



[TRANSLATION]

Citation: *The Estate of MD v Minister of Employment and Social Development*, 2025 SST 738

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	The Estate of Michèle Durocher
Respondent:	Minister of Employment and Social Development
Representative:	Érégna Bernard

Decision under appeal:	General Division decision dated November 18, 2024 (GP-24-967)
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Tribunal member:	Shirley Netten
Type of hearing:	In writing
Decision date:	July 17, 2025
File number:	AD-24-830

Decision

[1] The appeal is allowed in part. M. D. was entitled to the Guaranteed Income Supplement (GIS) from July 2020 to June 2021, inclusive. M. D. wasn't entitled to the GIS for the month of July 2021.

Overview

[2] M. D. received the GIS from October 2018 to December 2020. Service Canada then sent her an overpayment notice for the GIS she had received from July to December 2020. Service Canada began deductions for the overpayment in June 2021. M. D. died in July 2021.

[3] In 2022, Service Canada asked M. D.'s estate to pay back the GIS payments for July to December 2020. Service Canada said that it hadn't received M. D.'s income information, and that it was too late for the estate to provide it. Service Canada said that it could not pay the GIS to M. D. for the period of July 2020 to July 2021.

[4] Service Canada maintained its decision on reconsideration, and the estate's appeal to the Tribunal's General Division was dismissed. The estate is now appealing to the Appeal Division.

[5] The Minister of Employment and Social Development (Minister) says that M. D. didn't apply for the GIS at the time and that it was too late for her estate to apply in 2022. I have found that the Minister waived M. D.'s requirement for an application for the GIS for the months of July to December 2020 and didn't give notice that an application would be required for the rest of the payment period (July 2020 to June 2021). I have concluded that M. D. was entitled to the GIS from July 2020 to June 2021. I have also concluded that M. D. wasn't entitled to the GIS for the month of July 2021.

Issue

[6] The issue in this appeal is whether M. D. was entitled to the GIS from July 2020 to July 2021. To answer this, I have to consider the following:

- a) Did the Minister waive the requirement for an application for the payment period of July 2020 to June 2021? And what about July 2021?
- b) If there was no waiver:
 - 1. Was it too late for the estate to apply on M. D.'s behalf in 2022?
 - 2. Does it matter if M. D. was incapable of forming or expressing an intention to apply for the GIS herself?

Analysis

[7] The law says that “no supplement may be paid” for a month in a payment period unless an application has been made or the Minister has waived the requirement for an application.¹ Payment periods for the GIS run from July 1 of one year to June 30 of the next year.²

[8] If a person has previously applied for the GIS, the Minister can waive the requirement for an application for any month or months in a later payment period.³ While it may be the Minister's practice to waive the requirement for an application when income details are available in the person's tax return, the availability of income details isn't a requirement for the waiver under the law.⁴

¹ See sections 11(2), 11(3.1), and 11(4) of the *Old Age Security Act* (OAS Act).

² See section 2 of the OAS Act.

³ See section 11(4) of the OAS Act.

⁴ Under section 14(1.01) of the OAS Act, the Minister can waive the requirement for a statement of income when CRA provides the information from a tax return. This isn't a condition for waiving the requirement for an **application** under section 11(4).

Matters that are relevant but not in dispute

– The Minister waived the application for July 2019 to June 2020

[9] M. D. applied for the GIS in March 2018. Payments began in October 2018, the month after she turned 65. Payments continued for the July 2019 to June 2020 payment period without a new application.

[10] The Minister's counsel acknowledges that the Minister waived the requirement for an application for July 2019 to June 2020. The Minister wasn't obliged to tell M. D. about this waiver.⁵ Service Canada's file notes don't mention the waiver in 2019.⁶ The GIS payments simply continued. This shows that a waiver doesn't have to be accompanied by correspondence or a confirmation in the file.

– M. D. didn't apply for the GIS for July 2020 to June 2021, or for July 2021

[11] M. D. didn't complete an application for the GIS for the payment period of July 2020 to June 2021, or for the payment period beginning July 2021. There are no such applications in Service Canada's file, and there is no indication that these applications were made.

The Minister waived the requirement for an application for July 2020 to June 2021

[12] The Minister paid M. D. the GIS from July to December 2020. The Minister could only lawfully pay the GIS if there had been an application or a waiver, and there was no application. I have concluded that the Minister waived the application. Then, the Minister didn't give M. D. notice that an application would subsequently be required, and so the waiver applied to the whole payment period of July 2020 to June 2021.

⁵ The Minister has to tell the person if their application is being waived under section 11(3.1) of the OAS Act. There is no equivalent requirement for a waiver under section 11(4), which is the waiver relevant to this appeal.

⁶ See GD6-14 for all communications with M. D. in 2019.

– **July to December 2020: special measures**

[13] The evidence confirms that the government implemented special measures during the COVID-19 pandemic to give GIS recipients more time to provide their income details in 2020. This approach aligned with the government's extension of the tax-filing deadline that year. If a GIS recipient's 2019 tax return hadn't been filed, Service Canada continued to make GIS payments for six months.⁷

[14] The Minister's counsel says that these measures [translation] "were not a type of waiver, but rather advance payments."⁸ I disagree. None of the materials about the temporary measures mention advance payments.⁹ The *Old Age Security Act* (OAS Act) and its regulations don't permit advance payments of the GIS. And Parliament didn't amend the legislation to bring the temporary measures into force.

[15] The Minister's counsel also says that [translation] "pensioners still had to submit an application for the [GIS], which included their tax returns."¹⁰ I can't accept this argument. The public announcement and the internal procedures confirm that pensioners benefiting from the special measures would need to provide their **income information**, not that they would have to complete an **application** for the GIS.¹¹

[16] There is limited information about what was sent to M. D. in 2020. Copies of correspondence aren't available. Service Canada's system notes show payments and the code "KMT4678" but don't mention any correspondence.¹² The February 12, 2024, reconsideration letter says that an ISP3026 form was sent each month from July to December 2020.¹³ The Minister's submissions to the General Division show that a GIS suspension letter and a GIS form were sent to M. D. in July 2020 and that a reminder was sent in October 2020.¹⁴

⁷ See GD6-13, GD6-14; and AD10-12, AD10-13, AD10-16, and AD10-19.

⁸ She says this at AD10-2.

⁹ See the Prime Minister's announcement at AD10-16; and the internal procedures at AD10-19.

¹⁰ She says this at AD10-2.

¹¹ See AD10-16, AD10-19, and AD10-23.

¹² See GD6-13 and GD6-14.

¹³ See GD2-66.

¹⁴ See GD6-4.

[17] Internal procedures for the special measures state that the system automatically sent out a suspension letter in July 2020, as well as a reminder letter and a “statement of income form” in October 2020.¹⁵ The Minister’s counsel referred to the “KMT4678” procedures, and this code is mentioned in the procedures.¹⁶

[18] Based on this evidence, I find it more likely than not that the automated procedures were followed in M. D.’s case. I accept that Service Canada sent letters and forms to M. D. in July and October 2020. The samples provided by the Minister’s counsel show that the two letters told M. D. that Service Canada hadn’t received the necessary income details and asked her to complete a “statement of income form.”¹⁷ So, while M. D. was asked to provide details on her income in support of her GIS entitlement, she was never asked to complete an application for the GIS.¹⁸

– **July to December 2020: waiver of the requirement for an application**

[19] The OAS Act says that the GIS can only be paid if there is an application or a waiver of the requirement for an application.¹⁹ The Minister has the power to waive this requirement for pensioners who had previously applied for the GIS:

11(4) The Minister may waive the requirement referred to in subsection (2) for an application for payment of a supplement for any month or months in a payment period if an application for payment of a supplement has been made in respect of any payment period before that payment period.

[20] M. D. met the criteria for a waiver because she had applied for the GIS in 2018. She didn’t need to have applied after June 2019, as the Minister’s counsel suggested.²⁰

[21] The Minister applied the special measures and didn’t ask for an application to be completed. I find that the Minister waived the requirement for M. D. to complete an

¹⁵ See AD10-19 and AD10-23.

¹⁶ See AD10-2 and AD10-19.

¹⁷ See ISP3067B at AD10-26; ISP3067C at AD10-29; and ISP3026 at AD10-32.

¹⁸ It seems that Service Canada doesn’t clearly distinguish between the application and the statement of income (for example, the reconsideration decision at GD2-66 refers to the statement of income as an application). The law clearly distinguishes the two.

¹⁹ See section 11(2) of the OAS Act.

²⁰ See AD6-10.

application for the GIS from July to December 2020. This is how Service Canada was able to pay M. D. the GIS for those months.

[22] It is important to understand that the requirement for an application or waiver of the application is separate from the requirement or waiver of a statement of income.²¹ Here, I am finding only that the Minister waived the requirement for M. D. to **apply** for the GIS. This finding is consistent with Service Canada's May 2022 letter that said that payments would be made [translation] "until we received her income from 2019." The problem identified by Service Canada was that M. D. hadn't submitted her income details, not that she hadn't applied for the GIS.²²

– **January to June 2021**

[23] When the Minister waives the requirement for a GIS application (as is the case here), it must give 15 days' advance notice if an application will be required for any subsequent month or months in the payment period.²³ As discussed above, the Minister asked M. D. to provide her 2019 income details in July and October 2020.²⁴ There is no evidence that M. D. was asked to complete an application to receive the GIS starting in January 2021.

[24] I find that the required notice wasn't given to M. D. Accordingly, an application wasn't required for the rest of the payment period.

Entitlement for July 2020 to June 2021

[25] M. D. didn't need to apply for the GIS for the payment period of July 2020 to June 2021 because this requirement was waived. She did need to provide a statement of income.

²¹ Section 14 of the OAS Act sets out the statement of income requirements.

²² See Service Canada's May 3, 2022, letter at GD2-23.

²³ See section 11(5) of the OAS Act.

²⁴ See GD2-23 (letter from Service Canada); GD6-13 and GD6-14 (system notes); and AD10-16, AD10-19, AD10-23, and AD10-29 (temporary measures and correspondence templates).

[26] There is no statutory deadline for the statement of income, and the law doesn't preclude payment of or entitlement to the GIS if the statement of income arrives late.²⁵ Consistent with this, the internal procedures for the temporary measures indicate that a person would receive their GIS even if their income information arrived late:

If the 2019 income information is received from the client or Canada Revenue Agency after December 31, 2020 and there is an underpayment owing, the underpayment amount for July to December 2020 must be applied to the existing overpayment before releasing funds to the client. Retroactive payments effective January 2021 can be released in full to the client.²⁶

[27] M. D.'s income tax returns were filed as soon as possible by the estate, in 2022. M. D. was entitled to the GIS from July 2020 to June 2021 inclusive, in accordance with her income.²⁷

The Minister didn't waive the requirement for an application for July 2021

[28] July 2021 was the beginning of a new payment period. M. D. didn't receive the GIS for the month of July 2021 and hadn't filed her 2020 income tax return by that point. There is no evidence to support a finding that the Minister waived the requirement for an application for July 2021, or for the payment period July 2021 to June 2022.

Fall 2022 was too late for the estate to apply for the GIS for July 2021

[29] Ordinarily, the GIS can't be paid more than 11 months before an application is received or waived.²⁸ M. D.'s estate didn't complete an application for the GIS within 11 months of July 2021.

[30] The OAS Act has special rules for applications after death. An estate can apply for a pension within one year after the person's death, and that application is deemed to

²⁵ Section 11(7)(a) of the OAS Act says the GIS can't be paid more than 11 months before the application is received or waived. There is no equivalent provision for the statement of income.

²⁶ See internal procedures at AD10-19.

²⁷ See M. D.'s statements of income at GD2-27 to GD2-41.

²⁸ See section 11(7)(a) of the OAS Act

have been made on the date of death.²⁹ While the Minister's counsel says that this section only applies to pensions, it has been interpreted by the Federal Court to apply to all benefits in the OAS Act, including the GIS.³⁰ In any case, the special rules don't help the estate. It didn't apply for the GIS for July 2021 within a year of M. D.'s death.

Whether M. D. was incapable of forming or expressing an intention to apply for the GIS doesn't matter

[31] I agree with the Minister's counsel that the estate can't invoke M. D.'s incapacity to obtain benefits retroactively.

[32] You can apply for a benefit on behalf of a person who is incapable of forming or expressing an intention to apply on their own. In these circumstances, the application can be backdated:

28.1 (1) Where an application for a benefit is made on behalf of a person and the Minister is satisfied, on the basis of evidence provided by or on behalf of that person, **that the person was incapable of forming or expressing an intention to make an application on the person's own behalf on the day on which the application was actually made**, the Minister may deem the application to have been made in the month preceding the first month in which the relevant benefit could have commenced to be paid or in the month that the Minister considers the person's last relevant period of incapacity to have commenced, whichever is the later [emphasis added].

[33] However, since the person must be incapable of forming or expressing their intention on the date of the application, this provision only applies if the person was alive at the time the application was made.³¹ In other words, M. D.'s daughter could have applied for the GIS on M. D.'s behalf due to incapacity, but only up until July 10, 2021, when M. D. died. The incapacity provision doesn't allow the estate to apply for the GIS after M. D.'s death.

²⁹ See section 29 of the OAS Act.

³⁰ See *Canada (Minister of Human Resources Development) v Reisinger Estate*, 2004 FC 893.

³¹ See, for example, *The Estate of G.S. v Minister of Employment and Social Development*, 2019 SST 1502.

Entitlement for July 2021

[34] For July 2021, M. D. didn't apply for the GIS, the Minister didn't waive the requirement for an application, the estate didn't apply in time, and the incapacity provisions can't be used after death. M. D. wasn't entitled to the GIS for the month of July 2021.

Conclusion

[35] The appeal is allowed in part. M. D. was entitled to the GIS for July 2020 to June 2021, but not for the month of July 2021.³²

Shirley Netten
Member, Appeal Division

³² Service Canada will have to calculate the GIS payments for the 12 months and deduct the amount previously received, before paying M. D. (via her estate). It appears that M. D. received \$4,883.06 (\$5,192.28 in payments minus \$309.22 in deductions); see GDAD10-11 to GDAD10-13; and GD2-67.