



Citation: *MS v Minister of Employment and Social Development*, 2024 SST 392

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: M. S.

Respondent: Minister of Employment and Social Development
Representative: Joshua Toews

Decision under appeal: General Division decision dated October 4, 2022
(GP-19-48)

Tribunal member: Neil Nawaz

Type of hearing: On the Record

Decision date: April 18, 2024

File number: AD-22-749

Decision

[1] The appeal is dismissed. The General Division did not make an error when it found that the Appellant received an overpayment of the Guaranteed Income Supplement (GIS).

Overview

[2] The Appellant has been an Old Age Security (OAS) pensioner since September 2016. He has also been receiving the GIS, an associated benefit that is tied to a pensioner's reported income.

[3] The Canada Revenue Agency (CRA) reassessed the Appellant's income for 2016. It found that the Appellant had \$2,100 more in pension income for the year than what he had reported on his tax return.¹ When Service Canada learned of the reassessment, it recalculated the amount of the Appellant's GIS entitlement. It determined that the Appellant had been overpaid by \$898.12 from July 2017 to January 2018.

[4] In December 2018, the Appellant appealed Service Canada's determination to the Social Security Tribunal. He said that he was appealing because he needed more money to cover his basic living expenses. Since the Appellant's appeal was about the amount of his income, the Tribunal's General Division referred the matter to the Tax Court of Canada, as required under the *Old Age Security Act* (OAS Act).²

[5] On August 19, 2022, the Tax Court dismissed the appeal after the Appellant failed to appear.³ After receiving the Tax Court's decision, the General Division resumed its proceedings. It summarily dismissed the Appellant's appeal after finding that, in light of the Tax Court ruling, there were no issues left for it to decide.

¹ See Service Canada's letter dated January 12, 2018, GD2-16; see also Service Canada file review dated May 23, 2019, GD2-3.

² See letter from the Social Security Tribunal dated October 6, 2019. Under section 28(2) of the *Old Age Security Act*, only the Tax Court of Canada can decide how the Minister should treat income.

³ See Tax Court of Canada judgment, docket number 2019-2167, GD5.

[6] The Appellant appealed the General Division's summary dismissal to the Tribunal's Appeal Division.⁴ Once again, the Appellant cited his financial struggles as his reason for appealing. In the meantime, the Appellant had asked the Tax Court to set aside its previous judgment. In December 2022, the Tax Court granted the request.⁵ With the consent of both parties, the Appeal Division placed this matter in abeyance pending resolution of the revived Tax Court proceeding.

[7] The Tax Court has now issued a judgment. On April 10, 2024, the Court confirmed the income amounts that Service Canada used to recalculate the Appellant's monthly GIS entitlement from July 2017 to January 2018.⁶

[8] I have decided that there is no need for an oral hearing in this case. The issues are clear, and so are the relevant facts and the applicable law. This decision is based on my review of the documents already on file — the Appellant's submissions, as well as the information that was available to the General Division.⁷

Preliminary Matter

[9] On December 5, 2022, the rules governing the appeals to the Social Security Tribunal were changed. Among other things, the changes eliminated the General Division's ability to summarily dismiss appeals.

[10] The law contains transitional provisions for summary dismissals made under the old rules. Under these provisions, appeals of summary dismissals must be brought within 90 days after the new rules came into force, but the Appeal Division must deal with those appeals under the old rules.⁸ That means the Appellant doesn't need to get permission to appeal the General Division's summary dismissal.⁹ It also means the

⁴ See the Appellant's application for leave to appeal to the Appeal Division dated October 12, 2022, AD1.

⁵ See Order of the Tax Court of Canada dated December 7, 2022, AD3.

⁶ See Judgment of the Tax Court of Canada dated April 10, 2024, AD5.

⁷ Under section 21 of the *Social Security Tribunal Regulations* that were in effect when the Appellant brought his Appeal, the Tribunal had the discretion to choose a form of hearing so long as it complied with the requirement to proceed as informally and quickly as circumstances, fairness and natural justice permitted.

⁸ See section 240 of the *Department of Employment and Social Development Act* (DESDA).

⁹ Under section 53(3) of the old DESDA, there was an appeal as of right when the matter dealt with a summary dismissal from the General Division.

Appellant's hearing at the Appeal Division was not about the merits of his GIS claim but about whether the General Division made an error under specific grounds of appeal.

[11] Under the old rules, there were four grounds of appeal to the Appeal Division. An appellant had to show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹⁰

[12] To succeed, the Appellant had to show that the General Division made an error under one or more of the above grounds of appeal.

Issues

[13] In this appeal, I had to answer the following questions:

- Did the General Division apply the correct test for summary dismissal?
- Did the General Division make an error that fell one or more of the grounds of appeal?

Analysis

[14] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the General Division did not make any errors.

The General Division applied the correct test for summary dismissal

[15] The General Division disposed of the Appellant's appeal in the appropriate way. In its decision, the General Division correctly stated that it could summarily dismiss an

¹⁰ See DESDA, section 58(1) as it read before December 5, 2022.

appeal if it had no reasonable chance of success.¹¹ I am satisfied that the General Division understood the legal test and properly applied it to the facts.

[16] The threshold for summary dismissal is high.¹² It is not enough to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. A decision-maker must determine whether it is **plain and obvious** on the record that the appeal is bound to fail.¹³ The question is **not** whether the decision-maker must dismiss the appeal after giving full consideration to the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is **destined to fail**, regardless of whatever evidence or arguments might be submitted at a hearing.

[17] From the beginning of this proceeding, the only issue of substance has been the income amounts used to calculate the Appellant's GIS for the 2017–18 payment period. The Tax Court has now conclusively answered this question, making it clear that the General Division based its decision on the correct numbers.

[18] In dismissing the Appellant's appeal, the General Division rightly applied a high threshold, concluding that the appeal had "no reasonable chance of success." For reasons that I will explain in more detail, it was plain and obvious on the record that the Appellant was bound to fail.

The General Division did not make an error in coming to its decision

[19] The General Division's decision depended on whether there were any outstanding issues of merit after the Tax Court issued its ruling. In my view, there were none.

¹¹ See General Division decision, paragraph 8, citing the former DESDA section 53(1).

¹² See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v Canada (Attorney General)*, 2004 FCA 264.

¹³ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

– The General Division rightly deferred to the Tax Court

[20] Under the OAS Act, the Tax Court, and not the Tribunal, has jurisdiction over issues relating to the source and calculation of income used to determine eligibility for benefits.¹⁴

[21] In this case, the General Division correctly concluded that it had no authority to assess the Appellant's income for 2016.¹⁵ It waited until the Appellant's Tax Court appeal played itself out before rendering a decision. Only then did it decide that the Minister had recalculated the Appellant's GIS entitlement for 2017–18 using the right numbers. Those numbers were later confirmed by the Tax Court after it agreed to reopen the Appellant's appeal.

– The Appellant has never explained how his GIS was miscalculated

[22] The Appellant has never explained how, in his view, the Minister miscalculated his GIS amount. That matters because, in appeals like these, claimants bear the burden of proving that they are entitled to a benefit or a benefit amount. By contrast, the Minister is under no obligation to prove anything.

[23] Rather than explaining how Service Canada got the amount of his GIS wrong, the Appellant is instead protesting that it is too little to survive on. That may well be true, but that was not the issue at the General Division, nor is it the issue here at the Appeal Division. The Tribunal cannot consider a claimant's financial circumstances when deciding their entitlement to benefits.¹⁶

– There is no indication that the Minister applied the law incorrectly

[24] In letters to the Appellant and in a written submission to the General Division, Service Canada outlined the formula by which GIS entitlement is calculated.¹⁷ The

¹⁴ See OAS Act, section 28(2).

¹⁵ See General Division decision, paragraph 17.

¹⁶ See *Carter v Canada (Attorney General)*, 2008 FC 1046.

¹⁷ See Minister's written submission dated November 29, 2019 (GD4) summarizing section 12 of the OAS Act.

General Division could find no error in how the Appellant's GIS was calculated. Having reviewed the underlying law, I can't find an error either.

[25] The Appellant was understandably dissatisfied with his reduced GIS but, based on his revised income, that was what Parliament mandated. The General Division had no choice but to apply the law as written.

– The General Division could not take into account extenuating circumstances

[26] The Appellant regards the General Division's decision as unjust. He says that he has health problems. He says that he depends on the GIS for his living expenses. He says that he has contributed to society by raising five children as a single parent.

[27] However much I sympathize with the Appellant, I see no recourse available to him under the law. The General Division was bound to follow the OAS Act to the letter, and so is the Appeal Division. We are not permitted to consider extenuating circumstances such as the Appellant's financial need. The CRA reassessed the Appellant's income for 2016, and on two occasions the Tax Court refused to intervene. Based on the information available to it at the time, the General Division rightly determined that there were no other arguable issues left.

[28] Under the rules governing this Tribunal, I lack the authority to simply order what, in my opinion, might be fair. This reality is reflected in cases such as *Tucker* and *Esler*, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.¹⁸

Conclusion

[29] The General Division did not commit an error that falls within the permitted grounds of appeal. From what I can see, it applied the law correctly using accurate information. Its decision stands.

¹⁸ See *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278 and *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.

[30] The appeal is therefore dismissed



Member, Appeal Division