



Citation: *CP v Minister of Employment and Social Development*, 2025 SST 752

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: C. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated July 8, 2024 (issued by
Service Canada)

Tribunal member: Lianne Byrne

Type of hearing: Teleconference

Hearing date: February 13, 2025

Hearing participant: Appellant

Decision date: April 10, 2025

File number: GP-24-1738

Decision

[1] The appeal is dismissed.

[2] The Appellant, C. P., resided in Canada for 12 years. She isn't entitled to a greater period of residence in Canada for the purposes of calculating the amount of her OAS partial pension.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant was born in Romania on April 8, 1956. She came to Canada on November 19, 1994.

[5] The Appellant applied for an OAS pension on August 3, 2021. She said she wanted her pension to start as soon as she qualified.

[6] The Minister of Employment and Social Development (Minister) allowed the Appellant's application.¹ She was determined to qualify for an OAS partial pension of 12/40^{ths} beginning May 2021. The Appellant does not agree with the Minister's decision regarding the periods of residence used to calculate her OAS pension. She appealed the Minister's decision to the Social Security Tribunal's General Division.

[7] The Appellant says that she resided in Canada for 13 years from November 19, 1994 until December 31, 2007. She also contributed to the United States Social Security system from 2000 to 2022, which is 92 quarters of coverage. She does not agree that any periods of overlap between her residence in Canada and the quarters of coverage in the US should be deducted from her residence in Canada.

[8] The Minister says that the evidence indicates that she has 12 years and 212 days of residence in Canada. She did not live in Canada for the period from June 18,

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 GD2-3.

2007 to December 31, 2007. As a result, she does not qualify for a higher rate for her OAS partial pension. The Minister also says that it cannot use the full 88 quarters of coverage in the United States because the *OAS Act* does not allow coverage in the United States during the same period she is considered a resident in Canada. The period of coverage in the United States also cannot be counted after her 65th birthday, which was on April 8, 2021.

What the Appellant must prove

[9] The Appellant has already qualified for an OAS partial pension. The issue in this appeal is whether the Appellant is entitled to a greater period of residence in Canada for the purposes of calculating the amount of her pension benefits.

[10] The Appellant has to prove she resided in Canada for 13 years. She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she resided in Canada during the relevant periods.²

Reasons for my decision

[11] I find that the Appellant isn't eligible for a greater period of residence in Canada. She didn't reside in Canada for the 13 years that she claims.

[12] I considered the Appellant's eligibility from November 19, 1994, up to and including April 8, 2021.

[13] I chose the first date because this is when she arrived in Canada.

[14] I chose the second date because this is when she reached the age of 65 years old.

[15] Here are the reasons for my decision.

² See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

The test for residence

[16] 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.

[17] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.³

[18] A person is **present** in Canada when they are physically present in any part of Canada.⁴

[19] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:⁵

- where she had property, like furniture, bank accounts, and business interests
- where she had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where she had other ties, like medical coverage, rental agreements, mortgages, or loans
- where she filed income tax returns
- what ties she had to another country
- how much time she spent in Canada
- how often she was outside Canada, where she went, and how much time she spent there
- what her lifestyle was like in Canada
- what her intentions were

³ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁴ See section 21(1)(b) of the OAS Regulations.

⁵ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia 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.

[20] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.⁶

When the Appellant resided in Canada

[21] The Appellant resided in Canada from November 19, 1994, up to and including June 18, 2007.

[22] The Appellant **didn't reside in Canada** from June 19, 2007, up to and including December 31, 2007.

– The Appellant resided in Canada from November 19, 1994, up to and including June 18, 2007

[23] The Appellant resided in Canada from November 19, 1994 to June 18, 2007.

[24] The Appellant first entered Canada as a permanent resident on November 19, 1994. Her record of landing confirms this.⁷ The parties agree, and I find, that this is when her residence in Canada began.

[25] The parties also agree, and I find, that the Appellant remained a resident of Canada until at least June 18, 2007. This means she resided in Canada for at least 12 years and 212 days.

[26] The parties do not agree on the date the Appellant's residence in Canada ended. The Appellant says she remained a resident in Canada until December 31, 2007, which would give her 13 years of residence in Canada. The Minister, on the other hand, says that her residence in Canada ended on June 18, 2007.

[27] The Appellant provided inconsistent evidence regarding the date she stopped residing in Canada. In her application, she wrote that she began residing in the United States on June 18, 2007.⁸ She went on to explain that she kept her house in Windsor, Ontario even after she moved to the United States until March 27, 2009, when the

⁶ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

⁷ See page GD1-50

⁸ See page GD2-20

house was finally sold. She continued to pay property taxes in Canada. The Minister used this date, June 18, 2007, to calculate the amount of the Appellant's OAS partial pension.

[28] Since filing her application, the Appellant has provided a new date of departure from Canada. She now says she left Canada at the end of 2007. She says she remained a resident in Ontario, but worked in Michigan as a daily commuter. She says that between Christmas 2007 and New Year's 2008, she moved her belongings to her son's apartment in Michigan. She submits that this is when her residence in Canada ceased.

[29] She also testified the following:

- Her husband remained in Windsor, Ontario until their home was sold in 2009.
- She commuted to work in Michigan until the end of 2007 because she was responsible for cooking for her husband and cleaning their home in Windsor, Ontario. She did not explain why this responsibility changed after December 31, 2007 even though her husband remained in their Windsor, Ontario home.
- She continued banking at the Royal Bank of Canada in Windsor, Ontario until the end of 2007.
- She spent most of her time at the University of Windsor library studying for an exam.
- She paid the mortgage, utilities, and property taxes for her home in Windsor, Ontario.
- She owned a car in Canada.

[30] Although I accept that the Appellant had ongoing personal and other ties to Canada until December 31, 2007 and beyond, including her husband remaining in Canada, the ongoing ownership of her home, and paying Canadian taxes, she also had

personal and other ties in the United States, including her son residing in Michigan, her work in Michigan, and paying taxes in the United States.

[31] The Appellant provided inconsistent dates regarding the date she ceased residing in Canada. She did not provide a reasonable explanation for why she initially said she left Canada on June 18, 2007. She also has not provided documentation to support that she remained a resident of Canada until the end of 2007.

[32] While it is true that she provided her 2007 Canadian Income Tax Return, she also acknowledges that she was paying taxes in the United States at the same time.

[33] The Appellant also provided an Employment Authorization Card that was valid from November 16, 2007 to November 15, 2008.⁹ She wrote that this is the first step to obtaining permanent resident status in the United States. However, this does not assist in determining the date she stopped residing in Canada.

[34] Given that she had ties to both countries, she provided inconsistent departure dates, she did not provide a reasonable explanation for this inconsistency, and she did not provide documents to support her departure in December 2007, I find that she stopped residing in Canada on June 18, 2007.

[35] This gave her 12 years of Canadian residence.

The Appellant has residence in Canada from an agreement with the United States of America.

[36] Canada has a social security agreement with the United States of America. This means that the time the Appellant worked in the United States of America counts toward her eligibility for an OAS pension.¹⁰

⁹ See page GD2-11

¹⁰ Section 40 of the OAS Act allows the Government of Canada to make this agreement.

[37] The government of the United States of America provided information that shows that the Appellant worked in the United States from 2000 to 2021.¹¹ This gave her 88 quarters of coverage.

[38] Each quarter of coverage is equal to three months of residence in Canada.¹² However, the Agreement does not permit quarters of coverage to be used for totalization purposes if they overlap with periods of residence in Canada.¹³ Only one period can be counted.

[39] For this reason, the Appellant's quarters of coverage from January 2000 to June 2007 cannot be used for totalization purposes. This means that 30 quarters should be deducted. Also, the Appellant turned 65 years old on April 8, 2021. This means that 3 more quarters should be deducted. This leaves her with 55 quarters of coverage that can be used for totalization purposes.

[40] The Minister calculated this to give her 13 years and 294 days of residence

[41] If I had to decide whether the Appellant had enough years of residence to qualify for an OAS pension, I could add this time to her years of actual residence in Canada. However, that is not the issue in this appeal. She was already qualified for an OAS partial pension. International agreements cannot be used to increase the amount of the Appellant's OAS partial pension.

The Appellant isn't eligible for an increase to her OAS pension benefit

[42] The Appellant isn't eligible for an increase in her OAS pension benefit because she didn't reside in Canada longer than 12 years. The Minister allowed the Appellant's OAS partial pension at a rate of 12/40, which is appropriate given that she has 12 years of residence in Canada.

¹¹ See page GD2-43

¹² Article VIII, paragraph 3(b) of the Agreement

¹³ Article VIII, paragraph 3(a) of the Agreement

Conclusion

[43] The Appellant isn't eligible for an increase in the amount she receives for her OAS partial pension.

[44] This means the appeal is dismissed.

Lianne Byrne

Member, General Division – Income Security Section