



Citation: *VP v Minister of Employment and Social Development*, 2024 SST 1741

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: V. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 23, 2024 (issued by
Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: October 2, 2024

Hearing participants: Appellant
Appellant's representative

Decision date: October 21, 2024

File number: GP-24-977

Decision

[1] The appeal is dismissed.

[2] The Appellant, V. P., isn't eligible for an Old Age Security (OAS) pension.

[3] She needs to have resided in Canada for at least 20 years to be eligible for an OAS pension. But as of October 2, 2024, she has not resided in Canada for 20 years.

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

Overview

[5] The Appellant was born in Guyana on December 4, 1958. She turned 65 on December 4, 2023.

[6] The Appellant applied for an OAS pension on July 7, 2023. She said she wanted her pension to start as soon as she qualified.

[7] The Minister of Employment and Social Development (Minister) asked her to complete a residence questionnaire to obtain her residence statement, proof of departure from Canada, and legal status in Canada prior to her departure.

[8] The Appellant provided a residence statement from December 4, 1976 to May 15, 2008, a USA passport ID page issued November 3, 2020, and a Certificate of Canadian Citizenship.

[9] The Minister requested proof of her departure from Canada to support her residence statement. The Appellant provided a letter from a friend and an AT&T bill.

[10] The Minister refused the Appellant's application.¹ The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

¹ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD2-43.

[11] The Appellant says that she should be entitled to receive an OAS pension. She believes she had 20 years of residence in Canada.

[12] The Minister says that the Appellant did not provide sufficient proof that she meets the minimum residence requirements to qualify for an OAS pension.

What the Appellant must prove

[13] To receive a **full** OAS pension, the Appellant has to prove she resided in Canada for at least 40 years after she turned 18.² This rule has some exceptions. But the exceptions don't apply to the Appellant.³

[14] If the Appellant doesn't qualify for a full OAS pension, she might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[15] To receive a partial OAS pension, the Appellant has to prove she resided in Canada for at least 10 years after she turned 18. But, if the Appellant didn't reside in Canada the day before her application might have been approved, she has to prove she already has at least 20 years of residence.⁴

The test for residence

[16] 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.

[17] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁵

² See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. And she must have applied for the pension. The Appellant has met these requirements.

³ See section 3(1)(b) of the OAS Act.

⁴ See section 3(2) of the OAS Act.

⁵ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

[18] A person is **present** in Canada when they are physically present in any part of Canada.⁶

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

- 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

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

[21] The Appellant has to prove she resided in Canada. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she resided in Canada during the relevant periods.⁹

⁶ See section 21(1)(b) of the OAS Regulations.

⁷ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia 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.

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

⁹ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

Reasons for my decision

[22] I find that the Appellant isn't eligible for an OAS pension. She didn't reside in Canada the day before her application might have been approved.¹⁰ This means she needs to already have at least 20 years of residence in Canada. She didn't reside in Canada that long.

[23] I considered the Appellant's eligibility from October 19, 1974, up to and including the hearing date. I chose the first date because this is when she first entered Canada as a permanent resident.

[24] Here are the reasons for my decision.

[25] The Appellant wrote in her questionnaire that she moved to Canada from Guyana on October 19, 1974. She provided a copy of her Canadian passport, issued May 22, 1990 and expiring May 22, 1995.¹¹ She provided a Certificate of Canadian Citizenship dated October 19, 1981.

[26] The Appellant provided multiple different dates as the date she left Canada to live in the USA. In a questionnaire completed on November 30, 2023, she wrote that she resided in Canada until May 15, 2008.¹² She says she lived in the USA from May 15, 2008 onward. She did not provide any documentary evidence to substantiate this departure date from Canada, other than a letter from her friend who also provided this incorrect date of departure.

[27] In an e-mail dated June 4, 2024, the Appellant wrote that the correct date of departure from Canada is August 1994 rather than May 2008. There is no documentary evidence to substantiate this departure date from Canada.

[28] However, at the hearing, she explained that the correct date of departure from Canada was June 1994. She initially wrote May 2008 because she was confused when

¹⁰ I explain the "approval" date later in this decision.

¹¹ See page GD2-36

¹² See page GD2-19

completing the paperwork. She could not find airline tickets or any other documentation to show the exact day she left Canada, but confirmed that it was in June 1994.

[29] She did provide a letter from her previous employer in Florida, X, dated July 9, 2024.¹³ This letter confirms that she was employed in the USA beginning in June 1994 and remained employed for years thereafter.

[30] Given the Appellant's testimony and the letter from her employer, I accept that she left Canada in June 1994 and no longer resided in Canada after this date. It is clear from her testimony that she has been residing in the USA since June 1994.

[31] The Appellant provided testimony to support her residence in Canada up to June 1994. She says that, upon her arrival in Canada, she completed high school then attended college. She and her husband purchased a home, where they lived with their children. She worked in a bank, then at Xerox Canada. She was laid off from Xerox, which prompted her move to the USA.

[32] She moved to Florida in June 1994, several months ahead of her husband and children. This was so that she could start her job at X while her husband sold their home in Canada. She stayed with her sister until she could buy a place with her husband.

[33] The Appellant and her husband purchased their home in Florida in August 1994. She continued working at X until 2008. In May 2008, she started working at another insurance company until she retired.

[34] She filed taxes in the USA, but lost her records due to a water leak. The only documentation she could provide is a bill from AT&T from 2023.

[35] I considered that the Appellant's claimed dates of residence in Canada, from October 19, 1974 to June 1994, are insufficient to entitle to her to an OAS partial pension. She required 20 years of residence in Canada. Even if I accepted her dates of residence in Canada, she does not have 20 years of residence in Canada.

¹³ See page GD4-1

Therefore, she didn't reside in Canada long enough to qualify for an OAS partial pension.

[36] The Appellant didn't reside in Canada for at least 20 full years. This means she isn't eligible for an OAS pension.

Conclusion

[37] As of the hearing date, the Appellant isn't eligible for an OAS pension.

[38] This means the appeal is dismissed.

Lianne Byrne
Member, General Division – Income Security Section