



Citation: *LK v Minister of Employment and Social Development*, 2025 SST 480

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: L. K.

Representative: N. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 25, 2024 (issued by
Service Canada)

Tribunal member: James Beaton

Type of hearing: Videoconference

Hearing date: May 5, 2025

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

Interpreter

Decision date: May 8, 2025

File number: GP-24-1843

Decision

[1] The appeal is allowed.

[2] The Appellant, L. K., is eligible for a partial Old Age Security (OAS) pension of 11/40. Payments start as of November 2022. If she meets the income requirements, she is also eligible for Guaranteed Income Supplement (GIS) payments as of November 2022.

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

Overview

[4] The Appellant was born in Ukraine on September 19, 1950. She first visited Canada in January 2005. She immigrated as a permanent resident with her daughter on December 19, 2010. Since then, she has spent time in Canada and Ukraine.

[5] The Appellant applied for an OAS pension and the GIS on November 23, 2022. She said she wanted her benefits to start as soon as she qualified.¹

[6] The Minister of Employment and Social Development refused her application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[7] The Minister says the Appellant didn't qualify for benefits until July 2024 because that is when she had resided in Canada for 10 years (from July 11, 2014, to July 10, 2024). The Minister says she was only a visitor to Canada before July 11, 2014.

[8] The Appellant says she has resided in Canada since December 19, 2010, when she came as a permanent resident. She acknowledges that she spent time in Ukraine between that date and July 11, 2014. She says she only left Canada because she had to take care of her ill father.

¹ See GD2R2-13.

What the Appellant must prove

[9] To receive the GIS, the Appellant must first prove that she is eligible for an OAS pension.²

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

[11] 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.

[12] To receive a partial OAS pension, the Appellant must 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 was approved, she must prove she already has 20 years of residence.⁵

[13] The Appellant must prove she resided in Canada. She must prove this on a balance of probabilities. This means she must show it is more likely than not that she resided in Canada during the relevant period.⁶

Reasons for my decision

[14] I find that the Appellant is eligible for a partial OAS pension of 11/40 because she resided in Canada from December 19, 2010, to November 23, 2022 (11 years and 340 days). The first date is when she came to Canada as a permanent resident. The second date is when she applied for an OAS pension.

² See section 11(1) of the *Old Age Security Act* (OAS Act).

³ See section 3(1)(c) of the OAS Act. The Appellant must also 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.

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.

[15] Here are the reasons for my decision.

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 must 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.⁷

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

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

- 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

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.

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

When the Appellant resided in Canada

[21] The Appellant resided in Canada from December 19, 2010, to November 23, 2022. The Minister accepts that the Appellant resided in Canada from July 11, 2014, to November 23, 2022. I agree. So, my decision focuses on the period from December 19, 2010, to July 10, 2014.

– Factors that don't support residence in Canada

[22] In arguing that the Appellant didn't reside in Canada before July 11, 2014, the Minister points to the Appellant's presence in Ukraine. The following table shows her presence in Canada and Ukraine during the disputed period.¹¹

arrived	departed	days	country
December 19, 2010	April 15, 2011	118	Canada
April 16, 2011	February 11, 2012	302	Ukraine
February 12, 2012	July 15, 2012	155	Canada
July 16, 2012	July 1, 2013	351	Ukraine
July 2, 2013	October 7, 2013	98	Canada
October 8, 2013	July 11, 2014	277	Ukraine

[23] The reason for the Appellant's trips to Ukraine was to take care of her ill father, who was diagnosed with cancer in 2011. When in Ukraine, she stayed at her father's house and used his bank account to buy groceries and pay bills. She made the meals, did the laundry, and did whatever else needed to be done to care for him.¹²

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

¹¹ See GD2R2-16, 17, and 34 to 36.

¹² See the hearing recording.

[24] The Appellant spent a significant amount of time in Ukraine. But her ties to Canada were significant, too.

– **Factors that support residence in Canada**

[25] When the Appellant came to Canada as a permanent resident, she was already familiar with the country. She had visited three times on a visitor visa:¹³

- in January 2005, for 45 days, to visit her son O. (who bought a house here in 2004) and his daughter (who was born in May 2004)
- from December 18, 2005, to June 18, 2006, to help with O.'s second child (who was born in February 2006)
- from May 20, 2007, to November 2007, to help take care of O.'s children while O.'s wife transitioned back to work

[26] The Appellant says she intended to stay in Canada when she came as a permanent resident.¹⁴ I believe her. Her actions support that this was her intention.

- Before coming to Canada, she sold her house in Ukraine. She shipped her property to Canada, including cutlery, clothes, and bedding.
- In December 2010, she got Ontario government photo ID.
- From January 2011 to April 2011, she took English language courses.
- On January 14, 2011, she applied for Toronto social housing.¹⁵ She got a place on December 20, 2024. In the meantime, she stayed with her son and later her daughter.
- On January 28, 2011, she opened a bank account with CIBC.¹⁶
- On March 22, 2011, she got a family doctor.
- She earned \$3,563 from working as a cleaner in 2011.¹⁷ She filed taxes.

¹³ See GD2R2-32 and the hearing recording.

¹⁴ See the hearing recording.

¹⁵ See GD7-10.

¹⁶ See GD7-8.

¹⁷ See GD2R2-8.

[27] These factors show that the Appellant meant to settle in Canada and make it her home. I find that she established residence in Canada on December 19, 2010.

– **The Appellant's trips to Ukraine didn't interrupt her residence**

[28] Section 21(4)(a) of the *Old Age Security Regulations* says a person's residence in Canada isn't interrupted by an interval of absence that is of a temporary nature and no more than one year long.

[29] The Appellant's three absences from Canada during the disputed period were all less than one year long. I find that they were all of a temporary nature. They were for the specific purpose of caring for her father during his illness. Her father passed away on February 20, 2014.¹⁸ She didn't immediately return to Canada because of the Ukrainian tradition of holding memorial services on the 9th and 40th days after a person's death. Then, the political situation in Ukraine was unstable. It was hard for her to get the papers she needed to leave the country.¹⁹

[30] The Appellant's home remained in Canada during this period. She didn't have her own house or bank account in Ukraine. She didn't yet have a house in Canada, but she had taken steps to get one by applying for Toronto social housing. She had opened a bank account. Importantly, her children and grandchildren lived in Canada, and she had strong ties to them. She had clearly started building her life in Canada before her father's untimely illness. After her father's death, she only returned to Ukraine once for a brief period of 28 days. This shows that her responsibility to care for her father was her main tie to Ukraine.

¹⁸ See GD7-6 and 7.

¹⁹ See the hearing recording.

The Appellant qualified for a partial OAS pension in November 2022

[31] The Appellant qualified for a partial OAS pension of 11/40 on November 23, 2022:²⁰

- She met the age requirement (65) on September 19, 2015.
- She met the residence requirement (10 years) on December 19, 2020.
- She met the application requirement on November 23, 2022.

[32] The latest of these dates is November 23, 2022. That is when the Appellant qualified for a partial OAS pension. The amount of her pension is based on how many years she had resided in Canada by that date.

[33] The Appellant began residing in Canada on December 19, 2010. She continued residing in Canada up to November 23, 2022. As of November 23, 2022, she had resided in Canada for 11 years and 340 days after she turned 18.

When payments start

[34] The Appellant's pension starts in November 2022.

[35] OAS pension payments start the month after the pension is approved.²¹ The Appellant was 72 when she applied. When an application is received after a person turns 65, the approval takes effect on the **latest** of the following dates:²²

- one year before the day it was received—in this case, November 23, 2021
- the day the Appellant qualified for a pension after turning 65 **and** meeting the 10-year residence requirement—in this case, December 19, 2020

²⁰ Sections 3 to 5 of the OAS Act set out the requirements. There is no dispute that the Appellant is a Canadian citizen or legal resident of Canada. These requirements are in section 4 of the OAS Act and section 22(1) of the OAS Regulations.

²¹ See sections 8(1) and (2) of the OAS Act.

²² See section 5(2) of the OAS Regulations.

- the month before the day specified in writing by the Appellant—in this case, the Appellant asked for payments to start as soon as she qualified, which was November 23, 2022, and the month before that is October 2022

[36] The latest of these dates is October 2022. That is the effective approval date. Payments start the following month, which is November 2022.

Conclusion

[37] The Appellant is eligible for a partial OAS pension of 11/40. If she meets the income requirements, she is also eligible for the GIS.

[38] This means the appeal is allowed.

James Beaton

Member, General Division – Income Security Section