



Citation: *HS v Minister of Employment and Social Development*, 2025 SST 652

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: H. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 23, 2023 (issued
by Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: February 4, 2025

Hearing participant: Appellant

Decision date: February 14, 2025

File number: GP-24-160

Decision

[1] The appeal is allowed in part.

[2] The Appellant, H. S., is entitled to payment of the Guaranteed Income Supplement for the period from July 2021 to June 2022. However, she isn't entitled to the GIS for the period from July 2020 to June 2021. This decision explains why I am allowing the appeal in part.

Overview

[3] The Appellant applied for an Old Age Security (OAS) pension and the GIS on July 9, 2019. The Minister approved her application for an OAS partial pension. On June 14, 2022, the Appellant requested a reconsideration regarding the GIS benefit. She asked for retroactive GIS benefits to 2019.

[4] On October 23, 2023, the Minister maintained its decision to deny her GIS benefits for the periods of July 2020 to July 2021 and July 2021 to June 2022.

[5] The Minister now concedes in its submissions that she is eligible for the GIS for the period of July 2021 to June 2022, which it says will be paid to her when this appeal concludes. However, the Minister says that she is not eligible for the GIS for the period from July 2020 to June 2021 because she did not provide the required income information on time. The Minister also says that she does not meet the incapacity requirements as defined in the *OAS Act*.

[6] The Appellant says that she is entitled to the GIS for the period from July 2020 to June 2021. She could not provide the required income information sooner due to incapacity. Her family physician completed a Declaration of Incapacity to show that she has been incapable since November 21, 2017 and that her incapacity is ongoing.

What I have to decide

[7] Is the Appellant entitled to the GIS for the periods from July 2020 to June 2021 and from July 2021 to June 2022?

[8] Was the Appellant incapable of completing her application for the GIS for the period from July 2020 to June 2021?

Reasons for my decision

- **The Appellant is entitled to the GIS for the period from July 2021 to June 2022.**

[9] The Minister now concedes, and I find, that the Appellant is entitled to the GIS for this period. The Minister confirmed that the Appellant's income for 2020 was received by the Canada Revenue Agency (CRA) and provided to the Minister in June 2022. This allows the Minister to make a retroactive payment to the Appellant for the period from July 2021 to June 2022.

[10] The Minister says that the Appellant is owed \$4,952.46 and that this will be paid to her at the conclusion of this appeal.

- **The Appellant is not entitled to the GIS for the period from July 2020 to June 2021.**

[11] In her letter dated June 8, 2022,¹ the Appellant says that she only recently filed her taxes due to extenuating circumstances. She had a left total knee replacement in November 2017. She then did physiotherapy. Her pain increased in 2020, which exacerbated her mental health conditions (moderate to severe anxiety disorder and OCD). As a result, she could not attend to her financial affairs for some time. She also did not know how to file her taxes. She previously relied on her sister to do it for her, but her sister passed away in January 2021. She had to hire a firm to assist her.

[12] The OAS does not allow the payment of the GIS to begin earlier than 11 months prior to the month the application is received or deemed to have been made.²

¹ See page GD2-25

² See paragraph 11(7) of the OAS

[13] In order to qualify for the GIS for the period of July 2020 to June 2021, the Appellant had to provide an income statement for the year 2019. If she had filed her taxes for the year 2019, the CRA would have provided the Minister a CRA income transmission.

[14] As of October 2023, the Appellant and CRA still had not provided the 2019 income statement. Even if they had, however, this still would have been too late because the OAS only allows 11 months of retroactivity. This means she is not eligible for the GIS for the period from July 2020 to June 2021.

[15] The Appellant acknowledges that she did not provide the income statement in time, but says there are extenuating circumstances that should be considered.

[16] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. I am required to interpret and apply the provisions as they are set out in the CPP. I cannot use the principles of equity or consider extenuating circumstances to allow her a longer period of retroactivity.

- **The Appellant was not incapable of completing her application for the GIS for the period from July 2020 to June 2021 sooner.**

[17] The Appellant acknowledges that she did not provide the 2019 income statement in time. She says that she was incapable of providing it sooner.

[18] However, the Appellant did not meet the test for incapacity, so she is not entitled to the GIS from July 2020 to June 2021.

[19] To be able to use the incapacity provisions, the Appellant had to prove it is more likely than not that she was continuously incapable of forming or expressing an intention to make an application sooner. I have a lot of sympathy for the Appellant. I know she has health problems and challenges. But, she does not meet the test for incapacity. Here is why.

[20] It is not easy to prove incapacity. It does not matter if the Appellant did not know she had to apply, or could not fill out the application form. She had to be incapable of forming or expressing an intention to apply. This is no different from having the capacity to form an intention to make other relevant choices in life.³

[21] In deciding if the Appellant met the test for incapacity, I had to look at medical evidence, as well as evidence of what else she was doing during the period she says she did not have capacity to apply for the GIS.⁴

[22] I considered the medical evidence since November 21, 2017, which is when the Appellant claims her incapacity began.

[23] Dr. Brian Strom is the Appellant's family physician. Dr. Strom completed a Declaration of Incapacity on April 18, 2024, writing that her incapacity began on November 21, 2017 and is ongoing. The medical conditions causing her incapacity were noted to be OCD and failed arthroplasty of her left knee.

[24] There is also a medical report dated January 28, 2023 from Dr. Strom noting that the Appellant suffers from longstanding mental illness, from which she experiences severe anxiety and paranoid thoughts. She has found it almost impossible to leave her home since the Covid-19 pandemic. For this reason, she was unable to attend a Service Canada location to complete the required documents.

[25] I am satisfied the Appellant's physical and mental health conditions resulted in functional limitations by November 2017. But, that does not mean that she was incapable of forming or expressing an intention to apply for the GIS.

[26] In addition to the medical reports, I also have to look at the Appellant's activities since November 2017 to see what they show about her capacity.

³ *Canada (Attorney General) v. Kirkland*, 2008 FCA 144

⁴ *Attorney General of Canada v Danielson*, 2008 FCA 78; *Grosvenor v Attorney General of Canada*, 2018 FC 36

[27] The Appellant told me that she had left knee surgery on November 17, 2017. The surgery was unsuccessful.

[28] Prior to her surgery, she was working at X. She was unable to return to her regular duties because of her physical limitations. She retired from X in November 2018.

[29] She applied for short term disability benefits, which were approved. She then applied for long term disability benefits, which were approved for a five-month period until she turned 65 years old. She applied for, and received, employment insurance sickness benefits. She tried to extend her medical coverage, but this was not approved because she missed a deadline.

[30] She confirmed that she completed the necessary applications for short and long term disability benefits and for EI sickness benefits. She also brought the required forms to her doctor to be completed.

[31] The Appellant also confirmed that she has been attending physiotherapy and other medical appointments alone since her surgery. She is usually dropped off at her appointments by her son-in-law or daughter. She attends the appointments alone. She is able to consent to and make decisions about her treatments. After her appointments, she will either wait until her son-in-law or daughter can pick her up or book an Uber to drive her home. She tries to be as independent as possible so that she is not a burden.

[32] Since the surgery, she is living in an apartment owned by her brother. However, she spends most of her time at her daughter's home. She helps her daughter by supervising her grandchildren. She pays her brother to cover the maintenance fees for the apartment. She has her own bank account and manages her own finances. She pays her phone bill.

[33] Since her surgery, she has had difficulty walking. She also has difficulty leaving her home due to OCD. This made it difficult to tend to her financial affairs. In addition, her sister used to file her taxes for her, but she passed away in January 2021. The Appellant had to hire H&R Block for assistance. With their help, she was able to file her taxes for the years 2019, 2020, and 2021.

[34] There are additional documents on file indicating that the Appellant maintained the ability to complete and sign various forms and letters. For example,

- She applied for the OAS pension and the GIS on July 4, 2019
- She wrote a letter to Service Canada dated June 8, 2022
- She provided a statement of estimated income for the years 2019, 2020, and 2021 on July 17, 2022
- She wrote letters to Service Canada on September 30, 2022 and January 31, 2023

[35] Despite her medical conditions and functional limitations, she does not meet the test for incapacity.

[36] At the hearing, the Appellant answered my questions in a straightforward manner. I believe what she told me. However, the evidence shows she could attend medical appointments on her own, consent to and make decisions about treatment, manage her financial affairs, complete and sign forms, apply for benefits, write letters, and hire assistance to file her taxes.

[37] For these reasons, the Appellant was not incapable of forming or expressing an intention to apply for the GIS. She does not meet the test for incapacity.

Conclusion

[38] I find that the Appellant is not entitled to the GIS for the period from July 2020 to June 2021. I find that she is entitled to the GIS for the period from July 2021 to June 2022.

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

Lianne Byrne

Member, General Division – Income Security Section