



Citation: *IP v Minister of Employment and Social Development*, 2023 SST 503

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

# Decision

**Appellant:** I. P.  
**Representative:** Alexander Plakhov

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

---

**Decision under appeal:** Minister of Employment and Social Development decision dated January 4, 2022 (issued by Service Canada)

---

**Tribunal member:** Anne S. Clark

**Type of hearing:** Videoconference

**Hearing date:** April 18, 2023

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

**Decision date:** April 25, 2023

**File number:** GP-22-251

## Decision

[1] The appeal is allowed.

[2] The Appellant, I. P., is entitled to have the December 3, 2019, decision about his *Old Age Security* (OAS) benefits and Guaranteed Income Supplement (GIS) reconsidered.

## Overview

[3] The Appellant applied for OAS benefits and GIS in August 2016.<sup>1</sup> The Minister of Employment and Social Development (Minister) allowed his application.<sup>2</sup> In a decision dated December 3, 2019, the Minister decided the Appellant was not entitled to the full amount of GIS he received. The Minister reduced the GIS payment. That meant the Appellant owed \$4545.32.<sup>3</sup> The Appellant asked the Minister to reconsider its decision on November 25, 2020.<sup>4</sup>

[4] On January 4, 2022, the Minister refused to reconsider its December 3, 2019, decision.<sup>5</sup> The Minister said the Appellant's reconsideration request was too late and the decision could not be reconsidered.

[5] The Appellant appealed to the Social Security Tribunal's General Division.

[6] This appeal isn't about whether the Minister should have reduced the Appellant's GIS payment. It is about whether his request for reconsideration was late and, if it was, whether the Minister should have given him more time to ask for reconsideration.

## What I must decide

[7] I must decide whether the Appellant's reconsideration request was late.

---

<sup>1</sup> See GD2-3.

<sup>2</sup> See GD2-72.

<sup>3</sup> The Minister's decision is at GD1-51.

<sup>4</sup> The Appellant's request is at GD2-15.

<sup>5</sup> See GD2-20.

[8] If it was, then I must also decide whether the Minister acted judicially (made its decision properly) when it refused to give the Appellant more time to ask it to reconsider its decision.<sup>6</sup>

[9] If the Minister didn't act judicially, I will make the decision it should have made. My decision will focus on whether the Appellant has a reasonable explanation for why he was late and whether he showed a continuing intention to ask the Minister to reconsider its decision.

## **Matters I have to consider first**

### **The Minister asked me to adjourn the hearing**

[10] The Minister asked me to adjourn the hearing (that is, change the hearing date). The Minister submitted the request four days before the hearing. The Minister said it scheduled mandatory training (previously unscheduled) for its employees. Therefore, a departmental representative would not be able to attend a hearing until June 2023.

[11] I refused the Minister's request. I may reschedule an appeal if it is necessary for a fair hearing.<sup>7</sup> The Minister was notified of the hearing date on March 1, 2023. The Minister said the training was previously unscheduled. That tells me the scheduling conflict was within the Minister's control.

[12] Given the Minister's resources I would expect the Minister to be able to fully participate in the appeal as scheduled. The Minister's request to delay the appeal for approximately two months was not necessary to ensure a fair hearing for the Minister. The Minister could participate in writing or adjust its training schedule to allow an employee to attend the hearing by videoconference. Delaying the appeal for two months

---

<sup>6</sup> When the Minister of Employment and Social Development (Minister) gives more time (or "a longer period" as the law words it) in this situation, that means it accepts to consider the late request.

<sup>7</sup> See rule 43 (3) of the *Social Security Tribunal Rules of Procedure*. This rule also sets out circumstances when a party is entitled to have a hearing rescheduled. Those circumstances do not apply to the Minister's request. In all other requests the Member may only reschedule if it is necessary for a fair hearing.

to accommodate a departmental schedule just days before the hearing was not fair to the Appellant.

## **Reasons for my decision**

[13] The Appellant's reconsideration request was late. But the Minister didn't act judicially. I am directing the Minister to reconsider its decision.

### **The Appellant's reconsideration request was late**

[14] The Appellant's reconsideration request was late.

[15] An appellant has 90 days to ask the Minister to reconsider a decision.<sup>8</sup>

[16] If an appellant waits more than 90 days, then the reconsideration request is considered late.

[17] The Appellant said he knew his reconsideration request was late. He said he received the decision very quickly. He said he received it by December 5, 2019.

[18] I agree that the request was late. Accepting that the Appellant received the decision by December 5, 2019, he had until Wednesday March 4, 2020, to request reconsideration. He requested reconsideration on November 25, 2020.

[19] I find that the Appellant asked the Minister to reconsider its December 3, 2019, decision more than 90 days after the Minister told him about it.

### **What to consider when a reconsideration request is late**

[20] The Minister can reconsider a decision even if the reconsideration request is late. For this to happen, the law says that an appellant has to convince the Minister of two things. They have to show that:<sup>9</sup>

- a) they have a reasonable explanation for why they are late

---

<sup>8</sup> See section 81 of the *Canada Pension Plan*.

<sup>9</sup> See section 74.1(3) of the *Canada Pension Plan Regulations*.

- b) they always meant to ask the Minister to reconsider its decision—this is called their “continuing intention”

[21] The Appellant has to show he meets both factors. This means that, if the Appellant doesn’t meet one of the factors, then he isn’t entitled to have the Minister’s December 3, 2019, decision reconsidered.

### **The Minister must act judicially**

[22] The Minister’s decision whether to consider a late reconsideration request is discretionary. Discretion is the power to decide whether to do something. The Minister has to use its discretion judicially.<sup>10</sup>

[23] If the Minister did one of the following, then it didn’t act judicially:<sup>11</sup>

- acted in bad faith
- acted for an improper purpose or motive
- considered an irrelevant factor
- ignored a relevant factor
- discriminated

### **– The Minister didn’t act judicially**

[24] The Minister refused the Appellant’s reconsideration request. The Minister said it was because the Appellant made the request more than 90 days after he received the December 3, 2019, decision.<sup>12</sup> The Minister gave no other reason for the refusal.

[25] There is no evidence that the Minister acted in bad faith, for an improper purpose or motive, or discriminated.

---

<sup>10</sup> See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

<sup>11</sup> See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

<sup>12</sup> The Minister’s decision is at GD2-20.

[26] But the Minister did not consider all relevant factors. This means the Minister didn't act judicially.

[27] First, the Minister said it could not reconsider the December 3, 2019, decision because it was late. That is not correct. As I set out above, there are circumstances when the Minister can reconsider a decision after the 90-day period ends.

[28] Second, the law says that when a reconsideration request is late, the Minister must consider whether the appellant has a reasonable explanation for why they are late. The Minister must also consider whether the appellant showed that they always meant to ask the Minister to reconsider its decision.<sup>13</sup>

[29] The Appellant wrote about the reasons for the delay and his intention to pursue an appeal.<sup>14</sup>

[30] There is no evidence the Minister considered the Appellant's explanation. Because of this, the Minister ignored relevant factors it should have considered. As a result, it didn't act judicially.

– **What happens when the Minister doesn't act judicially?**

[31] Because the Minister didn't act judicially, I now have to decide whether the Appellant should get more time to ask for reconsideration. When I do this, I have to consider the same factors that the Minister had to consider.

**The Appellant meets both factors**

[32] The Appellant asked the Minister to reconsider its decision more than 90 days after the Minister told him about it. So, the Appellant has to show he has a reasonable explanation for why he was late and that he always meant to ask the Minister to reconsider the decision. The Appellant meets both factors.

---

<sup>13</sup> See section 74.1(3) of the *Canada Pension Plan Regulations*.

<sup>14</sup> See GD2-18.

– **The Appellant has a reasonable explanation for why he was late**<sup>15</sup>

[33] I find that the Appellant has a reasonable explanation for why he was late. He talked to a Service Canada agent twice. Once on the phone and once in person. Based on those conversations he believed there was an error in his application. He thought he had to contact his former spouse for her input to correct the error.

[34] The Appellant's former spouse was out of the country and would not return until October 2020. When she returned, she told him she would not help him in this matter. He contacted his legal representative in early November and sent his request for reconsideration on November 25, 2020.

[35] The Appellant did what he could to try to deal with what he believed was a mistake. He thought the first departmental agent may not have understood him, so he made a second contact. After that he believed he knew what to do and took those steps to address the issue. He thought his former spouse could correct the mistake, so he waited for her return.

[36] Based on the discussions the Appellant had with Service Canada and his former spouse he thought he had a reasonable plan to resolve what he thought was a mistake in processing his application. He thought he could "fix" the mistake without an appeal.

[37] As soon as the Appellant learned he could not correct what he believed was an error, he contacted his lawyer and filed his request promptly. His explanation for why he was late is reasonable.

– **The Appellant always meant to ask the Minister to reconsider its decision**<sup>16</sup>

[38] I find that the Appellant always meant to try to correct the decision that he had to repay some of the GIS he received. He contacted Service Canada twice. Based on those discussions he contacted his former spouse. He believed he had a plan to resolve the issue and waited for his former spouse to return so they could implement the plan.

---

<sup>15</sup> The Appellant explained in his letter at GD2-18. He also confirmed his reasons at the hearing.

<sup>16</sup> The Appellant explained his intention in his letter at GD2-18. He confirmed this at the hearing.

When he learned he would have to appeal he contacted his lawyer and filed his request promptly.

[39] From his evidence, the Appellant showed he always meant to challenge the Minister's December 3, 2019, decision.

## **Conclusion**

[40] The Appellant meets both factors. So, he is entitled to have the Minister's December 3, 2019, decision reconsidered.

[41] Because of this, I am sending this matter back to the Minister. The Minister must reconsider its December 3, 2019, decision.

[42] This means the appeal is allowed.

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