



Citation: *Estate of TS v Minister of Employment and Social Development*, 2025 SST 503

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: Estate of T. S.
Representative: Pina Mancuso

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated May 13, 2024 (issued by
Service Canada)

Tribunal member: Antoinette Cardillo

Type of hearing: Videoconference

Hearing date: February 25, 2025

Hearing participants: Appellant's representative
Respondent's representative

Decision date: May 14, 2025

File number: GP-24-1067

Decision

[1] The appeal is dismissed.

[2] The Appellant, the Estate of T. S., is not eligible to receive the Old Age Security (OAS) pension from October 2014 to September 19, 2021.

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

Overview

[4] T. S. was born in Hungary on January X, 1931. She applied for the OAS pension on December 1, 1995.¹ She reached the age of 65 in January 1996.

[5] The Minister of Employment and Social Development (Minister) approved T. S.'s application at the rate of 40/40, effective February 1996, the month following her 65th birthday. She received the pension payments from February 1996 to November 2015. The Minister suspended the payments because she went missing.

[6] On September 8, 2023, the Appellant's Representative contacted the Minister's call centre to say that T. S. was declared deceased in September 2021 in a declaratory judgment from the Quebec Superior Court.²

[7] On October 3, 2023, the Appellant's Representative sent a letter to the Minister requesting payment of the OAS pension from November 2015 up to September 19, 2021, T. S.'s date of death as indicated in the declaratory judgment.³

[8] The Minister refused the Appellant's Representative's retroactive payment request and stated that an overpayment was created.⁴ The Minister said that in accordance with the *Old Age Security Act* (OAS Act), a Presumption of Death certificate

¹ See GD2-3.

² See GD2-54.

³ See GD1-168.

⁴ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD1-180.

was issued by the Minister.⁵ In the certificate, the Minister indicated that T. S. disappeared under circumstances that established beyond a reasonable doubt the presumption of her death and certified that for the purposes of the OAS Act, her death was presumed to have occurred on September 19, 2014. Therefore, as T. S.'s OAS pension was paid until November 2015, an overpayment for the period from October 2014 to November 2015 was due in the amount of \$7,908.17.

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

Issue

[10] I have to decide if the Estate of the late T. S. is entitled to receive the OAS pension after her disappearance in September 2014, to September 2021, the date of T. S.'s death stated in a declaratory judgment from the Quebec Superior Court.

Reasons for my decision

[11] T. S. qualified for a full OAS pension of 40/40 on February 1996, the month following her 65th birthday. She received the OAS pension from February 1996 to November 2015. At that point, the Minister suspended the payments because they were advised that she had been missing.

– Facts

[12] T. S. disappeared on September 19th, 2014.

[13] In September 2015, T. S.'s OAS payment was returned to the Minister with a note that her bank account was frozen.⁶

[14] The Minister tried to contact T. S. but instead reached her son. He mentioned that his mother was no longer able to manage her affairs. The Minister sent him forms

⁵ See section 31(1) of the OAS Act.

⁶ See GD2-26.

to complete in order to have an authorized person on file, allowing for the administration of the OAS benefits.

[15] On December 2, 2015, after receiving the forms, T. S.'s son contacted the Minister's call centre. He said that his mother had been missing since September 2014.⁷ He also provided a police report number and mentioned that he had a power of attorney (POA) to manage his mother's affairs. He added that the OAS payments were still being deposited and asked if the account should be suspended. He requested to be called back.

[16] On December 3, 2015, the Minister contacted T. S.'s son to advise that because his mother was missing, a POA was not sufficient to authorize him to be a representative on the file.⁸ The Minister also advised him that his mother's account was suspended. He said that he would provide a Court ruling to confirm his mother's disappearance and his POA.

[17] On December 7, 2015, T. S.'s son filed at a Service Canada centre a judgment dated February 3, 2015, from the Quebec Superior Court stating that T. S. had disappeared on September 19, 2014.⁹ The judgment also confirmed that he had a general POA dated February 14, 2013.

[18] No further action was taken by the Minister or T. S.'s son from December 2015 to June 2023.

[19] On June 7, 2023, a declaratory judgment was rendered by the Quebec Superior Court declaring T. S.'s death as of September 19, 2021.

[20] The Quebec Director of Civil Status issued a death certificate on August 8, 2023.

[21] On September 8, 2023, the Appellant's Representative contacted the Minister's call centre to say that T. S. was declared deceased in September 2021. The Appellant's

⁷ See GD2-30.

⁸ See GD2-31.

⁹ See GD1-159.

Representative then sent a letter to the Minister requesting payment of the OAS pension up to the date of T. S.'s death.

[22] In a letter dated February 12, 2024, the Minister said that since T. S. disappeared under circumstances that established beyond a reasonable doubt that she was dead, the Minister certified for all purposes of the OAS Act that her death was presumed to have occurred on September 19, 2014.¹⁰ Her estate was entitled to the OAS pension payment for the month of her death. All payments after the month of her death had to be returned. There was an overpayment of \$ 7,908.17 for the period of October 2014 to November 2015.

– **The Appellant's arguments**

[23] The Appellant's Representative says that although the OAS Act gives the Minister the power to issue a death certificate under specific conditions, the Minister was wrong to issue the certificate for the following reasons:¹¹

- 1) The decision made by the Minister was unfounded in fact and in law.
- 2) The Minister failed to explain what findings led them to come to the conclusion that T. S. was dead beyond a reasonable doubt on September 19, 2014.
- 3) The Minister relied on a newspaper article dated December 4, 2015. The article did not conclude beyond a reasonable doubt that T. S. was dead. The article mentioned that the her son was offering a reward to any person providing any information regarding his mother. The information could be communicated directly to him or to the Sûreté du Québec. In December 2014, the Sûreté du Québec informed T. S.'s son that they had marked her file as a

¹⁰ See GD1-171.

¹¹ See GD1-174 and section 31(1) of the OAS Act.

“missing person.” At no time did the Sûreté du Québec indicate that they concluded that T. S. was dead.¹²

- 4) The presumption of life was not rebutted by the Minister within the seven-year period as required by the Civil Code of Quebec.¹³ The Minister made their assumption of death of T. S. on February 6, 2024, more than nine years after her disappearance.
- 5) The Supreme Court of Canada reviewed extensively the rules regarding the presumption of life during the seven-year period of an absentee, the presumption of death after seven years, and the effects of a declaratory judgment.¹⁴ The Supreme Court stated that:
 - a) after seven years, the Civil Code of Quebec no longer allows for rebuttal of the fact that the absentee was legally alive during the absence period.¹⁵
 - b) even when knowledge as to the true state of affairs changes after the pronouncement of the declaratory judgment of death, the Civil Code of Quebec contemplates only two exceptions under which this true state of affairs will supersede and prevail over the legal date of death established by the judgment: (1) when the absentee returns; and (2) when the discovery of the true date of death affects the timing of “the dissolution of the matrimonial or civil union regime” and of the opening of the absentee's succession.¹⁶
 - c) prior to seven years of absence, the situation is fluid and prone to change.¹⁷ There is a mere presumption of life, which can be confirmed by the absentee's return or rebutted by proof of the absentee's death. After

¹² See *R-33563 v Minister (Human Resources Development)* (December 18, 1997) (RT), the RCMP definitively concluded that there was “zero” chance that the person was alive.

¹³ The Appellant's Representative referred to articles 85 and 92 of the Civil Code of Quebec.

¹⁴ See *Threlfall v Carleton University*, [2019] 3 SCR 726 (Threlfall).

¹⁵ At paragraph 53 of the Threlfall decision.

¹⁶ See paragraph 54 of the Threlfall decision referring to articles 96, 97, and 101 of the Civil Code of Quebec.

¹⁷ See paragraph 56 of the Threlfall decision.

seven years of absence, a much more certain and concrete picture emerges: the declaratory judgment of death ends the absentee's legal existence and, in turn, confirms that the absentee was, legally speaking, alive the previous seven years.

- 6) The Minister ignored the declaratory judgment issued almost nine years after the disappearance of T. S. and decided to certify her death as having occurred on September 19, 2014. According to the Civil Code of Quebec and the Supreme Court of Canada, the Minister cannot do so once the seven-year period has expired and a declaratory judgment has been issued.¹⁸
- 7) In rendering its decision on February 12, 2024, the Minister interpreted the OAS Act to grant it a broad power to determine the date of death of a beneficiary at any time and to ignore all declaratory judgments rendered, applicable laws in other provinces, and death certificates.¹⁹
- 8) The Appeal Division of the Tribunal concluded that the Minister did not have the power to reassess its initial eligibility decisions about a claimant's benefits under the OAS Act.²⁰
- 9) Although the OAS Act gives the Minister the authority to issue a death certificate stating that the absentee disappeared under circumstances that establish beyond a reasonable doubt that the person is dead, this must be done within the seven-year period of the person's absenteeism.
- 10) To allow the Minister to issue a death certificate after the seven-year period and after the issuance of a declaratory judgment would go against the purpose or objective of the OAS Act. The OAS Act is a "benefit-conferring" legislation for seniors. This would deprive the senior's estate the right to

¹⁸ The Appellant's Representative referred to article 85 of the Civil Code of Quebec and the Threlfall decision.

¹⁹ Section 31(1) of the OAS Act.

²⁰ See *Minister (Employment and Social Development) v MB*, 2021 SST 8.

receive death benefits during the absentee's presumption of life period and potentially to have to reimburse those benefits.

11) The framework of section 31(1) of the OAS Act does not specify a timeframe in which the Minister can issue a death certificate. As such, it cannot be interpreted that the Minister can do so at any time indefinitely. The effects of such an interpretation would cause serious prejudice and would go against the principle of the OAS Act which is a benefit-conferring legislation. Section 31(1) must be interpreted such that the Minister did not have the power to issue a death certificate after the expiry of the seven-year period and the pronouncement of a declaratory judgment by the Quebec Superior Court.

[24] Based on these arguments, the Appellant's Representative said that the Appellant was therefore entitled to continue to receive OAS benefits while T. S. was an absentee. T. S. was presumed to be alive during the seven-year period from September 19, 2014, to September 19, 2021, and was entitled to all her substantive rights and benefits.

- The Minister's arguments

[25] The Minister submits that in 2023, when the Appellant's Representative contacted the Minister to obtain payment of the OAS pension for the period up to September 2021, the file was reviewed based on the known facts and the application of section 31 of the OAS Act.

[26] As mentioned in the Presumption of Death certificate, the Minister considered several elements.²¹ These were the two judgments of the Superior Court of Quebec, one confirming T. S.'s status as a missing person in 2015, and the other setting her date of death on September 19, 2021, seven years after her disappearance.²²

²¹ See GD2-66.

²² See GD2-35 and 54.

[27] The Minister also considered the notice of disappearance published by the Sûreté du Québec on September 23, 2014, the chronology of events, the testimonies as reported in various press articles between September 20, 2014, and December 4, 2015, and the fact that T. S.'s spouse was found but that the searches initiated in the same area did not result in T. S. being located.

[28] The Minister says that the decision to issue a Presumption of Death certificate followed the law. The elements considered reasonably allowed the presumption that the death of T. S. occurred on September 19, 2014.

[29] The Appellant is requesting payment of the OAS pension until the date of death appearing on the certificate issued by the Directeur de l'État civil du Québec, namely September 19, 2021, following the declaratory judgment of the Superior Court of Quebec on June 7, 2023. However, section 31(4) of the OAS Act expressly provides that the Minister is not bound by the death certificate issued by another authority. To this effect, the Minister also submits that the decision provided by the Appellant's Representative confirms that under section 31(4) of the OAS Act, the Minister is not bound by the issuance of a death certificate by another authority, such as a province.²³

– The Law

[30] Section 31 of the OAS Act says:

Presumption as to death of applicant or beneficiary

31 (1) Where an applicant or beneficiary has disappeared under circumstances that, in the opinion of the Minister, raise beyond a reasonable doubt a presumption that the applicant or beneficiary is dead, the Minister may issue a certificate declaring that the applicant or beneficiary is presumed to be dead and stating the date on which the death is presumed to have occurred, and thereupon the applicant or beneficiary shall be deemed for all purposes of this Act to have died on the date so stated in the certificate.

²³ *R-3J563 v Minister (Human Resources Development)* (December 18, 1997) (RT).

Change of presumed date of death

(2) If, after issuing a certificate under subsection (1), the Minister is satisfied from new information or evidence that the date of death is different from that stated in the certificate, the Minister may revoke the certificate and issue a new certificate stating a different date, in which case the applicant or beneficiary shall be deemed for all purposes of this Act to have died on the date so stated in the new certificate.

Where person presumed dead reappears

(3) If, after issuing a certificate under this section, the Minister is satisfied from new information or evidence that the applicant or beneficiary named in the certificate is alive, the Minister shall forthwith revoke the certificate and cause that person's benefits to be re-instated effective the month following the date of the person's presumed death stated in the certificate, subject to the provisions of this Act relating to the person's eligibility to receive those benefits.

Death certificates issued by other authorities

(4) For the purposes of this section, the Minister is not bound by the issuance or revocation of a death certificate by any other authority.

– Analysis

[31] The Appellant's Representative's main argument is that the Minister ignored the declaratory judgment issued by the Quebec Superior Court after the disappearance of T. S. and determined her death as having occurred on September 19, 2014.

[32] The Appellant's Representative submits that according to the Civil Code of Quebec and the Supreme Court of Canada, the Minister cannot make such a determination once a seven-year period has expired, and a declaratory judgment has been issued.²⁴

²⁴ The Appellant's Representative refers to article 85 of the Civil Code of Quebec and the Supreme Court decision in *Threlfall*.

[33] At the hearing, I told the Appellant's Representative that the Minister was not bound by provincial legislation.

[34] The Civil Code of Quebec codifies Quebec's private law. It is therefore not applicable in the circumstances. The Minister applies the rules of the OAS Act, which is federal legislation, for matters relating to OAS benefits.

[35] The Appellant's Representative also says that the Supreme Court reviewed extensively the rules regarding the presumption of life during the seven-year period of an absentee, the presumption of death after seven years, and the effects of a declaratory judgment.

[36] The Appellant's Representative refers to the Threlfall case. In that case, the Supreme Court interpreted the effect of a declaratory judgment made pursuant to the Civil Code of Quebec and the presumption of life (or death) also pursuant to the Civil Code of Québec. However, as I mentioned, the Minister is not bound by provincial legislation or a death certificate from another authority. Therefore, the Threlfall case can be distinguished from the current case.

[37] Furthermore, the OAS Act clearly says that the Minister is not bound by the issuance or revocation of a death certificate by any other authority.²⁵ In addition, a decision by the Review Tribunal submitted by the Appellant's Representative also confirms this.²⁶

[38] The Appellant's Representative also said that the Minister interpreted broadly its power under the OAS Act to determine the date of death of T. S. To support her submission, she said that the Tribunal's Appeal Division rendered a decision in 2021 concluding that the Minister did not have the power to reassess its initial eligibility decisions about an appellant's benefits under the OAS Act. However, the Appellant's Representative did not realize that this decision from the Tribunal's Appeal Division was

²⁵ Section 31(4) of the OAS Act.

²⁶ *R-3J563 v Minister (Human Resources Development)* (December 18, 1997) (RT).

overturned by the Federal Court of Appeal in 2022, confirming the Minister's power to reassess their decisions under the OAS Act.²⁷

[39] Contrary to the Appellant's Representative's argument, even though the Quebec Superior Court issued a declaratory judgment stating that the Appellant's date of death was September 19, 2021, the Minister had the power to issue a certificate stating that the presumed date of death of T. S. was September 19, 2014, in accordance with sections 31(1) and 31(4) of the OAS Act.

[40] T. S. was declared dead seven years after her disappearance by the province where she resided, where the laws allow an absentee to be declared dead after that time period. However, the Minister is not bound by that date and the Minister did not have to rebut, as submitted by the Appellant's Representative, the presumption of life within the seven-year period as required by the Civil Code of Quebec.

[41] Also, contrary to the Appellant's Representative's argument, the Minister did explain how they came to the conclusion that T. S.'s presumed date of death was on September 19, 2014.

[42] The Minister waited until they had proof of T. S.'s death from the Appellant. Then, the Minister considered the articles regarding the Appellant's disappearance in 2014 and in 2015, one year after her disappearance, stating that T. S. was still not found. The Minister also considered the fact that T. S.'s spouse was found but that the searches initiated in the same area did not result in T. S. being located.

[43] Based on the OAS Act, when an applicant has disappeared under circumstances that, in the opinion of the Minister, raise beyond a reasonable doubt a presumption that the applicant is dead, the Minister may issue a certificate declaring that the applicant is presumed to be dead and state the date on which the death is presumed to have occurred.²⁸

²⁷ See *Canada (Attorney General) v. Burke*, 2022 FCA 44.

²⁸ See section 31(1) of the OAS Act.

[44] Section 31(1) of the OAS Act does not require the Minister to determine that an applicant is dead beyond a reasonable doubt to issue a death certificate and stop payment of the OAS benefits. It says if, in the Minister's opinion, the circumstances of a disappearance are such that they raise beyond a reasonable doubt **a presumption** that the applicant is dead, the Minister may issue a certificate declaring that the applicant is **presumed** to be dead.

[45] In this case, after considering the facts (including confirmation of T. S.'s death by the Appellant), the Minister made a determination that as of September 19, 2014, date of T. S.'s disappearance, she unfortunately did not return, she was not found and there was no sign of life since her disappearance. Therefore, the Minister presumed that she was dead as of her date of disappearance.

[46] Pursuant to the OAS Act, so long as the Minister issued the death certificate while of the opinion that the circumstances of the disappearance raise beyond a reasonable doubt a presumption that the applicant is dead, the date that the Minister establishes as the date on which the death is presumed to have occurred, is deemed to be the date that the applicant had died for the purposes of the OAS Act.²⁹

[47] Finally, to allow the Appellant to benefit retroactively from the OAS pension during T. S.'s disappearance would be against the spirit of the OAS Act.

[48] The OAS Act is meant to provide support to seniors with a low income. It is not meant to support their relatives when they are absent or to support their estate after their death.³⁰

[49] The OAS Act does allow an individual's estate to apply for an OAS pension if the deceased was eligible to receive the pension before they died and did not apply, but the estate must apply within one year of the individual's death.³¹ In these cases, the OAS

²⁹ See section 31(1) of the OAS Act.

³⁰ See *E. E. v Minister (Employment and Social Development)*, 2018 SST 243 at paragraph 80 for analysis of a similar situation involving incarcerated individuals.

³¹ See section 29(1) of the OAS Act.

pension is intended to assist with expenses that would have been incurred while the individual was alive.

[50] In the present case, the situation is different. The Appellant had been approved since 1996 to receive the OAS pension. She disappeared in September 2014. The pension was meant to help and support her, not her estate.

Conclusion

[51] The Appellant is not eligible to receive the OAS pension from October 2014 to September 19, 2021.

[52] This means the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section