



Citation: *RM and the Estate of DA v Minister of Employment and Social Development*, 2024 SST
1694

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellants: R. M. & the Estate of D. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 9, 2024 (issued by
Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Videoconference

Hearing date: November 4, 2024

Hearing participant: Appellant

Decision date: November 24, 2024

File number: GP-24-501 & GP-24-502

Decision

[1] The appeals are dismissed.

[2] The Appellants, R. M., and the Estate of D. A., weren't eligible for all the Guaranteed Income Supplement (GIS) benefits received from November 2022 to May 2023.

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

Overview

[4] This decision is about two appeals. In one appeal, the Appellant is R. M. In the other appeal, the Appellant is the Estate of D. A.

[5] R. M. and D. A. were married. The Estate is represented by R. M.

[6] D. A. died in May 2023.¹ Before he died, he and his spouse were each receiving the GIS 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 1998.²

[7] After D. A. died, the Minister learned that the parties had reconciled in October 2022.

[8] In September 2023, the Minister wrote to each party and explained that they were not entitled to all the GIS benefits they had 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 R. M.' overpayment as \$1,098.76 and the estate's overpayment as \$3,023.76.³

¹ See page GD1-17.

² See page GD2-13.

³ See pages GD2-27 and GDJ1-30.

[9] The Appellants asked the Minister to reconsider its decisions.⁴ The Minister reconsidered but maintained the decisions.⁵

[10] The Appellants appealed the Minister's reconsideration decisions to the Social Security Tribunal's General Division.⁶

[11] R. M. says she shouldn't have to repay any money to the government because the Canada Revenue Agency (CRA) was aware of the change in marital status. She also says the repayment will result in financial hardship. She adds that the Minister was slow to recalculate the benefits. If the Minister had done it sooner, then she could have budgeted accordingly.

[12] The Minister says that because the parties reconciled in October 2022, the Minister was required to recalculate their entitlement to the GIS based on their combined income as of November 2022. The Minister also says the law doesn't allow the Minister to consider compassionate grounds when deciding a person's entitlement to income-tested benefits like the GIS.

What the Appellants must prove

[13] The Appellants aren't disputing the reconciliation. In other words, they acknowledge the reconciliation happened and that it happened in October 2022. Instead, they are disputing the fact that they must repay money to the government.

[14] To succeed with the appeals, the Appellants need to show that they shouldn't have to repay the money to the government.

⁴ See page GD2-29.

⁵ See pages GD2-35 and GD2J-32

⁶ See pages GD1-1 to GD1-3.

Procedural Matters

I joined two appeals

[15] In August 2024, I decided to join the two appeals – namely GP-24-501 and GP-24-502. My reasons for joining the appeals are set out in my letter of August 28, 2024.⁷

My findings

[16] From November 2022 to May 2023, the Appellants received GIS benefits that they weren't entitled to receive. That money must be repaid to the government.

– Why a person's marital status is important to the GIS

[17] The GIS is paid to people who receive the Old Age Security (OAS) pension and who have little to no other income.⁸

[18] If the pensioner is married and not separated, then their entitlement to the GIS is based on the couple's combined income.⁹

[19] If a married person was separated and then reconciles with their spouse, then the GIS is recalculated as of the month following the reconciliation.¹⁰

– GIS recipients must inform the Minister of a change to their marital status

[20] The law requires GIS recipients to tell the Minister **without delay** of changes to their marital status. The word "Minister" means the Minister of Employment and Social Development.¹¹

[21] There are no exceptions to this rule for people who didn't know about their obligations.

⁷ See GD5.

⁸ There are other requirements, but they aren't an issue in this appeal.

⁹ See section 12 of the *Old Age Security Act*.

¹⁰ See section 15(6.1) of the *Old Age Security Act*.

¹¹ See section 2 of the *Old Age Security Act*.

– **It is not enough to inform the CRA of a change to marital status**

[22] The Appellant says she met her obligation to inform the Minister of her change in marital status because she reported it to the CRA.

[23] Notifying the CRA of a change in marital status doesn't satisfy the obligation to notify the Minister of the change in marital status.

[24] In a case called *Barry*, the Federal Court of Appeal held that it is not enough, for GIS purposes, to only inform the CRA of a change in marital status. A GIS recipient must also inform the Minister.¹²

[25] Decisions from the Federal Court are binding on me. This means I must follow the court's interpretation of the law.

– **The law says that excess benefits must be repaid to the government**

[26] The law says that if a person receives a benefit payment that they are not entitled to, or if a person receives a benefit payment that is more than what they are entitled to, then the person **must** repay that money to the government.¹³

– **My jurisdiction is limited**

[27] There are some issues that I don't have jurisdiction to decide.

I don't have jurisdiction to waive or forgive overpayments

[28] During the hearing, R. M. spoke of the financial hardship the overpayments have caused. She also said she is willing to do community work to pay off the debts.

[29] The Minister has discretion, in certain circumstances, to forgive all or part of an overpayment.¹⁴ However, I don't have the same discretion. This means that only the Minister (and not this Tribunal) can reduce or cancel an overpayment for reasons such as undue hardship.

¹² See *Barry v. Canada (Attorney General)*, 2010 FC 1307.

¹³ See section 37(1) of the *Old Age Security Act*.

¹⁴ See section 37(4) of the *Old Age Security Act*.

[30] I also don't have any authority to decide how an overpayment is to be paid off. This means I can't allow a party to pay off a debt by doing community service.

I don't have jurisdiction to consider arguments about departmental error

[31] The Appellants say that the government made a mistake because it continued to pay the GIS even though the CRA was notified of the change in marital status.

[32] As I understand the argument, the Appellants are saying that it was the CRA that made the mistake.¹⁵ This argument can't succeed. This is because the CRA doesn't administer the OAS program.

[33] The Appellants also say that the Minister was slow to do the recalculation. The argument here is that if the Minister had acted sooner, then there would have been time to budget for the changes. Again, this argument can't succeed. This argument is really about departmental error.

[34] There is a provision in the OAS Act that is about departmental error. The department in question is the Minister of Employment and Social Development.¹⁶ The courts have held that the Tribunal doesn't have jurisdiction to consider whether the Minister (or one of the Minister's agents) made a mistake.¹⁷

[35] If a person wants to argue that the Minister made a mistake that resulted in the loss of benefits, then the person must raise that argument directly with the Minister.

I don't have jurisdiction to make decisions based on compassion

[36] R. M. explained that she experienced a lot of loss in a short amount of time. One of her brothers died in February 2023, her husband died in May 2023, another brother died in June 2023 and her good friend died shortly after that. She explained that these deaths and funerals took an emotional and financial toll.

¹⁵ See page GD1-1.

¹⁶ See section 32 of the *Old Age Security Act*.

¹⁷ See *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

[37] I am sympathetic to R. M.' circumstances. If I had jurisdiction to make decisions on compassionate grounds, this would be a case warranting that type of discretion. However, I don't have the jurisdiction to make decisions based on compassionate grounds, regardless of how compelling those circumstances may be.¹⁸

Conclusion

[38] The Appellants weren't entitled to all the GIS benefits they received from November 2022 to May 2023.

[39] The appeals are dismissed.

Shannon Russell
Member, General Division – Income Security Section

¹⁸ See *Canada (Minister of Human Resources Development) v. Esler*, 2004 FC 1567.