



Citation: *BW v Minister of Employment and Social Development*, 2024 SST 1031

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: B. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated February 10, 2023 (issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: In writing

Decision date: August 28, 2024

File number: GP-23-904

Decision

[1] The appeal is allowed.

[2] The Appellant, B. W., is eligible for a full Old Age Security (OAS) pension of 40/40. Payments start as of March 2021. This decision explains why I am allowing the appeal.

Overview

[3] The Appellant was born in Canada on April 3, 1950. He says he attended university in the United States from September 22, 1969, to June 13, 1970. And he lived in the United States from July 1988 to April 2, 2006. Otherwise, he says he has always resided in Canada.¹

[4] The Appellant applied for an OAS pension on March 30, 2021. He said he wanted his pension to start in March 2021.²

[5] The Minister of Employment and Social Development refused the Appellant's application. The Appellant asked the Minister to reconsider. The Minister didn't change its mind. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[6] The Minister's reconsideration decision says the Appellant didn't provide sufficient evidence to support his residence in Canada.³

[7] On appeal, the Appellant provided nearly 3,000 pages of documents to support his residence in Canada. I gave the Minister four months to review the evidence and make submissions to the Tribunal. The Minister didn't make any submissions or ask for more time to do so.

¹ See GD7-4.

² See GD2R-7 to 11.

³ See GD2R-74 and 75.

What the Appellant must prove

[8] The Appellant qualifies for a full OAS pension if he meets all of these requirements:

- 1) He wasn't a pensioner on July 1, 1977.
- 2) He was at least 25 years old on July 1, 1977.
- 3) He resided in Canada on July 1, 1977.
- 4) He is at least 65 years old.
- 5) He resided in Canada for 10 years immediately before the day his application was approved.⁴

[9] The Appellant must prove he meets these requirements. He must prove this on a balance of probabilities. This means he must show it is more likely than not that he meets these requirements.⁵

Reasons for my decision

[10] I find that the Appellant is eligible for a full pension of 40/40. Here are the reasons for my decision.

The Appellant clearly meets requirements 1, 2, and 4

[11] The Appellant clearly meets requirements 1, 2, and 4. He wasn't a pensioner on July 1, 1977.⁶ He was over the age of 25. He turned 65 years before he applied for an OAS pension in March 2021.

[12] Now I will discuss requirements 3 and 5.

The Appellant resided in Canada on July 1, 1977

[13] The Appellant meets requirement 3: he resided in Canada on July 1, 1977. To explain how I came to this conclusion, I must first explain what "residence" means.

⁴ See section 3(1)(b) of the *Old Age Security Act* (OAS Act).

⁵ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

⁶ See the definitions of "pension" and "pensioner" in section 2 of the OAS Act.

– **The test for residence**

[14] 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 must use these definitions in making my decision.

[15] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁷ A person is **present** in Canada when they are physically present in any part of Canada.⁸

[16] When I am deciding whether the Appellant resided in Canada, I must look at the overall picture and factors such as:

- 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 were⁹

[17] This isn't a complete list. Other factors may be important to consider. I must look at **all** of the Appellant's circumstances.¹⁰

⁷ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁸ See section 21(1)(b) of the OAS Regulations.

⁹ 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.

¹⁰ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

– **Applying the factors**

[18] This is what the Appellant says about his living situation in 1977:

- He lived at X. He had moved there in late 1974 or early 1975.
- He was self-employed under the name X. He had started the business in 1975 under the name X, and later X. His business consisted of buying “miracle cloth” from a business in Missouri and reselling it to retail stores and to homeowners by going door-to-door in Ontario.
- He trained for hockey several times per week at local arenas.
- He exercised several times per week at X.¹¹

[19] It is important to remember that the Appellant was born in Canada and, by his account, had spent his entire life in Canada up to this point, except when he attended university in the United States. That was from September 22, 1969, to June 13, 1970.¹² I have no reason to doubt his detailed account of his living situation. I accept that he was firmly established in Canada throughout 1977. His personal property and social ties were here. He spent all of his time here. He had no real ties to any other country.

[20] For these reasons, I find that the Appellant resided in Canada on July 1, 1977.

The Appellant resided in Canada from 2011 to March 2021

[21] The Appellant meets requirement 5: he resided in Canada from at least 2011 to March 2021, when he applied for an OAS pension.

[22] This is what the Appellant says about his living situation during this period:

- He rented a room at X This was his permanent residence in Canada.
- He enrolled in a Bachelor of Business in Real Estate program through the University of British Columbia’s Sauder School of Business in 2008. He took the courses by distance learning and wrote the supervised exams in-person at McMaster University in Hamilton. He completed the program in 2012.

¹¹ The Appellant summarizes his living situation at GD7-1 to 49.

¹² See GD1-20.

- For income, he continued selling miracle cloth. He updated his marketing materials in 2018.
- He also tried to flip houses by buying properties in need of renovation and reselling them for a profit. He distributed flyers, magnets, and posters to advertise this venture.
- In 2013, he stopped flipping houses. He joined the Ontario Real Estate Association and started studying for his real estate licensing exam.
- In 2014, he got his real estate licence. He joined X in X but quit after six months. He was having trouble finding clients due to the firm's poor name recognition. He then joined X in X. He worked there as a realtor from October 3, 2014, to May 24, 2022.¹³

[23] Again, I accept the Appellant's detailed account of his living situation. He provided **numerous** documents that support his account of having lived in Canada since 2006, including an Ontario driver's licence and health card, materials from his real estate studies, invoices related to his business, gas receipts from Ontario gas stations, income tax filings, and a letter attesting to his employment with X.¹⁴ His home, property, and business relationships were in Canada. He studied, worked, and filed income taxes here. He spent all of his time here. He had no ongoing ties to the United States.

When payments start

[24] The Appellant's pension starts in March 2021.

[25] OAS pension payments start the month after the pension is approved.¹⁵ The Appellant was 70 when he applied. When an application is received after a person turns 65, the approval takes effect on the **latest** of the following dates:¹⁶

- one year before the day it was received

¹³ The Appellant summarizes his living situation at GD7-1 to 49.

¹⁴ See, for example, GD1-30 to 83; GD2R-27, 34, and 68 to 70; and GD7, which is nearly 3,000 pages.

¹⁵ See sections 8(1) and (2) of the OAS Act.

¹⁶ See section 5(2) of the OAS Regulations.

- the day the Appellant qualified for a pension
- the month before the day specified in writing by the Appellant

[26] The Appellant asked to start getting a pension in March 2021. He had already qualified for a pension by then. One month before March 2021 is February 2021. That is the effective approval date.

[27] Payments start the following month, which is March 2021.

The Appellant also applied for the Guaranteed Income Supplement

[28] The Appellant applied for the Guaranteed Income Supplement (GIS) at the same time he applied for an OAS pension.¹⁷ The Minister refused the Appellant's application because a person can't get the GIS unless they are also getting an OAS pension.¹⁸ Now that I have decided that the Appellant was eligible for an OAS pension beginning in March 2021, the Minister must consider the Appellant's eligibility for the GIS as well.

Conclusion

[29] The Appellant is eligible for a partial OAS pension of 40/40.

[30] This means the appeal is allowed.

James Beaton
Member, General Division – Income Security Section

¹⁷ See GD2R-8 and 9.

¹⁸ See section 11(1) of the OAS Act.