



Citation: *JP v Minister of Employment and Social Development*, 2025 SST 261

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

## Decision

**Appellant:** J. P.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated August 6, 2024 (issued by  
Service Canada)

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**Tribunal member:** Virginia Saunders

**Type of hearing:** In person

**Hearing date:** February 5, 2025

**Hearing participants:** Appellant  
Appellant's witness  
Respondent's representative

**Decision date:** March 14, 2025

**File number:** GP-24-1597

## Decision

[1] The appeal is allowed.

[2] The Appellant, J. P., is eligible to cancel her Old Age Security (OAS) pension. This decision explains why I am allowing the appeal.

## Overview

[3] The Minister of Employment and Social Development (Minister) runs the OAS program. Some changes were made to it in 2013. These included:

- allowing people to defer receiving their OAS pension up to age 70; for each month they defer after they turn 65, they get an additional 0.6%<sup>1</sup>
- automatically enrolling some people at age 65; this means they don't have to apply to receive the OAS pension; the Minister determines if they are eligible based on information it already has
- allowing people to cancel their pensions within a certain period after payment starts<sup>2</sup>

[4] An OAS pension can't be paid unless the applicant is qualified and an application has been made and approved.<sup>3</sup> But the Minister can waive the requirement for an application if they are satisfied that the person is qualified.<sup>4</sup> This is where the Minister gets the authority to automatically enroll people for OAS payments.

[5] If the Minister intends to waive the requirement for an application, it must notify the person in writing of its intention to waive, and give them the information it intends to rely on to approve payment of the pension.<sup>5</sup> This is supposed to give the person a chance to decline the waiver and opt out of automatic enrolment.<sup>6</sup> A person would

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<sup>1</sup> See section 7.1 of the *Old Age Security Act*.

<sup>2</sup> See section 9.3 of the *Old Age Security Act*.

<sup>3</sup> See section 5(1) of the *Old Age Security Act*.

<sup>4</sup> See section 5(4) of the *Old Age Security Act*.

<sup>5</sup> See section 5(5) of the *Old Age Security Act*.

<sup>6</sup> See section 5(7) of the *Old Age Security Act*.

usually do this if they wanted to defer receiving their pension in order to get a higher amount later. They get another chance to opt out once payment starts, because they have another six months to cancel the pension.

[6] The Appellant turned 65 in November 2022. She didn't apply for an OAS pension because she was still working and she thought it would all be "clawed back"—that is, subject to the OAS recovery tax. (The recovery tax is applied to annual income over a certain amount. Pensioners with incomes above the threshold will have all or part of their OAS pension taxed back.)

[7] Although she didn't apply for it, the Appellant received an OAS pension cheque in July 2023. She wasn't working anymore, so she decided to deposit the cheque into her bank account. She also received cheques in August, September, and October. She deposited the first two cheques. Before she cashed the October cheque, she decided that she wanted to defer her OAS pension until later.

[8] The Appellant wrote to Service Canada (the Minister) and asked to defer her pension. She enclosed the uncashed October cheque, and a cheque to reimburse the funds she had received for July, August, and September.<sup>7</sup>

[9] The Minister replied that the Appellant was too late to cancel the pension because she had to do it no later than six months after the first payment was issued. The Minister said she had been automatically enrolled to start receiving the pension the month after she turned 65. The Minister had sent her letters and other information to tell her this. Her pension payments started in December 2022, and the Minister had received her request to cancel on November 16, 2023, which was too late.<sup>8</sup>

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

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<sup>7</sup> See GD2-24-27.

<sup>8</sup> See GD2-29-30 for the Minister's initial decision. The reconsideration decision maintaining the original decision is at GD2-40.

## What I have to decide

[11] I have to decide whether the Appellant can cancel her OAS pension.

## Reasons for my decision

[12] I find that the Appellant can cancel her pension. She didn't get proper notice that the Minister intended to waive the requirement for an OAS application. As a result, the Minister did not have legal authority to pay the pension.

## Cancelling an OAS pension

[13] A person may cancel their OAS pension if they do so in writing no later than six months after the day on which payment begins.<sup>9</sup>

### – When does payment of the pension begin?

[14] The Appellant asked to cancel her pension on November 16, 2023.<sup>10</sup> She argues that payment did not begin until she received a cheque in July 2023, so she made her request within the six-month limit.

[15] The Minister argues that payment began in December 2022, when a payment of \$685.50 was “released” but then withheld by the Canada Revenue Agency (CRA) because 100% of the payment was subject to the OAS recovery tax. This means the Appellant had to ask to cancel her pension by June 2023.<sup>11</sup>

[16] As the Minister described it, in cases where the full amount of the pension is subject to the recovery tax, payment is withheld and no payment is issued.<sup>12</sup> So, how could a person have been paid if they didn't receive any funds and the payor didn't intend for them to receive any? I considered what the law said about this.

[17] In deciding what the law means, I have to follow a rule that says every law is remedial, and must be given “such fair, large and liberal construction and interpretation

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<sup>9</sup> See section 9.3(1) of the *Old Age Security Act* and section 26.1 of the *Old Age Security Act Regulations*.

<sup>10</sup> See GD2-24-27. This is when the Minister received her letter.

<sup>11</sup> See GD4-4 and GD4-8.

<sup>12</sup> See GD4-4.

as best ensures the attainment of its objects.”<sup>13</sup> Then I must look at the words in question “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the [OAS] Act, the object of the Act, and the intention of Parliament.”<sup>14</sup> I must look at the wording in the OAS Regulations in the context of both the regulations and the OAS Act.<sup>15</sup>

– **What the law means**

[18] The OAS Act says a pensioner must ask to cancel their pension within a prescribed time after payment of the pension “has **commenced**.”<sup>16</sup> The OAS Regulations give the prescribed time: “no later than six months after the day on which payment of the pension...**begins**.”<sup>17</sup>

[19] It doesn’t matter that one provision says “commenced” and the other says “begins.” The words mean the same thing.<sup>18</sup>

[20] The OAS Act also says that payment of a pension “shall commence” in the first month after an application has been approved, or an earlier date prescribed by regulation.<sup>19</sup> Where the Minister waives the application requirement, the application is deemed to have been made on the day the requirement was waived.<sup>20</sup> And the approval of the application is effective on the day the person turned 65.<sup>21</sup>

[21] This means that where the requirement for the application is waived, payment of an OAS pension begins the month after the person turns 65. There is no exception for pensions that are subject to the recovery tax.

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<sup>13</sup> See section 12 of the *Interpretation Act*.

<sup>14</sup> See *Rizzo & Rizzo Shoes Ltd (Re)*, 1998 CanLII 837 (SCC).

<sup>15</sup> See *Bristol-Myers Squibb Co v Canada (Attorney General)*, 2005 SCC 26.

<sup>16</sup> See section 9.3(1) of the *Old Age Security Act*.

<sup>17</sup> See section 26.1 of the *Old Age Security Regulations*.

<sup>18</sup> See the Cambridge Dictionary at <https://dictionary.cambridge.org/dictionary/english/commence> and the Merriam-Webster Dictionary at <https://www.merriam-webster.com/dictionary/commence>; both retrieved March 6, 2025.

<sup>19</sup> See section 8(1) of the *Old Age Security Act*.

<sup>20</sup> See section 26.1 of the *Old Age Security Act*.

<sup>21</sup> See section 5(4) of the *Old Age Security Regulations*.

[22] So a person who was automatically enrolled for the pension but didn't receive any funds because of the recovery tax must ask to cancel it no later than seven months after their 65th birthday, because the law says that payment started the following month.

[23] This may seem like a harsh result. But when it works as intended, the requirement to give notice of the waiver lessens the impact of this provision. The combined effect is that OAS pensions are paid quickly to qualified seniors without making them apply for them, while the right of other seniors to defer their pensions is protected. This is in keeping with the overriding purpose of the OAS law, which is to provide modest income support to senior residents of Canada.<sup>22</sup>

[24] If the Minister waived the requirement for an application in the Appellant's case, the law says her OAS pension was approved when she turned 65 in November 2022. Payment began in December 2022, even though she didn't receive anything. She had to ask to cancel the pension by June 2023. She didn't ask until November 2023.

[25] However, I find that the Minister could not waive the requirement for an application, so it had no authority to start paying the Appellant's pension. I will explain why.

### **The Minister could not waive the requirement for an application**

#### **– The Minister didn't notify the Appellant of its intention to waive**

[26] I find that the Minister didn't notify the Appellant that it intended to waive the requirement for an application; nor did it provide her with the information on which it intended to rely. This means that the Minister could not waive the requirement for an application. If there was no waiver, the application wasn't deemed to have been made or approved, and there was no authority for payment to begin.

[27] The Minister argued that the notice requirement was met through the automatic enrolment process, because it sent the Appellant the following:<sup>23</sup>

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<sup>22</sup> See *Canada (Attorney General) v Burke*, 2022 FCA 44.

<sup>23</sup> See GD4-3-5 and GD4-9-10.

- a letter dated **November 18, 2021**, telling the Appellant she had been selected for automatic enrolment of her OAS pension, which would begin one month after her 65th birthday; the letter also told her what to do if she wanted to delay her pension
- a letter dated **September 20, 2022**, telling the Appellant her pension would automatically start the month after her 65<sup>th</sup> birthday, setting out the information the CRA would use to determine her Guaranteed Income Supplement (GIS) eligibility, and telling her what to do if she wanted to delay her pension
- a letter dated **November 10, 2022**, telling the Appellant she would start receiving the maximum OAS amount beginning December 2022, that her income was too high for her to receive the GIS, and if she disagreed with this she had to ask the Minister to reconsider; the letter also contained an information sheet about the OAS recovery tax
- a letter sent in **December 2022**, telling the Appellant that the full amount of her OAS pension would be withheld for the recovery tax until June 2023
- an OAS T4A tax slip for 2022, sent in **February 2023**, showing OAS benefits paid to her in 2022, and the amount of income tax deducted

– **The Appellant didn't get the first three letters**

[28] The Appellant said that she didn't get the letters of November 18, 2021, September 20, 2022, and November 10, 2022. I believe her. I find it is more likely than not that she didn't receive these letters.

[29] There aren't any copies of the November 2021 and September 2022 letters in the Appellant's file. However, I accept that letters were sent to her on those dates. The Minister said that, before October 2022, they didn't keep copies of this type of letter, but there is a record of the correspondence.<sup>24</sup> At the hearing, the Minister's representative explained that a table in the file shows letters were issued on those dates and addressed to the Appellant at her home in Vancouver.<sup>25</sup> His understanding is that

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<sup>24</sup> See GD4-9.

<sup>25</sup> See GD2-4.

“issued” means the letters were mailed. He believed there wasn’t a break in time between when a letter was printed and when it was mailed, but he didn’t know for sure.

[30] The table shows that the letter sent in November 2021 is called “OAS Auto-Enrolment.” The Minister provided a sample of the letter to show what would have been sent to the Appellant.<sup>26</sup> The Minister’s representative said it wouldn’t have been possible for the system to send a different letter. I accept that a letter like this was sent to the Appellant on November 18, 2021.

[31] The letter sent in September 2022 is called “ISP3108 GIS Auto-Enrolment Client Notification.” There isn’t a sample of that letter in the file. As a result, I don’t know what it might have said.

[32] There is a copy of the November 2022 letter addressed to the Appellant in the file.<sup>27</sup> The table shows that it was issued on November 10, 2022. I accept that it was sent to the Appellant on that date.

[33] I don’t have to decide if any of these letters contained proper notice of the Minister’s intentions, because I find that the Appellant didn’t receive them in any event.

[34] It’s not enough for the Minister to show that the notice was sent to the Appellant. It has to show that the notice was received. The law says the Minister must “notify the person in writing” of the intention to waive the application requirement.<sup>28</sup> A person isn’t notified of something unless they actually get the information.

[35] The Minister argued that the Appellant must have received the letters because they were sent to the right address and none of the letters were returned to it.<sup>29</sup> The Minister’s representative said they get quite a lot of mail returned, even when it is sent by regular mail, as these letters were.

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<sup>26</sup> See GD4-12-15.

<sup>27</sup> See GD2-9.

<sup>28</sup> See section 5(5) of the *Old Age Security Act*.

<sup>29</sup> See GD4-10.



[36] The Appellant and her husband live in the front half of a duplex. She said their mail is delivered to an unlocked mailbox at the front of the house. It occasionally gets put in the mailbox belonging to the other half of the duplex. The neighbours used to return this mail to them, but for the past seven years the home has been rented to a number of different tenants. They don't return mail and if the Appellant asks if they have received any, they say "no."

[37] The Appellant and her husband also find their mail gets delivered to a house with the same house number but on the next street. This happens a couple of times a year. In addition, some mail just doesn't arrive and they don't know what happened to it. For example, the Appellant said at least three credit card statements have gone missing.

[38] I am satisfied that the letters weren't delivered to the Appellant. The Appellant and her husband were open and credible when they testified at the hearing. They did not embellish their stories. They seemed to be a careful couple who looked after their mail and dealt promptly with documents that needed attention. I find it unlikely that they would have ignored these letters if the Appellant had received them.

[39] The Appellant also gave a plausible story of occasional difficulties with her mail. I find it likely that these three letters were delivered to the wrong address, and no one made the effort to return them to her. Because they had been delivered somewhere, they weren't returned to the Minister.

[40] The Appellant didn't receive the letters of November 18, 2021, September 20, 2022, and November 10, 2022. As a result, the Minister didn't notify her of the intention to waive the application requirement by these letters.

– **The December 2022 letter was not notice of an intention to waive**

[41] I find that the December 2022 letter did not satisfy the notice or information requirement.<sup>30</sup>

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<sup>30</sup> The letter is at GD2-12-13.

[42] The Appellant told me she likely received this letter, but she would not have read further than the first sentence, which said “For your information only, no action required.” She would have given the letter to her husband because he looked after their financial paperwork. Her husband said he would have put the letter in a file he kept for tax documents.

[43] Not reading a document isn’t a valid excuse for not knowing what’s in it. But even if the Appellant had read this letter, she would not have come away knowing that the Minister intended to waive the application requirement in her case. The letter says nothing like that. It talks about the recovery tax. It does not clearly say the Appellant is being paid her OAS pension because the Minister waived the application requirement.

[44] Nor does the letter provide the information the Minister relied on to approve payment of the pension. It appears from the sample auto-enrolment letter that this information would have been:<sup>31</sup>

- the Appellant’s year and month of birth
- a statement that she was a Canadian citizen or a legal resident of Canada
- a statement that she had lived in Canada for at least 40 years since age 18

The December 2022 letter doesn’t say any of these things.

[45] In addition, the letter was sent **after** the Appellant turned 65 in November 2022. The Minister must waive the application requirement “on the day on which a person turns 65 years of age.”<sup>32</sup> The notice requirement refers to the waiver as something that will happen in the future.<sup>33</sup> This means the notice can’t be given after a waiver. It must be given before. So even if the wording of the letter was sufficient notice, it was too late for the Minister to waive the application requirement.

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<sup>31</sup> See GD4-12.

<sup>32</sup> See section 5(4) of the *Old Age Security Act*.

<sup>33</sup> Section 5(5) of the *Old Age Security Act* says “if the Minister **intends** to waive the requirement for an application in respect of a person, the Minister shall notify the person in writing of that intention and provide them with the information on which the Minister **intends** to rely...”

– **The T4A was not notice of an intention to waive**

[46] For the same reasons, I find the T4A the Appellant received in February 2023 did not satisfy the notice requirement.<sup>34</sup> It did not say the Minister intended to waive the application requirement, nor did it provide the required information. And it was issued after the Appellant had already turned 65.

## **Conclusion**

[47] The Minister did not notify the Appellant of its intention to waive the requirement for an OAS application, nor did it provide the information it intended to rely on. This means the Minister didn't have the legal authority to begin paying the Appellant an OAS pension. Because the pension should never have been paid, the six-month time limit had not started to run. As a result, I find that the Appellant asked to cancel the pension in time.

[48] I find that the Appellant is eligible to cancel her OAS pension.

[49] This means the appeal is allowed.

Virginia Saunders  
Member, General Division – Income Security Section

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<sup>34</sup> See GD2-14.