, 2020, September 1, 2021 and November 22, 2021.

[32] The Appellant's appeal correspondence shows that he has, at various times, thought about raising a Charter argument. I wrote to the Appellant in early 2021 and asked him to clarify his intentions.[18]

[33] The Appellant replied by saying he would not be bringing a Charter argument.[19] In April 2021, I wrote a letter confirming that this appeal would follow the regular appeals process.[20]

Preliminary Matters

I agreed to accept late-filed documents and post-hearing submissions

The Appellant's factums

[34] In the days leading up to this hearing, the Appellant filed new documents. These documents include a factum[21], an affidavit and a Book of Documents for his factum[22], and a supplementary factum.[23]

[35] We discussed these late-filed documents at the beginning of the hearing. In the end, I decided to accept them into the record. I did so largely because the Appellant is self-represented and seemed genuinely unaware of the filing deadline in this appeal. It was also obvious to me that he had spent considerable time preparing the documents and formulating his arguments, and I thought the documents could be helpful to me in better understanding some of his arguments. Finally, the Minister's lawyer acknowledged that he could respond to the late-filed documents by way of post-hearing submissions.

[36] The Minister's lawyer filed his responding submissions on October 13, 2022.[24] I shared the Minister's submissions with the Appellant and I gave him an opportunity to

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[18] My letter is at page GD22-1.
[19] See pages GD29-2 and GD35-2.
[20] See page GD36-1.
[21] See pages GD90-1 to GD90-30.
[22] See pages GD91-1 to GD91-66.
[23] See pages GD92-1 to GD92-82.
[24] See pages GD104-1 to GD104-4.

reply. I did this because the Appellant asked for this at the hearing. The Appellant filed his reply on November 10, 2022.[25]

Opportunity to Comment on the *Burke* Decision

[37] During the hearing, the Appellant said he did not receive the email the Tribunal sent him on March 30, 2022. Attached to that email was the *Burke* decision from the Federal Court of Appeal (FCA).[26]

[38] I told the Appellant that I would ask the Tribunal Registry to re-send the email of March 30, 2022 to him after the hearing. I also said that I would give him time after the hearing to comment on the applicability of the *Burke* decision in this case.

[39] The Appellant filed his comments on the *Burke* decision on October 17, 2022.[27] In the meantime, he had written to the Tribunal to say that he had found the email the Tribunal had sent him on March 30, 2022.[28]

[40] I shared the Appellant's submissions on the *Burke* decision with the Minister's lawyer. However, I didn't give him an opportunity to respond. This is because he told me at the hearing that he would not need to file responding submissions.

The Appellant did not testify

[41] Near the beginning of the hearing, the Appellant said he hadn't decided whether he would be participating in the hearing solely as a representative or whether he would give testimony and thus subject himself to questions from both the Minister's lawyer and myself.

[42] I gave the Appellant a reasonable amount of time to decide whether he would testify. I also warned the Appellant that if he refused to clearly state his intentions, then I would infer he would not be testifying. In the end, the Appellant refused to tell me

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[25] See pages GD107-1 to GD107-5.
[26] See GD68.
[27] See GD102.
[28] See page GD99-2.

whether he would testify. As such, we proceeded with the hearing based on oral arguments only.

The Appellant objected to the length of the hearing

[43] At the beginning of the hearing, I told the parties that two hours had been set aside for the hearing and I stressed the importance of us managing our time efficiently. I also said that I did not want to spend time on issues that are not relevant in this appeal. I said this because, throughout this appeal, the Appellant has repeatedly dwelled on irrelevant matters, such as issues with his SIN and previous appeals he had made to the Tribunal.

[44] The Appellant objected to the length of the hearing. He raised his objections during the hearing and he raised them again after the hearing in post-hearing letters.

[45] I noted the Appellant's objections, but declined to schedule more time for the hearing. Here's why.

[46] First, I scheduled a Pre-Hearing Conference (PHC) on June 23, 2022, and one of the purposes of that conference was to discuss the hearing.[29] The Appellant chose not to attend. Had he attended, he could have raised arguments about how long he needed to present his case.

[47] The Appellant says the Tribunal did not send him the Notice of PHC. This is not true. The Tribunal sent him the Notice of PHC by email on June 14, 2022. Besides, the Appellant cited the date of the PHC in a letter he wrote that same day (i.e. June 14, 2022), so he was clearly aware of it.[30]

[48] If I understand the Appellant's argument correctly, he alleges he did not receive the Notice of PHC because, according to him, it was sent to him by the Minister and not the Tribunal. The Appellant's argument seems to be rooted in his concerns about the

[29] The Notice of Pre-Hearing Conference is at GD79-1.
[30] See page GD80-2. I addressed this in my letters of June 22, 2022 at GD83 and July 22, 2022 at GD84.

email address the Tribunal uses to send him emails.[31] I'm not going to spend a lot of time on this. The short reply is simply that the Tribunal uses the same IT platform as the Minister. This does not mean that emails sent from the Tribunal are in fact sent by the Minister.

[49] Second, the Appellant did not manage his time well during the hearing. Despite my caution at the beginning of the hearing and despite my repeated reminders throughout the hearing about time management, the Appellant chose to waste a considerable amount of time on matters that were straightforward or irrelevant. For example, the Appellant wasted much time on the issue of whether he would testify. He also spent time trying to revive issues about an appeal he tried to make to the Tribunal in 2018.

[50] Third, although the hearing was only supposed to last for two hours, it actually lasted for three hours. So, the Appellant was given some additional time to present his case.

Did the Minister have the authority to change its initial eligibility decision?

[51] Yes. The Minister had the authority to change its initial eligibility decision about the Appellant's GIS benefits. Before I explain why, I will explain how this issue arose.

[52] Before the FCA rendered its decision in *Burke*[32], I asked the parties to file submissions on whether the Minister had the authority to change its initial award of benefits.[33] With my request, I included several decisions from the Tribunal's Appeal Division on the issue of the Minister's authority under section 23 of the OAS Regulations. The Minister's lawyer has referred to these decisions as the section 23 decisions, and so I will refer to them that way too.

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[31] See, for example, page GD99-2.
[32] *Canada (Attorney General)* v. *Burke*, 2022 FCA 44
[33] My letter is at pages GD36-1 to GD36-3. See also my further request at paras 29 and 30 of my interlocutory decision of November 22, 2021.

[53] Each party filed submissions in response to my request.[34]

[54] The Appellant argued that the Minister could not change the decision to approve his OAS benefits.[35] He suggested that the section 23 decisions should not apply to him because those decisions all involved people who were born outside of Canada and who had passports. He also pointed to the evidence that he provided that, in his view, support a finding of residency.

[55] The Minister's lawyer provided comprehensive submissions arguing that the Minister has the authority to reassess GIS eligibility. There's no point in me summarizing the Minister's submissions because after the submissions were filed, the FCA rendered its decision in *Burke*.

[56] The Appellant says that his case is different from the *Burke* case because the question in *Burke* was whether that applicant's residency in Canada qualified her for OAS and GIS benefits whereas the questions in his case are (1) whether the Minister can demand that he provide his address, pursuant to subsection 25(2) of the OAS Regulations; and (2) whether the Minister failed to allow his Notice of Appeal of June 2018 to be perfected.[36]

[57] I've already explained that this appeal is not about a previous appeal the Appellant tried to make to the Tribunal in 2018. As for the Appellant's argument about subsection 25(2) of the OAS Regulations, that argument is just that. It's an argument. It does not define the issue on appeal, and it is not a basis for me to distinguish *Burke*.

[58] The *Burke* decision settles the law on the jurisdiction issue that was previously unresolved. The *Burke* decision affirms the Minister's broad powers to change past decisions, and to demand repayment of monies that should not have been awarded.[37]

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[34] The Appellant's submissions are at pages GD42-8 to GD42-11. The Minister's submissions are at GD40, GD49B and GD64.
[35] See page GD42-10.
[36] See GD102
[37] See paragraph 106 of *Canada (Attorney General)* v. *Burke*, 2022 FCA 44. See also post-*Burke* decisions such as *PS* v. *Minister of Employment and Social Development*, 2022 SST 265.

This decision is binding on me. This means I am required to follow and apply the court's interpretation of the law.

[59] I will comment, however, on one of the Minister's arguments – that is, that I should not have raised the issue about the Minister's authority. The Minister's lawyer submitted that the Appellant did not raise the argument, and a tribunal member should only raise issues of its own accord in exceptional circumstances, which are not present here.[38]

[60] I can't agree with the Minister's lawyer that the Appellant did not raise this argument. The Appellant wrote a letter as early as January 2017 in which he asserted that the Minister did not have the "unbridled" authority to re-determine his eligibility for OAS.[39]

[61] I know the Appellant has recently changed his mind about this and has explained that his focus is on challenging the reconsideration decision.[40] However, even if the Appellant had never questioned the Minister's authority, it would still have been appropriate for me to raise the new issue.

[62] A decision-maker may raise a new issue when failing to do so would risk an injustice.[41] An issue is new when it raises a new basis for potentially finding error in the decision under appeal beyond the grounds of appeal as framed by the parties.[42]

[63] In my view, failing to raise the potential issue of the Minister's authority to change the GIS decision would have risked an injustice.

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[38] See page GD40A-7.
[39] See page GD39-20.
[40] See page GD102-5
[41] *Adamson* v. *Canada (Human Rights Commission)*, 2015 FCA 153 at para 89, and *Ching* v. *Minister of Citizenship and Immigration*, 2015 FC 725 at para 71.
[42] *R*. v. *Mian*, 2014 SCC 54 at paragraph 30.

[64] The issue of the Minister's authority is an important one. It goes to a fundamental question of law – whether the Minister had the authority to change its decision on GIS eligibility. This issue was simply too important for me to ignore.[43]

Do any of the Appellant's challenges to the Minister's decisions affect my jurisdiction to hear and decide this appeal?

[65] No. None of the Appellant's arguments affect my jurisdiction to hear and decide his eligibility for the GIS. I will address each of the arguments separately.

Argument No. 1 – What the Appellant says

[66] The Appellant says that his benefits were stopped as of January 2018 without any written notice or reason. He adds that the Minister could not suspend, cancel, stop or delete his benefits without **first** issuing a formal decision about same.[44]

Argument No. 1 – My finding

[67] The Minister had warned the Appellant well before January 2018 that if he did not provide the information that was asked of him then his benefits could be suspended.[45] I know the Appellant was aware of these consequences because he acknowledged them in his letters of January 2017 and February 2017.[46] So if the Appellant is trying to assert that he was somehow taken by surprise by the suspension of benefits, then his assertion is without merit.

[68] Subsection 9(5) of the OAS Act allows the Minister to suspend payment of the pension where the pensioner fails to comply with any of the provisions of the OAS Act. Subsection 26(1) of the OAS Regulations requires the Minister to suspend payment of a benefit where it appears that the beneficiary is ineligible for payment of the benefit. This provision also allows the Minister to suspend payment of a benefit where it appears that

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[43] The Tribunal's Appeal Division has commented about the importance of this issue and the injustice that would incur if the issue is not raised. See, for example, *M.A.* v. *Minister of Employment and Social Development*, 2020 SST 269 at paras 34 and 35.
[44] See pages GD1-3, GD1-4 and GD1-7.
[45] See, for example, the Minister's letter of February 2017 at GD39-14.
[46] See pages GD39-13 and GD39-22.

further inquiry into the eligibility is necessary. I don't see anything in these provisions, or any other provision, that requires the Minister to notify the pensioner in writing **before or even at the same time** the suspension becomes effective.

Argument No. 2 – What the Appellant says

[69] The Appellant says that the decision to stop his benefits as of January 2018 must be a reconsideration decision because the initial decision is the decision of December 2015 approving his application.[47]

Argument No. 2 – My finding

[70] The suspension of the Appellant's benefits was not a reconsideration decision.

[71] First, in order for the Minister to render a reconsideration decision, there must first be a request for reconsideration pursuant to subsection 27.1(1) of the OAS Act.[48] The Appellant's first request for reconsideration was not made until February 2018 and, even then, it doesn't appear that the Minister received that request.

[72] Second, the Minister has confirmed that it did not issue a reconsideration decision in or around January 2018. Instead, the Minister suspended the Appellant's benefits because the Appellant was not responding to the Minister's requests for information or documents.[49]

Argument No. 3 – What the Appellant says

[73] The Appellant suggests that the Minister's award letter of December 21, 2015 cannot be changed because it, when read with the Appellant's OAS application, represents a binding contract. He also says that the letter gave only two reasons for when the OAS pension would stop and neither apply to him.[50] He adds that under the

[47] Pages GD26-2 and GD31-2
[48] Subsection 27.1(2) of the *Old Age Security Act*.
[49] Page GD33-2
[50] Page GD90-3

doctrine of *functus officio* the decision of December 21, 2015 should, absent a material change, remain as decided and not overturned, cancelled, and/or modified.[51]

Argument No. 3 – My finding

[74] The award letter of December 21, 2015 is about the Appellant's eligibility for the OAS pension and not his GIS.[52] This appeal is only about the Appellant's GIS benefits. I therefore do not need to consider the Appellant's arguments about a binding contract and so forth.

Argument No. 4 – What the Appellant says

[75] The Appellant says that the decisions to stop his pension and benefits after January 2018 are redundant and should be nullified (voided) because there were no benefits to stop.[53]

Argument No. 4 – My finding

[76] I don't see the logic in what the Appellant is saying. If the decisions of October 2018 and April 2020 were nullified because there were no benefits to suspend, then the Appellant would be in the position of having no benefits and no recourse to pursue those benefits. In any event, I don't have the authority to nullify (void) decisions of the Minister.

Argument No. 5 – What the Appellant says

[77] The Appellant says that he has never received a response to his request for reconsideration of May 21, 2018[54], and so his view is that the Minister never reconsidered the decision to "cancel" his benefits.[55] The Appellant also says he wants to appeal the Minister's decision to not process his request for reconsideration dated May

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[51] Page GD92-5
[52] Page GD91-9
[53] See pages GD1-4, GD1-17, and GD1-26.
[54] See page GD2-57 and GD48-5.
[55] See page GD42-6.

21, 2018.[56] He adds that, pursuant to subsections 54(1) and 64(1) of the *Department of Employment and Social Development Act* (DESD Act), the Tribunal can make the decision that the Minister should have made.

Argument No. 5 – My finding

[78] Contrary to what the Appellant asserts, the Minister did in fact respond to the Appellant's letter of May 2018. The Minister just didn't respond in the way the Appellant wanted.

[79] On May 25, 2018, one of the Minister's officers sent the Appellant an email acknowledging the request for reconsideration. The officer invited the Appellant to contact her with his availability so that she could provide him with assistance.[57] The Minister wrote to the Appellant again in September 2018 and, in this letter, the officer explained that a formal decision had not yet been made and so there was no decision from which the Appellant could ask for a reconsideration.[58]

[80] A short while later, in October 2018, the Minister issued a formal decision confirming the suspension of benefits and giving the Appellant the right to ask for a reconsideration.[59]

[81] Quite some time passed, and then the Appellant wrote a letter to the Minister on December 4, 2019, asking for a settlement conference to resolve a number of issues including the issue about his OAS benefits.[60] Although the Appellant's letter was written months after his 90 day appeal period had expired and although the Appellant did not specifically ask for a reconsideration, the Minister considered his letter to be just that – a request for reconsideration. After all, the Appellant raised arguments in that letter about his residency in Canada.

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[56] See page GD1-16.
[57] See page GD2-121.
[58] See pages GD2-148 to GD2-149.
[59] See pages GD2-150 to GD2-151.
[60] See pages GD2-143 to GD2-144.

[82] While the Appellant asserts that his letter of December 4, 2019 was not a request for reconsideration, I don't have a remedy to provide to him. Nor do I understand why he wants one.

[83] I have no role to play in the reconsideration stage of the appeal process. Reconsiderations fall within the sole jurisdiction of the Minister.[61] The Appellant thinks that subsections 54(1) and 64(1) of the DESD Act allow me to make the decision that the Minister should have made. This is not the case. Again, only the Minister has authority to render reconsideration decisions.[62] Subsections 54(1) and 64(1) of the DESD Act must be read together with section 28 of the OAS Act. Together, these provisions simply set out the powers of the Tribunal and what the Tribunal can decide **after** an appeal has been properly made to the Tribunal.

The Appellant's residence

[84] I turn now to what this appeal is really about. That is, whether the Appellant has resided in Canada since July 2015. The issue is not any more complicated than that.

[85] Despite the straightforward issue underlying this appeal, the Appellant has, at almost every turn, tried to transform the uncomplicated question of residency into a convoluted and unnecessary procedural mess.

[86] This is disappointing because there has always been an easy solution to this matter. All the Appellant ever had to do was provide the information asked of him. The Federal Court explained this to him in 2019, by saying this[63]:

> ...it would appear that there is an easy way out of this procedural gridlock that R. P. has created for himself, and continues to exacerbate in the various venues. Had R. P. simply provided the information required for eligibility purposes for his benefits (including his residential address), he may well have been receiving them by now. Instead, R. P. refuses to

[61] Subsection 27.1(2) of the *Old Age Security Act*. See also *RP* v. *Minister of Employment and Social Development*, 2022 SST 26 at para 16.
[62] Subsection 27.1(2) of the *Old Age Security Act*.
[63] *Potomski* v. *Canada (Attorney General)*, 2019 FC 763 at paragraph 36.

> provide this basic information the government requires, despite every effort by numerous staff to assist and steer him in the right direction.

What it means to reside in Canada

[87] There is a difference between residing in Canada and being present in Canada. A person **resides** in Canada if he makes his home and ordinarily lives in any part of Canada.[64] A person is **present** in Canada if he is physically present in any part of Canada.[65]

[88] To decide if the Appellant made his home and ordinarily lived in Canada, I have to look at the "big picture" and consider things like:

- where he has property such as homes, furniture, bank accounts, and business interests;
- where he has social ties, such as friends, relatives, and membership in religious groups, clubs, or professional organizations;
- where he has ties such as medical coverage, rental agreements, mortgages or loans;
- where he files income tax returns;
- what ties he has to another country;
- how much time he spends in Canada;
- how often he is absent from Canada, where he goes, and how much time he spends there;
- his lifestyle and way of living in Canada; and
- his intentions.[66]

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[64] Paragraph 21(1)(a) of the *Old Age Security Regulations*.
[65] Paragraph 21(1)(b) of the *Old Age Security Regulations*.
[66] The Federal Court of Canada said this in *Canada (Minister of Human Resources Development)* v. *Ding*, 2005 FC 76. See also *De Bustamante* v. *Canada (Attorney General)*, 2008 FC 1111; *Duncan* v. *Canada (Attorney General)*, 2013 FC 319; *De Carolis* v. *Canada (Attorney General)*, 2013 FC 366.

[89] This isn't a complete list. There may be other things that are important in a particular case. I must look at all of the Appellant's circumstances.[67]

[90] The Minister does not have to prove that the Appellant did not reside in Canada. The Appellant has to prove his residence in Canada. He has to prove it on a balance of probabilities (that it is more likely than not).[68]

The period from July 2015 to August 31, 2017

[91] The Minister's lawyer says that his client has doubts about whether the Appellant resided in Canada from July 2015 to August 31, 2017.

[92] It is not difficult to see why the Minister has doubts. Here are just a few examples:

- The Appellant has refused to give his home address. So we don't know where he rests his head at night.[69]

- The Appellant has refused to comply with requests from the Minister to provide information that would help determine his residency.

- The Appellant has, at times, provided vague and even ridiculous responses to questions asked of him. For example, in response to a question asking him to describe his living accommodations in Canada, the Appellant wrote "can't answer."[70] As another example, when asked to explain how he financially supported himself during years when he reported having no income, the Appellant wrote "Not required as per M. Triggs."[71] Here, he seems to be referring to an earlier letter he wrote to Ms. Triggs, Assistant Deputy Minister, in which he

[67] *Canada (Minister of Human Resources Development)* v. *Chhabu*, 2005 FC 1277.
[68] *De Carolis* v. *Canada (Attorney General)*, 2013 FC 366 at paragraph 32.
[69] I am speaking colloquially here and not literally.
[70] See page GD2-77.
[71] Page GD2-78.

said that unless she provided him with certain information then he would assume she agreed he did not have to answer the question in the Questionnaire.[72]

- The Appellant chose not to have any of his three affiants attend the hearing, and so the veracity (truth) of their evidence could not be tested.[73] This is despite my letter of July 22, 2022, in which I encouraged him to have the affiants attend the hearing so that questions could be asked of them. At the same time, I warned the Appellant that failure of the affiants to attend the hearing and be available for questions could result in minimal weight being assigned to the affidavits.[74]

- The Appellant chose not to give oral evidence at this hearing or be subjected to questions by either the Minister's lawyer or myself.

[93] To further complicate things, there appears to have been some significant changes in the Appellant's life in and around 2014 and 2015. This time period is important because, as I explained earlier, the Appellant was initially found eligible for the GIS as of July 2015, being the month after his 65th birthday.

[94] So, what are the significant changes?

[95] First, the Appellant appears to have retired around this time. I say this because he filed a *Statement of Estimated Income* and in that document he identified his date of retirement as June 20, 2014.[75] Also, a decision from the Tribunal's Employment Insurance Section says the Appellant applied for EI benefits in June 2014 and in his application he said he last worked on June 20, 2014, due to a shortage of work as a computer technician.[76] Also, according to the Minister, the Appellant last made contributions to the Canada Pension Plan (CPP) in 2015.[77] Finally, the Appellant has repeatedly argued that the Minister's decision to stop his benefits resulted in him having

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[72] See page GD2-132.
[73] An affiant is a person who swears to an affidavit.
[74] See page GD84-3.
[75] See page GD2-21.
[76] See page GD1-67.
[77] See page GD2-89.

to live off of several hundred dollars a month, thereby suggesting he has little other income.

[96] Second, the Appellant appears to have changed addresses around this time. His file shows that at one time he owned a property at X Avenue in Windsor. This is supported by a City of Windsor statement of account dated July 31, 2013 that identifies the Appellant as the assessed owner of that property.[78] In February 2021, the Appellant wrote a letter saying, among other things, that he lived at X Avenue from 1985 to "about 2015".[79] Finally, the Minister's lawyer has brought to my attention a decision from the Ontario Court of Appeal about a property the Appellant owned in Windsor.[80] More specifically, the decision is about a writ of possession that was granted to the Appellant's mortgagee in March 2015.[81] The decision doesn't identify the address of the mortgaged property in question, but it provides a history of the mortgage going back to 2005. It's reasonable to infer from this, and the previously mentioned 2013 statement from the City of Windsor and the February 2021 letter from the Appellant, that the property in question is the X property.

[97] I don't know where the Appellant moved to after leaving the home on X Avenue. It's possible he didn't have a place to call home. But if that's the case, all he ever had to do was say so. Residency in Canada is not dependent upon a person having a fixed address in Canada.

[98] The Appellant's reasons for not providing his address include privacy concerns and the absence of a statutory requirement that he provide it. On this last point, the Appellant says that subsection 25(2) of the OAS Regulations, which is a provision cited in some of the Minister's letters, only requires that he provide the address where his benefits are to be sent.[82] He says he has complied with this provision because he has provided his P.O. Box address.

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[78] See page GD37B-2.
[79] See page GD25-2.
[80] The decision is *The Canada Trust Company* v. *Potomski*, 2015 ONCA 324.
[81] A writ of possession allows a lender to take possession of the mortgaged property.
[82] See pages GD1-24 and GD1-25.

[99] I don't need to embark on an exercise of statutory interpretation of subsection 25(2) because even if what the Appellant says is true – that the provision only requires him to provide the address where his benefits are to be sent – the law still requires him to prove his residency in Canada. The obvious starting point for any claim of residency is to show the address where one makes their home.

I decided to assign no weight to the affidavits on record

[100] In support of his appeal, the Appellant has filed short affidavits, from himself (January 2017 and May 2020), his two daughters (May 2020 and September 2022) and a friend (May 2020).[83]

[101] Not one of the affiants made themselves available to testify and be cross examined at the hearing.

[102] The Minister's lawyer submits that, because I have not tested the affiants' evidence and because I cannot presume the veracity (truthfulness) of any of the affiant's statements, I should ignore and give no weight to the affidavits or to the new evidence set out in the Appellant's factum. The Minister's lawyer also submits that I should draw an adverse inference from the Appellant's failure to explain his refusal and his witnesses' failures to testify.[84]

[103] I agree with the Minister's position. The Appellant did not give any rational explanation for why neither he nor any of his affiants could testify and be cross examined at the hearing. This is despite the fact that I had previously cautioned the Appellant about what could happen if his affiants did not testify at the hearing.[85] After that, the Minister filed a letter indicating, among other things, that the Minister would not accept *any* unchallenged affidavit evidence from the Appellant as proof of residence.[86]

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[83] The Appellant's affidavits are at pages GD2-33 and GD2-56. His daughters' affidavits are at pages GD2-52 and GD92-80. His friend's affidavit is at page GD2-54.
[84] See page GD104-2.
[85] See page GD84-3.
[86] See page GD87-2.

[104] I have, therefore, not assigned any weight to the affidavits. I will address the Minister's argument about adverse inference shortly.

The Appellant probably resided in Canada from July 2015 to August 31, 2017

[105] Despite the skepticism that the Appellant's approach to his appeal has raised, there is some evidence that supports the Appellant's assertion that he has lived in Canada his entire life.

[106] First, and perhaps most significantly, the Appellant has provided his personal claims history from the Ontario Ministry of Health and Long-Term Care. The history covers the period from January 1, 2014 to April 21, 2021. This document shows that the Appellant had regular claims from July 2015 (the period I am required to focus on).

[107] For example, from July 2015 to August 31, 2017, the Appellant had claims in the following months:[87]

	2015	**2016**	**2017**
January			√ (1 date)
February		√ (6 dates)	√ (3 dates)
March		√ (2 dates)	√ (1 date)
April		√ (1 date)	√ (2 dates)
May			√ (1 date)
June			√ (2 dates)
July	√ (1 date)		√ (3 dates)
August	√ (1 date)		√ (1 date)

[87] See pages GD37A-3 to GD37A-8.

September	√ (2 dates)	√ (1 date)	
October	√ (3 dates)		
November	√ (1 date)	√ (3 dates)	
December		√ (1 date)	

[108] Second, the Minister's lawyer has filed a decision from the Human Rights Tribunal of Ontario (HRTO) in which the Appellant was alleging discrimination in a matter involving his application for geared-to-income housing at a non-profit corporation in Ontario.[88] The decision indicates that the Appellant was put on a waiting list for housing. The decision doesn't say when the Appellant made his application for housing, but it appears to have been before he reached age 65 in June 2015. I know from a more recent decision of the HRTO that the Appellant continued to be on a waiting list for a subsidized unit in a senior's apartment at X Apartments as of May 2017.[89] Obviously, this is not evidence of actual residence in Canada. However, the fact that the Appellant was trying to secure housing in Ontario in 2015 through mid 2017 is supportive of at least an intention to continue to reside in Canada.

[109] Third, according to the Minister, the Appellant made contributions to the CPP in 2015 and had earnings in 2016.[90] Contributions are made on employment earnings, so this tells me the Appellant had some work activity in Canada in 2015 and 2016. I don't know how much the Appellant earned in those years because the only contribution statement I have shows earnings up to 2014.[91] Nonetheless, I can't ignore the fact that he appears to have had some work activity in Canada in 2015 and 2016.

[110] Fourth, the Appellant has, for some time, had a P.O. Box in Canada.

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[88] The decision is *Potomski* v. *The Corporation of the City of Windsor and Windsor Essex Community Housing Corporation*, 2016 HRTO 602.
[89] *Potomski* v. *Windsor (City)*, 2020 HRTO 572 at para 3.
[90] See page GD2-89.
[91] See page GD61-159.

[111] I am aware that one of the Minister's investigators did some searches on the internet and reportedly found evidence of the Appellant having a transportation business that was registered in Ontario. This, along with the Appellant's use of an American phone number, raised questions of whether the Appellant was operating his business in Michigan.[92]

[112] I can see why this would raise questions for the Minister. However, I haven't been provided with evidence of the actual internet search(es) and so it's hard for me to assess this concern in any meaningful way. Moreover, I note that the investigator reported that the internet search showed the Appellant's company dissolved for non-compliance in June 2007, which is long before the July 2015 date that I am required to focus on.

[113] The Minister questions whether the Appellant could have been living in Michigan and simply crossing the border into Canada for medical appointments and prescription refills. I acknowledge this possibility. And, as pointed out by the Minister's lawyer, it would have been really helpful had the Appellant made himself available for questions so that he could have responded to this concern.

[114] I certainly have doubts about where the Appellant was living from July 2015 to August 31, 2017. However, I don't need to be convinced beyond a reasonable doubt of his residence in Canada. I only need to be persuaded that it's more likely than not that he resided in Canada. What does this burden mean? Pared down to its lowest threshold, it means 50% plus the weight of a feather.

[115] The Appellant has met this burden. His medical claims history and efforts to seek housing in Ontario after losing his home on X Road show that he **probably** resided in Canada through to the end of August 2017. Context is important here, and the context that I find important is that the Appellant had a long pre-July 2015 history of living in Windsor, Ontario. This is not a case, for example, where the Appellant was born outside

[92] See pages GD2-185 and GD2-199.

of Canada, had years of deep-rooted ties to another country, and then tried to establish first-time residency in Canada in 2015.

The Appellant probably continued to reside in Canada after August 31, 2017

[116] The Minister says that there may be enough evidence to show that the Appellant resided in Canada from September 2017 to at least June 2022. This is largely due to the recent factual findings of other decision makers – namely, the HRTO and the Superior Court of Justice – Ontario (Divisional Court).

[117] I agree that this evidence is supportive of a finding of residence in Canada since September 1, 2017.

[118] According to the 2020 decision from the HRTO, the Appellant has lived at X Apartments (a subsidized senior's apartment) since September 1, 2017.[93]

[119] The 2022 decision of the Superior Court of Justice involved a motion the Appellant brought concerning a decision from the Landlord and Tenant Board. What is important here though is that the decision says that the materials filed in that proceeding show that the Appellant is a tenant of X Non-Profit Housing Corporation in Windsor, Ontario.[94]

[120] As pointed out by the Minister's lawyer, X Non-Profit Corporation is affiliated with X, which is located on X Street in Windsor, Ontario.[95]

[121] I obviously don't have access to the materials filed in either the HRTO proceedings or the court proceedings. However, I think it's reasonable to rely on the findings in those decisions insofar as the Appellant's residence is concerned, particularly since the Appellant's rental agreement was material to each of those decisions.

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[93] *Potomski* v. *Windsor (City)*, 2020 HRTO 572 at para 6.
[94] *Potomski* v. *The Landlord and Tenant Board et al*., 2022 ONSC 3348 at para 3.
[95] At page GD87-2, the Minister referred me to Schedule 36, Line 100 of the *Designated Housing Projects – Section 68 of the Act*, O Reg 368/11.

[122] In addition to the aforementioned tribunal and court decisions, I also have the Appellant's medical claim history showing regular claims in Ontario until April 2021 (being the last period covered in the report).

[123] The Appellant had medical claims as follows:[96]

	2017	**2018**	**2019**	**2020**	**2021**
January		√ (1 date)	√ (7 dates)	√ (2 dates)	√ (1 date)
February		√ (2 dates)	√ (4 dates)		√ (1 date)
March		√ (2 dates)	√ (1 date)	√ (2 dates)	√ (4 dates)
April		√ (2 dates)	√ (2 dates)		√ (1 date)
May		√ (1 date)			
June		√ (2 dates)	√ (1 date)	√ (3 dates)	
July			√ (1 date)	√ (1 date)	
August			√ (2 dates)	√ (2 dates)	
September	√ (4 dates)	√ (1 date)	√ (2 dates)	√ (3 dates)	
October	√ (8 dates)	√ (5 dates)	√ (1 date)		
November	√ (8 dates)	√ (2 dates)	√ (1 date)		
December	√ (2 dates)		√ (1 date)	√ (5 dates)	

[124] Taken together, the findings in the tribunal and court decisions and the Appellant's medical claims history show that the Appellant has probably continued to reside in Canada since September 1, 2017.

[96] See pages GD37A-8 to GD37A-13.

[125] I know that the decision of the Superior Court of Justice is dated June 2022, and so technically there is a small gap of time between June 2022 and the hearing of September 27, 2022 that is unaccounted for. However, I doubt very much that the Appellant moved away from Canada in that short amount of time. I think the Appellant has lived in Canada throughout the entire period of time in dispute. He has simply tried to lead us all down a tangled path of obstruction, with complete disregard for the strain this has put on scarce resources. For this reason, I am not drawing an adverse inference about the withheld information.

The Appellant did not have absences of more than six months

[126] If a person is absent from Canada (even if they have not stopped residing in Canada), then they are only entitled to receive the GIS for six months after the month of departure.[97] There are no exceptions to this rule.

[127] The Appellant's medical claims history shows he was never absent from Canada for more than six months from July 2015 to April 2021. The medical claims history report does not cover any period of time after April 2021 and so I can't say for certain that the Appellant hasn't been absent for more than six months since then. However, given his pattern from April 2015 to April 2021, it's reasonable to assume nothing has changed since April 2021.

Other Matters

Departmental Error

[97] Paragraph 11(7)(c) of the *Old Age Security Act*.

[128] The Appellant asks me to direct the Minister, pursuant to section 32 of the OAS Act, to take remedial action to place the Appellant in the position that he would have been in, had his benefits not been stopped as of January 2018.[98]

[129] I am not granting the Appellant's request. Section 32 of the OAS Act deals with departmental error. The jurisprudence is clear that I don't have any jurisdiction to make findings under section 32 of the OAS Act.[99]

Monetary Penalties

[130] The Appellant says that, pursuant to paragraph 44.1(1)(a) of the OAS Act, I should direct the Minister to pay him an administrative penalty of $30,000 and I should direct certain employees of Service Canada to pay him an administrative monetary penalty of $20.00.[100]

[131] I do not have jurisdiction to order the Minister or any employees of Service Canada to pay administrative penalties.[101] Paragraph 44.1(1)(a) allows the Minister (not the Tribunal) to impose a penalty on a person (not the Minister) if the person has made a statement or declaration in an application or otherwise that the person knew was false or misleading.

[132] Even if I had the authority to order penalties, I would not do so. There is simply no evidence in this appeal of any conduct on the part of the Minister or any Service Canada employee that would even come close to warranting a penalty.

Access to the Tribunal's files and documents

[133] The Appellant says that he has been disadvantaged because the Minister and its representatives have access to the Tribunal's decisions and also the documents

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[98] See pages GD1-4 and GD1-19.
[99] See, for example, *Canada (Minister of Human Resources Development)* v. *Tucker*, 2003 FCA 278.
[100] See page GD48-3.
[101] My jurisdiction is limited by sections 27.1 and 28 of the *Old Age Security Act*, which do not provide for administrative monetary penalties.

referenced in those decisions. He believes he should have been given the same access.[102]

[134] The Minister is a party to the Tribunal's income security proceedings. The Minister is entitled to the appeal documents and decisions in the files to which it is a party.

[135] Unlike the Minister, the Appellant is not a party in all of the income security proceedings. As such, the information that is available to him is more limited.

The upload of documents to the Appellant's file

[136] The Appellant raised concerns about the time it has taken for Tribunal Registry to upload documents to his file and share those documents accordingly. He argued the Tribunal has been non-compliant with the "without delay" requirement set out in subsection 5(2) of the now repealed *Social Security Tribunal Regulations.*

[137] I acknowledge that the Appellant's documents (and perhaps even the Minister's documents) have not always been uploaded to this file as quickly as the Appellant would hope. And while I understand that this has been a source of frustration to the Appellant, I don't see evidence of him being disadvantaged in any way by the delays.

The Recording of the Hearing

[138] After the hearing, the Appellant wrote to the Tribunal and noted, among other things, that the recording of the hearing stayed on while he was still in the hearing room at the Service Canada Centre in Windsor.

[139] I have listened to the recording, and I acknowledge it stayed on. I don't know why that happened. It's unfortunate, but nothing turns on this. The recording only stayed on for about one minute, and during that time the Appellant seemed to be talking to

[102] See page GD52-2.

someone who works for Service Canada. I didn’t hear him say anything about the merits of his appeal.

Conclusion

[140] The Appellant has met the residency requirements for the GIS since July 2015.

[141] This means the appeal is allowed.

Shannon Russell
Member, General Division – Income Security Section