



Citation: *The Estate of FH v Minister of Employment and Social Development*, 2025 SST 130

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: The Estate of F. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 8, 2024 (issued by
Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Teleconference

Hearing date: January 28, 2025

Hearing participants: Appellant
Respondent/Respondent's representative

Decision date: February 18, 2025

File number: GP-24-961

Decision

[1] The appeal is allowed.

[2] The Appellant, The Estate of F. H., is eligible for a partial Old Age Security (OAS) pension of 8/40. Payments start as of August 2018.

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

Overview

[4] F. H. was born in December 1942. He died in October 2022. His estate is the Appellant in this appeal. The estate is represented by F. H.'s son-in-law. F. H. applied for an OAS pension and the Guaranteed Income Supplement (GIS) in July 2018.¹ His son-in-law helped him with his application.

[5] In September 2018, the Minister of Employment and Social Development (Minister) said that F. H. didn't have enough years of residence in Canada to qualify. It sent his application to one of its specialized departments to see if he qualified through an international agreement.²

[6] In December 2020, the Minister sent a letter to F. H. asking for information about his income to process his application. It didn't get a response. In July 2021 and October 2021, it sent follow-up letters. In February 2022, it sent a final letter saying it didn't get a response, so it stopped the review of his file. It said F. H. would have to apply again.³

[7] The Appellant made a post-mortem application for an OAS pension for F. H. in May 2023.⁴ The Minister approved it in November 2023 with an effective date of November 2021.⁵

¹ See GD2-3 to 6.

² See GD2-25.

³ See GD2-31, GD2-42, GD2-46, and GD2-49.

⁴ See GD9-15 to 22.

⁵ See GD2-59.

[8] Upon receiving the approval letter for his second application in November 2023, the Appellant asked the Minister to reconsider the effective date.⁶ The Minister asked for clarification on which application the Appellant referred to in his request.⁷ The Appellant responded that he was requesting a reconsideration of the July 2018 application.⁸

[9] The Minister then reconsidered its decision on the July 2018 application. It said F. H. didn't respond to their requests for information, so it maintained its decision to deny his July 2018 application.⁹

[10] The Appellant appealed the Minister's decision to the General Division of the Social Security Tribunal (Tribunal). He said F. H. didn't get the letters because he moved. The Appellant wants the pension to start as of September 2019.¹⁰

[11] The Minister's position is that the appeal is about whether the Appellant should have more time to ask for reconsideration of the February 2022 decision. It argues he can't have more time to ask for a reconsideration.¹¹

[12] There are two matters I will address in this appeal. First, I will address the Minister's arguments about the late reconsideration.¹² Then, I will address whether the Appellant's July 2018 application should be approved.

What I considered first

This appeal is not about a late reconsideration

[13] This appeal is not about a late reconsideration.

[14] A request for reconsideration is when an appellant, who doesn't agree with the decision of the Minister, asks for the Minister to change its mind. Ordinarily, this request

⁶ See GD2-52 to 58.

⁷ See GD2-62 to 64.

⁸ See GD2-65.

⁹ See GD2-67.

¹⁰ See GD1-4.

¹¹ See GD11.

¹² I note that I have already decided on this issue twice before the hearing date. See GD7 and GD10. But, as it was addressed again at the hearing, I will give my reasons again here.

has to be made within 90 days of getting the decision.¹³ The Minister may allow a longer period to make a request for reconsideration if the Minister is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated continuing intention to request a reconsideration.¹⁴

[15] When a request for reconsideration is over 365 days late or is made by someone who has applied by the same benefit again (which is the case here), the Minister must also be satisfied that there is a reasonable chance of success, and no prejudice would be caused to the Minister.¹⁵

[16] At the hearing, the Minister said the Appellant didn't give any reasons for the delay and didn't show a continuing intention to request a reconsideration. So, they can't give the Appellant more time to ask for a reconsideration.¹⁶

[17] But, the Minister **did** give the Appellant more time. The Minister responded to the Appellant's November 2023 request for reconsideration, and then issued a reconsideration decision in May 2024. The reconsideration decision said the Minister was maintaining its February 2022 decision to deny the application.¹⁷

[18] At the hearing, the Minister's representative said that the request for reconsideration was sent back to one regional department when it should have been sent to the Minister's International Operations department. He said it appears that requests and decisions may not have been communicated properly between departments. International Operations didn't know about the request for reconsideration and reconsideration decision until the Appellant appealed.

[19] I asked the Minister if it is possible for the two departments to share information. I also asked if this information could have been reviewed and a decision still made. The Minister's representative said that there is a system where information can be shared.

¹³ See section 27.1(1) of the OAS Act.

¹⁴ See section 29.1(1) of the OAS Regulations.

¹⁵ See section 29.1(2) of the OAS Regulations.

¹⁶ See GD11.

¹⁷ See GD2-67.

He could not comment about actions that may have happened that he was not a part of. He maintained the issue in this appeal was related to the late reconsideration.

[20] I disagree with the Minister.

[21] The Appellant is free to ask for a reconsideration as long as they aren't satisfied with the decision. He must do so within 90 days, but the Minister can allow more if it is satisfied that the criteria mentioned above have been met. By making a reconsideration decision on the Appellant's request, and by not denying the request for being late, the Minister gave the Appellant more time to ask for reconsideration.

[22] Regardless of what type of internal communications or miscommunications may have happened, the facts remain the same. The Minister made a reconsideration decision on the Appellant's reconsideration request. It is on that basis the Appellant has appeal rights to the Tribunal.

[23] Next, I will address what the Appellant must prove when it comes to the July 2018 application.

What the Appellant must prove

[24] The issue in this appeal is whether the F. H. was entitled to a **partial** pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[25] To get a partial OAS pension, the Appellant has to prove F. H. resided in Canada for at least 10 years after he turned 18. But, if F. H. didn't reside in Canada the day before his application was approved, he has to prove he already had 20 years of residence.¹⁸

¹⁸ See section 3(2) of the OAS Act.

[26] The Appellant has to prove F. H. 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 he resided in Canada during the relevant periods.¹⁹

The test for residence

[27] 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.

[28] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.²⁰

[29] A person is **present** in Canada when they are physically present in any part of Canada.²¹

[30] When I am deciding whether F. H. resided in Canada, I have to look at the overall picture and consider various factors to determine if he made his home and ordinarily lived in Canada.²²

Reasons for my decision

[31] I find F. H.'s estate ²³was eligible for a partial OAS pension of 8/10. The 10 years and 119 days F. H. lived and worked in the Philippines also count as residence in Canada. They help him qualify for an OAS pension, but don't change the amount of the pension.

– F. H.'s periods of residence

[32] I find that F. H. resided in Canada for 8 years and 218 days.

¹⁹ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

²⁰ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

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

²² 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.

²³ The Appellant isn't claiming he wants a full pension.

[33] I considered F. H.'s eligibility from August 21, 2009, to July 27, 2018. I chose the first date because this is when F. H.'s passport shows he first came to Canada.²⁴

[34] I note the Minister only considered F. H.'s eligibility until July 30, 2017, in its "IO Residence Sheet." I am unsure why it chose this date. It didn't provide submissions or an explanation for why they chose this date either.²⁵

[35] I disagree with the Minister's date. I chose July 27, 2018, because that's when F. H. applied for an OAS pension. In his application, he said he wanted his pension to start as soon as he qualified.²⁶

[36] I also found no indication from the appeal file that, after entering Canada in August 2009, F. H. didn't continue to reside in Canada until July 27, 2018. His first application shows he continued to live in Canada at the time the application was made. His second application shows he continued to live in Canada until his death.²⁷ The Minister did not address or dispute these facts.

– **Canada's agreement with the Philippines helps F. H. qualify**

[37] Canada has a social security agreement with the Philippines. The time F. H. lived and worked there counts toward his eligibility for an OAS pension.²⁸

[38] The government of the Philippines provided the Minister with information that shows that F. H.'s time in the Philippines equals 10 years and 119 days of residence in Canada.²⁹

[39] So, when I am deciding if F. H. had enough years of residence to qualify for an OAS pension, I can add this time to his actual years of residence in Canada. It doesn't

²⁴ See GD2-16.

²⁵ See GD2-39.

²⁶ See GD2-4.

²⁷ See GD2-3 to 6 and GD9-15 to 22.

²⁸ Section 40 of the OAS Act allows the Government of Canada to make this agreement. See the Agreement on Social Security Between Canada and the Republic of the Philippines.

²⁹ See GD2-39.

increase the amount of his pension, but it allows him to qualify because gives him the required 10 years of residence.

– **The documents the Minister requested from the Appellant**

[40] The Minister requested a number of documents from the Appellant in their December 2020, July 2021, and October 2021 letters.

[41] The Appellant said he wasn't aware of these letters. He thought F. H.'s application was being processed. He says it was likely that he or F. H. didn't get these letters because F. H. moved. He helped F. H. with his first application. If he got them, he would have acted on them. I believe what he says.

[42] The Appellant has since given all the information required for the Minister to approve the first application. I make this finding because the Minister had sufficient information to approve the second application. There isn't evidence of any follow-up letters or additional requests for information included in the file.³⁰

[43] I don't see any reason why the July 2018 application can't be approved. And, at the hearing, the Minister's representative said his July 2018 application would have been approved if all the documents had been provided when they asked.

The Appellant qualified for a partial OAS pension in July 2018

[44] This Appellant's appeal is successful. F. H. qualified for a partial OAS pension of 8/40 as of July 2018.³¹ His residence in the Philippines helped him qualify for the pension. But it doesn't change the amount of the pension.³²

[45] The pension starts as of August 2018. This is because OAS pension payments start the first month after the pension is approved and when an application is approved

³⁰ See GD2-59.

³¹ The law sets out several possible dates for approval of an OAS pension. The approval takes place on the latest of those dates. In the Appellant's case, the latest date was in the date of his application. See section 8 of the OAS Act and section 5 of the OAS Regulations.

³² See the Agreement on Social Security Between Canada and the Republic of the Philippines. The agreement with the Philippines says that years of residence under the agreement don't count when calculating the amount of the pension.

after the last day of the month it was received, the approval may be effective earlier to when the application was received.³³

Conclusion

[46] I find the Appellant is eligible for a partial OAS pension of 8/10.

[47] This means the appeal is allowed.

Brianne Shalland-Bennett
Member, General Division – Income Security Section

³³ See section 8(1) of the OAS Act.