



Citation: *MA v Minister of Employment and Social Development*, 2025 SST 638

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: M. A.
Representative: M. H.

Respondent: Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated October 3, 2023 (issued by Service Canada)
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Tribunal member: Lianne Byrne

Type of hearing: In person

Hearing date: November 13, 2024

Hearing participants: Appellant
Appellant's representative

Decision date: February 9, 2025

File number: GP-24-232

Decision

[1] The appeal is allowed in part.

[2] The Appellant, M. A., met the residence requirement to receive the Guaranteed Income Supplement (GIS) for the period of November 2014 to May 2016. However, he didn't meet the requirement to receive the GIS for the period from May 3, 2016 until November 2021.

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

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 2008.¹

[5] A person who receives an OAS pension is also eligible for the GIS if they meet certain requirements. To be eligible for the GIS, their income needs to be below a certain level and they have to be a resident in Canada. If they are absent from Canada or no longer reside in Canada for more than six months, they are no longer eligible for the GIS.²

[6] The Minister conducted a review of the Appellant's file and determined that he was a non-resident of Canada from November 28, 2014 until November 2021. The Minister stopped the Appellant's GIS payment. The Minister says the Appellant wasn't eligible to receive the GIS after May 2015. The Minister says, however, that he is still eligible for his OAS pension.³

¹ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at page GD1-10.

² Section 11 of the *Old Age Security Act*.

³ See the Minister's Submissions at page GD5-4 paragraph 12

[7] The Minister decided that the Appellant had to repay an overpayment of \$82,235.59. This is how much the Appellant received in GIS payments from May 2015 to November 2021.

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

[9] The Appellant says that he provided ample evidence to support that he remained a resident in Canada during the period in question, including entry information from the Canada Border Services Agency, passport, ticket purchases, doctor visits, bank records, and leases held in Canada. From 2020 to the end of 2021, he was stranded in Somalia due to the Covid-19 pandemic. He was unable to return to Canada due to the death of family members, his own illness and hospitalization, and difficulty traveling due to ill health. He was diagnosed with cancer upon his return to Canada. If this period is not considered, then his time spent in Canada is about the same as his time spent abroad.

[10] The Minister says that the Appellant was not resident in Canada from November 28, 2014 until November 2021 because he spent substantially more time abroad and only returned to Canada for short durations. This clearly indicates that he did not live in Canada during this period and was only present in Canada. His absences from Canada do not meet the criteria for acceptable absences as outlined in the OAS Regulations.

Issue

[11] I have to decide if the Appellant was a resident in Canada from November 2014 until November 2021.

[12] To receive the GIS, the Appellant has to prove he resided in Canada from November 2014 to November 2021.

[13] The Appellant 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 period.⁴

Eligibility Requirement for the GIS

[14] The GIS is an income-tested monthly benefit that is paid to individuals who receive the OAS pension, reside in Canada, and have little to no income. If a GIS recipient stops residing in Canada for a period of six months, then that person is no longer eligible for the GIS.⁵ Similarly, if a person is absent from Canada, then they are paid the GIS for six months after the month of departure then it stops.⁶ This is so regardless of how many years of residency in Canada the person has.

[15] 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.

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

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

[18] 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;

⁴ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

⁵ Paragraph 11(7)(d) of the *OAS Act*.

⁶ Paragraph 11(7)(c) of the *OAS Act*.

⁷ See section 21(1)(a) of the *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 *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.

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

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

Reasons for my decision

[20] The Minister determined that the Appellant was not resident in Canada from November 28, 2014 to November 2021. This decision was primarily based on the Appellant's absence from Canada for 1928 days and presence in Canada for 932 days. The Minister pointed out that he spent substantially more time abroad and only returned to Canada for short durations, which it submits clearly indicates that he did not live in Canada and was only present in Canada.

[21] The Appellant does not disagree with the Minister's calculation of his absences from Canada. However, he says that time spent in Canada versus time spent abroad is only one of the factors to be considered.

[22] The parties agree, and I find, that the Appellant travelled to Somalia and was absent from Canada during the following periods for a total of 1928 days:

- From November 27, 2014 to March 26, 2015 (119 days)
- From May 26, 2015 to October 29, 2015 (156 days)

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

- From May 3, 2016 to May 6, 2017 (368 days)
- From July 15, 2017 to April 27, 2018 (286 days)
- September 22, 2018 to March 28, 2019 (187 days)
- April 26, 2019 to October 19, 2019 (176 days)
- December 6, 2019 to May 21, 2021 (532 days)
- August 29, 2021 to December 11, 2021 (104 days)

[23] The parties also agree, and I find, that he was present in Canada in all of the intervening periods.

[24] I will consider the Appellant's eligibility for the GIS in two separate time periods. First, I will consider the Appellant's status in Canada from November 2014 until May 2, 2016. I will then consider his status from May 3, 2016 until November 2021.

The Appellant didn't stop residing in Canada from November 2014 until he left for Somalia on May 3, 2016.

[25] I find that the Appellant remained a resident in Canada from November 2014 until May 3, 2016. I also find that he was not absent from Canada for longer than six months during this time.

[26] This means he met the residence requirement to receive the GIS. So, he was eligible for the GIS from November 2014 to May 2016.

[27] Here are the reasons for my decision.

[28] The Minister says that the Appellant stopped residing in Canada in November 2014. The Minister relied primarily on his absences from Canada to decide that he was present in Canada rather than resident in Canada.

[29] The Appellant has lived in Canada since September 1990. He leased a home for his family. He lived in this house with his wife and three daughters. His daughters attended school in Canada. He worked as a security guard in an airport until his retirement in 2014. He filed his taxes in Canada. He owned a car and had a driver's license. He has a long term family doctor. His best friends are in Canada. He attends the mosque regularly.

[30] After retiring in 2014, he had more time to visit Somalia, where his 11 siblings, their families, and his cousins were still living. He would usually travel alone. His wife, children and grandchildren remained in Canada. He left his possessions in Canada, other than clothing. He spent the following periods in Somalia, visiting his siblings:

- From November 27, 2014 to March 26, 2015 (119 days)
- From May 26, 2015 to October 29, 2015 (156 days)

[31] While in Somalia, he stayed with one of his siblings. He did not work. He spent his time visiting relatives. He went to the mosque.

[32] The Appellant submitted numerous documents to support his residence in Canada during this period, including the Enbridge gas bills¹¹, income tax returns¹², bank statements¹³, OHIP claims history showing medical appointments¹⁴, and his family physician listing medical appointments¹⁵.

[33] I accept that, from November 2014 to May 2016, the Appellant resided in Canada. Although he made two lengthy visits to Somalia, he maintained significant familial, social, and financial ties to Canada. He owned a property in Canada and left all of his possessions in his home. His wife and children remained in the home while he was away. He had a Canadian bank account and filed taxes. He attended medical appointments. He also demonstrated an intention to remain resident in Canada, with his

¹¹ See GD2-17

¹² See GD2-211 to 218

¹³ See GD2-272

¹⁴ See GD2-328 to 331

¹⁵ See GD2-441

visits to Somalia intended as an opportunity to spend time with his elderly and ailing siblings before they passed away.

[34] Significantly, the Appellant was not absent from Canada for more than six consecutive months.

[35] For these reasons, he remained entitled to the GIS from November 2014 up to May 2, 2016.

The Appellant was no longer resident in Canada from May 3, 2016 until November 2021

[36] I find that the Appellant didn't reside in Canada from May 3, 2016 until November 2021.

[37] This means he didn't meet the residence requirement to receive the GIS. So, he wasn't eligible for the GIS from November 2016 (six months after the month he stopped residing in Canada) until November 2021.

[38] Here are the reasons for my decision.

[39] A person is present in Canada when they **are physically present** in any part of Canada.¹⁶ So, a person is absent from Canada if they **are not physically present** in any part of Canada.

[40] The Appellant was physically absent from Canada for 368 days from May 2016 until May 2017. This is longer than six consecutive months.

[41] 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.¹⁷

[42] I find that the Appellant was absent from Canada for more than six months. This means he wasn't eligible for the GIS after November 2016.

¹⁶ See section 21(1)(b) of the *Old Age Security Regulations* (OAS Regulations).

¹⁷ See section 11(7)(c) of the *Old Age Security Act* (OAS Act).

[43] In addition, I also find that the Appellant was no longer resident in Canada from May 2016 until November 2021.

[44] During this time, the Appellant continued to have significant ties in Canada. His wife, children, and grandchildren were still in Canada. He still attended the mosque. He also provided documentary evidence, including lease agreements¹⁸, income tax returns¹⁹, bank statements²⁰, OHIP claims history²¹, letter from his family physician listing dates of his appointments²², and prescriptions records²³. His ties to Canada did not change significantly from the previous period.

[45] There is very little information available about his ties to Somalia, other than his significant familial ties. He had numerous extended family members there, including siblings, nieces, nephews, and cousins. He also attended the mosque in Somalia.

[46] Although I accept that he still had significant ties to Canada during this time period, I do not accept that his intention was to remain resident in Canada. This is because he spent so little time in Canada and so much time in Somalia.

[47] The Appellant was only present in Canada during the following periods:

- May 6, 2017 to July 15, 2017 (71 days)
- April 27, 2018 to September 22, 2018 (149 days)
- March 28, 2019 to April 26, 2019 (30 days)
- October 19, 2019 to December 6, 2019 (49 days)

[48] This means he was physically present in Canada for a total of 299 days.

¹⁸ See GD2-135

¹⁹ See GD2-215

²⁰ See GD2-272

²¹ See GD2-325

²² GD2-441

²³ See GD2-131

[49] By contrast, he was in Somalia during the following periods:

- May 3, 2016 to May 6, 2017 (368 days)
- July 15, 2017 to April 27, 2018 (286 days)
- September 22, 2018 to March 28, 2019 (187 days)
- April 26, 2019 to October 19, 2019 (176 days)
- December 6, 2019 to May 21, 2021 (532 days)
- August 29, 2021 to December 11, 2021 (104 days)

[50] This means he was absent from Canada for a total of 1,653 days.

[51] The highly disproportionate amount of time spent in Somalia does not reflect an intention to remain resident in Canada. The Appellant demonstrated an intention to spend the majority of his time in Somalia, where he had a large extended family.

[52] The Appellant explained that there is a reasonable explanation for his lengthiest absence from Canada from December 6, 2019 to May 21, 2021. He was supposed to return to Canada in May 2020. However, he got stuck in Somalia due to the global Covid-19 pandemic. The airports were closed. When the airports did re-open, he did not feel it was safe to travel due to the ongoing pandemic. In addition, three of his siblings passed away from Covid-19. He had to remain for their funerals.

[53] He also got very sick. He required hospitalization. He provided a chest CT scan report and a biochemistry examination report²⁴.

[54] Eventually, one of his daughters flew to Somalia to help care for him. With her help, he was able to return to Canada in a wheelchair on May 21, 2021. Upon his return

²⁴ See GD2-428

to Canada, he was diagnosed with prostate cancer. He is receiving treatment in Canada.

[55] Although I understand the circumstances that led to this particular visit to Somalia being lengthier than his previous visits, it is important to note that I already found that he was not resident in Canada prior to this visit. He had not reestablished his residence in the 49 days he spent in Canada (from October 19, 2019 to December 6, 2019) before returning again to Somalia. So, the reasons for this lengthy trip to Somalia are irrelevant.

[56] It should also be noted that, despite his ill health, after this lengthy trip to Somalia, he only stayed in Canada for 101 days before returning to Somalia for another 104 days to visit his family. Again, this does not demonstrate an intention to be resident in Canada.

[57] For these reasons, the Appellant was not resident in Canada from May 2016 until November 2021.

The Appellant started residing in Canada again in December 2021

[58] I find that the Appellant started residing in Canada again in December 2021.

[59] This is when the Appellant returned to Canada from his last trip to Somalia. He has not been back to Somalia since then. Since his return from Somalia in 2021, he and his wife live with one of their daughters and her family. He renewed his driver's license in December 2021²⁵, but has stopped driving. He spends his free time with his wife, daughters, grandchildren, and friends. He is able to walk to the mosque from their home. He is receiving medical treatment in Canada.

No ability to waive or forgive the overpayment

[60] The Appellant submits that he does not have the financial ability to repay the overpayment.

²⁵ See page GD2-98

[61] I am very sympathetic to the Appellant's situation. However, I do not have the ability to waive or forgive all or part of the overpayment. The legislation allows only the Minister, in certain circumstances, to remit all or part of an overpayment for reasons of financial hardship, but the law is clear that it is only the Minister (and not this Tribunal) who has the authority to make such a decision.²⁶

Conclusion

[62] The Appellant was eligible to receive the GIS from November 2014 until November 2016. He was not eligible to receive the GIS from December 2016 until November 2021. He has been eligible to receive the GIS since then.

[63] This means the appeal is allowed in part.

Lianne Byrne

Member, General Division – Income Security Section

²⁶ Subsection 37(4) of the *Old Age Security Act*. See also *Canada (Minister of Human Resources Development) v Tucker*, [2003 FCA 278](#) and *Nanka v Canada (Attorney General)*, [2018 FC 959](#)