



Citation: *SM v Minister of Employment and Social Development*, 2025 SST 669

**Social Security Tribunal of Canada**  
**General Division – Income Security Section**

## Decision

**Appellant:** S. M.  
**Representative:** A. G.

**Respondent:** Minister of Employment and Social Development

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<b>Decision under appeal:</b>	Minister of Employment and Social Development reconsideration decision dated September 4, 2024 (issued by Service Canada)
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**Tribunal member:** Wayne van der Meide

**Type of hearing:** Videoconference

**Hearing date:** June 19, 2025

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** June 20, 2025

**File number:** GP-24-1976

## Decision

[1] The appeal is dismissed.

[2] The Appellant, S. M., isn't eligible for an Old Age Security (OAS) pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant turned 65 years old on May 2, 2024. She first came to Canada as a permanent resident on September 27, 2013. Since then, she has spent time in Canada and India.

[4] The Appellant says when she first arrived in Canada she moved here to live with her only son and grandchild. Although she had to go back to India regularly to take care of her mother, she only stayed in India longer than a year once and that was because of Covid-19 travel restrictions.

[5] The Minister says that the Appellant didn't establish that she lived in Canada until May 3, 2015, and that after that she only resided in Canada when she was present in Canada. The Minister says when the Appellant was in India, she wasn't residing in Canada.

## What the Appellant must prove

[6] To receive a **full** OAS pension, the Appellant must prove she resided in Canada for at least 40 years after she turned 18.<sup>1</sup> This rule has some exceptions. But the exceptions don't apply to the Appellant.<sup>2</sup>

[7] If the Appellant doesn't qualify for a full OAS pension, she might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a

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<sup>1</sup> See section 3(1)(c) of the OAS Act. The Appellant must also be at least 65 years old and a Canadian citizen or legal resident of Canada. And she must have applied for the pension. The Appellant has met these requirements.

<sup>2</sup> See section 3(1)(b) of the OAS Act.

person resided in Canada after they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[8] To receive a partial OAS pension, the Appellant must prove she resided in Canada for at least 10 years after she turned 18. But, if the Appellant didn't reside in Canada the day before her application was approved, she must prove she already has 20 years of residence.<sup>3</sup>

[9] The Appellant must prove she resided in Canada. She must prove this on a balance of probabilities. This means she must show it is more likely than not that she resided in Canada during the relevant period.<sup>4</sup>

## Reasons for my decision

[10] I find that the Appellant isn't eligible for a partial pension because she hasn't resided in Canada for 10 years.

### The test for residence

[11] 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 must use these definitions in making my decision.

[12] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.<sup>5</sup>

[13] A person is **present** in Canada when they are physically present in any part of Canada.<sup>6</sup>

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<sup>3</sup> See section 3(2) of the OAS Act.

<sup>4</sup> See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>5</sup> See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

<sup>6</sup> See section 21(1)(b) of the OAS Regulations.

[14] When I am deciding whether the Appellant resided in Canada, I must look at the overall picture and factors such as:<sup>7</sup>

- 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

[15] This isn't a complete list. Other factors may be important to consider. I must look at **all** of the Appellant's circumstances.<sup>8</sup>

### **When the Appellant resided in Canada**

[16] I find that the Appellant resided in Canada from:

- May 3, 2015, to December 2, 2019
- December 8, 2021, to the date of the hearing (June 19, 2025)

[17] These are my reasons.

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<sup>7</sup> 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.

<sup>8</sup> See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

– **The Appellant's presence in Canada**

[18] How much time an appellant spends in and outside of Canada is relevant to determining where they resided. This table shows when the Appellant was present in Canada and when she was abroad:

<b>From</b>	<b>To</b>	<b>Days</b>	<b>Country</b>
2013-09-27	2013-10-16	20	Canada
2013-10-16	2014-03-23	157	India
2014-03-23	2014-05-06	45	Canada
2014-05-06	2015-05-03	361	India
2015-05-03	2015-10-05	156	Canada
2015-10-05	2016-04-25	202	India
2016-04-25	2016-12-02	221	Canada
2016-12-02	2017-11-16	348	India
2017-11-16	2018-09-17	306	Canada
2018-09-17	2019-07-29	314	India
2019-07-29	2019-12-02	127	Canada
2019-12-02	2021-12-08	736	India
2021-12-08	2022-10-24	321	Canada
2022-10-24	2023-04-01	158	India
2023-04-01	2025-02-27	698	Canada
2025-02-27	2025-03-18	19	India
2025-03-18	2025-06-19	93	Canada

– **Factors which support that the Appellant resided in Canada**

[19] At the hearing the Appellant told me that when she arrived in Canada as a permanent resident in September 2013 she intended to stay in Canada with her only son. She lives with her son. She has had a family doctor in Canada since 2016. She said she wanted to get a job in Canada, but her health doesn't allow her to work. She has a Canadian bank account. She volunteers at her temple.

– **Factors which suggest that the Appellant continued to reside in India when she was present in India**

[20] The Appellant still owns a home in India. She said she didn't sell it earlier because it is a family home and her mother lived in it until she died in December 2023. Since then, she has been waiting for a better market to sell her home. She still has a bank account in India as well.

– **The Appellant didn't establish residence in Canada until May 3, 2015**

[21] The Appellant's first two trips to Canada lasted only 20 and 45 days respectively. She said she converted all of her savings into Canadian dollars and brought it with her along with gifts for her grandson. I understand that she only stayed in Canada for short periods because she had to go back to India to take care of her mother. But I find that because she didn't sever her ties with India or spend significant time living with her son in Canada these trips didn't establish residency.

– **The Appellant started to reside in Canada on May 3, 2015**

[22] On May 3, 2015, the Appellant came to Canada and spent 156 days here. She lived with her only son and grandson. She had a Canadian bank account and a family doctor. She spent time with her grandson and participated in the activities of her local temple.

[23] I find that even though she still had property and family ties to India (her mother) she established residency in Canada on May 3, 2015. She intended to and did live in Canada with her son and grandson.

– **The Appellant's absences in India from October 5, 2015, and July 29, 2019, were temporary and didn't interrupt her residence in Canada**

[24] Section 21(4)(a) of the *Old Age Security Regulations* says a person's residence in Canada isn't interrupted by an interval of absence that is of a temporary nature and no more than one year long.

[25] The Appellant's three absences from Canada during the disputed period were all less than one year long. I find that they were all of a temporary nature. They were for the specific purpose of caring for her mother.

[26] The Appellant's home remained in Canada during this period. Although she had a home in India, she maintained that home for her mother. She told me at the hearing, and I believe her, that when she first came to Canada she intended to move here to be with her only son and grandson.

- **The Appellant's residence was interrupted from December 2, 2019, to December 8, 2021**

[27] The Appellant was in India from December 2, 2019, to December 8, 2021. She says that she didn't come back to Canada sooner because of Covid-19 travel restrictions. The law doesn't make an exception for Covid-19 travel restrictions. Besides, her absence from Canada of 736 days is too long to be considered temporary, especially since she still had a home in India and was taking care of her mother, which was an important family tie.

- **The Appellant's absences from Canada from October 24, 2022, to March 18, 2025, were temporary and didn't interrupt her residence in Canada**

[28] The Appellant had two absences from Canada during this period. The first was 158 days long and was spent taking care of her mother. The second absence was only for 19 days to take care of financial and legal matters in India. I find that both absences were temporary and didn't interrupt her residence in Canada.

## **Conclusion**

[29] I find that the Appellant has resided in Canada for a total of 2,963 days or just over eight years. This is less than the minimum of 10 years of residence required to qualify for an OAS pension.

[30] That means the appeal is dismissed.

Wayne van der Meide  
Member, Social Security Tribunal