



Citation: *RM and The Estate of DA v Minister of Employment and Social Development*, 2025 SST 217

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicants:** R. M.  
The Estate of D. A.

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

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**Decision under appeal:** General Division decision dated November 24, 2024  
(GP-24-501)

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**Tribunal member:** Kate Sellar

**Decision date:** **March 12, 2025**

**File number:** AD-25-105

## Decision

[1] I'm refusing the Applicant leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

## Overview

[2] R. M. filed this appeal on her own behalf and also in her role as the representative of the estate of her late husband, D. A. At the General Division, her own appeal and the estate's appeal were joined together. They remained joined at the Appeal Division. For the purpose of this decision, I'll refer to R. M. in both her roles as simply "the Applicant."

[3] D. A. died in May 2023. Before he died, he and the Applicant were each receiving the Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OAS Act) as single (or separated) pensioners. This is because they had previously reported to the Minister of Employment and Social Development (Minister) that they separated in 1998.

[4] After D. A. died, the Minister learned that the Applicant and her husband had reconciled in October 2022.

[5] In September 2023, the Minister explained that the couple were not entitled to all the GIS benefits they received from November 2022 (the month after the reconciliation) to May 2023 (the month D. A. died). The Minister explained that each party would have to repay the money they were not entitled to receive. The Minister calculated the overpayment for the parties as \$1,098.76, and \$3,023.76, respectively. Those overpayment amounts didn't change in the Minister's reconsideration letter.

[6] The Applicant and the estate appealed to this Tribunal. In a single decision covering both appeals, the General Division found that the Applicant didn't dispute the Minister's position about when the couple reconciled. Accordingly, the Minister assessed the overpayments correctly. The General Division explained the rules about

calculating the GIS benefit. The General Division explained that it doesn't have the authority to remit (cancel or forgive) overpayments when they are calculated correctly.

## Issues

[7] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law in this appeal by failing to make an exception to the law requiring repayment of GIS overpayments based on compassionate grounds?
- b) Does the application set out evidence that wasn't presented to the General Division?

## I'm not giving the Applicant permission to appeal

[8] I can give the Applicant permission to appeal if the application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.<sup>1</sup>

[9] I can also give the Applicant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>2</sup>

[10] Since the Applicant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

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<sup>1</sup> See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

<sup>2</sup> See section 58.1(c) in the Act.

**There's no arguable case that the General Division made an error of law by failing to make an exception to the requirement to repay GIS overpayments.**

[11] The Applicant argues that she cannot afford to repay the overpayment because the cost of living has skyrocketed. Repaying the GIS overpayment would cause her economic hardship and poverty. The Applicant is experiencing a stressful time in her life with the loss of close family members and friends. She explains that she has worked her whole life and never collected employment insurance benefits or welfare.<sup>3</sup>

[12] The General Division explained that it's the OAS Act that sets the rules for calculating the amount of GIS qualified pensioners receive. The Minister pays the GIS to OAS pensioners with little to no other income. If a pensioner is married and not separated, then it's the couple's combined income that dictates how much GIS the pensioners in the couple receive. If a married person was separated and then reconciles, the minister recalculates the GIS payment amount as of the month after the reconciliation.<sup>4</sup>

[13] The General Division explained that it doesn't have the authority to change the requirement to repay the overpayment based on compassionate grounds.<sup>5</sup>

[14] There's no arguable case that the General Division made an error of law by failing to cancel the overpayment or excuse the Applicant from repaying the overpayment on compassionate grounds.

[15] The Applicant doesn't provide any part of the OAS Act that gives the General Division the authority to cancel or forgive an overpayment when it's calculated correctly. There's no arguable case that the General Division made an error of law by stating that it doesn't have the power to cancel or forgive the overpayment based on any financial hardship that repayment might cause.

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<sup>3</sup> See AD1-2.

<sup>4</sup> See paragraphs 17 to 19 in the General Division decision, citing sections 12 and 15(6.1) in the *Old Age Security Act* (OAS Act).

<sup>5</sup> See paragraph 26 in the General Division decision about repayment under section 37(1) of the OAS Act.

## **The Applicant hasn't provided new evidence**

[16] The Applicant hasn't provided any evidence that wasn't already presented to the General Division. So new evidence also cannot form the basis for giving the Applicant permission to appeal.

## **Final Note**

[17] The General Division explained that the **Minister** does have the power in certain circumstances to forgive all or part of an overpayment. The **Minister** can reduce or cancel an overpayment for reasons like undue hardship **(not this Tribunal)**.

[18] **Nothing in this decision takes away the Applicant's ability to contact Service Canada to request that they cancel or reduce the amount of overpayment under section 37(4) of the OAS Act.<sup>6</sup>**

## **Conclusion**

[19] I've refused to give the Applicant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>6</sup>If a person wants to ask the Minister to do something under the OAS Act (like cancel/remit all or part of an overpayment), Service Canada is the program to contact.