



Citation: *JE v Minister of Employment and Social Development*, 2023 SST 1725

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

## Decision

**Appellant:** J. E.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated November 19, 2019 (issued  
by Service Canada)

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**Tribunal member:** Anne S. Clark

**Type of hearing:** Teleconference

**Hearing date:** October 27, 2023

**Hearing participant:** Appellant

**Decision date:** November 21, 2023

**File number:** GP-23-24

## Decision

[1] The appeal is dismissed.

[2] The Appellant, J. E., wasn't entitled to a Guaranteed Income Supplement (GIS) as a single person from April 2011 to August 2015. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant is a senior citizen. He applied for a GIS in December 2010. He was separated from his spouse, and they later divorced. He lived in a common-law relationship with B. D. They shared accommodations for some time and then lived apart from each other. In 2015 B. D. became ill and had to move to a long-term care facility. When B. D., passed away the Minister reviewed the Appellant's GIS entitlement in light of the marital status he reported.

[4] The Minister decided the Appellant's GIS was calculated based on the marital status of single. It should have been based on the marital status of married. That meant the Appellant was overpaid by approximately \$4000.00.

[5] The Appellant says the previous General Division decision was correct and that the Minister should not be allowed to recover the amount they decided was an overpayment. The Appellant's financial circumstances are very difficult. He cannot afford to repay the amount the Minister demands.

[6] In its reconsideration decision the Minister said the GIS is calculated based on marital status.<sup>1</sup> The Appellant's GIS was calculated based, in part, on the wrong marital status. The Minister reduced the monthly payment to ease the financial burden. But the Minister decided the Appellant is required to repay the overpayment.

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<sup>1</sup> See GD2-60.

## What the Appellant must prove

[7] For the Appellant to succeed, he must show the Minister's decision (November 19, 2019) was wrong according to the law. In particular, that he should be entitled to have his GIS calculated as a single person from April 2011 to August 2015.

## Appeal history

### **A brief summary of the appeal history will help explain my decision**

[8] This appeal is a rehearing of an appeal from the Minister's decision dated November 19, 2019. The Appellant asked the Tribunal's General Division (GD) to review the decision to determine if the Minister had the authority to revisit a decision they made in the past.

[9] The GD decided the Minister did not have the authority to go back and revisit their earlier decision. The GD allowed the Appellant's appeal on November 9, 2020. The Minister appealed the GD decision to the Tribunal's AD.

[10] The AD followed the recent ruling of the Federal Court of Appeal and decided the Minister can revisit previous decisions and require the appellant to repay an overpayment. On December 23, 2022, the AD decided the GD decision was wrong. The AD returned the appeal to the GD for a fresh hearing.

### **The Appellant said he wanted to withdraw his appeal**

[11] The hearing concluded on October 27, 2023. On October 30, 2023, the Appellant said he wanted to withdraw his appeal. An appellant may withdraw an appeal at any time until a hearing ends or is concluded.<sup>2</sup> I could not allow the Appellant to withdraw his appeal because the hearing had already ended (concluded).

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<sup>2</sup> The wording of this rule changed slightly in December 2022. Section 14 of the *Social Security Tribunal Regulations* said an appeal may be withdrawn before a hearing is concluded. Rule 44 of the *Social Security Rules of Procedures* says an appellant may withdraw an appeal before the hearing ends. Either definition means the Appellant can't withdraw his appeal after October 27, 2023.

## Reasons for my decision

[12] The Minister is allowed to revisit and change decisions it already made on files. The Appellant prefers the earlier GD decision, but the Minister has the authority to revisit decision. To be successful the Appellant has to show he should have received a GIS as a single person.

### **The law says the Minister can change its earlier decision**

[13] The Appellant argues that the Minister can't go back and change its mind about whether it should have paid him benefits. However, the law says that the Minister **can** do this. The Minister can investigate a past decision about benefits. If the Minister finds that it should not have paid the benefits, it can require the Appellant to repay them. The Minister can do this even if the benefits were paid a long time ago, and even if the repayment is for a large amount.<sup>3</sup>

[14] The Minister may decide that the Appellant doesn't have to repay all of the benefits. For example, it might do this if the Appellant would experience undue hardship, or if the benefits were paid because of an administrative error.<sup>4</sup> But that is the Minister's decision to make, not the Tribunal's.

[15] Nothing in this decision is intended to address or change any possible agreement the Minister made or may make about the Appellant's repayment schedule.

### **The Appellant has to prove he was entitled to a GIS as a single person**

#### **GIS**

[16] The GIS is an income-tested monthly benefit that is paid to people who get an *Old Age Security* (OAS) pension, who have little or no other income and who reside in

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<sup>3</sup> See sections 37(1) and (2) of the OAS Act; section 23 of the OAS Regulations; and *Canada (Attorney General) v Burke*, 2022 FCA 44.

<sup>4</sup> See section 37(4) of the OAS Act.

Canada. If a pensioner has a spouse or common-law partner the GIS is determined based on the combined income of the couple.<sup>5</sup>

– **Common-law partner**

[17] A common-law partner is a person who has resided with the pensioner in a conjugal relationship at the relevant time and for at least one year.<sup>6</sup> The Appellant and B. D. were common-law partners during the relevant time. (April 2011 to August 2015) I will explain the facts that support this conclusion.

[18] The factors that are relevant to determining whether two people were cohabiting in a conjugal relationship include:<sup>7</sup> It is not necessary for the circumstances to meet every factor. When I consider the evidence and factors in this appeal, I find there is enough evidence to show a marriage-like relationship during the relevant period.

- Shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation.
- Sexual and personal behavior, including whether the parties had sexual relations, maintained an attitude of fidelity to each other, communicated on a personal level, ate together, assisted each other with problems or during illness or bought each other gifts.
- Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services.
- Social, including whether the parties participated together or separately in neighbourhood and community activities and their relationship with each other's family members.
- Societal, including the attitude and conduct of the community towards each of them as a couple.

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<sup>5</sup> See section 12 of the *Old Age Security Act*.

<sup>6</sup> See section 2 of the *Old Age Security Act*.

<sup>7</sup> The Supreme Court of Canada explained this in a decision called Hodge. The citation is *Minister of Human Resources Development v. Hodge*, 2004 SCC 65.

- Support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property.

[19] The Appellant said he considered himself only “partially co-habiting” with B. D. beginning in 2011. He did live with her until 2015 when she went into long-term care. However, when they did live together, he did not consider them to be common-law partners. He said that was mainly because he did not own the house they lived in. He owned another property and was working to rebuild or repair it.

[20] The Appellant said he maintained both properties. The house they lived in was in B. D.’s name and the property they did not live in was in his name.

[21] They shared household expenses. They shared a bedroom, and each is named as beneficiary in the other’s insurance policies and wills.

[22] The Appellant had to take overnight trips at times. B. D. did not travel with him for those trips. They travelled together for vacations, sometimes with other couples. They were estranged from B. D.’s family who would not accept them a couple.

[23] B. D. had a condition that limited intimacy. But the Appellant and B. D. did not have intimate relationships with other people. He said they were very close. She relied on him, and he took care of her.

– **The Appellant said he did not cheat on his GIS applications**

[24] The Appellant said he did not cheat or lie to get GIS payments. At most he misunderstood the rules. He feels he should not be penalized for that. It is not fair to make him repay the amount since he did not know he was not entitled to the amount he received.

[25] The Tribunal is created by legislation. It only has the powers granted to it by its governing statute. This means I have to interpret and apply the provisions as they

appear in the CPP and its regulations. I cannot change or waive them, even if they seem unfair in a particular situation.<sup>8</sup>

[26] The Appellant said the amount of money the Minister will recover is very small for the government but will cause financial struggles for him. I explained to the Appellant that I cannot decide whether the Minister should forgive (remit) any of the amount owing.<sup>9</sup>

[27] I find that the Appellant wasn't eligible for GIS payments as a single person from April 2011 to August 2015.

[28] This means the appeal is dismissed.

Anne S. Clark  
Member, General Division – Income Security Section

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<sup>8</sup> For a general discussion on this point see the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.

<sup>9</sup> This is explained in a decision called *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278