



Citation: *AA v Minister of Employment and Social Development*, 2023 SST 1901

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: A. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated January 5, 2023 (issued by Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: In person

Hearing date: November 29, 2023

Hearing participant: Appellant

Decision date: December 29, 2023

File number: GP-23-464

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. A., isn't entitled to have the May 10, 2020 decision about his Old Age Security (OAS) pension reconsidered.

Overview

[3] The Appellant was granted an Old Age Security pension on May 10, 2020, with an effective date of June 2020. The Appellant did not apply for this benefit, but was auto-enrolled by the Minister. The Appellant asked the Minister of Employment and Social Development (Minister) to reconsider its decision on June 16, 2022, almost two years later.

[4] On January 5, 2023, the Minister refused to reconsider its decision. It said the Appellant's reconsideration request was too late.

What I must decide

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

[6] If it was, then I must also decide whether the Minister exercised its discretion judicially (made its decision properly) when it refused to give the Appellant more time to ask it to reconsider its decision.¹

[7] 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. It will also focus on whether the Appellant's reconsideration request has a reasonable chance of success and whether giving him more time would be unfair to another party.

¹ When the Minister gives more time (or "a longer period" as the law words it) in this situation, that means it agrees to consider the late request

Reasons for my decision

The Appellant's reconsideration request was late

[8] The Appellant's reconsideration request was late. He asked the Minister to reconsider its May 10, 2020 decision to auto-enroll him in the OAS pension more than one year after the day the Minister told him about it.

[9] An appellant has 90 days to ask the Minister to reconsider a decision.²

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

[11] Although the Minister told the Appellant about its decision to auto-enroll the Appellant in May 2020, the Appellant testified that he was working in a very demanding job at the time. He did not become aware that he had been auto-enrolled and that 100% of his benefit was being clawed back until April 2021. He did not correct the problem at that time, explaining that he was extremely busy at work and did not want to enter a Service Canada centre due to the COVID-19 pandemic.

[12] It was not until June 2022 that he requested a reconsideration of the Minister's decision.

[13] I find that the Appellant asked the Minister to review its decision more than one year after the Minister told him about it. It is also more than one year after the Appellant acknowledges that he became aware of the decision.

What to consider when a reconsideration decision is late

[14] 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. The appellant has to show that:³

² See section 81 of the *Canada Pension Plan*.

³ See section 74.1(3) of the *Canada Pension Plan Regulations*.

- They have a reasonable explanation for why they are late
- They always meant to ask the Minister to reconsider its decision – this is called their “continuing intention”

[15] If the appellant asked the Minister to reconsider its decision more than 365 days after the Minister told them about it, then the law says that the appellant has to convince the Minister of two other things, too. The appellant has to show that:⁴

- Their reconsideration request has a reasonable chance of success
- Giving them more time would not be unfair to another party

[16] In total, there are four factors that an appellant has to meet. This means that, if the Appellant doesn't meet one of these four factors, then he isn't entitled to have the Minister's decision reconsidered.

The Minister must exercise its discretion judicially

[17] 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 exercise its discretion judicially.⁵

[18] If the Minister has done one of the following, then it didn't exercise its discretion judicially:⁶

- Acted in bad faith
- Acted for an improper purpose or motive
- Considered an irrelevant factor
- Ignored a relevant factor

See section 74.1(4) of the *Canada Pension Plan Regulations*.⁴

⁵ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

⁶ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

- Acted discriminatorily (unfairly)

The Minister exercised its discretion judicially

[19] The Minister refused the Appellant's reconsideration request. The Minister said it was because the Appellant didn't give a reasonable explanation for requesting an extension of time, did not show a continuing intention to request a reconsideration, and did not have a reasonable chance of success.

[20] There is no evidence that the Minister acted in bad faith, for an improper purpose or motive, considered an irrelevant factor, or acted discriminatorily.

[21] The Appellant says that the Minister ignored a relevant factor. He says that the Minister did not consider that he was auto-enrolled even though this was not beneficial to him. He says the Minister should have known that his OAS pension would be 100% clawed back. He also explained that he received multiple letters around the same time from Service Canada regarding both the CPP and OAS. This created confusion about whether he would be auto-enrolled or had to apply.

[22] While I am very sympathetic to the Appellant's situation, the Appellant was notified that he would be auto-enrolled if he did not decline before turning 65 years old. He was sent two letters explaining this. The first one was sent on May 21, 2019 and the second one was sent on May 10, 2020. These letters contain contact information and online resources that could be accessed in order to clarify any confusion.

[23] After he was auto-enrolled, he then had six months after the date his pension began to request that it be cancelled. His pension could not be cancelled after six months pursuant to the OAS. He did not request that his OAS pension be cancelled within six months.

[24] While I understand the Appellant's frustration that he was auto-enrolled even though it was of no benefit to him, the OAS does not require the Minister to consider the effect of auto-enrollment on appellants before they are selected for auto-enrollment.

The effect of auto-enrollment on the Appellant was not a relevant factor that was ignored by the Minister.

[25] I do not agree that the Minister ignored a relevant factor.

Conclusion

[26] This means the appeal is dismissed.

Lianne Byrne
Member, General Division – Income Security Section