



Citation: *LS v Minister of Employment and Social Development*, 2025 SST 277

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: L. S.
Representative: G. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 14, 2024 (issued by
Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Videoconference

Hearing date: February 20, 2025

Hearing participants: Appellant
Appellant's representative
Witness (appellant's niece)

Decision date: March 21, 2025

File number: GP-24-1076

Decision

[1] The appeal is allowed.

[2] The Appellant, L. S., is eligible for a partial Old Age Security (OAS) pension of 10/40. Payments start as of November 2024.

[3] This decision explains why I am allowing the appeal.

Overview

[4] The Appellant was born in India on February 5, 1953. He turned 65 years of age in February 2018.

[5] The Appellant applied for an OAS pension on May 11, 2022.¹ He said he wanted his pension to start as soon as he qualified.

[6] The Appellant first arrived in Canada on March 13, 2012. Since his arrival, he said that he spent time in India from June 5, 2012, to May 28, 2013, and from December 5, 2020, to April 25, 2022.

[7] The Minister of Employment and Social Development (Minister) refused the Appellant's application.² The Minister said that certain periods that the Appellant claimed as residence in Canada were presence and not residence. As the Appellant had not resided in Canada for at least 10 years after the age of 18 when he applied, he did not reside in Canada long enough to qualify for a partial OAS pension.

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

¹ See page GD2-3.

² The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD2-49.

What the Appellant must prove

[9] To receive a **full** OAS pension, the Appellant has to prove he resided in Canada for at least 40 years after he turned 18.³ This rule has some exceptions. But the exceptions don't apply to the Appellant.⁴

[10] If the Appellant doesn't qualify for a full OAS pension, he 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.

[11] To receive a partial OAS pension, the Appellant has to prove he resided in Canada for at least 10 years after he turned 18. But, if the Appellant didn't reside in Canada the day before his application might have been approved, he has to prove he already has at least 20 years of residence.⁵

[12] The Appellant has to prove he resided in Canada. He has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not he resided in Canada during the relevant periods.⁶

Reasons for my decision

[13] I find that the Appellant is eligible for a partial OAS pension of 10/40 because he resided in Canada for at least 10 years after he turned 18.

[14] I considered the Appellant's eligibility from March 13, 2012, up to and including the day of the hearing.

[15] I chose the first date because that is the date the Appellant entered Canada for the first time.

³ 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 he must have applied for the pension. The Appellant has met these requirements.

⁴ See section 3(1)(b) of the OAS Act.

⁵ See section 3(2) of the OAS Act.

⁶ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[16] I chose the second date because I can determine the Appellant's residency up to and including the date of the hearing (February 20, 2025).

[17] Here are the reasons for my decision.

The test for residence

[18] 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.

[19] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁷

[20] A person is **present** in Canada when they are physically present in any part of Canada.⁸

[21] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:⁹

- where he had property, like furniture, bank accounts, and business interests
- where he had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where he had other ties, like medical coverage, rental agreements, mortgages, or loans
- where he filed income tax returns
- what ties he had to another country
- how much time he spent in Canada
- how often he was outside Canada, where he went, and how much time he spent there

⁷ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁸ See section 21(1)(b) of the OAS Regulations.

⁹ 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.

- what his lifestyle was like in Canada
- what his intentions were

[22] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.¹⁰

When the Appellant resided in Canada

[23] The Appellant **resided in Canada** in the following periods:

- from May 28, 2013, to December 6, 2020, and
- from April 26, 2022, to the date of the hearing (February 20, 2025)

[24] The Appellant **didn't reside in Canada** in the following periods:

- from March 13, 2012, to May 27, 2013, and
- from December 5, 2020, to April 25, 2022

[25] I will now discuss each period, starting with the earliest one. For each period, I will explain why I have decided that the Appellant did or didn't reside in Canada.

- The Appellant didn't reside in Canada from March 2012 to May 2013

[26] The Appellant arrived in Canada for the first time on March 13, 2012.

[27] In a questionnaire dated October 25, 2022, the Appellant stated that:

- he decided to live permanently in Canada as of March 13, 2012
- he left Canada on June 5, 2012, to visit family in India, but had to have back surgery, so he remained in India and returned to Canada on May 29, 2013¹¹

[28] In a questionnaire dated April 12, 2023, the Appellant said that:

¹⁰ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

¹¹ See page GD2-13.

- he got a cell phone service a few weeks after he arrived in Canada
- his cell phone number in India was cancelled within three months after he left, he had no other utilities registered in India
- he moved his belongings to Canada in March 2012
- he lived with relatives while in India from June 2012 to May 2013¹²

[29] After his arrival in Canada on March 13, 2012, the Appellant remained in Canada for approximately 10 weeks. He then left for India on June 5, 2012, and did not return to Canada until May 29, 2013, almost one year later.

[30] At the hearing, the Appellant's niece said that he had back issues but decided to move to Canada in 2012 even though he had to return to India to have surgery. He also returned to visit family since he still had his elderly father and brother in India. His children were all living in Canada.

[31] Based on the evidence, I can't find that the Appellant resided in Canada in March 2012. The Appellant arrived in Canada on March 13, 2012. He was in Canada for less than 10 weeks before he left for almost one year. He said that he came with the intent to live in Canada permanently and he came with his belongings, however, when he arrived, he did plan on going back to have surgery. He did not establish a lifestyle in Canada before he left for India in June 2012. He still had ties to India and returned for almost one year. Therefore, the period from March 2012 to May 2013 is not a period of residence.

– **The Appellant resided in Canada from May 2013 to December 2020**

[32] The Appellant resided in Canada from May 28, 2013, to December 6, 2020.

[33] This period is not in dispute.

¹² See page GD2-35.

– **The Appellant didn't reside in Canada from December 2020 to April 2022**

[34] The Appellant didn't reside in Canada from December 5, 2020, to April 25, 2022.

[35] In a questionnaire dated October 25, 2022, the Appellant said that he left Canada on December 5, 2020. Due to Covid, he had to stay in India until April 25, 2022.¹³

[36] In another questionnaire dated November 25, 2022, the Appellant said that:

- he left Canada on December 5, 2020, as his elder brother in India was sick and he asked him to visit
- while in India, he stayed at his brother's residence
- he filed his Canadian income tax return for 2021
- when he left, he was scheduled to return on March 5, 2021
- his return flight on March 5, 2021, was cancelled by the airline, and he tried to rebook, however, it was not possible due to Covid
- he was not able to get a direct flight back to Canada until April 25, 2022¹⁴

[37] At the hearing, the Appellant's niece said that the Appellant could not come back to Canada because of Covid. He did not want to travel by himself, and he wanted a direct flight for health reasons. Therefore, he had to wait for someone to accompany him back to Canada on a direct flight.

[38] The Appellant also provided an email from Air Canada dated November 11, 2021, saying that they were processing a refund for his flight issued during their Covid goodwill period.¹⁵ The email was entitled "Req for refund to original form of payment".

¹³ See page GD2-13.

¹⁴ See page GD2-15.

¹⁵ See page GD2-25.

[39] An undated letter from the Appellant's daughter-in-law said that due to Covid, there was a shortage of flights, leading to the Appellant being unable to book a return flight to Canada.¹⁶ The flights that were available had more than one layover in different countries, which was not an option that the Appellant could consider due to his health condition and his age. His doctor suggested he not travel through other countries. As Covid was at its peak at that time, it made the Appellant extremely nervous about contracting the virus while travelling. His daughter-in-law stated that the Appellant did not have a formal education, which made it hard for him to travel through multiple countries because he could not read or write. The unavailability of direct flights, his fear of contracting Covid and his health condition at the time, led him to spend extra time in India, which were the reasons for his delayed return to Canada.

[40] Although the Appellant said that his flight was cancelled by the airline in March 2021 due to Covid and that he could not rebook before April 2022, the Appellant did not provide proof that the flight was cancelled by the airline or that it was impossible to rebook sooner.

[41] The email from the airline is entitled "Req for refund to original form of payment", therefore it is unclear if the airline cancelled the flight or if the Appellant cancelled and requested a refund. Even if the flight back to Canada was cancelled by the airline in March 2021, there is still no proof that the Appellant wasn't able to rebook sooner than in April 2022, which is one year later from his original return date. In fact, the evidence shows that the Appellant waited for a direct flight and for someone to accompany him for health reasons. There is no proof that he was not able to rebook sooner but rather he made a choice to wait until he found a direct flight and a person to come back with him. Although I sympathize with the Appellant and his health challenges, I cannot consider that the period he stayed in India from December 2020 to April 2022 is a period of residence in Canada.

¹⁶ See page GD2-28.

- The rules about deemed residence or presence don't apply in this period

[42] In some situations, the law says a person's residence or presence in Canada continues even if they are absent for a long time. This doesn't apply to the Appellant's absence from December 5, 2020, to April 25, 2022.

[43] The law says a person's absence doesn't interrupt their residence or presence in Canada if:¹⁷

- the person resides in Canada
- their absence was temporary
- they weren't absent for more than one year

[44] I considered whether this rule applies to the Appellant's absence from December 5, 2020, to April 25, 2022. I decided that it doesn't apply.

[45] The Appellant has to meet all three requirements. He doesn't meet the third requirement since he was absent from Canada for more than one year. That long an absence doesn't always mean that a person has stopped residing in Canada.¹⁸ But in the Appellant's case, this rule doesn't apply to his period of absence.

– The Appellant resided in Canada from April 2022 to the date of the hearing

[46] The Appellant resided in Canada from April 26, 2022, to the date of the hearing (February 20, 2025).

[47] After his return to Canada in April 2022, the Appellant has been residing with his daughter and at times he visits and stays with his other children in Canada. He does return to India every year or every second year as he has done since his arrival in Canada in 2012. He visits his brother. He usually leaves in December and returns in March. He always purchases a return ticket. He has all his belongings in Canada and does not have any property in India.

¹⁷ See section 21(4)(a) of the OAS Regulations.

¹⁸ See *Perera v Canada (MHW)*, [1994] FCJ, No. 351.

The Appellant qualified for a partial OAS pension in October 2024

[48] In its submissions, the Minister advised the Appellant that he may qualify for the OAS pension if he continued to live in Canada until the end of October 2024 provided he submitted a new application, has had no absences from Canada since April 26, 2022, and all other requirements are met.

[49] I don't agree with the Minister. The Appellant does not have to resubmit an application.

[50] The law says that the Tribunal may dismiss an appeal or confirm, rescind or vary a decision of the Minister or give the decision that the Minister should have given.¹⁹ There is nothing in the OAS Act or the OAS Regulations that state that a pension application is no longer valid based on the Appellant's circumstances at a particular time, or that an application expires if not approved within a certain time. At any time up to the date of a reconsideration decision, the Minister could make a decision on any relevant periods of residence. On appeal, the Tribunal has jurisdiction to do so up to the date of the hearing, and could base its findings on any credible evidence.

[51] After a review of the documentary evidence and the testimony at the hearing, I find that the Appellant has resided in Canada after April 2022 to the date of the hearing (February 20, 2025). He therefore has resided in Canada for 10 years. He does not need to resubmit an application.

[52] The Appellant qualified for a partial OAS pension of 10/40 in October 2024. That is when he had resided in Canada for 10 years after he turned 18. (He was already 65 years old, was a legal resident of Canada, and had applied for the pension.)²⁰

¹⁹ Subsection 54(1) of the *Department of Employment and Social Development Act*.

²⁰ Sections 3 to 5 of the OAS Act set out these requirements.

[53] As of October 2024, the Appellant had resided in Canada for 10 years after he turned 18:

- from May 28, 2013, to December 6, 2020, and
- from April 26, 2022, to the date of the hearing (February 20, 2025)

[54] The Appellant is therefore eligible for a pension of 10/40 of the full amount.²¹

When payments start

[55] The Appellant's pension starts in November 2024.

[56] OAS pension payments start the first month after the pension is approved.²² The Appellant's pension was approved in October 2024.²³

Conclusion

[57] The Appellant is eligible for a partial OAS pension of 10/40.

[58] This means the appeal is allowed.

Antoinette Cardillo

Member, General Division – Income Security Section

²¹ The period of residence is rounded down to the lower multiple of a year when it isn't a multiple of a year. See section 3(4) of the OAS Act.

²² See section 8(1) of the OAS Act.

²³ The law sets out several possible dates for approval of an OAS pension. The approval takes place on the latest of those dates. In the Appellant's case, the latest date was in October 2024. See section 8 of the OAS Act and section 5 of the OAS Regulations.