



Citation: *Minister of Employment and Social Development v JV*, 2023 SST 1271

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Rebekah Ferriss

Respondent: J. V.
Representative: Eloho Atekha-Aideyan

Added Party: The Estate of A. V.

Decision under appeal: General Division decision dated May 19, 2023
(GP-21-498)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **September 14, 2023**

File number: AD-23-783

Decision

[1] I'm allowing the appeal. The Claimant is could not be paid a partial Old Age Security (OAS) pension or the Guaranteed Income Supplement (GIS) from **September** 2014 to September 2020. These are the reasons for my decision.

Background

[2] J. V. (Claimant) was born in India. She came to Canada as a permanent resident in March 1995 and became a citizen in 1999. Since then, she has spent time in Canada, India, and the US. She received:

- the Allowance under the *Old Age Security Act* (OAS Act) from May 2009 to April 2010;
- a partial OAS pension of 10/40 from May 2010 to September 2018; and
- the GIS from May 2010 to June 2015, and from July to September 2018.

[3] The Minister then decided that the Claimant never resided in Canada and that she had to repay all the benefits she had received, which was over \$83,000.

[4] The Claimant appealed to this Tribunal. The General Division decided that the Claimant:

- was eligible for the Allowance from May 2009 to April 2010;
- was eligible for a partial OAS pension of 12/40ths and the GIS starting from July 2011 (her application was approved the month before);
- wasn't entitled to the partial OAS pension or the GIS from **August 2014** to September 2020 (a period of non-entitlement). The Claimant stopped residing in Canada on February 2, 2014.

[5] I gave the Minister permission to appeal, finding that it was arguable that the General Division made an error in calculating the period of non-entitlement.

The parties agree on the outcome of the appeal

[6] The parties have asked for a decision based on an agreement they reached during a settlement conference on September 14, 2023.¹

[7] The parties agree on the following:

- The Appeal Division should allow the Minister's appeal.
- The Claimant is eligible for the Allowance from May 2009 to April 2010.
- The Claimant is eligible for a partial OAS pension of 12/40ths and the GIS starting from July 2011 (her application was approved the month before) until March 29, **2023**. However, the Claimant also has a period of non-entitlement.
- Sections 9(3) and 11(7)(d) of the OAS Act allow payment of benefits for six months after the month of the Claimant's departure from Canada.
- Since the General Division found that the Claimant stopped residing in Canada on February 2, 2014, that means that she is entitled to benefits for February 2014, plus the following six months. The Claimant would stop being entitled to benefits effective September 2014. Therefore, the correct period during which the Claimant **cannot** receive the OAS and GIS was **September** 2014 to September 2020 (the period of non-entitlement).

I accept the parties' agreement

[8] I accept the parties' agreement. I'm satisfied that according to the sections of the OAS Act outlined above, the Claimant is entitled to the partial OAS pension and the GIS in August 2014, and that the period of non-entitlement started **September** 2014 and continued to September 2020.

¹ See section 39(2) in the *Social Security Tribunal Rules of Procedure*.

[9] I allow the Minister's appeal. The Claimant is entitled to benefits precisely as set out by the General Division, except that the period of non-entitlement starts in September 2014, not in August 2014, in accordance with the parties' agreement.

Conclusion

[10] I allow the Minister's appeal. The Claimant's period of non-entitlement is September 2014 to September 2020.

Kate Sellar
Member, Appeal Division