



[TRANSLATION]

Citation: *GI v Minister of Employment and Social Development*, 2025 SST 83

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

### **Decision**

**Appellant:** G. I.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated January 18, 2024  
(issued by Service Canada)

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**Tribunal member:** Antoinette Cardillo

**Type of hearing:** In writing (at the Appellant's request)

**Decision date:** January 10, 2025

**File number:** GP-24-549

## Decision

- [1] The appeal is dismissed.
- [2] The Appellant, G. I., isn't eligible for a partial Old Age Security (OAS) pension of 18/40. He is eligible for a partial OAS pension of 17/40.
- [3] Payments start in January 2021.
- [4] This decision explains why I am dismissing the appeal.

## Overview

- [5] The Appellant was born in Haiti on November 18, 1952. He first came to Canada in September 1979.
- [6] The Appellant applied for an OAS pension on December 22, 2016. The Minister of Employment and Social Development (Minister) refused his application. The Appellant appealed this decision to the Tribunal's General Division.
- [7] On June 30, 2020, the Tribunal dismissed the appeal in part.<sup>1</sup> The Tribunal determined that the Appellant wasn't a resident of Canada the day before the Appellant's OAS pension application was approved—that is, November 17, 2017 (the day before he turned 65). The Appellant also wasn't a resident when he returned to Canada on January 16, 2020. The Appellant didn't have a minimum of 20 years of Canadian residence after he turned 18, so he could not receive the OAS pension and the Guaranteed Income Supplement.
- [8] But the Tribunal determined that the Appellant was a resident of Canada from September 3, 1979, to December 12, 1979, and from April 2, 1997, to July 1, 1997. This was in addition to the period already accepted by the Minister, from December 13, 1979, to April 1, 1997. This totalled 17 years and 302 days.

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<sup>1</sup> See decision at GD2-280.

[9] The Appellant appealed this decision to the Tribunal's Appeal Division.

[10] On October 23, 2020, the Appeal Division determined that the General Division hadn't made an error and that the appeal should be dismissed.<sup>2</sup>

[11] The Appellant applied again for an OAS pension on September 17, 2020.<sup>3</sup> The Minister refused the application. The Appellant asked the Minister to reconsider its decision.

[12] In the reconsideration decision letter dated January 18, 2024, the Minister determined that the Appellant had re-established his residence in Canada on June 12, 2019.<sup>4</sup> The Minister also specified that the Appellant had 17 years of Canadian residence in the past and that he qualified for an OAS pension in September 2019. The Minister gave him a partial pension of 18/40 from October 2019, the date of the maximum retroactivity of the start date of the payment.

[13] The Appellant appealed this decision to the Tribunal.

[14] The Appellant says that he should receive a partial pension of 19/40, not 18/40. He says that he had 17 years and 10 months of residence in the past. He would have one year and four months of residence since his return—from June 12, 2019, to September 17, 2020. That would total 19 years and two months.

[15] On September 26, 2024, the Minister changed its position.<sup>5</sup> It asked the Tribunal to consider December 16, 2020, as the date of the Appellant's final return and not June 12, 2019, as it had determined in its January 18, 2024, decision letter. The Minister explained its change in position by saying that the date the Appellant re-established his residence in Canada could not be earlier than June 30, 2020, the date of the Tribunal's decision. On that date, the Tribunal had confirmed that the Appellant was still not a resident of Canada. So, the Appellant would be eligible for a partial pension of

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<sup>2</sup> See the Appeal Division decision at GD2-304.

<sup>3</sup> See the application at GD2-3.

<sup>4</sup> The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD1-8.

<sup>5</sup> See the Minister's submissions at GD07.

17/40 from January 2021, not for a partial pension of 18/40 from October 2019, as the Minister had determined on January 18, 2024.

[16] The Minister says that the Tribunal's June 30, 2020, decision is final. That decision established that the Appellant wasn't a resident of Canada from July 2, 1997, to the date of the Tribunal's decision. This decision was upheld by the Tribunal's Appeal Division. So, the Appellant can't now challenge this decision through this appeal, which is only about his new OAS pension application filed on September 17, 2020. The Minister says that only the period after June 30, 2020, can be reviewed by the Tribunal at this time.

## OAS pension

[17] To receive a **full** OAS pension, a person has to prove they resided in Canada for at least 40 years after they turned 18.<sup>6</sup>

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

[19] To receive a partial pension, the Appellant has to prove he resided in Canada for at least 10 years after he turned 18. But, if the Appellant didn't reside in Canada the day before his application was approved, he has to prove he already has 20 years of residence.<sup>7</sup>

[20] The total number of years of residence in Canada is rounded down.<sup>8</sup> Also, years of residence after an application for a partial pension has been approved can't affect the amount of the pension.<sup>9</sup>

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<sup>6</sup> See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. And he must have applied for the pension. The Appellant has met these requirements.

<sup>7</sup> See section 3(2) of the OAS Act.

<sup>8</sup> See section 3(4) of the OAS Act.

<sup>9</sup> See section 3(5) of the OAS Act.

## General Division's June 2020 decision

[21] I am bound by the decision made by the General Division on June 30, 2020, and upheld by the Appeal Division. Based on the evidence, the General Division found that the Appellant wasn't a resident of Canada the day before his OAS pension application was approved—that is, November 17, 2017. He also wasn't a resident when he returned to Canada on January 16, 2020. The Appellant didn't have a minimum of 20 years of Canadian residence after he turned 18 to qualify for the OAS pension.

[22] The General Division acknowledged that the Appellant had resided in Canada only from September 3, 1979, to December 12, 1979; from December 13, 1979, to April 1, 1997 (period accepted by the Minister); and from April 2, 1997, to July 1, 1997. This totalled 17 years and 302 days.

[23] The General Division's June 30, 2020, decision is final. So, I can't find that the Appellant was a resident of Canada before June 30, 2020, because the Tribunal has already decided that he wasn't.

### ***Res judicata***

[24] There is a rule of law called *res judicata*. This principle is intended to resolve disputes.<sup>10</sup> In other words, when the Tribunal makes a decision about an appellant's residence, the issue can't be decided again.

[25] I have decided that *res judicata* applies to the Appellant's appeal because it meets all three conditions.

[26] The Supreme Court of Canada has developed the following three preconditions for *res judicata* to apply:<sup>11</sup>

1. The same issue must have been decided in an earlier proceeding.
2. The prior judicial decision must have been final.

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<sup>10</sup> See *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44.

<sup>11</sup> See *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44.

3. The parties to both proceedings, or their privies, must be the same.

[27] The issues in both appeals are the same. The previous appeal was about whether the Appellant was a resident of Canada to qualify for a partial OAS pension based on the number of years of residence in Canada. In this appeal, I have to determine the same issue. The General Division has already ruled on the Appellant's residence until June 2020, and the Appeal Division upheld that decision. The issue before me is still about whether the Appellant qualifies for a partial OAS pension based on the number of years of residence in Canada, but as of July 2020.

[28] The General Division decision was appealed to the Appeal Division. The Appeal Division upheld the General Division decision. So, the General Division decision is final.<sup>12</sup>

[29] And finally, the parties are the same in both appeals. It is still the Appellant and the Minister.

[30] Having found that the criteria for *res judicata* have been met, I will now decide whether I can use my discretion to waive *res judicata*.

[31] To make this decision, I have to consider the following factors established by the Supreme Court:

- i. the wording of the legislation granting the power to make the administrative order
- ii. the purpose of the legislation
- iii. the availability of an appeal
- iv. the safeguards available to the parties in the administrative proceeding
- v. the expertise of the administrative decision maker
- vi. the circumstances giving rise to the prior administrative proceeding
- vii. the potential injustice

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<sup>12</sup> See GD-19-1994 and AD-20-728. The Appeal Division found that the Tribunal's General Division didn't make an error and upheld the General Division decision.

[32] I see no problem with the wording or purpose of the legislation. The Appellant used his right to appeal the General Division's June 2020 decision. The Appeal Division upheld this decision. Both General Division and Appeal Division decision makers had expertise in the area of OAS.

[33] It also doesn't appear that procedural safeguards weren't available. The Appellant knew the case he had to make. He was given an opportunity to present his arguments.

[34] I also find that applying *res judicata* isn't unfair.<sup>13</sup> Even though the Appellant says that the General Division illegally expanded its mandate by extending it until the date of its June 2020 decision, that this is a technical error, and that the General Division must stick to its mandate, which was about whether he qualified for the OAS pension after he applied in December 2016, I have no reason to determine that there will be an injustice in applying *res judicata* to this appeal.<sup>14</sup>

[35] So, I can't decide whether the Appellant was a resident of Canada before June 30, 2020. The Tribunal has already decided that this wasn't the case.

## Reasons for my decision

[36] In my view, the Appellant is eligible for a partial pension of 17/40 the full amount.

[37] In its June 30, 2020, decision, the Tribunal already decided that the Appellant had resided in Canada for the following periods:

- September 3, 1979, to December 12, 1979
- December 13, 1979, to April 1, 1997 (period accepted by the Minister)
- April 2, 1997, to July 1, 1997

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<sup>13</sup> See *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44. The Supreme Court of Canada established a list of relevant factors to consider when deciding whether a strict application of the principle of *res judicata* results in an injustice.

<sup>14</sup> See GD10-4, GD10-9, and GD11-2.

[38] This represents a total of 17 years and 302 days.

[39] The Minister says that the Appellant now resides in Canada and asks the Tribunal to consider December 16, 2020, as the date of his final return. Before he left Canada in July 1997, the Appellant had valid legal status and had 17 years and 302 days of residence since turning 18. So, from his return date of December 16, 2020, the Appellant could be eligible for an OAS pension in January 2021, the month after the month where all eligibility requirements are met.

[40] The Minister says that the OAS pension rate should be 17/40 and not 18/40, contrary to what the Minister had established on January 18, 2024.

[41] Based on the evidence since June 2020, I find that the Appellant returned to Canada on December 16, 2020.<sup>15</sup> Based on his passport stamps and a questionnaire signed on December 14, 2023, he has hardly been absent from Canada since December 2020.<sup>16</sup> He no longer has a link to Haiti, and he lives with his family in Canada. The Appellant has been registered for low-cost housing since 2021.<sup>17</sup> According to a vehicle scrapping contract, he has a car that he took off the road in May 2023.<sup>18</sup>

[42] So, he re-established his residence in Canada on December 16, 2020. Based on the years of residence acknowledged by the Tribunal in June 2020 and by the Minister on September 26, 2024, the Appellant resided in Canada for a period of 17 years and 302 days: from September 3, 1979 (the date of his first entry into Canada), to July 1, 1997; and from December 16, 2020 (the date of his return and re-establishment in Canada).

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<sup>15</sup> See passport stamp at GD2-382 and 384.

<sup>16</sup> See passports at GD2-375 to 384, GD2-388 to 390, and the questionnaire at GD2-351 to 354.

<sup>17</sup> See GD2-360 to 366.

<sup>18</sup> See GD2-367.

[43] Under the *Old Age Security Act* (OAS Act) the total number of years of residence in Canada must be rounded down.<sup>19</sup> So, the Appellant's period of residence in Canada is 17 years.

[44] Where an applicant qualifies for a pension and has reached the age of 65 years before the day the application was received (as in the Appellant's case), the approval of the application will be effective as of the latest of:<sup>20</sup>

- a) the day that is one year before the day the application was received

*September 2019 (Appellant's application received in September 2020)*

- b) the day the applicant reached the age of 65 years

*November 2017*

- c) the day the applicant became qualified for a pension under sections 3 to 5 of the OAS Act

*December 2020*

- d) the month before the date specified in writing by the applicant

*The Appellant indicated on his application as soon as he qualified.*

[45] This means that the Appellant's application was approved in December 2020.

[46] Payments start the month after all eligibility requirements are met, that is, in January 2021.

## Conclusion

[47] The Appellant isn't eligible for a partial pension of 18/40 the full amount. He is eligible for a partial pension of 17/40.

[48] Payments start in January 2021.

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<sup>19</sup> See section 3(4) of the OAS Act.

<sup>20</sup> See section 8 of the OAS Act and section 5 of the *Old Age Security Regulations*.

[49] This means the appeal is dismissed.

Antoinette Cardillo

Member, General Division – Income Security Section