



Citation: *GG v Minister of Employment and Social Development*, 2024 SST 835

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: G. G.

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

Decision under appeal: General Division decision dated March 21, 2024
(GP-23-1440)

Tribunal member: Kate Sellar

Decision date: **July 5, 2024**

File number: AD-24-301

Decision

[1] I'm allowing the appeal. The Claimant is entitled to a partial OAS pension in the amount of 7/40ths. Payments start June 2018. These are the reasons for my decision.

Background

[2] The Claimant was born in Canada in June 1941. He lived in Canada until February 1961, when he left to go to university in the United States (US). The Claimant stayed in the US after graduating. He became a dual citizen of Canada and the US. He applied for an Old Age Security (OAS) pension on May 14, 2019. He said he wanted his pension to start as soon as he qualified.

[3] The Minister granted the Claimant a pension of 1/40 on the basis that the Claimant resided in Canada from his 18th birthday until February 12, 1961.

[4] The Claimant asked the Minister to reconsider its decision. On reconsideration, the Minister increased the Claimant's pension to 7/40. The Minister decided that his time at university in the US counted as Canadian residence.

[5] The Claimant appealed to this Tribunal. He argued that the Minister wrongly counted only the academic terms as residence in Canada, rather than the entire time he attended university (including the time between the academic terms).

[6] The General Division dismissed the Claimant's appeal, finding that the Minister's initial decision was correct: the Claimant was only resident in Canada enough to warrant a partial pension of 1/40th.

[7] I gave the Claimant permission to appeal.

The parties agree on the outcome of the appeal

[8] The parties have asked for a decision based on an agreement they reached during a settlement conference on July 3, 2024.

[9] The parties agree on the following:

- The Appeal Division should allow the Claimant's appeal. The parties do not want or need a hearing at the General Division.
- The Claimant is entitled to a partial pension under the OAS Act in the amount of 7/40ths.
- This amount is based on the Claimant's residency in Canada, plus residency in the US that qualifies under the OAS Act and the Agreement on Social Security between Canada and the United States of America.
- The Claimant has 7 years and 54 days of Canadian residency for the purpose of the OAS Act as follows:
 - a) June 21, 1959 to February 12, 1961 = 1 year and 237 days;
 - b) October 1, 1962 to March 31, 1963 = 182 days;
 - c) October 1, 1963 to March 31, 1964 = 183 days;
 - d) October 1, 1964 to March 31, 1965 = 182 days;
 - e) October 1, 1965 to June 30, 1967 = 1 year and 273 days; and
 - f) October 1, 1968 to December 31, 1970 = 2 years and 92 days.
- In accordance with the OAS Act, payments begin effective June 2018.

I accept the parties' agreement

[10] I accept the parties' agreement in full. The Claimant's residency is calculated based on:

1. his time in Canada from when he turned 18, until he went away to the US for university; plus
2. his time in university in the US (but only the periods in which he wasn't also contributing to the US Social Security Program through cooperative education programs, for example).

[11] The Claimant's time in university in the US is deemed not have interrupted his residence Canada.¹ The *Old Age Security Regulations* contain a rule that states that any interval of absence from Canada of a person resident in Canada that is for the purpose of attending a school or university shall be deemed not have interrupted that person's residence or presence in Canada.

[12] The Claimant's partial OAS pension starts in June 2018. OAS pension payments start the first month after the pension is approved. The Claimant's pension is considered approved in May 2018, one year before he applied.²

Conclusion

[13] I allow the appeal. The Claimant is entitled to a partial pension under the OAS Act of 7/40ths. Payments start June 2018.

Kate Sellar
Member, Appeal Division

¹ See section 21(4) of the *Old Age Security Regulations* (regulations).

² See section 8 of the OAS Act and section 5 of the regulations.