



Citation: *RB v Minister of Employment and Social Development*, 2024 SST 322

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** R. B.

**Respondent:** Minister of Employment and Social Development  
**Representative:** Viola Herbert

---

**Decision under appeal:** General Division decision dated October 9, 2023  
(GP-23-21)

---

**Tribunal member:** Neil Nawaz

**Type of hearing:** Teleconference  
**Hearing date:** March 14, 2024  
**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** March 31, 2024  
**File number:** AD-23-993

## Decision

[1] I am dismissing this appeal. The Appellant and his wife began living separate and apart on April 19, 2021. That means he was not eligible to receive the Guaranteed Income Supplement (GIS) at the married rate after that date.

## Overview

[2] The Appellant is a 76-year-old retiree who has been receiving the Old Age Security (OAS) pension and GIS since 2012.<sup>1</sup>

[3] On April 19, 2021, the Appellant and his wife had an altercation. He was arrested, charged with uttering threats, and ordered to move out of the marital home at X.<sup>2</sup> The Appellant and his wife divorced on November 26, 2022.<sup>3</sup>

[4] On July 27, 2022, the Appellant completed an annual GIS application and statement of income for the period July 1, 2022 to June 30, 2023. On the statement, he indicated that he had been separated since April 19, 2021.<sup>4</sup> The Appellant also enclosed a copy of his 2021 tax return, in which he declared his marital status as separated.<sup>5</sup> One week later, the Appellant forwarded a letter from his lawyer confirming a separation date of April 19, 2021.<sup>6</sup> That was followed by a statutory declaration in which the Appellant again stated that he had been separated from his wife since April 19, 2021.<sup>7</sup>

[5] On September 22, 2022, the Minister informed the Appellant that, based on the information in his statement of income and his statutory declaration, his marital status, for the purpose of calculating his GIS, had been changed from “married” to “single,” effective April 2021.<sup>8</sup> According to the Minister, the change meant that the Appellant had been overpaid from August 2021 to June 2022 in the amount of \$4,000. But the

---

<sup>1</sup> See Service Canada OAS benefits summary generated on January 12, 2023, GD2-3.

<sup>2</sup> See Ontario Provincial Police arrest report dated April 19, 2021, GD1-11

<sup>3</sup> See Ontario Superior Court divorce order dated November 26, 2022, GD1-5.

<sup>4</sup> See Appellant’s statement of income for the GIS, July 2022 to June 2023 dated July 27, 2022, GD2-11.

<sup>5</sup> See Appellant’s T1 2021 income tax return dated April 4, 2022, GD2-13.

<sup>6</sup> See letter dated August 2, 2022, GD2-21. The name and address of the Appellant’s lawyer were redacted by the Minister’s department for unknown reasons.

<sup>7</sup> See Appellant’s Statutory Declaration – Separation of Legal Spouses or Common-law Partners dated August 16, 2022, GD2-22.

<sup>8</sup> The GIS single rate is less than the married rate.

Minister added that the change also produced an underpayment of \$3,226 from July 2022 to September 2022, resulting in a net overpayment of \$774.<sup>9</sup>

[6] The Appellant appealed the Minister's assessment to the Social Security Tribunal. He claimed that, around August 2, 2021, he and his wife had reconciled and resumed cohabiting before breaking up again for good on March 29, 2022. He asked the Tribunal to recognize the additional period in which he cohabited with his wife and to reassess the overpayment.

[7] The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It placed weight on several documents in which the Appellant had declared that he was separated as of April 19, 2021. It did not believe the Appellant when he testified that he and his wife had reconciled for nearly eight months.

[8] The Appellant then asked the Appeal Division for permission to appeal. Among other things, he alleged that the General Division ignored key pieces of evidence, such as his former wife's testimony confirming that there had been a reconciliation.

[9] Last November, one of my colleagues on the Appeal Division allowed the appeal to proceed because she thought the Appellant had raised at least an arguable case. Earlier this month, I held a hearing to discuss the parties' respective cases in full.

[10] Now that I have considered submissions from both parties, I have concluded that the Appellant failed to make his case. From what I can see, the Appellant permanently separated from his wife on April 19, 2021. That means he was not entitled to the GIS at the married rate after that date.

## **Issue**

[11] For the Appellant to succeed, he must prove, on a balance of probabilities, that he reconciled with his wife on or around August 2, 2021 and separated from her on March 29, 2022.

---

<sup>9</sup> See Minister's letter dated September 22, 2022, GD1-14.

## Analysis

[12] I have applied the law to the available evidence and concluded that the Appellant should not have received the GIS at the married rate after April 19, 2021.

### **The GIS is based on a couple's combined income**

[13] A person who receives an OAS pension may be eligible to receive a GIS. How much they receive for GIS depends on their income and their relationship status. If the person is married, their GIS is based on the couple's combined income.<sup>10</sup> This stops three months after they become separated. At that point, the Minister calculates the GIS as if the person didn't have a spouse.<sup>11</sup>

### **There wasn't enough evidence to show that the Appellant and his wife reconciled**

[14] I was unable to find enough evidence demonstrating that the Appellant and his wife reconciled between August 2021 and March 2022. Moreover, I was not convinced by much of the Appellant's evidence purporting to show that a reconciliation occurred.

#### **– The Appellant repeatedly declared that he was separated as of April 19, 2021**

[15] The Appellant insists that he reconciled with his wife between August 2, 2021 and March 29, 2022. The problem is, he signed several documents suggesting otherwise. For instance:

- on April 4, 2022, the Appellant filed his income tax return for 2021 confirming his marital status as "separated";
- on July 27, 2022, the Appellant declared that he had been separated since April 21, 2021;
- on July 27, 2022, the Appellant signed a statement of income indicating his marital status as "separated" as of April 21, 2021;

---

<sup>10</sup> Section 12 of the *Old Age Security Act* (OAS Act) sets out the rules for calculating the GIS amount.

<sup>11</sup> See section 15(4.2) of the OAS Act.

- on August 2, 2022, the Appellant's lawyer wrote, "The separation that figures on this Application [for divorce] and that has not been contested by [the Appellant's wife] is April 19, 2021"; and
- on August 16, 2022, the Appellant signed a declaration saying that he and his wife last resided together on April 19, 2021.

[16] None of the above documents contained any suggestion that the Appellant reunited with his wife after April 19, 2021.

[17] The Appellant was at a loss to explain how he could have listed a separation date if April 21, 2021 if, in fact, he had returned to his wife only three months later. He said that he was confused. He blamed his accountant and lawyer. He cited his diabetes and the medications he takes for it.

[18] If the Appellant had inadvertently listed the wrong date on one document, then I would have been inclined to accept his explanations. However, the Appellant listed April 21, 2021 on five separate documents. That can't be a coincidence: it can only mean that the Appellant regarded his true separation date as April 21, 2021.

[19] The Appellant's position changed only in September 2022, after he learned that going from married to single affected his GIS amount. He then produced evidence of reconciliation, but it did not outweigh what he had already said.

– **The Appellant's evidence of reconciliation was less than compelling**

[20] The Appellant presented evidence that he said proved he and his wife had reconciled in August 2021. However, I found most of it unpersuasive:

- The Appellant submitted a letter dated July 2021 asking the Crown and the Court to waive his undertaking not to return home.<sup>12</sup> He also submitted a letter signed by his wife the previous month declaring that he posed no threat

---

<sup>12</sup> See Appellant's letter dated July 12, 2021, GD2-9. I am also left with some doubt that this letter was actually written in 2021. The Appellant writes, "To put me outside of my house for **14 months** not having any proof that I threatened my wife is a harsh judgment to say the least." If the letter was, in fact written in July 2021, the Appellant would have been outside his house at that point for more than **two months**. For that reason, I cannot help but suspect that the letter should have been dated July 12, **2022**.

to her.<sup>13</sup> However, it's not clear that these letters were actually submitted to the Court, nor is there any evidence on file that the Court ever allowed the Appellant to return to X.

- The Appellant provided various hotel and apartment rental receipts.<sup>14</sup> However, this evidence only shows that he required accommodation up to June 2021 and then again from April 2022 onward; they do not prove he actually moved back to the marital home at X in August 2021.
- The Appellant was apparently re-arrested at X on March 29, 2022, but that doesn't mean he was living at that address at the time, nor does it necessarily mean that he had been reconciled with his wife for the previous eight months.<sup>15</sup>
- The Appellant submitted bank statements showing that he paid utilities and property taxes for X for the entire year after he moved out. However, the statements do not necessarily prove that he moved back to the marital home in August 2021.<sup>16</sup>
- The Appellant submitted an income tax summary indicating that he was married in 2021.<sup>17</sup> However, this information is at odds with what he indicated on his 2021 income tax return.<sup>18</sup> Since the summary was generated in November 2023, I suspect that the Appellant amended his marital status after the fact.
- The Appellant produced statements from several friends and family members, including his former wife, attesting to a reconciliation from August 2021 to

---

<sup>13</sup> See letter dated June 22, 2021 by M. A., GD9-9.

<sup>14</sup> See Quality Inn receipt for the period April 22, 2021 to June 21, 2021, GD1-16. See also rent receipts for the following periods: April 7, 2022 to April 30, 2022; May 1, 2022 to May 31, 2022, GD2-44.

<sup>15</sup> There appear to be fragments of two undertakings on file, both of which relate to the Appellant's second arrest. Neither document is in focus. One appears to be dated March 31, 2022 — it bars the Appellant from going to X and requires him to appear in court on April 1, 2022 (GD9-3 and GD9-4). The other is dated April 13, 2022 — it bars the Appellant from communicating with his wife (GD9-7).

<sup>16</sup> See TD bank statements from August 2021 to March 2022, GD2-33 to GD2-43.

<sup>17</sup> See Canada Revenue Agency (CRA) income tax information summary generated on November 3, 2023, AD3-1.

<sup>18</sup> See Appellant's T1 General income tax return, filed with the CRA on April 4, 2021, GD2-13.

March 2022.<sup>19</sup> However, I am not inclined to give these statements great deal of weight because (i) they were prepared after the Minister assessed the GIS overpayment and (ii) they are less than objective — the Appellant's relatives had an interest in not seeing him lose money.

[21] Ultimately, there is no hard evidence that Appellant ever lived at the former marital home at X after April 19, 2021. I believe that the Appellant was **attempting** to reconcile with his wife for the remainder of 2021 and into 2022. However, I saw no indication that his attempt at reconciliation actually succeeded. For that reason, his appeal must fail.

## Conclusion

[22] The Appellant has failed to satisfy me that he was entitled to a GIS at anything other than the single rate as of April 2021. The available evidence instead shows that, after that date, he was separated from his wife for good. I was not convinced, as the Appellant would have me believe, that he and his wife reconciled between August 2, 2021 and March 29, 2022.

[23] The appeal is dismissed.



---

Member, Appeal Division

---

<sup>19</sup> See letter dated July 29, 2023 from M. A., GD8-8.