



Citation: *HG v Minister of Employment and Social Development*, 2024 SST 366

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: H. G.

Respondent: Minister of Employment and Social Development

Added Party: Pearl Garnett

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated January 27, 2023 (issued
by Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Teleconference

Hearing date: April 3, 2024

Hearing participant: Appellant

Decision date: April 5, 2024

File number: GP-23-801

Decision

[1] The appeal is allowed.

[2] The Appellant, H. G., lived in Canada for at least 20 years when he stopped residing in Canada. His Old Age Security (OAS) pension should not have been suspended when he stopped residing in Canada.

[3] This decision explains why I am allowing the appeal.

Overview

[4] The Appellant is 84 years old. He was born in Guyana. He came to Canada in July 1996 with his wife. He bought a home. His daughter lives in Canada. For several years he lived and worked here as a pastor for X.

[5] He turned 65 in October 2004. He applied for an OAS pension. His pension application was approved, and payments started in August 2006. He retired from his job as pastor with X in April 2007.

[6] Several years later, in March 2018, the Appellant informed the Minister that he was moving to Guyana at the end of April 2018.

[7] The Minister agrees that the Appellant resided in Canada from July 1, 1996, to March 28, 2018 (nearly 22 years). But, the Minister says his residence in Canada was **interrupted** on two occasions:

- from July 6, 2008, to June 23, 2009 (353 days)
- from August 15, 2010, to May 6, 2012 (1 year and 265 days).

[8] Because the Minister excluded these two periods, the Minister says that when the Appellant moved to Guyana in April 2018 he had only lived in Canada for a total of a little more than 19 years.

[9] The Appellant agrees that he hasn't lived in Canada since April 2018. But, he says the Minister should not have excluded the two periods the Minister excluded. He

says during those periods, he still lived in Canada. Therefore, he says, that when he moved to Guyana in April 2018 he had lived in Canada more than 20 years.

[10] The Added Party didn't take any position in this appeal.

My decision

[11] I find that between July 1996 and April 2018, the Appellant's residence in Canada wasn't interrupted. Therefore, when he stopped residing in Canada in April 2018 he had lived in Canada for more than 20 years.

[12] The Appellant was entitled to a "portable" OAS pension by the time he stopped living in Canada.

[13] Therefore, the Minister shouldn't have suspended his pension.

The issues in this appeal

[14] A person who stops residing in Canada may continue to receive pension payments **if** they lived in Canada at least 20 years before they stopped living in Canada.¹

[15] The Appellant has to prove when he resided in Canada. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he resided in Canada during the relevant periods.²

1. What it means to reside in Canada

[16] The law says that being present in Canada isn't the same as residing in Canada. "Residence" and "presence" each have their own definition. I have to use these definitions in making my decision.

¹ See section 9(4) of the *Old Age Security Act* (OAS Act).

² See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[17] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.³

[18] A person is **present** in Canada when they are physically present in any part of Canada.⁴

[19] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:⁵

- where he had property, like furniture, bank accounts, and business interests
- where he had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where he had other ties, like medical coverage, rental agreements, mortgages, or loans
- where he filed income tax returns
- what ties he had to another country
- how much time he spent in Canada
- how often he was outside Canada, where he went, and how much time he spent there
- what his lifestyle was like in Canada
- what his intentions were

[20] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.⁶

2. Temporary absences

[21] An absence from Canada **doesn't interrupt** a person's residence in Canada if:⁷

³ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁴ See section 21(1)(b) of the OAS Regulations.

⁵ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; and *De Carolis v Canada (Attorney General)*, 2013 FC 366.

⁶ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

⁷ See section 21(4)(a) of the *Old Age Security Regulations* (OAS Regulations).

- he was residing in Canada immediately before he left
- his absence was temporary, and
- he wasn't absent for more than one year

3. Absences while engaged as a missionary

[22] An absence from Canada also **doesn't interrupt** a person's residence in Canada if the person was "employed or engaged" while out of Canada as a "missionary with any religious group or organization."⁸

[23] There is little case law interpreting this section. But based on a plain reading of the law, the length of the absence isn't important as long as the person returns to Canada within six months of the end of his employment or engagement outside of Canada.

Reasons for my decision

[24] I will now explain why I find that as of April 2018 the Appellant resided in Canada for more than 20 years.

[25] As I said, the Minister agrees that the Appellant resided in Canada from July 1, 1996, to March 28, 2018, except for two periods. My reasons will focus on explaining why the Minister should not have excluded the two periods in question.

The Appellant is credible

[26] The disputed periods are as long as 16 years ago. But the Appellant has been substantially consistent about the facts since that time. At the hearing the Appellant answered all my questions without hesitation, including telling me when he couldn't remember something. He also made admissions that could have been interpreted as against his interest. For example, for some of the periods he was absent he also worked outside of Canada. This is a factor that might indicate he didn't reside in Canada. It doesn't, for reasons I will explain later.

⁸ See section 21(5)(b)(vi) of the OAS Regulations.

Absences between July 2008 and June 2009 didn't interrupt the Appellant's residence in Canada

[27] The Appellant retired from his job as a pastor in Canada with X in April 2007. He couldn't afford to keep up with mortgage payments, so he sold his house in August 2008. He and his wife then moved in with his daughter, who still lives in Canada. Although since coming to Canada he travelled for work and personal reasons, he travelled more and for longer periods after he retired.

[28] On the other hand, after he retired and sold his house, the Appellant still had connections to Canada. For example, he maintained several Canadian bank accounts, kept his car, and maintained insurance on that car. He also filed his Canadian income taxes every year. And as I mentioned, his daughter lives in Canada and when he wasn't travelling he and his wife lived with her and their son in law. Sometimes his wife travelled with him, but at other times she didn't.

[29] The Appellant had two absences from Canada during this period. He went to Guyana, Trinidad, and the United States from July 2008 to March 2009 and again from April 2009 to June 2009.⁹ In between these trips he came back to Canada for 14 days, between March 6 and 30, 2009.

[30] I will now explain why neither of those absences interrupted his residence in Canada.

[31] Both absences were temporary, less than one year, and the Appellant resided in Canada immediately before both absences.

[32] The term "absence" is about presence, not residence. In other words, being absent from Canada means being physically outside of Canada. So, when he returned to Canada, even if for only 14 days, the Appellant's first absence ended.

[33] If someone leaves Canada repeatedly for long periods, and returns to Canada for short periods, at a certain point it can no longer be said that they were a resident of

⁹ See GD2-65 to GD2-67 and GD2-107

Canada immediately before they left for their next absence. But I find that **isn't** the situation here. The Appellant was resident in Canada before both his absences.

[34] During his absences he did visit Trinidad and the United States. But during both absences he spent most of his time in Guyana working. He said at the hearing that although he had retired from his Canadian post, he was still capable and wanted to work, and also needed to work for financial reasons. The job opportunity that was available to him to work was with his church, as a pastor, in Guyana. There weren't any opportunities at that time in Canada.

[35] The Appellant didn't buy a house in Guyana. He lived in accommodations provided by his church. **After** he moved to Guyana in 2018, he did buy a house there.

[36] Although the Appellant's wife went to Guyana during his time there, she went for shorter periods.¹⁰ In other words, she continued to live in Canada while he was abroad.

[37] The Minister agrees that before July 2008 and after June 2009 the Appellant resided in Canada. This too suggests that the two absences during this period were just that, absences rather than a change of residence.

[38] When I consider all the facts, it is clear to me that the Appellant's absences didn't interrupt his residence. They were each temporary absences of less than one year.

[39] I **also** find that both absences didn't interrupt his residence because while he was absent he was engaged as a missionary in Guyana.

[40] I have already said that the Appellant is credible, but I want to explain why I believe this particular part of his evidence.

[41] First, in July 2009 the Appellant completed a questionnaire sent to him by the Minister. He said: "I have been visiting Guyana. I am involved in a missionary project that is likely to end in summer 2011."¹¹

¹⁰ See GD2-153.

¹¹ See GD2-67.

[42] Second, the Appellant never “claimed” that his absences should be deemed not to interrupt his residence **because** he was engaged in missionary work. I didn’t raise this issue specifically at the hearing. This fact came up as part of his general description of what he was doing in Guyana.

[43] This tells me that he is telling the truth about what he was doing while he was in Guyana. The only evidence of his missionary work is what the Appellant told me about it at the hearing. In this case, I find that his testimony is enough evidence to meet his burden.

[44] I want to add that it doesn’t matter whether the Appellant was engaged in Missionary work for a church based in Canada or Guyana. I don’t know and it doesn’t matter.

[45] It also doesn’t matter whether the **only** reason he went to Guyana was to engage in missionary work. Based on the evidence I think he went to Guyana and Trinidad for these trips for a number of reasons: to escape the cold, he wanted to spend time in his homeland, and because it was less costly to stay in Guyana.

[46] All these things can be true, but it is also true that he was engaged in missionary work while he was outside of Canada for a religious organization and returned within six months of that work ending.

Absences between August 2010 and May 2012 didn’t interrupt the Appellant’s residence in Canada

[47] During this period the Appellant made several trips. Some were trips of a week or two to the United States. He also made longer trips:¹²

- to Guyana from August 2010 to July 2011
- to the Dominican Republic to study Spanish for about two months from September to November 2011
- to Guyana from December 8, 2011, to May 6, 2012

¹² See GD2-82, GD2-83 and GD2-107.

[48] None of these absences were for more than one year, they were temporary, and I find that immediately before each absence he was a resident of Canada.

[49] However, there are three things that make these absences less clearly temporary as compared to the previous absences that I describe earlier. I think it is important to summarise these differences and explain why I still find that these were temporary absences.

[50] First, during this period two of the Appellant's absences were quite long (one was nearly a year and the other was about 5 months). His absences during the previous period were nearly a year and 3 months). Second, the Appellant's wife spent more time with him in Guyana as compared to the previous period. Third, while he was in Guyana he didn't live in a church residence. He rented a house there. I don't know the terms of the lease.

[51] On the other hand, he didn't buy a house in Guyana and came back to Canada after his trips. When he returned from his second trip to Guyana (in May 2012) he lived with his daughter for a few months, then rented a house for a while, and then moved into a seniors' residence.¹³ After his return from Guyana, he also worked in Canada from January to June 2013.¹⁴ Finally, the Minister concedes that after he came back from his last trip during this period, he lived in Canada for several years.

[52] So as with the previous period, when I look at the facts as a whole, I find that his absences during this period were temporary absences that didn't interrupt his residence in Canada. He spent a lot of time in Guyana, but he still ordinarily lived and made his home in Canada.

[53] Unlike the previous period, I find that he wasn't engaged in missionary work while he was outside of Canada. I will now explain why.

[54] Unlike with the previous period, for this period the Appellant never said he was doing missionary work in Guyana or elsewhere **before** the hearing. When he answered

¹³ See GD2-48, GD2-49, GD2-53, and GD2-54.

¹⁴ See GD2-50 to GD2-52.

questionnaires and wrote to the Minister, he simply said he went to Guyana for winter breaks.

[55] Even at the hearing he didn't raise it himself. He simply responded in the affirmative to my question whether he "also" worked for the church when he was in Guyana.

[56] As I mentioned before there isn't a lot of case law on this section of the regulations. But it seems to me that the word "while" is important. The use of that word tells me that a person has to be regularly engaged in missionary work while outside of Canada. It isn't enough for a person to do some missionary work at certain points in time "during" their absence. This is what happened while the Appellant was in Guyana for his two trips during this period: he didn't regularly work as a missionary while he was there, he just did some missionary work during his stays.

Conclusion

[57] The Appellant resided in Canada from July 1, 1996, to March 28, 2018. This is more than 20 years. Therefore, the Minister shouldn't have suspended payment of his OAS pension when he stopped living in Canada.

[58] This means the appeal is allowed.

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