



Citation: *YF v Minister of Employment and Social Development*, 2023 SST 1170

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Y. F.
Representative: W. F.

Respondent: Minister of Employment and Social Development
Representative: Andrew Kirk

Decision under appeal: General Division decision dated September 2, 2022
(GP-22-386)

Tribunal member: Neil Nawaz

Type of hearing: In person
Hearing date: August 1, 2023
Hearing participants: Appellant
Appellant's representative
Respondent's representative

Decision date: August 25, 2023
File number: AD-22-912

Decision

[1] The appeal is dismissed. The Appellant is not entitled to the Guaranteed Income Supplement (GIS) before January 2017.

Overview

[2] The Appellant became entitled to a partial Old Age Security pension as of September 2013.¹ In December 2017, the Appellant submitted GIS applications for the years 2016–17 and 2017–18.²

[3] In September 2018, the Minister of Employment and Social Development (Minister) approved the Appellant's GIS applications with a first payment date of January 2017.³

[4] In October 2018, the Appellant submitted three more GIS applications, this time for the years 2013–14, 2014–15, and 2015–16.

[5] The Minister denied those applications. It said that it couldn't pay the GIS more than 11 months before the application was received.

[6] The Appellant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by videoconference and dismissed the appeal. It found that the Minister had acted within the law by limiting the Appellant's retroactive GIS payments.

[7] The Appellant then applied for permission to appeal to the Appeal Division. One of my colleagues on the Appeal Division granted her permission to appeal. Earlier this month, I held a hearing to discuss her claim in full.

¹ The Appellant first applied for an OAS pension on November 23, 2012—see GD2-40. After a long period of investigation, the Minister agreed that the Appellant was entitled to a partial OAS pension as of September 2013. See agreement between Minister and Appellant dated August 10, 2018, GD2-162.

² See GIS applications for the periods July 1, 2016 to June 30, 2017 (GD2-147) and July 1, 2017 to June 30, 2018 (GD2-149).

³ See Minister's approval letter dated September 4, 2018, GD2-165.

Preliminary Matter

[8] On December 5, 2022, the rules governing the appeals to the Social Security Tribunal changed. Under the new rules, the Appeal Division, once it has granted permission to proceed, must now hold a *de novo*, or fresh, hearing about the same issues that were before the General Division. As I explained at the outset of the hearing, that meant I would be considering all available evidence about the Appellant's potential eligibility for the GIS. I also made it clear that I would not be bound by any of the General Division's findings.

Issue

[9] Is the Appellant entitled to the GIS before January 2017?

Analysis

[10] I have applied the relevant law to the available evidence. I have concluded that the Appellant is barred from receiving GIS payments more than 11 months before her earliest application date.

There is no way around the 11-month retroactive payment limit

[11] The Appellant's first two GIS applications were dated December 2017. The other three were filed in October 2018. That means the Appellant's earliest possible payment date was January 2017 or 11 months before the filing date of the first applications.

[12] This limit on retroactive payment is mandated by law. Section 11(7)(a) of the *Old Age Security Act* (OASA) caps back payment of the GIS at no "more than 11 months before the month in which the application is received" by the Minister. There are no allowances or exceptions. The Appellant's reasons for not filing GIS applications earlier are therefore rendered irrelevant, as is her age or lack of facility with English. As a result, the Appellant was statute-barred from receiving payment any earlier than January 2017.

[13] The Appellant argued that section 11(3.1) of the OASA should apply to his case. It says that the Minister may waive the requirement for an application if she is satisfied the applicant is qualified for the benefit.

[14] However, I don't think this section helps the Appellant. Its use of the words "may" and "satisfied" suggests that the Minister's power to waive the application requirement is discretionary or voluntary. As such, I have no authority to force the Minister to correct what the Appellant perceives is an injustice.

None of the Appellant's reasons for appealing has merit

[15] The Appellant finds it unfair that senior citizens like herself are denied a benefit merely because they may have been delayed—maybe for understandable reasons—in submitting an application. Yet this is the outcome that Parliament prescribed when it enacted the OASA.

[16] As much as I may sympathize with the Appellant, my hands are tied by the OASA and the laws that govern the Tribunal. As a member of an administrative tribunal, I have no power to ignore the law and simply order a result that I might think is "fair."

[17] Support for this position may be found in a case called *Esler*, in which the Federal Court said: "The Review Tribunal [a predecessor to the Social Security Tribunal] is a pure creature of statute and as such, has no inherent equitable jurisdiction which would allow it to ignore the clear legislative provision... and use the principle of fairness to grant retroactive benefits in excess of the statutory limit."⁴

Conclusion

[18] For the above reasons, the Appellant is not entitled to the GIS before January 2017.

[19] The appeal is dismissed.



Member, Appeal Division

⁴ See *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.