



Citation: *EA v Minister of Employment and Social Development and DM*, 2024 SST 301

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: E. A.

Respondent: Minister of Employment and Social Development

Added Party: D. M.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 22, 2022
(issued by Service Canada)

Tribunal member: François Guérin

Type of hearing: Teleconference

Hearing date: January 31, 2024

Hearing participants: Appellant
Added Party

Decision date: February 1, 2024

File number: GP-23-6

Decision

[1] The appeal is dismissed.

[2] The Tribunal has no jurisdiction over the reimbursement of the overpayment.

Overview

[3] The Appellant, E. A., was born on November 23, 1948, and applied for an Old Age Security (OAS) pension to start as soon as she was eligible.¹ She also applied for the Guaranteed Income Supplement (GIS).² She declared that she was separated.³ She was approved for a full pension of 40/40th effective December 2013.⁴

[4] The Appellant submitted a completed GIS application for the period from July 2014 to June 2015 on May 6, 2014, where she declared she was single.⁵ The Appellant's income was in excess of the maximum allowable income and the Minister informed the Appellant that she did not qualify.⁶

[5] The Appellant submitted a new GIS application on September 15, 2015, for the period from July 2015 to June 2016, where she declared that she was single. This application was approved effective July 2015.⁷

[6] The Appellant submitted a new GIS application on October 26, 2016, for the period from July 2016 to June 2017, where she declared that she was married. The Appellant confirmed that she has been married to the Added Party since September 1, 2007.⁸

¹ GD2-77, section 10

² GD2-77, section 11

³ GD2-77, section 9

⁴ GD5-3, paragraph 5

⁵ GD2-71

⁶ GD2-73 to 74

⁷ GD2-68 to 70

⁸ GD2-42

[7] The Added Party, D. M., was born on September 5, 1952, and applied for an Old Age Security (OAS) pension to start as soon as she was eligible.⁹ He also applied for the Guaranteed Income Supplement (GIS).¹⁰ He declared that he was married to the Appellant.¹¹ The Added Party also applied for an allowance benefit on December 2, 2016.¹² The allowance benefit was approved effective September 2015.¹³

[8] The Appellant submitted a revised GIS application on August 30, 2016, for the period from July 2015 to June 2016, where she declared that she was married to the Added Party.

[9] After investigation, the Minister informed the Appellant of a change in the GIS amount paid to her for the period from September 2015 to September 2017 which resulted in an overpayment of \$4,957.35.¹⁴

[10] On September 10, 2018, the Appellant made a request for reconsideration.¹⁵ On September 22, 2022, the Minister maintained his decision after reconsideration.¹⁶

[11] The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).¹⁷

What is the Appellant's position?

[12] At the hearing, the Appellant confirmed that she has been legally married to the Added Party since September 1, 2007, that she has never legally separated or divorced from the Added Party to the date of this hearing, and that they have been living separately since late 2018. She asked the Tribunal to use a discretion to reduce or cancel the overpayment.

⁹ GD2-51, section 10

¹⁰ GD2-51, section 11

¹¹ GD2-50, section 9

¹² GD2-49

¹³ GD4-2 to 3

¹⁴ GD2-37

¹⁵ GD2-22

¹⁶ GD2-3 to 4

¹⁷ GD1

[13] She testified that the repayment of this overpayment would cause her financial hardship and that it will make it difficult for her.

What is the Minister's position?

[14] The Minister submitted that, after a review of the information received from the Appellant and the Added Party, the Appellant was not entitled to a GIS benefit calculated on the basis of a rate of a pensioner married to a non-pensioner for the period from September 2015 to September 2017.¹⁸

[15] The Minister submitted that the Appellant should have been paid according to a rate reflective of a pensioner married to an allowance recipient for the period from September 2015 to September 2017. This resulted in an overpayment of \$4,957.35 for this period.

What the Appellant must prove

[16] For the Appellant to succeed, the Appellant must prove that she was not married to a recipient of an allowance for the period from September 2015 to September 2017.

Matters I have to consider first

The Minister wasn't at the hearing

[17] A hearing can go ahead without the Minister if the Tribunal is satisfied that the Minister received notice of the hearing.¹⁹ The Notice of Hearing was emailed to the Minister on January 15, 2024, through the normal communication channel between the Tribunal and the Minister. Therefore, the Tribunal is satisfied that the Minister received notice of the hearing and the hearing took place as scheduled but without the Minister.

¹⁸ GD5-8. Paragraph 34

¹⁹ *Social Security Tribunal Regulations*, section 12(1)

Reasons for my decision

[18] The GIS provides a supplement to the basic OAS pension and is paid to seniors who have a low income.²⁰ The GIS depends on income and is calculated on the previous year's income (base calendar year). The GIS is adjusted annually based on the pensioner's federal Income Tax and Benefit Return. Generally, the GIS is only paid on request of the pensioner, and the pensioner must apply annually to qualify.

[19] Sections 12 and 13 of the *Old Age Security Act* (OAS Act) state that the amount of an eligible pensioner's GIS payment is based on the pensioner's annual income. In the case of conjugal partners, the income of both spouses is used to calculate the GIS to be paid to each.

[20] Section 15(1) pertains to the information that is required with an application for a GIS. This includes whether or not the applicant had a spouse or a conjugal partner at any time during the period or in the month before the first month of the payment period and, if so, the name and address of the spouse or common law partner.

[21] Section 15(2) pertains to the statement required from the spouse or conjugal partner of the applicant and the divulgence of the spouse's or conjugal partner's income for the base calendar year.

[22] Section 15(9) pertains to the obligation of the applicant to notify the Minister immediately of any change in the applicant's civil status such as separation, death, or commencement of a relationship with a spouse or conjugal partner.

[23] Section 19 of the *OAS Act* states that an allowance may be paid to the spouse, common-law partner, or former common-law partner of a pensioner subject to the *Act*.

[24] Section 37(1) of the *OAS Act* states that the overpayment – whether it is a surplus or a benefit to which one is not entitled – must be returned immediately.

²⁰ Section 11 of the *Old Age Security Act* (OAS Act).

[25] The Appellant must prove on the balance of probability that the Added Party was not recipient of an allowance during this period, as per the *OAS Act*.

[26] At the hearing, the Appellant did not dispute that she has been married to the Added Party since September 1, 2007, and that they never legally separated or divorced from each other, and that the Added Party was in receipt of an allowance from September 2015 to September 2017. She also confirmed that she started living separately from the Added Party around August 2018, which is after the disputed period.

[27] The Appellant's grievance is that she has limited means to support herself and that it is her accountant's error when he reported incorrectly her marital status. She would like the Tribunal to use a discretion to reduce or cancel the overpayment.

[28] The Federal Court of Appeal confirmed that the Minister has the right to recover any overpayment paid to persons eligible to receive OAS and/or GIS regardless of time that has elapsed since the date of the overpayment.²¹ Even if the Appellant could not repay this debt at present, the Minister could claim it later.

[29] As a legislative entity, the Tribunal has only the powers conferred on it by law. The Tribunal interprets and applies the provisions as set out in the *OAS Act*.

[30] The Minister believes that the Appellant was overpaid \$4,957.35 for the period from September 2015 to September 2017.

[31] The Social Security Tribunal does not have jurisdiction to decide the amount of the overpayment.²² Only the Minister can decide the amount of the overpayment or an arrangement for its repayment. Therefore, the Tribunal does not have the power to write off a debt to the Minister or render a previous decision null and void.

[32] The Tribunal would like to remind the Appellant that if she considers that the amount of this overpayment reimbursement could cause her financial difficulties, she

²¹ *Grenier v Canada (Human Resources Development)*. 2008 FCA 130

²² *Old Age Security Act*, section 37(2)

can request the Minister to remit all or a portion of the amount and if unsuccessful can seek judicial review of that decision.

Conclusion

[33] Although I am sensitive to the Appellant's submission and financial situation and the fact that repaying this amount would cause her financial hardship given her limited means, I must render my decision based on the submissions received from both parties and the testimony I heard to establish the Appellant's eligibility to the GIS as per the *OAS Act* for the period from September 2015 to September 2017.

[34] Since the Appellant herself admitted that she was married and resided with the Added Party during this period and that the Added Party was in receipt of an allowance, I cannot help but conclude that the Tribunal has no jurisdiction over the reimbursement of the overpayment.

[35] This means the appeal is dismissed.

François Guérin
Member, General Division – Income Security Section