



Citation: *MA v Minister of Employment and Social Development*, 2025 SST 637

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. A.

Representative: M. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 9, 2025
(GP-24-232)

Tribunal member: Kate Sellar

Decision date: June 18, 2025

File number: AD-25-350

Decision

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

Overview

[2] The Minister of Employment and Social Development (Minister) started paying the Claimant an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) in January 2008.

[3] The Minister reviewed the Claimant's file and decided that he was not a resident of Canada from November 28, 2014 until November 2021. The Minister stopped the Claimant's GIS payment.¹ The Minister found that the Claimant wasn't eligible to receive the GIS after May 2015, but he was still eligible for the OAS pension. The Claimant asked the Minister to reconsider its decision. The Minister maintained its initial decision in a reconsideration letter dated October 3, 2023.² The Claimant appealed to this Tribunal. The General Division allowed the appeal in part.

[4] The General Division found that the Claimant **was** a resident of Canada from November 2014 to May 2016. However, from May 3, 2016 until November 2021, he **was not** a resident of Canada.

[5] This means that the Claimant was eligible to receive the GIS from November 2014 to November 2016, but he wasn't eligible to receive the GIS after that.

Issues

[6] The issues in this appeal are:

¹ The GIS is not "portable" outside of Canada once a person is outside of Canada for more than 6 months.

² See GD2-423. The letter also contained a discretionary decision about the repayment plan for the overpayment.

- a) Is there an arguable case that the General Division made an error of fact by ignoring evidence about the Claimant's return ticket to Canada in March 2020?
- b) Is there an arguable case that the General Division made an error of law by applying the requirements of the OAS Act despite the challenges the Claimant faced because of the pandemic?
- c) 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;
- 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.

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

⁴ See section 58.1(c) in the Act.

There's no arguable case that the General Division made an error of fact by ignoring the Claimant's evidence about his return ticket to Canada for March 2020.

[10] The Claimant argues that the General Division made an error of fact by ignoring that that he had a return ticket to Canada for March 2020.⁵ The Claimant argues this showed his intention to return to Canada.

[11] The General Division did clearly reference and consider the Claimant's arguments about the pandemic-related travel limitations that impacted his return to Canada in 2020. The General Division explained why the reasons for the extended stay in Somalia weren't irrelevant.⁶

[12] Accordingly, there's no arguable case that the General Division ignored what the Claimant's plane ticket meant in terms of his intention. The General Division came to a different conclusion about whether the Claimant was a resident of Canada during that time, but there's no arguable case that it ignored the evidence the Claimant provided about his intention to return before the pandemic started.

There's no arguable case that the General Division made an error of law by applying residence requirements despite the impact of the pandemic.

[13] The Claimant argues that he shouldn't be held accountable in law for not complying with the residency requirements from 2020 to 2021 because of the pandemic. The Claimant argues that he showed a clear intention to comply with the law.⁷

[14] The General Division is required to apply the law as set out in the OAS Act. Claimants who receive an OAS pension are also eligible for the GIS if they meet certain requirements. As the General Division explained, to be eligible for the GIS, a claimant's income needs to be below a certain level, and they have to be a resident in Canada. If

⁵ See AD1-10 to 11.

⁶ See paragraph 55 in the General Division decision.

⁷ See AD1-10 to 11.

they are absent from Canada or no longer reside in Canada for more than six months, they are no longer eligible for the GIS.⁸

[15] The Claimant hasn't shown an arguable case for an error of law by the General Division. The General Division was required to apply the law as its written, and the Claimant hasn't raised a legal argument about how the General Division could choose not to apply the residency requirements based on the pandemic.

[16] The General Division found the Claimant stopped being a resident of Canada in May 2016, and that he hadn't reestablished residency in Canada during his last stay in the country, from October 2019 to December 2019. Therefore, as the General Division explained, it's not relevant whether the Claimant couldn't comply with the residency requirements due to the pandemic: he wasn't considered a resident to begin with at this time. To qualify, he would have had to already been residing in Canada.⁹

There's no new evidence.

[17] The Claimant hasn't provided any evidence that wasn't already presented to the General Division. Accordingly, new evidence also cannot form the basis for permission to appeal.

[18] I've reviewed the record.¹⁰ I'm satisfied that the General Division didn't overlook or misunderstand any important evidence that could change the outcome for the Claimant. I understand why the Claimant would like the survivor's pension to be paid as early as the wording of the CPP allows.

⁸ See paragraph 5 in the General Division decision, discussing section 11 in the *Old Age Security Act*.

⁹ See paragraph 55 in the General Division decision.

¹⁰ For more on this type of review by the Appeal Division, see *Karadeolian v Canada* (Attorney General), 2016 FC 615.

Conclusion

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

Kate Sellar
Member, Appeal Division