



Citation: *BR v Minister of Employment and Social Development*, 2024 SST 1479

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

Decision

Appellant: B. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 2, 2024 (issued by
Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Videoconference

Hearing date: September 19, 2024

Hearing participant: Appellant

Decision date: November 6, 2024

File number: GP-24-332

Decision

[1] The appeal is allowed.

[2] The Appellant, B. R., is eligible to cancel his Old Age Security (OAS) pension.

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

Overview

[4] The Appellant was selected for automatic enrollment for his OAS pension starting July 2022, the month after he turned 65.

[5] The Minister of Employment and Social Development (Minister) says it sent several letters to the Appellant to notify him of the intention to automatically approve his OAS pension. The Minister did not receive a response from the Appellant to indicate that he wished to delay the start of his OAS pension.

[6] In March 2023, the Appellant asked the Minister to cancel his OAS pension. The Minister denied this request because it was past the six months allowed for cancellation. The Appellant appealed this decision to the Social Security Tribunal (Tribunal).

[7] The Appellant says that he did not receive any of the Minister's letters. His OAS pension started in July 2022. However, because of the OAS recovery tax, Canada Revenue Agency (CRA) withheld the entire amount of his pension. There were no deposits made into his bank account. He didn't know he was receiving an OAS pension until he received a T4A slip in February 2023. He immediately took steps to cancel his OAS pension, but was told he was too late.

[8] The Minister says that the Appellant was sent three letters to notify him that he was selected for automatic enrollment. He requested cancellation of his OAS pension on March 3, 2023, which is more than six months after his OAS pension began. The Appellant cannot cancel his OAS pension because his request to cancel was made more than six months after the day on which his payments began.

Issue

[9] I have to decide whether the Appellant is eligible to cancel his OAS pension after it started in July 2022.

Reasons for my decision

The request to cancel his OAS pension was late.

[10] The *OAS Act* allows individuals to cancel their OAS pension no later than six months after the day it starts.¹ The Appellant's written request to cancel his OAS pension was received on March 3, 2023, which is more than six months after his pension began.²

The Minister has to notify the Appellant of its intention to waive the requirement for an OAS application

[11] The Minister submits that the Appellant was notified that he was selected for automatic enrolment of his OAS pension by mail. The Minister says that automated letters were sent to the Appellant in June 2021, May 2022, and July 2022. The Minister also says it sent an automated letter in July 2022 to notify the Appellant that the full amount of his OAS pension would be withheld.

[12] The Minister could not provide actual copies of any of these letters. The Minister explained that it did not retain copies of most automated letters prior to October 2022.³ However, the Minister's file shows that the correspondence was sent to the Appellant's current address.

[13] The Appellant submits that he did not receive any of these letters and therefore was not notified that his OAS pension would start in July 2022.

¹ Section 9.3 of the *OAS Act*; Section 26.1 of the *OAS Regulations*

² See the Appellant's letter dated February 25, 2023 at page GD2-8

³ See the Minister's submissions at page GD5-7, paragraph 25

[14] In order for the Minister to pay an OAS pension, a person usually has to make an application and that application has to be approved.⁴ However, the Minister can waive the requirement for an application.

[15] If the Minister intends to waive the requirement for an application, they must notify the person in writing of this intention. They must also provide them with the information upon which they intend to rely to approve the payment of the pension.⁵

[16] This means that if a person is not notified with the required information, the Minister can't waive the requirement for an application and can't pay a pension.

The Minister did not notify the Appellant

[17] I find, on a balance of probabilities, that the Minister did not notify the Appellant that it intended to waive the requirement for an application and did not provide him the information upon which it intended to rely. As a result, the Minister did not have the legal authority to pay the Appellant's OAS pension.

[18] The Appellant submits that he did not receive any of the automated letters that the Minister says were sent to his address. He cannot explain why he did not receive these letters, but is adamant that they were never received.

[19] He explained that the last correspondence he received about the OAS pension was in 2021, when he was advised that he had to make an application to receive his OAS pension. He did not apply at that time. He had no intention of applying because he was still working and knew that the entire pension would be taxed.

[20] He was shocked when he received his T4A in February 2023. He immediately took steps to cancel his OAS pension. This was done in a telephone call in February 2023 followed by a letter dated February 25, 2023 (received by the Minister on March 3,

⁴ Subsection 5(1) of the *OAS Act*

⁵ Subsection 5(4) of the *OAS Act*

2023). In this letter, the Appellant wrote that he only recently became aware that he was automatically enrolled for the OAS pension.

[21] In addition to this letter, the Appellant was very credible in his testimony. He confirmed at the hearing that he did not know about the automatic enrollment until February 2023. Without receiving the letters, he could not have known about the OAS pension because no money was deposited into his bank account. It is not until he received his T4A that he was notified. He then took immediate steps to try to cancel it.

[22] The Minister was unable to provide actual copies of the letters it says were sent to the Appellant. It could only provide a screenshot of its correspondence as well as recreated letters. While this may be sufficient evidence of notice in most cases, it is insufficient in this particular case, where the Appellant's letter, testimony, and actions demonstrate that he did not receive notice until February 2023.

[23] Therefore, the Appellant was never notified of the Minister's intention to waive the requirement for an application. This means the Minister didn't have the legal authority to begin paying the Appellant's OAS pension. For this reason, I find that the Appellant asked to have his pension cancelled within the time limit set out in the *OAS Act*.

Conclusion

[24] I find that the Appellant is eligible to cancel his OAS pension.

[25] This means the appeal is allowed.

Lianne Byrne
Member, General Division – Income Security Section