



Citation: *The Estate of WW v Minister of Employment and Social Development*, 2024 SST 296

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: The Estate of W. W.

Respondent: Minister of Employment and Social Development

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

Tribunal member: Wayne van der Meide

Type of hearing: Teleconference

Hearing date: March 7, 2024

Hearing participant: Appellant

Decision date: March 13, 2024

File number: GP-23-928

Decision

[1] The appeal is allowed.

[2] Payment of W. W.'s (the applicant's) pension starts on November 2020.

Overview

[3] The applicant turned 65 in October 2016. He turned 70 in October 2021. He applied online that month for his Old Age Security (OAS) pension. He said he wanted his pension to start in November 2021.

[4] The applicant died in November 2021. His widow, who is the representative of his estate and the Appellant in this appeal, notified the Minister of his death.

[5] In a letter from January 2022 the Minister told the Appellant that the pension was approved with payments starting November 2021.¹ A couple weeks later, the Appellant wrote a letter to the Minister saying that her deceased husband wanted his pension to be retroactive to 11 months before the date of his application.² The Minister responded saying: "Since May 3, 2007, the **Old Age Security Act** does not allow us to approve a request for the Old Age Security benefit received after the date of death of an individual."³

[6] The Appellant asked the Minister to reconsider this decision and then the Minister said it would not reconsider. In that letter the Minister reviewed the history and concluded by saying: "As [the applicant] requested that his Old Age Security start November 2021, his application was approved, with the effective date that he requested."⁴

¹ See GD2-9 to GD2-10.

² See GD2-11 to GD2-13.

³ See GD2-14 and GD2-15.

⁴ See GD2-25.

What the law says

[7] This is what the law says.

Old Age Security Act

8 (1) Payment of pension to any person shall commence in the first month after the application therefor has been approved, but where an application is approved after the last day of the month in which it was received, the approval may be effective as of such earlier date, not prior to the day on which the application was received, as may be prescribed by regulation.

(2) Notwithstanding subsection (1), where a person who has applied to receive a pension attained the age of sixty-five years before the day on which the application was received, the approval of the application may be effective as of such earlier day, not before the later of

(a) a day one year before the day on which the application was received, and

(b) the day on which the applicant attained the age of sixty-five years, as may be prescribed by regulation.

29 (1) Despite anything in this Act, an application for a pension that would have been payable to a deceased person who, before their death, would have been entitled, on approval of an application, to payment of that pension under this Act may be made within one year after the person's death by the estate or succession, by the liquidator, executor or administrator of the estate or succession or heir of that person or by any person that may be prescribed by regulation.

Old Age Security Regulations

5 (2) Where the Minister is satisfied that an applicant mentioned in subsection (1) attained the age of 65 years before the day on which the application was received, the Minister's approval of the application shall be effective as of the latest of

(a) the day that is one year before the day on which the application was received,

(b) the day on which the applicant attained the age of 65 years;

(c) the day on which the applicant became qualified for a pension in accordance with sections 3 to 5 of the Act; and

(d) the month immediately before the date specified in writing by the applicant.

Reasons for my decision

[8] The Appellant wants to change the effective date (or start date) of her deceased husband's pension. In submissions, the Minister says that the issue in this appeal is whether an estate can change the effective date of a pension.⁵

[9] I agree that this is the issue.

[10] The facts and issues in this appeal are similar to a previous appeal.⁶ I think it is helpful to cite that decision at length:

[27] The Appellant argues that the date written on her application form was a mistake and that it must be changed as specified, in writing, in her request for reconsideration. However, the Minister maintains that the date cannot be changed once payments have begun. To support its position, the Minister does not cite a particular legislative provision, but claims that the OAS Act must be interpreted this way, given the entirety of the text and section 9.3 of the OAS Act, which, since 2013, has enabled beneficiaries to receive a pension or to request its cancellation.

[28] In this regard, the Tribunal finds that this legislative plan contains an ambiguity. Paragraph 5(2)(d) of the OAS Regulations (cited above) makes a single reference to the "date specified in writing by the applicant." The legislator had determined that it was worth defining the term "application form" in subsection 2(1) of the OAS Regulations. According to subsection 3(2) of those same Regulations, the Minister may insist that an application form be used. Therefore, if the legislator had wanted to hold an applicant to the date specified on their application form, it could have easily done so by adding a reference in paragraph 5(2)d) to the date that the applicant specified *on their application form*. However, these words do not appear in the relevant provision. The Tribunal must give effect to the legislator's decision to omit these words from paragraph 5(2)d).

[29] The Tribunal notes that although the Appellant was not held to the date provided on her application form, the Appellant did retain the option of amending that date, as long as the request for amendment was in writing.

[30] The Minister does not contest this conclusion. The Minister recognizes that an individual may make changes to their pension claim; however, it argues that such a request should be submitted within a certain timeframe, namely before the first payment of the benefit. In this case, because the payment of the pension had begun, the Appellant had no

⁵ See GD4-5. As I mentioned, the Minister previously said that the law didn't allow it "to approve a request for the Old Age Security benefit received after the date of death of an individual."

⁶ See *L. B. v Minister of Employment and Social Development*, 2017 CanLII 33768 (SST).

choice but to request the cancellation of the pension service under section 9.3 of the OAS Act and section 26.1 of the OAS Regulations. In fact, these provisions provide that:

- a) a pensioner can submit to the Minister an application for cancellation, in writing, within six months of the first payment of the pension;
- b) the Minister must approve the application for cancellation; and
- c) all sums paid out must be paid back within six months of the certification date of the application.

[11] I agree. I see nothing in the law that prevents someone from changing the date they want their pension to start, which in turn permits the Minister to change the effective date of the approval of the pension. Given the purpose of the OAS plan, I won't read in a prohibition that Parliament hasn't created.

[12] The law explicitly allows a person to request the cancellation of a pension within 6 months after it has commenced.⁷ In this case, the request was made within weeks of the Appellant being told of the approval. Although the Appellant didn't ask for the pension to be cancelled, just changed, these sections of the law tell me that Parliament intended for applicants/beneficiaries to have some flexibility to change their minds about what they want.

[13] The Minister says: "Since May 3, 2007, the Old Age Security Act does not allow us to approve a request for the Old Age Security benefit received after the date of death of an individual." The Minister isn't being asked to approve a request for a benefit. The applicant made his request before he died. The Minister is being asked to change the effective date of the approval.

[14] The Minister argues that it cannot do what the Appellant asks because the applicant has died. The Minister doesn't cite any law in support of this position. I see none supporting it. In fact, the law says that an estate can apply for a benefit on behalf of an applicant **after** the applicant has died.⁸

⁷ See section 9.3 of the *Old Age Security Act* and section 26.1 of the *Old Age Security Regulations*.

⁸ See section 29(1) of the *Old Age Security Act*.

[15] In the absence of a prohibition, it is reasonable to interpret the law as **also** allowing an estate to change an application. As the Federal Court said⁹:

I would describe the OAS regime as altruistic in purpose. Unlike the Canada Pension Plan, OAS benefits are universal and non-contributory, based exclusively on residence in Canada. This type of legislation fulfills a broad-minded social goal, one that might even be described as typical of the Canadian social landscape. It should therefore be construed liberally, and persons should not be lightly disentitled to OAS benefits.

[16] Arguably, the legislation is a bit ambiguous and/or contains gaps. Therefore, I think it is important to note that the Minister hasn't argued that the way I interpret the law would cause the Minister prejudice in this case and/or more generally.

Conclusion

[17] The Appeal is allowed.

[18] The Minister shall change the effective date of approval of the pension to October 8, 2020.¹⁰

[19] Payments of the pension start on November 2020.

[20] Given the earlier approval date, the Appellant will no longer qualify for same level of increase that was used when he deferred his pension until he turned 70. The Minister can of course reduce the monthly amount of the applicant's pension in light of this earlier effective date.

Wayne van der Meide
Member, General Division – Income Security Section

⁹ See paragraph 28 of *Canada (Minister of Human Resources Development) v. Stiel*, 2006 FC 466.

¹⁰ See section 5(2) of the Old Age Security Regulations.