



[TRANSLATION]

Citation: *LM v Minister of Employment and Social Development*, 2024 SST 1551

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** L. M.

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

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**Decision under appeal:** General Division decision dated  
October 9, 2024 (GP-24-571)

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**Tribunal member:** Jude Samson

**Decision date:** December 16, 2024

**File number:** AD-24-734

## Decision

[1] Permission to appeal is refused. The appeal won't go ahead.

## Overview

[2] L. M. is the Applicant in this case. The Minister of Employment and Social Development (Minister) issued two reconsideration decisions that created overpayments in the Applicant's account.

[3] The Minister made its **first decision** in December 2018. This was about the Applicant's marital status. According to the Minister, the Applicant had been in a common-law relationship with her spouse since July 2011, when she was being paid the Guaranteed Income Supplement (GIS) at the single rate. As a result, the Minister asked the Applicant to repay an overpayment of \$43,389.99.

[4] The Minister made its **second decision** in February 2024. That one was about the Applicant's income. The Minister says it calculated the amount of the GIS the Applicant was entitled to based on a family income of \$13,177.00, while her family income was \$13,295.00. So, the Minister asked the Applicant to repay an overpayment of \$14.00.

[5] The Applicant appealed to the General Division of the Social Security Tribunal. It dismissed her appeal. The General Division says that the Applicant wanted to appeal only the first decision. But it had jurisdiction only over the second decision. The General Division found that the Applicant hadn't appealed the first decision within the time limit set out in the law.<sup>1</sup>

[6] I find that the appeal doesn't raise an arguable case that the General Division made an error recognized by law. Also, the Applicant didn't provide any new evidence. So, I have no choice but to refuse permission to appeal.

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<sup>1</sup> See section 52 of the *Department of Employment and Social Development Act* (DESD Act).

## Issues

[7] The issues are the following:

- a) Could the General Division have made an error of fact when it found that the Applicant had received the Minister's first decision?
- b) Are there other reasons for giving permission to appeal?

## I am not giving the Applicant permission to appeal

[8] I can give permission to appeal if the Applicant has raised an arguable case in her application that the General Division:

- didn't follow a fair process
- acted beyond its powers or refused to use them
- misinterpreted the law or applied it incorrectly
- got the facts wrong<sup>2</sup>

[9] I can also give permission to appeal if the Applicant's application has evidence that wasn't presented to the General Division.<sup>3</sup>

### – The General Division didn't make an error of fact

[10] The Applicant says that the General Division made an error of fact because she never received the Minister's first decision. Since she didn't receive that decision, she argues that her appeal of the decision can't be late.

[11] The Applicant's argument doesn't raise an arguable case for the following reasons.

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<sup>2</sup> See sections 58.1(a) and 58.1(b) of the DESD Act.

<sup>3</sup> See section 58.1(c) of the DESD Act.

[12] First, the General Division was entitled to focus its decision on the Minister's second decision, since it was the only decision that was sent with her notice of appeal to the General Division.<sup>4</sup>

[13] Second, I can't fault the General Division for failing to consider an argument that it was never presented. The Applicant seems to be making this argument for the first time before the Appeal Division.

[14] Third, the General Division's finding that the Applicant received the Minister's second decision by January 2020 is supported by strong evidence.<sup>5</sup> Specifically, it is clear that the Applicant received the Minister's first decision because she mentioned it in a letter Service Canada received on January 20, 2020.<sup>6</sup> Also, she has to be aware of the consequences from the first decision, since the Minister has been deducting \$325 per month from her benefits since March 2020.<sup>7</sup>

– **There is no other reason to give permission to appeal**

[15] The Applicant's application doesn't have any new relevant evidence that wasn't before the General Division. So, I can't give her permission to appeal for this reason.

[16] In addition to the Applicant's arguments, I reviewed the file and the General Division decision. I have also listened to the audio recording of the General Division hearing.<sup>8</sup> But I haven't found any other reasons for giving permission to appeal.

[17] In her application to the Appeal Division, the Applicant repeated that she hadn't hidden anything and that she had always had her tax returns filed by responsible

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<sup>4</sup> The Applicant's notice of appeal to the General Division is at GD-1.

<sup>5</sup> See para 14 of the General Division decision.

<sup>6</sup> See GD2-258.

<sup>7</sup> See GD2-264.

<sup>8</sup> The Federal Court has said that I have to do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

people.<sup>9</sup> I don't doubt that. But she was also required to tell Service Canada about her change in marital status.<sup>10</sup> It wasn't enough to tell only the Canada Revenue Agency.<sup>11</sup>

[18] I sympathize with the Applicant. If she is in a difficult financial situation, she can consider asking the Minister (through Service Canada) to reduce the monthly amount deducted from her GIS payments.

## Conclusion

[19] Since the Applicant hasn't raised an arguable case and hasn't presented new evidence, I have to refuse permission to appeal. This means that the appeal won't go ahead.

Jude Samson  
Member, Appeal Division

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<sup>9</sup> See AD1 and AD1B.

<sup>10</sup> See section 15(9) of the *Old Age Security Act* (OAS Act).

<sup>11</sup> See *Barry v Canada (Attorney General)*, 2010 FC 1307.