



Citation: *AR v Minister of Employment and Social Development*, 2025 SST 311

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: A. R.
Representative: C. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 19, 2024 (issued by
Service Canada)

Tribunal member: Virginia Saunders

Type of hearing: Videoconference

Hearing date: March 27, 2025

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

Decision date: April 2, 2025

File number: GP-24-1775

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. R., didn't meet the presence requirement to receive the Guaranteed Income Supplement (GIS). This means the Appellant wasn't eligible for the GIS from July 2020 to December 2020.

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

Overview

[4] The Minister of Employment and Social Development (Minister) started paying the Appellant an Old Age Security (OAS) pension and the GIS in January 2009.¹

[5] One requirement for getting the GIS is that, for each payment period,² the person and their spouse must give the Minister a statement of their income for the previous calendar year.³ Another requirement is that the person must stay in Canada. If they leave Canada for more than six months, they are no longer eligible for the GIS.⁴

[6] In January 2021, the Minister decided the Appellant wasn't eligible for the GIS from July 2020 to December 2020. The Minister said the Appellant had to pay back \$3,782.28 he received in GIS during that period. (This is called an overpayment.) At the time, the Minister's reason was that the Appellant and his wife had not submitted a statement of their 2019 income.⁵

[7] The Appellant asked the Minister to reconsider the decision in February 2021. In his request, he enclosed a statement of income for 2019. He said that he had left Canada more than a year earlier. He had planned to return in March 2020, but couldn't

¹ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada.

² Payment periods for the GIS go from July of one year to June of the following year.

³ See sections 10 and 14(1) of the *Old Age Security Act*.

⁴ See section 11(7)(c) of the *Old Age Security Act*.

⁵ See GD2-36-37.

because of the Covid-19 pandemic. Once travel was permitted, his health prevented him from returning.⁶

[8] In January 2024, the Minister asked the Appellant to complete a questionnaire.⁷ In response, the Appellant said that he left Canada in October 2019. He returned in November 2021, but left again the following month. He said that he had been in Portugal ever since.⁸

[9] The Minister issued its reconsideration decision. It didn't change the result, but it gave new reasons for why the Appellant wasn't eligible for the GIS. The Minister said the Appellant wasn't eligible because of his absence from Canada.⁹

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

[11] The Appellant says he always planned to return to Canada but couldn't because of pandemic travel restrictions and his health.¹⁰

[12] The Minister says that, because the Appellant left Canada in October 2019, he wasn't eligible for the GIS after April 2020. The Minister says the Tribunal doesn't have the authority to review its decisions about overpayments.

What I have to decide

[13] This appeal is only about whether the Appellant was eligible for the GIS from July 2020 to December 2020.

[14] I agree with the Minister that the Tribunal doesn't have any authority over a decision about an overpayment. But, it does have authority to decide if a benefit was

⁶ See GD2-38-41.

⁷ See GD2-64-66.

⁸ See GD2-68-69.

⁹ See GD2-113.

¹⁰ See GD1-1.

payable.¹¹ If I decide the Appellant was eligible for the GIS during the period in question, then there isn't an overpayment.

[15] There is another decision about the Appellant's GIS, but it concerns his eligibility for the periods May to June 2020, and July 2021 to March 2024. It was made on the same day as the reconsideration decision in this appeal.¹²

[16] At the hearing, I explained that the Tribunal can only hear appeals of reconsideration decisions. There isn't a reconsideration decision about the other periods, so they aren't part of this appeal.

[17] The Minister's representative gave the Appellant information about how to ask for reconsideration of the other decision, and possibly get some relief because of his financial situation. I also explained that the Tribunal doesn't have the power to consider financial or other circumstances when deciding appeals, so the Appellant should pursue this with the Minister.¹³

[18] I have to decide if the Appellant was eligible to receive the GIS from July 2020 to December 2020. If he wasn't eligible, I don't have the power to do anything about the overpayment of \$3,782.28.

Reasons for my decision

[19] I find that the Appellant wasn't eligible to receive the GIS from July 2020 to December 2020. Here are the reasons for my decision.

The Appellant was absent from Canada for more than six months

[20] The law says that a person can't receive the GIS if they are absent from Canada for six consecutive months, not including the month they left.¹⁴

¹¹ See section 28(1) of the *Old Age Security Act*.

¹² See GD1-27-28.

¹³ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

¹⁴ See section 11(7)(c) of the *Old Age Security Act*.

[21] A person is present in Canada when they **are physically present** in any part of Canada.¹⁵ So, a person is absent from Canada if they **are not physically present** in any part of Canada.

[22] The Appellant doesn't dispute that he left Canada in October 2019. He says he didn't return until November 2021. So, as of May 2020, he had been absent from Canada for more than six months. He was absent for the entire period that is at issue in this appeal—July 2020 to December 2020.

[23] The law doesn't make exceptions for situations like the Appellant's, where he planned to return to Canada within six months but could not for reasons beyond his control. This means he didn't meet the presence requirement to receive the GIS during that period.

Conclusion

[24] The Appellant didn't meet the presence requirement to receive the GIS. So, he wasn't eligible for the GIS from July 2020 to December 2020.

[25] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section

¹⁵ See section 21(1)(b) of the *Old Age Security Regulations*.