



[Translation]

Citation: *GS v Minister of Employment and Social Development*, 2024 SST 1351

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

## **Decision**

**Appellant:** G. S.

**Respondent:** Minister of Employment and Social Development

---

**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated August 11, 2021  
(issued by Service Canada)

---

**Tribunal member:** Antoinette Cardillo

**Type of hearing:** In writing

**Decision date:** November 1, 2024

**File number:** GP-23-1050

## Decision

[1] The appeal is dismissed.

[2] The Appellant, G. S., didn't meet the residence requirement to receive the Guaranteed Income Supplement. This means the Appellant wasn't eligible for the Guaranteed Income Supplement from June 2011 to October 2019.

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

## Overview

[4] The Minister of Employment and Social Development (the Minister) began paying the Appellant an Old Age Security pension in January 2021 [sic].<sup>1</sup>

[5] A person who receives an Old Age Security pension is also eligible for the Guaranteed Income Supplement if they meet certain requirements. For example, their income needs to be below a certain level, and they have to stay in Canada. If they leave or stop residing in Canada, they are no longer eligible for the Guaranteed Income Supplement.

[6] The Minister started paying the Appellant the Guaranteed Income Supplement in January 2021 [sic].

[7] The Minister stopped the Appellant's Guaranteed Income Supplement payment in December 2019.

[8] Following an investigation and after reconsideration, the Minister determined that the Appellant had stopped residing in Canada on January 8, 1998, and that upon her return to Canada in June 2011, she had not re-established her residence. For this reason, she wasn't eligible for the Guaranteed Income Supplement.

---

<sup>1</sup> The Minister of Employment and Social Development manages the Old Age Security programs for the Government of Canada. See the decision at GD2-98 and the reconsideration decision at GD1-15.

[9] The Minister decided that the Appellant had to repay \$70,692.21. This is how much the Appellant received in Guaranteed Income Supplement payments from June 2011 to September 2019.

[10] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[11] On July 19, 2022, the General Division of the Tribunal dismissed the appeal, stating that the Appellant wasn't a resident of Canada within the meaning of the *Old Age Security Act* from June 29, 2011, to July 5, 2022. This means she wasn't eligible for the Guaranteed Income Supplement.

[12] The Appellant appealed the General Division's decision to the Tribunal's Appeal Division. On June 6, 2023, the Appeal Division sent the matter back to the General Division for reconsideration by another member of the Tribunal. The appeal is therefore before me.

## **What the Appellant must prove**

[13] To receive the Guaranteed Income Supplement, the Appellant has to prove she resided in Canada from June 29, 2011, to September 2019.

[14] The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she resided in Canada during the relevant period.<sup>2</sup>

---

<sup>2</sup> See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

## Matter I have to consider first

### - The Appellant asked that the appeal proceed in writing

[15] Following two requests from the Appellant, I agreed that the appeal could proceed in writing. I proceeded by questions and answers.<sup>3</sup>

[16] The Minister made its submissions.<sup>4</sup>

## Reasons for my decision

[17] I find that the Appellant didn't reside in Canada from June 2011 to October 2019. She didn't re-establish her residence in Canada in June 2011, the date of her return to Canada following her departure in 1998, until September 2019.

[18] This means she wasn't eligible for the Guaranteed Income Supplement from June 2011 to September 2019.

[19] Here are the reasons for my decision.

### The test for residence

[20] 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.

[21] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.<sup>5</sup>

[22] A person is **present** in Canada when they are physically present in any part of Canada.<sup>6</sup>

---

<sup>3</sup> See IS01 to IS07 and IS11.

<sup>4</sup> See IS09.

<sup>5</sup> See section 21(1)(a) of the *Old Age Security Regulations*.

<sup>6</sup> See section 21(1)(b) of the *Old Age Security Regulations*.

[23] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:<sup>7</sup>

- where she had property, like furniture, bank accounts, and business interests
- where she had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where she had other ties, like medical coverage, rental agreements, mortgages, or loans
- where she filed income tax returns
- what ties she had to another country
- how much time she spent in Canada
- how often she was outside Canada, where she went, and how much time she spent there
- what her lifestyle was like in Canada
- what her intentions were

[24] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.<sup>8</sup>

## **The Guaranteed Income Supplement**

[25] The Guaranteed Income Supplement is an income-tested monthly benefit based on marital status that is paid to individuals who receive the Old Age Security pension and reside in Canada. If a Guaranteed Income Supplement recipient leaves Canada, that person can receive these benefits for only six months after the month of departure. This is the case regardless of how many years of residence in Canada the person has.<sup>9</sup>

---

<sup>7</sup> See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *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.

<sup>8</sup> See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

<sup>9</sup> See section 11(7) of the *Old Age Security Act*.

– **The Appellant didn't re-establish her residence in Canada in June 2011**

[26] I find that the Appellant didn't re-establish her residence in Canada on June 29, 2011.

- **The Appellant's ties to Canada**

[27] In her application to appeal, the Appellant says the following:<sup>10</sup>

1. She lived in Canada from 1970 to 1972, from 1976 to 1998, and from 2011 to November 12, 2021, the date of the appeal.
2. In 1998, as her mother was very ill, she returned to X with her daughter, who was seven years old at the time. She requested a sabbatical from her employer, X, and sublet her dwelling, hoping to return to Canada.
3. She rented an apartment in X with her mother and daughter and had to find a job to support them. She subsequently abandoned her dwelling in Canada. When her mother died in 2001, her position at X in X was filled by another person, and no other positions were available. Given her age at the time (57), she decided to remain in her position in X to continue supporting her daughter and her family.
4. She remained in X to help her daughter, who became a single mother. She bought an inexpensive house. When her daughter turned 21 and finished university, the Appellant decided to return to Canada, where she had friends and acquaintances with whom she had strong emotional ties, and to reconnect with Quebec. She retired from her job in X. Her daughter and grandson continue to live in the house in X, and her daughter handles all the expenses. She visits them in the winter to take advantage of the summer in X.
5. Since her return in 2011, she has had rental agreements and paid rent. The agreements were automatically renewable. Her landlord agreed to transcribe both agreements onto lease forms from the Tribunal administratif du logement [Housing administrative tribunal]. She has a new lease as of January 2020.<sup>11</sup>

---

<sup>10</sup> See GD1-5 and subsequent pages.

<sup>11</sup> See GD2-71, GD2-197, and GD2-221, and IS5-17 to IS5-23.

6. She has ties to X, X (immigrant aid organization), and X.<sup>12</sup>
7. She has furniture and clothing in Canada and shares some household items with the lessor.
8. She has kept a record of her medical appointments and hospitalizations from 2011 to 2020.<sup>13</sup>
9. She has a driver's licence (valid from 2012 to 2016 and from 2016 to 2024).<sup>14</sup>
10. She has a bank account and filed her 2018 and 2020 tax returns.<sup>15</sup>
11. She has a service contract with Vidéotron (invoices in September 2014, June 2015, June 2016, May 2017, and November 2019).<sup>16</sup>
12. She takes part in cultural activities.
13. She made a will (only the last page was submitted).<sup>17</sup>
14. She has a Canadian passport valid from 2016 to 2021. It was delivered in X.<sup>18</sup>

[28] On May 3, 2024, the Appellant gave the following answers to my questions:<sup>19</sup>

1. Do you have family in Canada?

Answer: I don't currently have any family in Canada. My daughter (a Canadian citizen) and my grandson haven't yet been able to come. I very much hope that they will be able to join me as soon as possible.

Concerning my residence in Canada, I'm considered a resident, while my family lives in X. I've freely chosen to live in Canada, where I feel perfectly integrated and happy. My many friends are my family.

---

<sup>12</sup> See GD2-60, GD2-67, and GD2-79.

<sup>13</sup> See also the Régie de l'assurance maladie du Québec [Quebec health insurance board] report at GD2-185 to GD2-192 for the years 2011 to 2019.

<sup>14</sup> See GD1-54 and GD1-58.

<sup>15</sup> See GD1-93 to GD1-98.

<sup>16</sup> See GD1-72 to GD1-77.

<sup>17</sup> See GD2-244 and GD1-61.

<sup>18</sup> See GD1-64, GD2-16, and GD2-134.

<sup>19</sup> See IS5.

2. Do you have family in X?

Answer: Yes, I have family in X. My daughter (a Canadian citizen) and my grandson live in X, in X. My half-sister and her four adult children live in the same city. I've always had a good relationship with my half-sister. I also have cousins, but I don't have a relationship with them.

I've lived in Canada, away from them and all my family, for 34 years.

3. You said that once your daughter was independent enough, had turned 21 and finished university, and once you had retired from your job in X, you decided to return to Canada. Can you confirm when your daughter turned 21?

Answer: I returned to Canada in 2011. My daughter turned 21 in June 2011 and was in a relationship at the time.

4. You submitted a rental agreement for a room as of June 29, 2011 (GDI-25 and GDI-26), indicating a rent of \$300/month. You then submitted a rental agreement with the same lessor but at a different address as of August 30, 2013, indicating a rent of \$600/month (GDI-29 and GDI-31).

- a) Please explain why the rent doubled.
- b) Did you rent a larger space?

Answer: As of August 30, 2013, I had a much larger space, which is why the price doubled. In 2013, my lessors decided to sell their triplex at X to buy a house at X. The house had an extension.

This extension was a self-contained studio with its own entrance. It included a kitchenette with a fridge and stove, a bathroom, and a large space for the dining room and bedroom. My lessors offered to rent me this studio for \$600/month. I agreed and signed the agreement.



5. Why are there two leases for the same period at the same address in 2013 (see GD1-29 and GD1-31)?

Answer: The lessor had always used rental agreements with her lessees at X, and continued to do the same with me at X. I therefore signed these agreements at X as I had done at X. When I learned that a “Bail de logement” [“Lease of a Dwelling”] form had been in use in Quebec for several years, I asked if she could transcribe the rental agreement onto that form. She agreed. That’s why there are two leases for the same period and the same address in 2013.

6. Where did you live between 2014 and 2020?

- a) Please give specific details.
- b) If you travelled outside of Canada: Please indicate for how long, with supporting evidence, and where you lived.

Answer: On August 30, 2013, I signed a rental agreement for a studio at \$600/month located at X in X. At the end of December 2019, I signed a new lease for 2020 at the same address.

In 2019, the lessor, having learned that her husband had stage 4 cancer, decided to care for him at home. Her decision required making changes to the house. She asked me if I would be willing to occupy a smaller space in the house so the studio could be transformed into a large care room (with a hospital bed and other fixtures). As the lessors were long-time friends, I agreed to the request to support them in this difficult time. That’s why, to answer your question, I lived at X in X from 2014 to 2020. However, every year, I left Canada in the winter to go to X for the following reasons:

- a) To visit my family (my daughter, grandson, half-sister, and half-brother).
- b) See my pension and make the necessary arrangements to convert the pesos into Canadian dollars so that I could bring them back since no financial institution in Canada accepts pesos from X.

In X, I bought my plane tickets with the money from my pension, which I could not bring back because of the restrictions of the Government of X.

## 2020; PANDEMIC

I was scheduled to return to Canada on April 14, 2020. As that was the year of the global pandemic (March 2020), I was unable to return to Canada. X introduced strict measures to counter transmission, imposing mandatory quarantine on the population and closing borders, businesses, and most public transportation. My flights with Air Canada were cancelled five times. The airports were closed. My airline stopped all its flights for X. The company refunded my ticket. As I was part of a high-risk group, I could not go out. It was therefore impossible to get to X, which is very far from X (1,800 km). That is why, though I was on the list of people to be repatriated to Canada, I could not return due to the subsequent cancellation of the various flights scheduled. However, I remained in contact with the X.

## Addresses where I lived outside Canada

- X in 2016, at the home of a friend's son in X
- X in 2018: X
- X from 2014 to 2020:
  - at my daughter's home in X
  - at the home of my half-brother (now deceased) from 2014 to 2018
  - X
  - at a friend's home (2015, 2016, and 2017) in X

## Days outside Canada

2014-12-27	2015-05-25	X 150 days
2015-11-28	2016-05-18	X 173 days
2016-11-26	2017-05-16	X 172 days
2017-11-24	2018-05-14	X 172 days
2018-12-13	2019-05-07	X 146 days

2019-12-04 2021-09-28 X 665 days (forced to remain in X due to the pandemic)

#### Days in Canada

2014-06-12	2014-12-26	Canada 198 days
2015-05-26	2015-11-27	Canada 186 days
2016-05-19	2016-11-25	Canada 191 days
2017-05-17	2017-11-23	Canada 191 days
2018-05-15	2018-12-12	Canada 212 days
2019-05-08	2019-12-03	Canada 210 days
2019-09-29	2024- xxx	Canada 900 days +....

7. Please explain why you didn't have a lease between 2014 and 2020.

Answer: Yes. I always had a lease; I signed it in 2013. This same lease was automatically renewed under the same conditions from 2014 to 2019, as there were no changes during those years. For 2020, I signed a new lease, still at the same address (X), on December 2, 2019, because of changes that led to new conditions.

8. Why was a lease signed in 2020 for the same address you say you lived at in 2013, and why is the rent lower than in 2013 (see GDI-34)?

a) What did you rent that is different from or the same as in 2013 (a room, etc.)?

Answer: Following the changes in the house, which led to new conditions, a new lease was signed on December 2, 2019, for 2020. The first rental agreement in 2013 was for a studio (large bedroom) with space for a complete kitchenette (cabinets, refrigerator, and stove), bathroom, dining room space, and bedroom. The studio had a separate door. The second lease in 2020 was for a smaller space with one bedroom and a separate bathroom. As the conditions changed, the rent dropped from \$600 to \$350. As I stated in my answer to question 6, these changes took place because my lessor's

husband was terminally ill with cancer, and she wanted to care for him at home by transforming the studio into a large care room. I therefore signed two leases for the same address, one in 2013 and the second in December 2019.

9. Please provide proof of rent payments as of 2011.

Answer: In the leases, the payments were made hand to hand, meaning in cash without receipts. I didn't think it was necessary to get receipts of payment, as I'd signed an agreement with my lessor.

When you asked me for proof of payment, I realized that I didn't have any receipts. I therefore asked my lessor to make a declaration before a Commissioner for Oaths proving that I had paid all my rent regularly during the years I was renting.<sup>20</sup>

10. Please explain why two of your Canadian passports were issued in X, in 2011 (see GD2-16) and 2016 (see GD5-25).

Answer:

Passport renewal in 2011

I lived in X until 2010. In 2011, I made my plan of returning to Canada a reality. Since I was in X, I had no choice but to make the arrangements there. That's why I renewed my Canadian passport with the Canadian Embassy in X.

Passport renewal in 2016

Before I went on vacation to X in 2016, I noted that my passport validity date was far away. Due to a lack of information, I didn't renew it before leaving. My passport expired on May 4, and my return date was May 19. That's why I renewed my Canadian passport with the Canadian Embassy in X.

11. Please indicate the number of hours you have volunteered per year since your return to Canada in 2011.

---

<sup>20</sup> See IS5-58 and GD2-222.

- a) At X
- b) At the Xs (see GDI-60) or other volunteer organizations

Answer: First of all, I should note that it's rather difficult for me to calculate the number of hours I've volunteered per year over so many years (13 years). However, I'll do my best to answer the question.

#### The X co-operative

The X housing co-operative (formerly X, on X street) played a very important role in my Canadian life. I was a founding member and the first chair of the board of directors. I worked for 10 years with this co-operative, whose mission was to integrate immigrants into society. Over the years, I met many members who were old-stock Quebecers and members of other backgrounds, and I maintained these relationships. Upon my return in 2011, I got back in touch with the co-operative, through which I reconnected with old members and met new ones. I attended various social gatherings where all the members were present. Among other tasks, I had to make visits to comfort, guide, and support people facing difficulties. In 2023, the building caught fire, and most members lost everything. I wanted to be there for them in such a tumultuous time. It's difficult for me to calculate the number of hours I did during all those years. I didn't keep a record of the time spent. It's in my nature to help others without keeping track of time.

#### X

The Xs are a Canadian religious congregation I belonged to for a number of years. This institution's charism and mission is to help the most disadvantaged members of society. The Xs are secular groups that are part of the institution and work toward the same mission. In 2012, I joined a group of Xs from X and went there every Saturday for meetings to recharge our spiritual batteries and take stock of our work with people in need. My job was to visit the sick to give them comfort and support in their daily lives, as well as build trusting relationships with vulnerable seniors to combat their loneliness. As the group of Xs didn't keep records and disbanded after the pandemic, I can only give a

rough time estimate: two to three hours, once or twice a week, every month of the year, not counting when I was outside Canada.

#### Other organizations

The other organizations referenced in the file are organizations I belong to and through which I take part in various activities: courses, conferences, cultural and sporting activities, and outings. I'm currently volunteering with X (X), making phone calls and doing home visits to break isolation.

#### - **The Appellant's ties in X**

[29] There is no doubt that the Appellant has been in Canada every year since her return in 2011. She lives with friends, has furniture and clothes, has signed leases, has a driver's licence, belongs to organizations, has a bank account, has service agreements, and files tax returns.

[30] However, the Appellant manipulates documents to prove that she resides in Canada. She signed one lease in 2011, one in 2013 and another in 2019, which she asked her lessor to retranscribe. She can't prove that these leases were automatically renewed before they were retranscribed. In fact, she signed only two leases, in 2011 and 2013, in their original form (that is, those that weren't on the lease form of the Tribunal administratif du logement). The others are just retranscriptions.

[31] She didn't prove that she paid rent from 2011 to 2019. She asked her lessor to sign a sworn document confirming the payment of rent from 2013 onward. No tangible evidence of withdrawal or deposit for rent was submitted for 2011 to 2019. Furthermore, in the past, there have been contradictions between what the Appellant told the Minister's investigator in June 2019 and what the Appellant is saying now.<sup>21</sup> In 2019, she reportedly said she paid rent only when she was in Canada. This is more plausible

---

<sup>21</sup> See the investigation report at GD2-129.

than what she is saying now, which is that she paid rent all year long from 2011 to 2019, even when she wasn't in Canada.

[32] In addition, the Appellant was unable to give details of her volunteer hours, if only for the last few years, to demonstrate her ties to the organizations and friends that are important to her. Her answer was very vague. None of the letters from these organizations indicate the Appellant's volunteer hours. It is therefore difficult to place any weight on this aspect of the evidence submitted by the Appellant.

[33] The Appellant's absences from Canada are also an important factor. She has left Canada for half of every year since her return in June 2011. She returns to her home country, where she has a house, a daughter, and a grandson. She makes financial transactions for her foreign pension and renews her passports there.

[34] Although the Appellant has tried to show that she has been residing in Canada since her return in June 2011, unfortunately, her ties to X are very strong, perhaps even stronger than those she says she has in Canada.

[35] She states that she has complied with the law(s) and hasn't been absent from Canada for more than six months. However, to be eligible for the Guaranteed Income Supplement, an applicant has to prove that their ties to Canada are deeply rooted and significant. The Appellant has ties to Canada, but the fact that she has been absent for half of every year for almost 10 years to return to her house with her daughter and grandson does not support the finding that she re-established her residence in Canada. There is also the lack of evidence about the payment of rent, her volunteer hours, the regularity of service agreements (only in September 2014, June 2015, June 2016, May 2017, and November 2019), and her tax returns (only in 2018 and 2020).

[36] When I look at all the Appellant's circumstances as I have just described, although she certainly has a stable lifestyle and ties in Canada, the regularity and length of her stays in Canada, compared with the frequency and length of her absences from

Canada for X, don't support the finding that the Appellant resided in Canada from June 2011 to September 2019.

[37] The Appellant could receive the Guaranteed Income Supplement if she resumed residing in Canada after the disputed period, that is, after September 2019.

## **Conclusion**

[38] The Appellant didn't meet the residence requirement to receive the Guaranteed Income Supplement for the disputed period, from June 2011 to September 2019.

[39] This means the appeal is dismissed.

Antoinette Cardillo

Member, General Division – Income Security Section