



Citation: *AS v Minister of Employment and Social Development*, 2025 SST 799

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: A. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated February 11, 2025 (issued
by Service Canada)

Tribunal member: Sarah Sheaves

Type of hearing: Teleconference

Hearing date: July 24, 2025

Hearing participant: Appellant

Decision date: July 25, 2025

File number: GP-25-597

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. S., can't have his Old Age Security (OAS) pension paid earlier than April 2023. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was born on August 5, 1957. He turned 65 and was eligible to apply for an OAS pension on August 5, 2022.

[4] The Minister of Employment and Social Development (Minister) received the Appellant's application on March 15, 2024. In the application, the Appellant said he wanted the pension to start as soon as he was eligible.¹

[5] The Minister approved the application, with a start date of April 2023.²

[6] The Appellant disagreed with the start date of his pension. He appealed the Minister's reconsideration decision to the Social Security Tribunal (Tribunal).

[7] The Appellant says he wants his OAS pension to start when he turned 65 in August 2022. He says he was experiencing depression and several personal and professional challenges at that time, and could not apply earlier than he did.

[8] The Minister says it has paid the Appellant the maximum of retroactive benefits available under the law. It has also given the Appellant an actuarial adjustment of 0.6% per month for each month the pension was deferred. It says the Appellant isn't entitled to any further benefits.

¹ See GD2-4.

² See GD2-11.

What the Appellant must prove

[9] For the Appellant to succeed, he must show that the law allows the Minister to pay him benefits before April 2023. To do that, he must prove that he was unable to apply for his OAS pension before March 2024 because he was incapacitated.

[10] To prove incapacity, the Appellant has to show he was incapable or forming or expressing an intention to apply for the OAS pension earlier than March 2024.³

Reasons for my decision

[11] The Appellant isn't entitled to payment of his OAS pension earlier than April 2023. He does not meet the legal test for incapacity, and he has received the maximum retroactive payments available in the law.

The Appellant got the maximum retroactive payment

[12] The law says that when a person applies for an OAS pension, the maximum of retroactive payments a person can get is 12 months before the application is received by the Minister.⁴

[13] The Minister received the Appellant's application on March 15, 2024. It started paying the pension as of April 2023. This means the Minister started paying the benefit as early as the law allows.

[14] The Appellant got the maximum retroactive payment available by law.

The Appellant doesn't meet the test for incapacity

– What the law says about incapacity

[15] The only exception to receive benefits beyond the maximum retroactivity provided in the law, is if an appellant was incapacitated, and could not have applied at an earlier date.

³ See s. 28.1 (3) of the *Old Age Security Act*.

⁴ See s. 8 (2) of the *Old Age Security Act*.

[16] The test for incapacity is strict, and difficult to meet. To satisfy the test, an appellant must show that it is more likely than not that they lacked the capacity to form or express an intention to apply for the pension.

[17] The capacity to form or express an intention to apply for a benefit or pension is like the capacity to make other day-to-day choices or decisions in life.⁵

[18] An appellant must also show that they were continuously incapable of forming or expressing an intention to apply for their pension for the entire period they claim they were incapacitated.⁶

– **The Appellant hasn't claimed he was incapacitated**

[19] The Appellant hasn't argued that he was incapacitated and was unable to form or express an intention to apply for his pension at an earlier date.

[20] The Appellant told me he was experiencing depression and hardship, and that contributed to the delay in applying for the pension. He says he was overwhelmed by trying to operate his business post-pandemic, and caring for his sick parent.

[21] The Appellant wanted the Minister and the Tribunal to consider his time of hardship, and to pay the pension at an earlier date.

[22] The Appellant says he didn't know there was a timeline for applying that would affect him, otherwise he would have applied sooner.

[23] There is no medical evidence in the Tribunal file that suggests the Appellant was incapacitated at any time.

[24] The Appellant told me that while he was experiencing depression, he has never seen a physician or obtained treatment for that condition. He told me he has no evidence to support a claim of incapacity.

⁵ See s. 28.1 (3) of the *Old Age Security Act*.

⁶ See s. 28.1 (3) of the *Old Age Security Act* and *Flaig v Canada (Attorney General)*, 2017 FC 531.

[25] Based on the evidence before me, and the evidence I received from the Appellant at the hearing, I do not find that the Appellant was incapacitated at any relevant point in time before he applied for his OAS pension.

[26] While the Appellant felt overwhelmed by his work and caregiving responsibilities at the time he turned 65, he wasn't incapable of forming an intention to apply for his pension.

I have to follow the law

[27] The law does not give me the power to consider exceptional or mitigating circumstances when I am making a decision about retroactive pension benefits.

[28] I must follow what the law says about how far back a pension may be paid before the application was made.

Conclusion

[29] I find that the Appellant isn't entitled to receive his OAS pension earlier than April 2023.

[30] This means the appeal is dismissed.

Sarah Sheaves

Member, General Division – Income Security Section