



Citation: *EA v Minister of Employment and Social Development and DM*, 2024 SST 300

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. A.

Respondent: Minister of Employment and Social Development
Representative:

Added Party: D. M.
Representative:

Decision under appeal: General Division decision dated February 1, 2024
(GP-23-6)

Tribunal member: Kate Sellar

Decision date: **March 22, 2024**

File number: AD-24-174

Decision

[1] I'm refusing to give E. A. (Claimant) leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

[2] E. A. (Claimant) applied for an Old Age Security (OAS) pension to start as soon as she was eligible. She also applied for the Guaranteed Income Supplement (GIS). She declared that she was separated. She was approved for a full OAS pension effective December 2013.

[3] On May 6, 2014, the Claimant applied for GIS for the period from July 2014 to June 2015. She declared she was single. The Claimant's income was higher than the maximum allowable income, so the Minister informed the Claimant that she didn't qualify.

[4] On September 15, 2015, the Claimant applied for GIS for the period from July 2015 to June 2016. She declared that she was single. The Minister approved this application effective July 2015.

[5] On October 16, 2016, the Claimant applied for the GIS for the period from July 2016 to June 2017. She declared that she was married. The Claimant confirmed that she has been married to D. M. (Added Party) since September 1, 2007.

[6] The Added Party applied for an OAS pension to start as soon as he was eligible. He also applied for the GIS. He declared that he was married to the Claimant. The Added Party also applied for an OAS allowance on December 2, 2016. The Minister approved the allowance effective September 2015.

[7] On August 30, 2016, the Claimant revised her GIS application for the period from July 2015 to June 2016. She declared that she was married to the Added Party.

[8] After investigation, the Minister informed the Claimant 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. The Claimant asked the Minister to reconsider its decision. The Minister sent a reconsideration decision maintaining its decision about the overpayment.

[9] The Claimant appealed to this Tribunal. The General Division dismissed the appeal. The General Division found that since the Claimant agreed that she was married and lived with the Added Party from September 2015 to September 2017, the Claimant was overpaid for that period. The General Division found that the Minister didn't make any error in assessing the overpayment.

Issues

[10] The issues in this appeal are:

- a) Is there an arguable case that the General Division made any error that would justify giving the Claimant permission to appeal?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[11] I can give the Claimant permission to appeal if the application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.¹

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

[12] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.²

[13] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

No arguable case for an error by the General Division

[14] The Claimant says that the General Division got the facts wrong.³ She says she made a mistake when she stated in some of her applications for GIS that she was single. At the General Division hearing, she said she always completed tax returns stating that she was "single," including the years that she was married. She didn't understand how the forms work. She says the General Division ignored these facts.

[15] There's no arguable case that the General Division made an error of fact. The Claimant was married to the Added Party for the entire period of the overpayment from 2015 to 2017 (she doesn't dispute this: she simply adds that she moved out later in 2018). Throughout the period of the overpayment, the Added Party was receiving the OAS allowance (she doesn't dispute this either). The Claimant was initially paid as though she was single, when she should have been paid as though she was married to someone receiving the OAS allowance. The Claimant hasn't raised any fact that the General Division ignored or misunderstood that could impact the result.

The Claimant hasn't set out any new evidence

[16] The Claimant hasn't set out any new evidence that wasn't already presented to the General Division. So, new evidence cannot form the basis for permission to appeal either.

[17] I've reviewed the record. I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any important evidence.⁴ The Minister

² See section 58.1(c) of the Act.

³ See AD1-2 to 4.

⁴ The Federal Court requires the Appeal Division to conduct this kind of review. See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

calculates (and recalculates, as necessary) the GIS payments based on the facts. The key facts here are that the Claimant was married to an OAS allowance recipient from September 2015 to September 2017. Accordingly, the Minister recalculated the Claimant's GIS payment amount based on those facts and assessed an overpayment. The General Division decision reviews the sections of the law that allow the Minister to:⁵

- pay the GIS to low-income seniors based on the previous year's income;
- pay the OAS allowance to the spouse of a person receiving GIS; and
- require people to repay overpayments.

[18] I see no arguable case that the General Division made an error applying the law about GIS payments to the Claimant's situation.

[19] The Claimant explained that it's difficult to have to pay back the overpayment as a senior on a fixed income with the cost of living increasing. She stated that if her appeal doesn't proceed, she needs the monthly payments on the overpayment to be lower.

[20] As the General Division stated, if the Claimant wants all or part of the overpayment remitted (cancelled), or if she wants to change her repayment schedule because of financial hardship, she needs to make that request in writing to Service Canada.

Conclusion

[21] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁵ See paragraphs 18 to 24 in the General Division decision.