



Citation: *DW v Minister of Employment and Social Development*, 2022 SST 1172

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: D. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated April 9, 2021 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: On the record

Decision date: October 18, 2022

File number: GP-21-1292

Decision

[1] The appeal is summarily dismissed. This means there won't be a hearing and the Tribunal is closing the appeal file.

[2] The Appellant, D. W., isn't eligible for the Guaranteed Income Supplement (GIS) for July 2019 to June 2020 (also called the "2019/2020 benefit period").

[3] This decision explains why I am summarily dismissing the appeal.

Overview

[4] The Appellant applied for the GIS for the 2019/2020 benefit period on March 29, 2019.¹ The Minister of Employment and Social Development denied the Appellant's application because his estimated income for 2019 was too high for him to qualify. The Minister estimated his 2019 income using his actual income from 2018, which was \$19,472. Of that amount, \$13,664 came from the Appellant closing his Locked-In Retirement Account (LIRA).²

[5] The Appellant says his LIRA income should not have been used to estimate his 2019 income. He says that closing his LIRA was a one-time occurrence—he wasn't going to close another LIRA in 2019. So his 2019 income would be much lower, similar to his income from previous years. He added that he didn't use the LIRA money to pay for living expenses. Some of it was taxed by the federal Government; the rest went to the bank.

[6] The Minister says it had to include the LIRA income in its estimate of the Appellant's 2019 income.³

[7] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division. The Tribunal forwarded the appeal to the Tax Court of Canada. This is

¹ See GD2-3 to 6.

² See GD2-27. Sections 13 and 14 of the *Old Age Security Act* set out this process for determining if an appellant is eligible for the GIS.

³ See GD2-40 and 41.

because the *Old Age Security Act* says that only the Tax Court can decide how the Minister should treat income.⁴

[8] On August 31, 2022, the Tax Court decided that the Minister treated the Appellant's LIRA income correctly, and that the Minister correctly used it to estimate the Appellant's 2019 income.⁵

What summary dismissal means

[9] The Tribunal must summarily dismiss an appeal if it considers that the appeal has no reasonable chance of success.⁶ If an appeal doesn't have a reasonable chance of success, it means an appellant doesn't have an argument that could possibly succeed. No matter what evidence or arguments an appellant might present at a hearing, the appeal still would not have a reasonable chance of success.⁷

[10] If the Tribunal summarily dismisses an appeal, there won't be a hearing and the Tribunal will close the appeal file.

[11] On September 12, 2022, I sent the Appellant a letter explaining that I planned to summarily dismiss his appeal. I asked him to tell me in writing by October 12, 2022, why he thinks his appeal should not be summarily dismissed.⁸

[12] In correspondence with the Tribunal, the Appellant suggested that his written submissions were being ignored.⁹ Although this was not the case, I decided to hold a conference with him so that we could discuss his appeal orally. That conference took

⁴ See section 28(2) of the *Old Age Security Act*.

⁵ See GD3.

⁶ See section 53(1) of the *Department of Employment and Social Development Act*; and *Miter v Canada (Attorney General)*, 2017 FC 262.

⁷ See *The Estate of JB v Minister (Employment and Social Development)*, 2018 SST 564 at paragraph 23.

⁸ Before the Tribunal summarily dismisses an appeal, it must notify an appellant in writing about what it plans to do and give the appellant a reasonable amount of time to make submissions (arguments). Section 22(1) of the *Social Security Tribunal Regulations* says this. A copy of the letter I sent to the Appellant is at GD0.

⁹ See, for example, an email from the Appellant dated September 20, 2022 (GD6).

place on October 11, 2022. I told him that he was still allowed to submit documents up until October 12, 2022.

[13] The Appellant replied to my letter on October 12, 2022.¹⁰ In addition to the reasons he gave earlier, he said I should not summarily dismiss his appeal for the following reasons:

- He received different advice about the GIS from three different employees of Service Canada.
- Eligibility for the GIS should be based on financial need, not income.
- His appeal should be allowed due to “extenuating circumstances,” the “mental and emotional strain” he has suffered during the appeal process, and for “humanitarian and compassionate” reasons.

What I have to decide

[14] I have to decide whether the Appellant’s appeal has a reasonable chance of success.

Reasons for my decision

[15] The Appellant’s appeal doesn’t have a reasonable chance of success.

[16] The only issue in this appeal is whether the Minister correctly used the Appellant’s LIRA income in 2018 to estimate his 2019 income. If the Minister’s approach was correct, then the Appellant’s 2019 income was too high for him to qualify for the GIS for the 2019/2020 benefit period. If the Minister’s approach was incorrect, then the Appellant’s 2019 income was **not** too high for him to qualify for the GIS for the 2019/2020 benefit period.

[17] The Tax Court decided that the Minister’s approach was correct. The Tax Court said that the Minister correctly found the Appellant’s 2018 income to be \$19,472. The Minister also correctly used his 2018 income (including the LIRA income) to estimate his

¹⁰ See GD10.

2019 income at \$19,472. Based on that estimate, he didn't qualify for the GIS for the 2019/2020 benefit period.

[18] There is nothing left for the Tribunal to decide.¹¹

[19] Although I sympathize with the Appellant, the *Old Age Security Act* and the *Old Age Security Regulations* set out how to determine whether a person is eligible for the GIS. That process requires the Minister to estimate a person's income in one year using their income from the previous year. There are exceptions to this rule, but they don't apply to the Appellant's case.¹²

[20] The Minister (and the Tribunal) must follow the law. I can't make exceptions based on extenuating circumstances, the Appellant's mental and emotional strain, or humanitarian or compassionate reasons.¹³

[21] I can also appreciate that the Appellant would be frustrated that he received different advice about his GIS from three different employees of Service Canada. But the Tribunal is independent from Service Canada and isn't bound by what Service Canada employees told the Appellant. The Tribunal is bound by the law. The law allows only one outcome in this case—the dismissal of his appeal.

Procedural issues

[22] At the conference on October 11, the Appellant raised a couple procedural concerns. I will address those now.

¹¹ The Appellant said that there were other issues for the Tribunal to decide. But the Appellant was actually referring to his arguments, not other issues. All of his arguments were ultimately about the same issue—whether the Minister correctly used the Appellant's LIRA income in 2018 to estimate his 2019 income.

¹² See sections 13 and 14 of the *Old Age Security Act* and section 14 of the *Old Age Security Regulations*. By finding that the Appellant's 2019 income was correctly calculated using section 14(6) of the *Old Age Security Act*, the Tax Court specifically found that the exceptions don't apply (see GD3-2).

¹³ See *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.

– **The role of navigators at the Tribunal**

[23] The Tribunal assigned a staff member (called a “navigator”) to the Appellant’s case. The Appellant said that he had had multiple navigators during the course of his appeal. He said that the Tribunal wasn’t adequately supporting him throughout the appeal process because:

- he didn’t understand what the navigators’ role was
- the navigators didn’t answer his questions
- the navigators didn’t give him a “list of grounds” (arguments) that he could use to support his appeal

[24] Navigators are a service that the Tribunal provides to appellants who don’t have a professional representative, like a lawyer. But navigators aren’t representatives—that is, they don’t represent appellants before the Tribunal. They don’t mediate between an appellant and the Tribunal member who decides the appellant’s appeal. They don’t help appellants prepare arguments. They don’t make recommendations or give advice or opinions about the outcome of an appeal. Much of this was explained in a letter that the Tribunal sent to the Appellant on June 23, 2021.

[25] This doesn’t make the Tribunal’s process unfair. An appellant is free to retain a representative to help them in situations where navigators and other Tribunal staff can’t.

[26] To address the Appellant’s concerns, at the conference I invited the Appellant to ask me any questions he still had about the appeal process. This is in keeping with the Tribunal’s approach to making decisions (called “active adjudication”).¹⁴

[27] The Appellant was frustrated that he could not find a “list of grounds” or arguments he could make that would allow him to succeed in his appeal. He said he had checked online but could not find anything. I reassured him that there are no “magic

¹⁴ See *Minister (Employment and Social Development) v SH and Justice for Children and Youth*, 2021 SST 412 at paragraph 65.

words” to raise an issue before the Tribunal. He could simply tell me what issues he saw in his case, and tell me why he believed I should decide them in his favour.

– **Allegations of bias**

[28] At the conference, the Appellant also said he believed I was biased and could not make a fair decision about his appeal because I was only one person. He said his appeal should be decided by a panel of at least three Tribunal members.

[29] Allegations of bias are serious because they challenge a decision-maker’s integrity. The person alleging bias has the onus (responsibility) of showing that there is a reasonable apprehension of bias. It is not enough for a person to simply allege or suspect bias.¹⁵

[30] A reasonable apprehension of bias exists if an informed person who views the matter realistically and practically and thinks the matter through would conclude it is more likely than not that I would decide unfairly.¹⁶

[31] If there is a reasonable apprehension of bias, then I can’t decide the Appellant’s appeal.

[32] The Appellant hasn’t shown that there is a reasonable apprehension of bias.

[33] I explained to the Appellant that the Tribunal is created by law. The law says that every appeal to the Tribunal must be heard by a single member.¹⁷ The Appeal Division of the Tribunal has previously found that one-person panels don’t automatically result in unfairness.¹⁸

[34] A person who is informed of the law that governs the Tribunal, and thinks the matter through realistically and practically, would not believe that I would decide

¹⁵ See *Joshi v Canadian Imperial Bank of Commerce*, 2014 FC 552.

¹⁶ See *Baker v Canada (Minister of Citizenship and Immigration)* (1999), [1999] 2 SCR 817 (SCC) at paragraphs 45 to 47.

¹⁷ See section 61 of the *Department of Employment and Social Development Act*.

¹⁸ See *GS v Minister (Employment and Social Development)*, 2017 SSTADIS 770 at paragraph 8.

unfairly. They would understand that the Tribunal must follow the law, and that one person can make a fair decision just like a panel of three people can.

[35] The Appellant's allegation doesn't support a reasonable apprehension of bias.

Conclusion

[36] The Tax Court has already decided the only issue in this appeal. There is nothing left for the Tribunal to decide.

[37] As a result, the Appellant isn't eligible for the GIS for the 2019/2020 benefit period.

[38] This means the appeal doesn't have a reasonable chance of success.

[39] The appeal is summarily dismissed.

James Beaton
Member, General Division – Income Security Section