



Citation: *RM v Minister of Employment and Social Development*, 2022 SST 1331

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

## **Decision**

<b>Appellant:</b>	R. M.
<b>Representative:</b>	Peter Austin
<b>Respondent:</b>	Minister of Employment and Social Development
<b>Representative:</b>	Regina Barron
<b>Decision under appeal:</b>	Minister of Employment and Social Development reconsideration decision dated December 14, 2021 (issued by Service Canada)
<b>Tribunal member:</b>	George Tsakalis
<b>Type of hearing:</b>	On the record
<b>Decision date:</b>	November 10, 2022
<b>File number:</b>	GP-22-430

## Decision

[1] The appeal is dismissed.

[2] The Tribunal does not have jurisdiction to waive the \$1,800 overpayment in relation to Guaranteed Income Supplement (GIS) benefits the Appellant, R. M., received from January 2019 and June 2020.

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

## Overview

[4] The GIS is a monthly benefit payable to people receiving *Old Age Security* (OAS), who have little or no income.<sup>1</sup> The amount of the GIS depends on relationship status and income.<sup>2</sup> If a person's income increases, the general rule is that the amount of their GIS benefit decreases.

[5] The Minister of Employment and Social Development (the Minister) received a Statement of Estimated Income from the Appellant on January 22, 2019. The Appellant advised that her workers' compensation benefits (WCB) would be stopped on December 31, 2018.<sup>3</sup>

[6] The Minister wrote to the Appellant on January 30, 2019 about changes to the Appellant's Guaranteed Income Supplement (GIS) benefits for the 2018-2019 payment year. The Minister recalculated the Appellant's GIS benefits because her WCB benefits had stopped. In the Appellant's case, the Minister increased the Appellant's GIS benefits because she expected her income to decrease. The Minister also informed the Appellant that any unreported income might result in an overpayment which the Appellant would have to pay back.<sup>4</sup>

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<sup>1</sup> See section 11 of the *Old Age Security Act*

<sup>2</sup> See section 12 of the *Old Age Security Act*

<sup>3</sup> See GD2-23

<sup>4</sup> See GD2-29

[7] The Minister wrote to the Appellant on May 6, 2019. The Appellant's GIS was renewed for the 2019-2020 payment period based on the Appellant's Statement of Estimated Income. The Minister again informed the Appellant that any unreported income might result in an overpayment which the Appellant would have to pay back.<sup>5</sup>

[8] The Minister reviewed the Appellant's OAS account because of a difference between the Appellant's estimated income in 2019 and her actual 2019 income as reported from the Canada Revenue Agency. The Minister wrote to the Appellant on August 31, 2020. The Minister advised the Appellant that it had recalculated her GIS benefit for the 2018-2019 and 2019-2020 periods. This is because the Appellant's actual income was more than her expected income. The Appellant had actually received \$1,615.44 in WCB in 2019 that was not contained in her estimated income. Since the Appellant's income went up, the amount of her GIS benefits went down. The Minister calculated a \$1,800 overpayment from January 2019 to June 2020.<sup>6</sup>

[9] The Appellant confirmed in a Questionnaire that she had received \$134.62 per month in WCB in 2019.<sup>7</sup>

[10] The Appellant has appealed the Minister's decision to the Tribunal. The Minister says this appeal should be dismissed. This is because the OAS Act allows the Minister adjust payments if an Appellant's actual income exceeds their estimated income.<sup>8</sup>

[11] The Appellant argues that the overpayment should be waived. She had been informed that her WCB would stop. She did not know she would have received WCB in 2019. She did nothing wrong. She also is in difficult financial circumstances and she would have serious difficulty paying back the money the Minister says she owes.<sup>9</sup>

[12] I invited the Appellant and the Minister to a case conference because I had concerns about the Appellant's case. I advised the Appellant that I would not make a

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<sup>5</sup> See GD2-35

<sup>6</sup> See GD2-39

<sup>7</sup> See GD2-46

<sup>8</sup> See section 18 of the *Old Age Security Act*

<sup>9</sup> See GD2-8, GD3-1-2 and GD5-1-2

decision on this appeal until I discussed my concerns with her and her representative at a case conference.<sup>10</sup>

[13] I advised the Appellant and her representative that the Tribunal did not have jurisdiction to waive the overpayment. The Appellant's representative asked me to draft an on the record decision dismissing this appeal. I agreed to draft an on the record decision because this appeal had to be dismissed based on the information in the file.

## **Reasons for my decision**

[14] The Tribunal is created by law. The law says that the Tribunal only has authority or jurisdiction to decide whether any benefit is payable or the amount of the benefit.<sup>11</sup> I must interpret the law as it is set out in the OAS Act. The OAS Act gives the Minister the power to adjust GIS benefits when an Appellant's actual income is higher than their estimated income. I know that the Appellant did nothing wrong. She did not expect that she would receive further WCB benefits when she completed her Statement of Estimated Income. This unexpected income led to the overpayment. However, I cannot make decisions on compassionate grounds. This means that I cannot waive or reduce the overpayment.<sup>12</sup>

[15] The Minister asked the Appellant to pay back the overpayment at the rate of \$158.68 a month.<sup>13</sup> The Appellant says she cannot do this. She wants some form of relief from the Minister. The Minister's representative said she would send the Appellant a Statement of Income and Expenses. She said the Appellant can complete this form and the Minister would consider an alternative repayment plan. I would encourage the Minister's representative to forward this form to the Appellant as soon as possible, given that she finds herself in difficult financial circumstances.

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<sup>10</sup> See GD6

<sup>11</sup> See sections 27 and 28 of the *Old Age Security Act*

<sup>12</sup> See *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278

<sup>13</sup> See GD2-39

## **Conclusion**

[16] Even though I sympathize with the Appellant, I must dismiss this appeal. This is because the Minister has the power to adjust GIS benefits when an Appellant's actual income is higher than their estimated income and I do not have jurisdiction to reduce or waive the overpayment.

George Tsakalis

Member, General Division – Income Security Section