



Citation: *IR v Minister of Employment and Social Development*, 2023 SST 742

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

Decision

Appellant: I. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 30, 2022 (issued
by Service Canada)

Tribunal member: Brenda Hollingsworth

Type of hearing: Videoconference

Hearing date: November 29, 2022

Hearing participants: Appellant
Interpreter

Decision date: January 4, 2023

File number: GP-22-531

Decision

[1] The appeal is dismissed.

[2] The Appellant, I. R., isn't eligible for the Guaranteed Income Supplement (GIS).¹ This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant is an 82-year-old Canadian citizen. He is originally from Romania and now lives in Israel. He hasn't been to Canada since 2017.

[4] The Appellant says that he should receive the GIS for humanitarian reasons because he worked in Canada for 21 years and is now facing financial and health problems.

[5] The Minister of Employment and Social Development (Minister)² says the Appellant isn't eligible for the GIS because he doesn't reside in Canada and hasn't resided in Canada for many years.

[6] The Minister decided that the Appellant had to repay \$7,212.35. This is how much he received in GIS payments from August 2019 to December 2020, before the Minister learned he wasn't residing in Canada.³

What the Appellant must prove

[7] To receive the GIS, the Appellant has to prove that he is eligible for it based on the rules set out in the *Old Age Security Act* (OAS Act).⁴ He also has to prove that none of the limitations or restrictions in the OAS Act apply to him.

¹ The Guaranteed Income Supplement (GIS) is a supplemental amount paid to Old Age Security (OAS) recipients who have little or no other income. The eligibility requirements for the GIS are set out in the *Old Age Security Act* (OAS Act).

² The Minister of Employment and Social Development (Minister) manages the OAS programs for the Government of Canada.

³ See the Minister's reconsideration letter at GD1-2 and the Minister's submission at GD5.

⁴ Section 11 of the OAS Act sets out the rules for GIS eligibility. Section 11(7) says that the GIS isn't available to foreign residents, beginning six months after they leave Canada.

Reasons for my decision

[8] These are the reasons why I am dismissing the appeal.

The Appellant resides in Israel and doesn't qualify for the GIS

[9] The Appellant admitted at the hearing that he resides in Israel. He participated in the hearing from his home in Israel. The documents that he provided to the Minister show that he moved from Canada to Israel in 2006.⁵

[10] The Appellant explained that, before 2018, he would travel to Canada once per year and stay with friends for about a month. The rest of the time, he lived in Israel. However, he explained that his last visit to Canada was in 2017. He no longer travels due to his health. He does still have a valid Canadian passport.

[11] Given that he doesn't reside in Canada, the Appellant doesn't qualify for the GIS.

A member of the Social Security Tribunal doesn't have discretion to vary the law

[12] The Appellant wants me to create an exception to the law for him, based on humanitarian grounds. As a member of the Social Security Tribunal, I don't have the power to make exceptions to the rules in the OAS Act.

[13] The Appellant argues that:

- he has a number of serious health problems
- his current monthly income isn't enough to meet his needs and isn't fair given the taxes he paid
- he worked and paid taxes in Canada for 21 years
- Service Canada should not have sent him the GIS application form if he wasn't eligible

⁵ See GD1-7.

[14] None of those arguments would allow me to grant the GIS to someone who has lived outside Canada for more than six months.

Conclusion

[15] I find that the Appellant isn't eligible for the GIS.

[16] This means the appeal is dismissed.

Brenda Hollingsworth
Member, General Division – Income Security Section