



Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: M. A.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 24, 2023 (issued by
Service Canada)

Tribunal member: Adam Picotte
Type of hearing: In person
Hearing date: August 14, 2023
Hearing participants: Appellant
Appellant's wife
Decision date: September 29, 2023
File number: GP-23-697

Decision

[1] The appeal is allowed in part.

[2] The Appellant, M. A., is eligible for an actuarial adjustment based on a deferral of his pension as he had at least 20 years of residence prior to age 65.

[3] The Appellant is not entitled to further retroactive benefits.

[4] This decision explains why I am allowing part of this appeal.

Overview

[5] The Appellant is 73 years old. He turned 65 in 2015 and chose to defer his *Old Age Security* (OAS) pension until age 70. He did this so that he could take advantage of an actuarial adjustment allowed for under the legislation. The Minister denied entitlement to an actuarial adjustment on the basis that the Appellant had 14 years and 197 days of residence up to his 65th birthdate in Canada. From his birthdate at age 65 to his birthdate at age 70, the Appellant lived in the United States of America and did not return to Canada until August 1, 2020, after his 70th birthdate. As a result, the Minister determined that the Appellant did not qualify for an actuarial adjustment.

[6] The Appellant says that he had 20 years of residence in the Netherlands between 1979 and 2000. This period of residence should have been used by the Minister to calculate his entitlement to an actuarial adjustment. However, the Minister did not include this information in its calculation. Had it done so, an adjustment would have been granted.

[7] The Minister says that it properly adjudicated entitlement and the Appellant was not entitled to an enhancement.

What the Appellant must prove

[8] For the Appellant to succeed, he must prove he had 20 years of combined residence in countries with a social security agreement and that as a result he is entitled to an actuarial adjustment.¹

[9] Section 7.1(2) of the OAS allows for a deferral of a partial pension, This rule is limited to circumstances where the Appellant has under 20 years of residence in Canada. Such Appellants may not defer their pension if living outside Canada.²

[10] The OAS allows for residency to be counted through reciprocal agreements with various countries.

[11] The OAS permits the Minister to enter into reciprocal agreements with the governments of other countries. This provision contemplates that such agreements might affect the eligibility for pensions, including, the following:

4. The totalization of periods of residence and the periods of contribution in that country and periods of residence in Canada³

[12] On April 1, 2004, the Netherlands and Canada entered into the *Agreement on Social Security Between Canada and the Kingdom of the Netherlands* (the "Agreement").

[13] The Agreement set out, in part, the following:⁴

1(a) If a person is not eligible for a benefit on the basis of the periods creditable under the legislation of Canada, the eligibility of that person for that benefit shall be determined by totalizing these periods and those specified in sub-paragraph

(b), providing that the periods do not overlap.

¹ Section 7.1(4) *Old Age Security Act*

² Section 7.1(4)(c) and Section 9(3) and (4)

³ *Section 40 Old Age Security Act*

⁴ Article IX of the Agreement

- (i) In the application of this paragraph:
- (ii) For the purposes of determining eligibility for a benefit under the *Old Age Security Act*, a creditable period under the Netherlands legislation on old age insurance shall be considered as a period of residence in the territory of Canada.

2 If a person is not eligible for a benefit under the legislation of Canada on the basis of the periods creditable under the legislation of the Parties, totalized as provided in paragraph 1, the eligibility of that person for that benefit shall be determined by totalizing these periods and periods creditable under the laws of a third State with which both Parties are bound by international social security Instruments which provide for totalizing of periods.

[14] The Agreement sets out further that:⁵

1 If a person is eligible for an Old Age Security pension or an allowance solely through the application of the totalization provisions of Article IX, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.

Matters I have to consider first

The Minister asked me to adjourn the hearing

[15] The Minister asked me to adjourn the hearing for three months (that is, change the hearing date) because it requested additional time to investigate the Appellant's entitlement to an OAS benefit. In the normal course, I would allow such a request. I didn't do that here. The reason I didn't do that here is because the Appellant told me

⁵ Article X the Agreement

that he wanted to proceed with a hearing and did not want to incur a delay on a decision.

[16] I called the oral hearing to obtain his evidence. During the oral hearing, the Appellant told me that the Minister had sent him forms to fill out. He advised me that it was his intention not to fill these forms out. The Minister's further investigations required these forms to be completed. As a result, the adjournment request made by the Minister could not result in a fulsome conclusion.

[17] I also denied the adjournment request because it would not result in an expeditious and speedy resolution of the issue on appeal.

[18] Rescheduling a hearing should only take place if it is necessary for a fair hearing.⁶

[19] The Ontario Court of Appeal has provided a summary of relevant factors, drawn from a review of the jurisprudence, to consider when deciding whether to grant an adjournment⁷:

A non-exhaustive list of procedural and substantive considerations in deciding whether to grant or refuse an adjournment can be derived from these cases. Factors which may support the denial of an adjournment may include a lack of compliance with prior court orders, previous adjournments that have been granted to the applicant, previous peremptory hearing dates, the desirability of having the matter decided and a finding that the applicant is seeking to manipulate the system by orchestrating delay. Factors which may favour the granting of an adjournment include the fact that the consequences of the hearing are serious, that the applicant would be prejudiced if the request were not granted, and a finding that the applicant was honestly seeking to exercise his right to counsel and had been represented in the proceedings up until the time of the adjournment request. In weighing these factors, the timeliness of the request, the applicant's reasons for being unable to proceed on the scheduled date and the length of the requested adjournment should also be considered.

⁶ Section 43(3) of the *Rules of the Social Security Tribunal*

⁷ *Igbinosum v Law Society of Upper Canada* (2008), 239 O.A.C. 178 (DC)

[20] Granting a three-month adjournment would not have favoured an expeditious and speedy resolution of the issue on appeal.

[21] While the Minister requested extra time for an issue the Appellant raised at the end of June 2023, the Appellant mentioned living in the Netherlands and in the United States in his reconsideration request. So the Minister should have already had the opportunity to investigate whether this time abroad could count towards his residency.

[22] As a result, I refused the request for an adjournment.

I accepted a document sent in after the hearing

[23] At the hearing, the Appellant told me that he had evidence of his entitlement to an Old Age Security pension from the Netherlands. Establishing this entitlement may have resulted in entitlement to totalization under the OAS. As a result, I allowed the Appellant time to submit a translated copy of his entitlement decision. He submitted this decision to the Tribunal on August 30, 2023. I had the decision sent to the Minister on August 31, 2023, and allowed the Minister until September 14, 2023, to provide submissions. The Minister did not respond.

Reasons for my decision

The Appellant's totalization period is greater than 20 years

[24] The Appellant had 14 years of residency in Canada.⁸

[25] In addition, the Appellant had 21 years of residency in the Netherlands. In a letter dated July 6, 2016, from the SVB Social Insurance Bank of the Netherlands, the Appellant was advised that he did not always accrue an old-age pension. However, he did accrue sufficient pensionable time to qualify for a partial pension.⁹

[26] The basic state pension in the Netherlands, known as Algemene Ouderdomswet ("AOW") allows for a total period of accruals equal to 50 years. However, the Appellant

⁸ GD2-26

⁹ GD15-3

was advised that he was uninsured for 29 years, 1 month and 10 days.¹⁰ This meant that he had been insured for 20 years and approximately 11 months.

[27] The result of the combined 14 years of residence in Canada and his 20 years of residence in the Netherlands means that the Appellant had sufficient totalization to qualify under the OAS for an actuarial adjustment based on a deferral of his pension.

The Appellant isn't entitled to a further period of retroactivity

[28] The OAS is very specific as to the length of retroactivity of payment of an Old Age Security pension. When an applicant has attained the age of 65 before the day the application is received, the approval of the application is effective as of the latest of "the day that is one year before the day on which the application was received". And, in the case of an applicant who attained the age of 65, approval of the application can be effective "as of such earlier day, not before the later of a day one year before the day on which the application was received..." Payment of a pension to any person is to start in the first month after the application has been approved.¹¹

[29] The Appellant's application was received in January 2021.¹² In the Application he wrote that he wanted to start receiving the benefit effective January 2021.¹³ This request was granted.

Conclusion

[30] I find that the Appellant is eligible for a full actuarial adjustment meaning he would receive an adjustment for every month between when he became eligible for the pension, and when this application was approved, but not more than after the month in which he attained 70 years of age. I find that the Appellant is not entitled to a further period of retroactivity.

¹⁰ GD15-5

¹¹ See Section 8 and 5 of the OAS Act

¹² GD2-36

¹³ GD2-37

[31] As such, there will be a 60-month period of deferral, which would result in a 36% increase (60 months x 0.6%).

[32] This means the appeal is allowed in part.

Adam Picotte
Member, General Division – Income Security Section