



Citation: *ML v Minister of Employment and Social Development*, 2023 SST 1225

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Decision**

**Appellant:** M. L.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Viola Herbert

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**Decision under appeal:** General Division decision dated November 30, 2022  
(GP-20-1363)

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**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference

**Hearing date:** August 29, 2023

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** September 5, 2023

**File number:** AD-23-62

## Decision

[1] The appeal is dismissed. The Appellant did not cancel her Old Age Security (OAS) pension within six months after it began. There is nothing I can do to cancel it now.

## Overview

[2] In September 2018, Service Canada automatically approved the Appellant for a pension under the *Old Age Security Act* (OAS Act).<sup>1</sup> The Appellant claims that she was never notified of the approval. Since the Appellant had a high income at the time, her OAS pension was completely clawed back, and nothing was ever deposited into her account.

[3] In June 2019, after realizing that she was officially an OAS pensioner, the Appellant asked Service Canada to delay all OAS pension payments until further notice. The Minister denied the request because it came more than six months after the first date of payment.<sup>2</sup>

[4] The Appellant appealed Service Canada's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It found insufficient evidence to support the Appellant's claim that she had cancelled her OAS pension within the six-month deadline. It concluded that it was too late for the Appellant to cancel her pension.

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

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<sup>1</sup> Service Canada is the agency that the Minister uses to deal with the public. In this decision I will be using the terms "Minister" and "Service Canada" interchangeably.

<sup>2</sup> See Minister's letter dated June 24, 2020, GD2-15.

## **Preliminary Matter**

[6] In December 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 whether the Appellant cancelled her OAS pension on time. I also made it clear that I would not be bound by any of the General Division's findings.

## **Issue**

[7] For the Appellant to succeed, she must prove that she submitted a written request to Service Canada to cancel her OAS pension within six months after the pension began.

## **Analysis**

[8] I have applied the law to the available evidence and concluded that the Appellant did not cancel her OAS pension within the six-month deadline.

## **The Appellant did not cancel her OAS pension in time**

[9] At the hearing, the Appellant said that she was aware of the financial advantages of delaying her government pensions as long as possible. She insisted that she took steps to stop both her OAS and CPP pensions after she turned 65. She argued that Service Canada made a mistake by recognizing only part of her request.

[10] I can understand the Appellant's frustration, but I have to follow the law and the facts where they take me. The evidence on file points to the following sequence of events:

- On August 22, 2017, Service Canada sent the Appellant a letter notifying her that she would be auto-enrolled for the OAS pension effective September 2018, when she was due to turn 65. The letter advised the Appellant to

contact Service Canada as soon as possible if she wanted to delay the pension.

- On March 29, 2018, the Appellant sent Service Canada a letter asking it not to send her any CPP benefits beginning September 2018. The letter did not mention the OAS pension or any benefit associated with it.<sup>3</sup>
- In September 2018, the Appellant turned 65. That same month, she was approved for the OAS pension and formally put in pay.
- Sometime in early 2019, the Appellant received a T4A slip indicating that she was officially an OAS recipient, even if she wasn't actually receiving any pension payments. The Appellant testified that she didn't appreciate the significance of the slip and put it in a file meant for her accountant when it came time to prepare her income taxes.
- In April 2019, her accountant noticed the slip and informed the Appellant that she was technically receiving an OAS pension. In a letter dated June 2, 2019, the Appellant asked Service Canada to delay all OAS pension payments.<sup>4</sup>
- On June 24, 2020, Service Canada refused the Appellant's request because it was filed too late.<sup>5</sup>

[11] According to section 26.1(1) of the *Old Age Security Regulations* (OAS Regulations), a request for cancellation of a pension shall be made to the Minister in writing no later than six months after the day on which payment of the pension begins.

[12] The Appellant's pension began in September 2018, even though she didn't actually receive any of it because of the OAS pension recovery tax, popularly known as the "clawback." However, the Appellant did not make a written request to cancel her OAS pension until June 2019—well after the six-month deadline.

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<sup>3</sup> See Appellant's letter dated March 29, 2018, GD2-14

<sup>4</sup> See Appellant's letter dated June 2, 2019, GD2-8.

<sup>5</sup> See Minister's letter dated June 24, 2020, GD2-15.

## **None of the Appellant's arguments can succeed**

[13] The Appellant strongly feels that Service Canada administered her OAS pension unfairly. She wants me to recognize that she cancelled her OAS pension on time. She asks me to take the following points into account:

- She never received Service Canada's August 2017 letter notifying her that she would be auto-enrolled for the OAS pension;
- She called Service Canada around March 2018 to request a delay in her OAS and CPP pension payments until further notice;
- Service Canada told her that such a request had to be made in writing, but the representative to whom she spoke never said that she had to mention both pensions; and
- Since no pension amount was ever deposited in her bank account, she had no way of knowing that she was an OAS recipient until it was too late.

[14] None of this helps the Appellant. The Federal Court has held that the Minister has no obligation to warn a potential applicant of a deadline clearly outlined in the OAS Act.<sup>6</sup> In any event, I am satisfied that the Appellant was in fact informed of her OAS enrolment and the six-month cancellation deadline.

[15] The Appellant claims to have never received Service Canada's August 2017 letter, but I prefer to rely on the Minister's evidence. Service Canada says that they don't keep actual copies of the auto-enrolment letters they send out. However, a record of mailings to the Appellant over the past 10 years indicates that an "auto-enrolment" letter was sent to her registered home address on August 22, 2017.<sup>7</sup> I am also placing weight on an undated Service Canada statement, submitted by the Appellant herself, informing her that the OAS recovery tax would be starting in September 2018.

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<sup>6</sup> See *Canada (Minister of Human Resources and Development) v Reisinger (Estate)*, 2004 FC 893.

<sup>7</sup> See Service Canada's Intranet IT Renewal Delivery System record of correspondence with the Appellant, AD3-4.

[16] The Appellant is asking me to find that her letter of March 29, 2018 in effect cancelled her OAS pension as well as her CPP pension. Unfortunately, I can't do that. I accept that the Appellant probably **meant** to cancel both pensions, but the wording of the OAS Regulations suggests that the cancellation of her OAS pension had to **explicitly** be done in writing.

### **This Tribunal can't correct the Minister's erroneous advice or administrative errors**

[17] Finally, the Appellant alleges that a Service Canada representative gave her faulty guidance about how to cancel her pension. I have no way of knowing whether this is true but, even if it is, I don't have the authority to intervene.

[18] The Tribunal is created by legislation and, as such, has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the OAS Act.

[19] According to section 32 of the OAS Act, the Minister may take remedial action if she is satisfied that an applicant was denied a benefit because of erroneous advice or administrative error. Use of the words "may" and "satisfied" in this provision suggests that such a decision is purely discretionary—the Minister doesn't have to fix her mistake if she doesn't think it is warranted. However, case law says that administrative tribunals, such as this one, can't force the Minister to revisit or reverse a decision that she has taken voluntarily.<sup>8</sup> In this case, since the Minister has never admitted to an error, there is nothing I can do to make her correct it.

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<sup>8</sup> See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

## Conclusion

[20] The Appellant did not submit a written request to the Minister to cancel her OAS pension within six months of the first payment date. Even if the Appellant missed the deadline because of the Minister's erroneous advice, I don't have the authority to retroactively cancel the pension myself.

[21] The appeal is dismissed.



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Member, Appeal Division