Citation: *CW v Minister of Employment and Social Development*, 2025 SST 732

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	C. W.
Representative:	K. W.
Respondent:	Minister of Employment and Social Development
Representative:	Viola Herbert

Decision under appeal:	General Division decision dated August 2, 2024 (GP-24-280)

Tribunal member:	Pierre Vanderhout
Type of hearing:	In Writing
Decision date:	July 16, 2025
File number:	AD-24-741

Decision

[1] The appeal is dismissed. The income of the Appellant's spouse should be considered when determining her entitlement to the Guaranteed Income Supplement (GIS). This finding does not affect her entitlement to the Old Age Security (OAS) pension.

Overview

[2] In this appeal, I will refer to the Appellant, C. W., as the "Claimant." I will refer to her husband, G. G., as the "Claimant's Spouse." I will refer to the Respondent, the Minister of Employment and Social Development, as the "Minister."

[3] The Claimant is 71 years old. She has lived most of her life in Canada. She married the Claimant's Spouse in September 2008.[1] They lived together in Israel until January 2015.[2] The Claimant moved back to Canada in January 2015 to look after her elderly mother. Her mother was a Holocaust survivor with multiple medical conditions, including dementia. Her mother passed away in January 2025, at the age of 104.

[4] The Claimant's Spouse has remained in Israel since January 2015. His adult son (the Claimant's Stepson) lives 800 metres away from him. The Claimant's Stepson has Bipolar Disorder and the Claimant's Spouse sometimes cares for him around the clock during manic episodes. However, the Claimant's Spouse also continues to work as a part-time university instructor and a freelance consultant. I see no dispute that he and the Claimant lived separately until at least January 2025.

[5] The Claimant applied for the OAS pension and the GIS on June 30, 2022.[3] The Minister originally denied her application because she was late in responding to a request from the Minister. However, on reconsideration, the Minister granted her a full OAS pension in February 2023. Her OAS pension effective date was July 2021. But the

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[1] See GD2-29.
[2] See GD2-7 and GD2-50.
[3] See GD2-3.

Minister did not have enough information to decide her request for the GIS.[4] The GIS period under review was from July 2021 to June 2022.

[6] The Minister did not issue a reconsideration decision about the GIS until December 2023. At that time, the Minister appeared to grant the GIS. However, the GIS payable was zero. The Minister said no GIS was payable because the combined income for the Claimant and the Claimant's Spouse was too high.[5] In other words, the Minister considered the income of both the Claimant and her husband.

[7] The Claimant appealed that decision to the Social Security Tribunal (Tribunal). She said she and her husband lived apart for reasons not attributable to either of them. As a result, she said her GIS entitlement should not consider her husband's income. She said her GIS entitlement should be determined as if she were single. The Tribunal's General Division dismissed the appeal in August 2024. The Claimant then requested leave to appeal at the Tribunal's Appeal Division.

[8] One of my Appeal Division colleagues granted the Claimant leave to appeal. As a result, she was entitled to a *de novo* hearing at the Appeal Division. However, she requested a hearing "in writing" at the Appeal Division. She is entitled to her choice of hearing.[6] Accordingly, I have based my decision on the materials in the file. I did not hold an oral hearing.

[9] In this appeal, I must decide whether the Claimant's GIS entitlement should consider the income of the Claimant's Spouse.

[10] I find that the Claimant's GIS entitlement should consider the income of the Claimant's Spouse. I will now explain why.

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[4] See GD2-68.
[5] See GD2-71.
[6] See section 2(1) of the *Social Security Tribunal Regulations, 2022*.

Issue

[11] The issue in this appeal is whether the income of the Claimant's Spouse should be considered when assessing the Claimant's GIS entitlement.

Analysis

[12] If an OAS recipient is legally married or in a common-law relationship, her GIS entitlement is based on the combined income of the OAS recipient and her spouse.[7]

[13] However, section 15(3) of the *Old Age Security Act* (OAS Act) contains a limited exception (which I'll call the "Exception") that may apply to the Claimant. The relevant parts of the Exception are:

> 15(3). Where an application for a supplement in respect of any payment period has been made by a person, the Minister may, after any investigation of the circumstances that the Minister considers necessary, direct that the application be considered and dealt with as though the person did not have a spouse or common-law partner on the last day of the previous payment period, in any case where…
>
> > (b) the Minister is satisfied that the person, as a result of circumstances not attributable to the person or the spouse or common-law partner, was not living with the spouse or common-law partner in a dwelling maintained by the person or the spouse or common-law partner at the time the application was made. [emphasis added]

Should the income of the Claimant's Spouse be considered when assessing the Claimant's GIS entitlement?

[14] For the reasons below, I find that the income from the Claimant's Spouse should be considered.

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[7] See, generally, section 12 of the *Old Age Security Act*.

[15] I am satisfied that the Claimant did not live with the Claimant's Spouse for the period starting in January 2015 and lasting until at least January 2025. This covers the period when the Claimant first applied for the OAS pension and the GIS. While she and the Claimant's Spouse sometimes see each other, she lived in and maintained a dwelling in Côte-Saint-Luc, Québec, at all material times.[8] The Claimant's Spouse lived in and maintained a dwelling in Israel at all material times.[9]

[16] I will now look more closely at why the Claimant and the Claimant's Spouse were not living together.

– **Why the Claimant was living in Canada**

[17] The Claimant believed the Exception applied to her when she first applied for the GIS. She said she took on the role of primary (and often sole) caregiver to her mother. Her mother was by then 101 years old and still living in her home. The Claimant lived there too. Her mother suffered from dementia and could no longer walk. The Claimant's Spouse affirmed this.[10] Dr. Stoyanova (home care physician) also affirmed the main medical conditions.[11]

[18] The Claimant's mother relied entirely on the Claimant, as a close family member, for whatever sense of security and familiarity she had.[12]

[19] In June 2023, Dr. Stoyanova said the Claimant was the primary caregiver for her mother. Besides companionship, the Claimant gave medication and oversaw her mother's diet, meals, and medical treatments. Dr. Stoyanova said the Claimant's constant presence was an essential component of her mother's health and well-being. Dr. Stoyanova said this was why the Claimant lived apart from the Claimant's Spouse, who had family and other obligations in Israel.[13]

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[8] See, for example, GD2-3, GD2-11, GD2-26, GD2-50.
[9] See, for example, GD2-7, GD2-16, GD2-26.
[10] See GD2-26 and GD2-27.
[11] See GD2-64.
[12] See GD1-9.
[13] See GD2-64.

[20] In November 2024, Ms. Choinier (occupational therapist) said the Claimant's mother was dependent on caregivers and the Claimant to meet her needs in all areas of daily living. The Claimant's mother benefited from being in familiar surroundings, with familiar and consistent people providing her with care. Due to her complex situation, her care needs were best met within the home environment. She also had neuropathy and arthritis.[14]

[21] Ms. Choinier said the needs of the Claimant's mother were even more complex because she had "sundowning." This meant she began to speak only Hungarian (her native language). She also had behavioural and psychological symptoms of dementia. Finally, her diaper intolerance led to numerous and unpredictable transfers to a commode.[15]

[22] In January 2025, Dr. Lapierre affirmed the medical conditions and limitations described by Dr. Stoyanova and Ms. Choinier. Dr. Lapierre also said the Claimant's mother had post-traumatic stress disorder (PTSD) because of her wartime experience. The Claimant had been her primary caregiver since 2015.[16]

[23] Dr. Lapierre said the Claimant's constant presence was an essential component of her mother's health and well-being. It was also essential that her mother remain at home in familiar surroundings. Dr. Lapierre said an assisted care institution likely could not provide the constant commode transfers required. For this, and other reasons, it was best for the Claimant to be at home with her mother. The Claimant was a "crucial intermediary," as she communicated on her mother's behalf and ensured caregiving was always present.[17]

[24] Dr. Lapierre said these circumstances required the Claimant to live apart from her husband since 2015, as he had family and other obligations in Israel.[18]

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[14] See AD7-32.
[15] See AD7-32.
[16] See AD7-29.
[17] See AD7-29 and AD7-30.
[18] See AD7-30.

– **Why the Claimant's Spouse was living in Israel**

[25] The Claimant said the Claimant's Spouse was obliged to stay in Israel due to professional and family obligations. He had two children from a previous marriage. He affirmed this explanation.[19] The Claimant added that the Claimant's Spouse did not provide her with any financial support. His friends and community were also in Israel.[20]

[26] The Claimant's Spouse said his son received the Bipolar disorder diagnosis after his first manic attack in 2012. The Claimant's Spouse said he was the primary care giver and life anchor for his son, as his ex-wife lived in Switzerland. He saw and helped his son daily when his son was depressed. He became a "24/7" caregiver during his son's manic phases. He said he could not leave for more than one weekend at a time. This meant his visits to the Claimant could only last for 8 to 11 days.[21]

[27] The Claimant's Spouse said he also had work commitments in Israel. He said he had an obligation, going back 40 years, to teach public health to university students. He was also a freelance health consultant. However, even if he fully retired, he said he would have to remain in Israel because of his son.[22]

[28] Dr. Lichtenberg (psychiatrist) affirmed that the Claimant's Stepson had been diagnosed with Bipolar disorder (Type I) following an initial manic-psychotic episode in 2012. He has had major manic-psychotic or manic episodes on roughly a yearly basis since then. These mostly required hospital stays or residential inpatient treatment ranging from weeks to several months. He also had inter-episodic depressive episodes. These affected his educational, occupational, and social functioning.[23]

[29] Dr. Lichtenberg said the Claimant's Stepson had a recurrent manic psychotic episode in December 2022 that included messianic ideation. He also had intermittent suicidal ideation, without actual plans. Dr. Lichtenberg said intense intervention was

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[19] See GD2-26 and GD2-27.
[20] See GD1-9.
[21] See GD3-2.
[22] See GD3-2.
[23] See GD3-4 and GD3-6.

needed: 2-3 psychotherapist visits per week, and 1-2 psychiatrist visits per month (4 in the event of a relapse).[24]

[30] I will now discuss a potentially binding decision of the Federal Court.

– **Decisions that are binding on the Tribunal**

[31] Decisions by the Federal Court, the Federal Court of Appeal, or the Supreme Court of Canada are binding on the Tribunal. This means that, if they interpret the law in a particular way, I cannot deviate from their interpretation unless the current appeal is distinguishable.

[32] Those higher courts have rarely reviewed the exact meaning of the Exception. The parties have acknowledged only one binding case about the Exception: a 2005 Federal Court decision called *Leavitt*.[25]

[33] The Claimant's factual situation is different from the factual situation in *Leavitt*. However, when I decide whether *Leavitt* is distinguishable, I must look at how *Leavitt* interprets the law. A different factual backdrop is only relevant if it means the law must be applied differently.

– **Is the key finding in *Leavitt* binding, or can it be distinguished?**

[34] I find that *Leavitt* contains a binding statement of law about the Exception that I must follow. I will now explain that binding statement.

[35] When the Exception was legislated, the December 1970 second reading included the following comments from the Honourable John Munro (Minister of National Health and Welfare):[26]

> "Other changes in the legislation have also been proposed to make it more equitable... In cases where one spouse is in a hospital, a nursing home or other

[24] See GD3-6.
[25] See *Canada (Minister of Human Resources Development) v Leavitt*, 2005 FC 664 ("*Leavitt*")
[26] See AD6-17. See also *Leavitt*, at paragraph 25.

> institution and the other spouse has to live alone with the same costs as a single person, that spouse can be treated as though he were single."

[36] A parliamentary White Paper about the Exception and other provisions contained essentially the same language. The relevant part of the White Paper said:[27]

> "This provision will assist in those cases where one spouse is in a hospital, a nursing home or other institution and the other spouse has to live alone with the same costs as a single person."

[37] In *Leavitt*, the Federal Court considered these references. The Federal Court concluded that the objective of the Exception was to address the situation, "where one partner was in a hospital or nursing home or other care facility."[28] I will call this the "Key Leavitt Finding." In my view, the Key Leavitt Finding clearly declares that one of the spouses must be the person who is in the hospital, nursing home, or other care facility.

[38] The key issue in *Leavitt* was whether the incapacitated spouse could still be considered single despite returning to the matrimonial home from a nursing home. That is not the fact situation in the present appeal. However, the Key Leavitt Finding is not confined to that fact situation. I see no qualification on the Key Leavitt Finding. It clearly states that the Exception applies when one of the spouses is in a care facility.

[39] I see no obvious error with the Key Leavitt Finding. The Federal Court said it considered "the clear words of [the Exception], the overall scheme of the OAS Act and the intent of Parliament" in reaching its conclusion.[29] As shown in the statements from the relevant White Paper and Parliamentary second reading, the Court did consider the intent of Parliament. While the Federal Court did not make an explicit conclusion about the OAS Act's overall scheme, it still showed an awareness of that scheme.[30]

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[27] See *Leavitt*, at paragraph 26. The White Paper was from the 28th Parliament, and was called *Income Security for Canadians.* Appendix I - "*Guaranteed Income Security for the Aged*". The cited passage appears at page 42.
[28] See *Leavitt*, at paragraph 27.
[29] See *Leavitt*, at paragraph 28.
[30] See *Leavitt*, at paragraph 7.

[40] I see no other binding decisions on this point. In a 2020 decision called *DP*, the Tribunal's General Division referred to the *Leavitt* decision.[31] Other Tribunal decisions are not binding, although they can have persuasive value. However, I saw no statement of law in the *DP* decision that could provide more guidance in applying the Key Leavitt Finding.

[41] In *DP*, one spouse had dementia. That spouse had to move into a secure, long-term care facility. As a result, the spouses were deemed separated due to circumstances not attributable to either of them.[32] This was the facility type that *Leavitt* said the Exception was meant to address. But, as in *Leavitt*, the person who had to move into a care facility was one of the spouses. It wasn't another family member, like the Claimant's mother or the Claimant's Stepson in this appeal.

[42] I therefore conclude that the Key Leavitt Finding binds me. The Key Leavitt Finding is not distinguishable. This means that the Exception cannot apply, as neither spouse is in a hospital, nursing home, or other care facility. This is the essence of *stare decisis*.[33]

[43] This would normally mark the end of my decision. However, I would like to briefly comment on two other aspects of the appeal. The first aspect arises from the Leave to Appeal Decision. The second aspect arises from the extensive arguments made about the Exception in this appeal. I will first comment on the Leave to Appeal Decision.

– The Leave to Appeal Decision

[44] The Leave to Appeal Decision suggested two potential errors of law. The first potential error of law was that the General Division didn't cite a particular part of *Leavitt* requiring the Exception to exclude situations outside of hospitals, care facilities, or nursing homes.[34] The second potential error of law was that the General Division

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[31] See *DP v Minister of Employment and Social Development*, 2020 SST 331.
[32] See *DP v Minister of Employment and Social Development*, 2020 SST 331, at paragraphs 25-26.
[33] This is the principle of following decisions made in previous cases. See the online Cambridge Dictionary at STARE DECISIS | English meaning - Cambridge Dictionary (retrieved July 14, 2025).
[34] See paragraph 14 of the Leave to Appeal Decision dated November 8, 2024 (LTA Decision).

misinterpreted *Leavitt* and did not provide a full analysis of the text, context, and purpose of the Exception.[35]

[45] The Leave to Appeal Decision only identifies potential errors of law. This does not mean that the General Division necessarily made errors of law.

[46] The Leave to Appeal Decision "opens the door" to a fresh look at the merits by the Appeal Division. But, in that fresh look at the merits, the Appeal Division's focus is not on addressing potential errors of law by the General Division.

[47] In this case, my analysis of the Key Leavitt Finding led me to conclude I was bound by that aspect of *Leavitt*. I ultimately did not rely on the same aspects of *Leavitt* as the General Division. It is not necessary to address the potential errors identified in the Leave to Appeal Decision.

– **The arguments about the Exception**

[48] As noted in *Leavitt*, the Exception has two requirements. The first requirement is that the situation faced by the person is, "as a result of circumstances not attributable to the person or spouse". The second requirement is that the person is, "not living with the spouse...in a dwelling maintained by the person or spouse".[36] The parties did not dispute the second requirement. But they had different views on interpreting the phrase, "as a result of circumstances not attributable to the person or spouse."

[49] The Minister said the Claimant and the Claimant's Spouse made a conscious decision to live apart. The Minister said the decision was in their control and not imposed on them. As a result, the Minister said they did not fall within the Exception.

[50] The Claimant and the Claimant's Spouse said they lived apart for reasons beyond their control: namely, she was the primary caregiver for her mother, and he had

[35] See paragraph 16 of the LTA Decision.
[36] See *Leavitt*, at paragraph 18.

family (his son) and other obligations. She also said social benefits legislation should be given a “fair, large, and liberal...interpretation” in her favour.[37]

[51] As the Key Leavitt Finding binds me, I cannot explore this issue further. But I will comment on one aspect of the Claimant’s submissions.

[52] I accept that many people would, if in the Claimant’s (or her husband’s) situation, choose to live where they could provide care for a needy family member. In fact, many people would not see it as a choice. They would feel compelled to provide that care. That is what both the Claimant and her husband have done. It is honourable and admirable. It speaks to their concern for their mother and son, respectively. However, this is not something that I could consider in my decision.

Conclusion

[53] The appeal is dismissed. The income of the Claimant’s Spouse should be considered when determining the Claimant’s entitlement to the GIS. The Exception does not apply to her.

Pierre Vanderhout
Member, Appeal Division

[37] This wording appears in section 12 of the *Interpretation Act.*