



Citation: *DL v Minister of Employment and Social Development*, 2025 SST 279

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. L.
Representative: J. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 27, 2024
(GP-23-901)

Tribunal member: Kate Sellar

Decision date: **March 24, 2025**

File number: AD-25-139

Decision

[1] I'm refusing to give the Claimant (D. L.) leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

[2] The Claimant applied for an allowance for the survivor under the *Old Age Security Act* (OAS) in July 2022.¹ The Minister of Employment and Social Development (Minister) approved her application. Payments started as of August 2021, 11 months before she applied.²

[3] The Claimant wanted the benefit to start when she turned 60 in December 2018. She asked the Minister to reconsider its decision about the start date. The Minister maintained the August 2021 start date.

[4] The Claimant appealed to this Tribunal. At the General Division, she argued that she was incapacitated (incapable of forming or expressing an intention to apply) and couldn't make an application earlier. She also said she would have applied earlier if she knew about the benefit.

[5] The General Division dismissed the Claimant's appeal, finding that the Claimant didn't prove she was incapacitated, so payments had to start 11 months before she applied.

Issues

[6] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law about when the allowance for the survivor starts given that the Claimant didn't know about the benefit sooner?

¹ See GD2R2-28 to 31.

² See GD2R2-49.

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

I'm not giving the Claimant permission to appeal

[7] I can give the Claimant 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.³

[8] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.⁴

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

There's no arguable case that the General Division made an error of law by failing to allow the benefit to start sooner.

[10] The Claimant argues that the General Division made an error of law by failing to start her allowance payments on her 60th birthday. She says she didn't know about the allowance for the survivor benefit until she applied, so it isn't fair to start the benefit only 11 months before the Minister got her application. She says now that she was never incapacitated.⁵

³ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

⁴ See section 58.1(c) of the *Act*.

⁵ See AD1-7.

– **The General Division applied the law about when the allowance starts.**

[11] The General Division explained that when a person applies for an allowance for the survivor, the maximum amount of retroactive benefits they can have is limited to 11 months before the month the Minister got the application.⁶

[12] The General Division found that the only exception to that 11-month rule applies when the Minister can deem an application received where a claimant proves they were incapable of forming or expressing the intention to apply earlier.⁷ The General Division found that exception didn't apply to the Claimant.

[13] The General Division explained that knowing about a benefit versus being capable of forming an intention to apply for a benefit are different.⁸ The General Division was clear that when the Claimant learned about the allowance for the survivor cannot factor into the decision about when the allowance payments start.⁹

– **There's no arguable case that the General Division made an error about when the Claimant's allowance for the survivor starts.**

[14] The Claimant hasn't raised an arguable case for an error by the General Division. She says she wasn't incapacitated but wonders how people can form or express an intention to apply for an allowance they don't know about.

[15] Consistent with the General Division decision, the fact that someone may not know about a particular government program doesn't mean they are "incapable of forming or expressing an intent" to apply, which is the only exception to the 11-month rule for payment.

⁶ See paragraph 5 in the General Division decision, applying section 12(3) of the *Old Age Security Regulations*.

⁷ See paragraphs 12 and 13 in the General Division decision, describing section 28.1 of the *Old Age Security Act* (OAS Act).

⁸ See paragraph 34 in the General Division decision, citing a Federal Court of Appeal decision the Tribunal must follow called *Canada (Attorney General) v Danielson*, 2008 FCA 78.

⁹ See paragraphs 33 and 34 in the General Division decision.

[16] Put a different way, being “incapable of forming or expressing an intent to apply” isn’t about how much information a person receives about available benefits. Rather, it’s about their own ability to figure out or communicate an intention (aim or plan) to apply.

[17] The Claimant hasn’t raised an arguable case for an error by the General Division. The General Division applied the OAS Act and regulations to the Claimant’s situation. The earliest the OAS allowance can start is 11 months before the application, which is when the Claimant’s pension started.

[18] The General Division explained that there’s only one exception to that 11-month rule for when the allowance can start, and the Claimant’s situation didn’t fit into that exception. The Claimant isn’t arguing that she was incapacitated, just that she didn’t know about the allowance until she applied.

[19] As the General Division explained, not knowing about the benefit is not a factor the General Division can consider when deciding the start date for the allowance. I can’t give the Claimant permission to appeal based on any possible error of law here.

The Claimant hasn’t provided new evidence

[20] The Claimant 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 Claimant permission to appeal.

[21] I’m satisfied that there’s no arguable case that the General Division ignored or misunderstood any other important evidence about the Claimant’s lack of awareness about the allowance for the survivor, which is the subject of her appeal.¹⁰

[22] I can understand why the Claimant wants the allowance to begin when she turned 60. As she explains, she was 53 years of age when her husband died. She says the funeral home filed the necessary paperwork after the death, but not an application for the allowance for the survivor (she wasn’t 60 yet and therefore not eligible). She

¹⁰ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

says didn't know about the allowance for the survivor; but also she never received any government notice about it either.

[23] The Claimant notes that the failure to advise her of the existence of the allowance for the survivor when she turned 60 is an error by the Minister. To request an investigation into a possible error by the Minister, the Claimant can contact Service Canada.¹¹ The Tribunal can't investigate and make decisions about administrative errors by the Minister.

Conclusion

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

Kate Sellar
Member, Appeal Division

¹¹ See section 32 of the OAS Act.