



Citation: *MS and SS v Minister of Employment and Social Development*, 2025 SST 122

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

# **Leave to Appeal Decision**

**Applicants:** M. S.  
S. S.

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

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**Decision under appeal:** General Division decision dated November 14, 2024  
(GP-24-660)

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**Tribunal member:** Kate Sellar

**Decision date:** February 14, 2025

**File number:** AD-25-91

## Decision

[1] I'm refusing to give the Applicants, M. S. and M. S., leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

## Overview

[2] The Applicants are married to each other. They received the Old Age Security (OAS) pension and the Guaranteed Income Supplement (the GIS). Eligibility for the GIS is based in part on income.

[3] On April 14 and June 15, 2022, the Minister sent them letters stating that Canada Revenue Agency (CRA) reassessed their 2020 combined income. This change resulted in the following overpayments: \$2,811 for one Applicant and \$3,060 for the other Applicant for the period from July 2021 to June 2022.

[4] The Applicants asked the Minister to reconsider the decision to assess overpayments. The Minister maintained the original decision on reconsideration. The Applicants appealed that decision to this Tribunal.<sup>1</sup>

[5] The General Division dismissed the appeal. The General Division found that it didn't have the power to remit (cancel or forgive) any aspect of the overpayment on compassionate grounds. Since that's what the Applicants were asking for, the General Division dismissed the appeal.

## Issues

[6] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact by ignoring important evidence from the Applicants?

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<sup>1</sup> I received one set of submissions requesting permission to appeal from both Applicants (see AD1-1). Their matters were joined at the General Division (see GD4) and the General Division issued one decision that applied to both of them. This decision also applies to both applicants.

- b) Does the application set out evidence that wasn't presented to the General Division?

## **I'm not giving the Applicants permission to appeal**

[7] I can give the Applicants 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;
- made an error applying the law to the facts.<sup>2</sup>

[8] I can also give the Applicants permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>3</sup>

[9] Since the Applicants haven't raised an arguable case and haven't set out new evidence, I must refuse permission to appeal.

## **There's no arguable case that the General Division made an error of fact by ignoring important evidence from the Applicants.**

### **– The Applicants' argument**

[10] The Applicants argue that the General Division made an error of fact by ignoring important information they provided. The relevant information the Applicants say the General Division ignored is the following:

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<sup>2</sup> See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

<sup>3</sup> See section 58.1(c) in the Act.

- They immigrated to Canada with sponsors, they weren't refugees.
- They were never a burden to taxpayers. They worked for decades.
- They provided their expenditures which exceed their income from all sources, and they are destitute.
- They are seniors.
- They never asked for additional pension funds, they are only asking not to have to repay the overpayment.

[11] The General Division explained that it doesn't have the power to remit any part of the overpayments based on compassionate or political grounds.<sup>4</sup> The Applicants weren't arguing that the CRA made an error about their combined income during the relevant time, or that the Minister misapplied the eligibility requirements for the GIS to their case.

[12] Instead, at the General Division the Claimant provided reasons why they shouldn't have to repay the overpayment that was assessed as a result of their revised 2020 income.

[13] The General Division explained that the OAS Act says that it's the **Minister** that has the ability to consider forgiving all or part of the overpayment where it's satisfied that repaying would cause undue hardship.<sup>5</sup>

[14] The General Division is presumed to have considered all the evidence, even if it doesn't discuss all the evidence in the decision. The Claimant can overcome that presumption by showing that the evidence was important enough that it should have discussed it.<sup>6</sup>

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<sup>4</sup> See paragraphs 11 and 12 in the General Division decision.

<sup>5</sup> See section 37(4) of the *Old Age Security Act* (OAS Act).

<sup>6</sup> See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

[15] The Applicants haven't raised an arguable case that the General Division made an error of fact by ignoring important evidence. There's no arguable case that the General Division ignored improperly the reasons the Applicants wanted the overpayment forgiven. The General Division doesn't have the power to forgive an overpayment that the Minister assessed properly. Accordingly, the reasons why the overpayment should be forgiven cannot be important enough that the General Division should have covered it. The Applicants made arguments about why the General Division should forgive the overpayment, but the General Division explained it doesn't have the power to make that decision.

[16] Accordingly, the Claimant hasn't raised an arguable case for an error of fact by the General Division that would justify giving them permission to appeal.

## **The Applicants haven't provided new evidence**

[17] I've reviewed the record.<sup>7</sup> I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any other important evidence that could have affected the outcome for the Applicants.

[18] I understand what the Applicants have to say about financial hardship. However, the General Division found that the Applicants weren't entitled to the GIS, so the overpayment was correctly assessed. I see no possible error in that decision.

[19] The Applicants are free to contact Service Canada directly to ask for information about having all or part of the assessed overpayment remitted under section 37(4) of the OAS Act.

## **Conclusion**

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

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<sup>7</sup> For more on the Appeal Division completing this type of review, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Kate Sellar  
Member, Appeal Division