



Citation: *TF v Minister of Employment and Social Development*, 2025 SST 897

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant: T. F.

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Decision under appeal: General Division decision dated January 7, 2025
(GP-24-699)

Tribunal member: Neil Nawaz

Type of hearing: In person

Hearing date: August 11, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: August 26, 2025

File number: AD-25-257

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to additional retroactive payments of the Old Age Security (OAS) pension. He was not incapacitated from applying for the pension before December 2022.

Overview

[2] The Appellant was born in the former Yugoslavia and immigrated to Canada in 1966. He is now 80 years old. In March 2010, he applied for the OAS pension.¹ Service Canada, the Minister's public facing agency, asked him to complete a questionnaire and to provide proof of residence in Canada. He did not respond, and Service Canada denied the Appellant's application because of insufficient documentation.²

[3] Years passed. In December 2022, the Appellant submitted a second application for the OAS pension.³ This time Service Canada approved the application, effective January 2022, which it said was the earliest payment date allowed under the law.⁴

[4] The Appellant's legal representative at the time sought additional retroactive pension payments. He claimed that the Appellant had been incapacitated for years and was incapable of managing his affairs. He appealed Service Canada's determination of the OAS pension first payment date to the Social Security Tribunal.

[5] The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It found insufficient evidence to show that the Appellant was incapable of forming or expressing an intention to make an application before December 2022. Among other things, the General Division noted that, while the Appellant's psychiatrist

¹ See the Appellant's first OAS pension application dated March 30, 2010, GD2R-6.

² See Service Canada's denial letter dated April 20, 2011, GD2R-10.

³ See the Appellant's first OAS pension application dated December 1, 2022, GD2R-6.

⁴ See Service Canada's approval letter dated April 26, 2023 (GD2R-27) and its reconsideration letter dated February 1, 2024 (GD2R-118). Under section 11(7)(a) of the *Old Age Security Act* (OAS Act), the earliest first payment date is 11 months before the date of application.

declared him incapacitated, he offered contradictory information as to when the incapacity might have begun.

[6] With the assistance of a friend, the Appellant then applied for permission to appeal to the Appeal Division. In April, one of my colleagues on the Appeal Division granted him permission to appeal. Earlier this month, I held a hearing to discuss his incapacity claim in full.

Issue

[7] In this appeal, I had to decide whether the Appellant was incapacitated from applying for the OAS pension before December 2022.

Analysis

[8] I have applied the law to the available evidence and concluded that the Appellant was not incapacitated before December 2022. I have no doubt that he has significant medical problems, but I couldn't find enough evidence to show that he was incapable of forming or expressing an intention to apply for the OAS pension earlier than he did.

The test for incapacity is specific

[9] Persons claiming incapacity must prove, on a balance of probabilities, that they were unable to form or express an intention to apply for OAS benefits such as the pension or the Guaranteed Income Supplement.⁵ That inability must be continuous from the date that they claim to have become incapacitated to the date that they actually submitted an application.⁶

[10] The incapacity provision is precise and focused. It does not require consideration of the capacity to make, prepare, process, or complete an application for benefits but only the ability to make or communicate a decision to do so.⁷ Capacity is to be

⁵ See OAS Act, section 28.1(1).

⁶ See OAS Act, section 28.1(3).

⁷ See *Canada (Attorney General) v Danielson*, 2008 FCA 78. This case, and others I will cite in this decision, addresses the *Canada Pension Plan*, but its incapacity provisions are nearly identical to those of the OAS Act.

considered in light of the ordinary meaning of the term and determined based on the medical evidence and on the claimant's activities. That capacity is similar to the capacity to form or express an intention with respect to other life choices.⁸

[11] In this case, the Appellant has produced evidence showing that he suffers from chronic pain and depression, but it doesn't show that he lacked the ability, when presented with specific options, to make informed life choices during the relevant period. As we will see, the Appellant may have lacked the **will** or the **initiative** to manage his life, but those are not the same things as lacking **capacity**.

The Appellant's medical reports do not indicate incapacity

[12] The Appellant has a long psychiatric history, but there was little in his medical file to indicate he has ever been incapacitated according to the standard set out by the *Old Age Security Act*.

[13] The Appellant sustained injuries in a 1984 workplace accident in which he fell on both knees and elbows. The earliest medical report on file is from 1991, when a psychiatrist assessed him for chronic pain and depression.⁹ At the time, he was found to be well oriented with respect to time, person, and place. He had reasonable judgement and insight.

[14] The Appellant underwent knee surgery in early 2004. At the time, his psychiatrist noted that the Appellant, who continued to suffer from chronic pain and depression, was upset that Ontario's Workplace Safety and Insurance Board (WSIB) wasn't paying him more for his impairment.¹⁰

[15] From 2008 to 2013, intermittent office notes by his psychiatrist indicate that the Appellant was in possession of his cognitive faculties and in a position to consent to treatment:

⁸ See *Sedrak v Canada (Minister of Social Development)*, 2008 FCA 86.

⁹ See report dated October 16, 1991 by Vinod Gangolli, psychiatrist, GD2R-107.

¹⁰ See report dated March 8, 2004 by Dr. R.K.R. Suprapaneni, psychiatrist, GD2R-88.

- In June 2008, the Appellant told Dr. Suprapaneni that he was going to have surgery on his back and that he was seeking advice on his WSIB claim.¹¹
- In November 2008, the Appellant told Dr. Suprapaneni that he had had knee surgery.¹²
- In February 2009, the Appellant told Dr. Suprapaneni that his insurance company was offering to compensate him for fire damage to his home; however, he also wanted to make a claim for pain and suffering and would need a letter for his lawyer.¹³
- In April 2009, the Appellant told Dr. Suprapaneni that his wife needed to apply for Ontario Disability Support Program benefits.¹⁴
- In August 2011, Dr. Suprapaneni noted that the Appellant was still wary of selling his building.¹⁵
- In November 2011, Dr. Suprapaneni said that the Appellant was taking his medications judiciously and that he intended to visit Cuba with his wife.¹⁶
- In February 2013, the Appellant told Dr. Suprapaneni that he had an MRI appointment scheduled for his shoulder and that he could not sleep because his legs were numb.¹⁷
- In May 2013, the Appellant told Dr. Suprapaneni that he needed hip surgery but was told he had to wait 17 months.¹⁸

[16] The above reports indicate that, for at least part of the period in which he claims to have been incapacitated, the Appellant had agency and was able to take steps to manage his healthcare and pursue benefits. The Appellant was elderly, and he was taking a number of powerful narcotic painkillers, but these factors did not prevent him

¹¹ See Dr. Suprapaneni's office note dated June 10, 2008, GD2R-76.

¹² See Dr. Suprapaneni's office note dated November 4, 2008, GD2R-73.

¹³ See Dr. Suprapaneni's office note dated February 5, 2009, GD2R-71.

¹⁴ See Dr. Suprapaneni's office note dated April 20, 2009, GD2R-72.

¹⁵ See Dr. Suprapaneni's office note dated August 22, 2011, GD2R-81.

¹⁶ See Dr. Suprapaneni's office note dated November 29, 2011, GD2R-82.

¹⁷ See Dr. Suprapaneni's office note dated February 13, 2013, GD2R-84.

¹⁸ See Dr. Suprapaneni's office note dated May 6, 2013, GD2R-83.

from discussing his problems with his psychiatrist, consenting to back, knee, and hip surgery, complaining about a waiting list for one of those procedures, and requesting medical documentation in support of his fire insurance claim.

[17] In my view, if the Appellant had the capacity to consent to manage his affairs from 2008 to 2013, then he likely also had the capacity to form or express an intention to apply for OAS benefits during that period.

A declaration of incapacity does not determine this matter

[18] Dr. Suprapaneni's last office note on file was in October 2013. There was then a nine-year gap in the medical record that ended in April 2022, when Dr. Suprapaneni wrote a letter in support of the Appellant's claim for additional retroactive OAS benefits.¹⁹ The psychiatrist said that the Appellant had been under his care since 1988 and suffered from chronic pain and major depression. He was now likely in the early stages of dementia. He was a "crippled" individual who had undergone two back surgeries and double knee and hip replacements. He was on several pain medications, including Dilaudid, Percocet, and OxyNeo.

[19] The following year, Dr. Suprapaneni wrote another letter, this time in support of the Appellant's claim for additional retroactive Canada Pension Plan (CPP) benefits.²⁰ He explained that, at the "crucial age" of 65, he was involved in two car accidents that had led to problems with his hips and knees. He said that the Appellant never had any idea to apply for CPP because he was "knocked off" with excessively high doses of narcotic medications. His memory was "clogged up," and his capacity to understand what was going on with regard to the CPP was "totally zero." He added that the Appellant was not aware of the availability of CPP benefits, even though he had lived in Canada for many years. He described the Appellant as "dull, apathetic, and helpless."

[20] I note that Dr. Suprapaneni did not explicitly raise the issue of capacity until the Appellant sought additional retroactive OAS benefits. Until then, there had been no

¹⁹ See Dr. Suprapaneni's letter dated April 15, 2022, GD2R-44.

²⁰ See Dr. Suprapaneni's letter dated August 16, 2023, GD2R-52.

mention of the Appellant's cognitive abilities in any of his previous notes or reports. Dr. Suprapaneni appeared to trace the Appellant's supposed incapacity to two car accidents in 2010, but his notes contained no specific mention of such accidents in that year or any of the following years, and there was nothing to suggest that the Appellant's mental condition deteriorated over that time. I also note that Dr. Suprapaneni apparently never inquired as to whether the Appellant was under power of attorney or considered referring him to the Office of the Public Guardian and Trustee.

[21] In October 2023, Dr. Suprapaneni completed and signed a declaration of incapacity form on the Appellant's behalf.²¹ Dr. Suprapaneni selected "yes" to the question of whether the Appellant's condition made him incapable of forming or expressing the intention to make an application. He said that the Appellant's incapacity was caused by severe arthritis, chronic pain, and depression. He said that the Appellant's incapacity was ongoing and began on December 10, 2010. He did not specify what had happened on that particular date to trigger the incapacity.

[22] I realize that, as his longtime treatment provider, Dr. Suprapaneni is intimately familiar with the Appellant's condition, but I gave his declaration of incapacity only so much weight. As noted, Dr. Suprapaneni's own notes suggest that the Appellant was in control of many aspects of his life. Moreover, his recent reports contain contradictions and omissions that raise doubts about their reliability. His declaration of incapacity said that the Appellant's incapacity began in December 2010 and was ongoing, but his most recent letter said that his incapacity began in 2008 and ended in 2022. That letter did not address the fact that the Appellant had somehow managed to apply for the OAS pension in March 2010.

[23] Ultimately, Dr. Suprapaneni's declaration of incapacity and his recent letters of support must be weighed against other evidence, which suggests that the Appellant was able to make informed life choices after 2010.²² In the end, it was witness testimony

²¹ See Dr. Suprapaneni's Declaration of Incapacity dated October 10, 2023, GD2R-62.

²² This approach is endorsed in a case called *Flaig v Canada (Attorney General)*, 2017 FC 531.

that convinced me that the Appellant was not incapacitated from making an OAS application before 2022.

The Appellant's own words suggested he had capacity

[24] The Appellant testified on his own behalf, and he brought two witnesses. However, I heard nothing in their testimony to suggest that he lacked the ability to form or express an intention to apply for OAS benefits before December 2022.

[25] The Appellant answered questions about his life since 2010. He appeared oriented and seemed to understand the purpose of the hearing. While he may not have appreciated every nuance of the test for capacity, he was fully aware that additional OAS money was on the line and that, to get it, he had show he was previously not mentally fit to make an application.

[26] English is the Appellant's second language and, although he had access to an interpreter, he preferred to speak without translation. His testimony was sometimes difficult to follow, and his thoughts were often scattered, but he was still able to give me a sense of the challenges he has faced over the past 15 years.

[27] The Appellant said that for years he has had intense back pain, for which he has been prescribed several powerful painkillers, including Dilaudid (six per day), Percocet (as needed), and oxycodone (three per day). His problems got worse after a motor vehicle accident in 2014. He needed back surgery, but his surgeons told him that his heart is weak. He said that if his heart were stronger, he'd go ahead with the surgery.

[28] He was divorced 14 or 15 years ago. After his home was damaged in a fire, he moved to a rental property. A few years later, he bought out his wife's share of another house that they still jointly owned. She wanted to move back to Cuba and care for her elderly mother. With the help of his lawyer, he obtained a loan from a private lender, secured by the house.

[29] I asked the Appellant why he applied for the OAS pension when he did. He replied that his friend, P. S., suggested it to him after he told him he needed money. He had no recollection of applying for the OAS pension in 2010.

[30] The Appellant's testimony told me that he has experienced more than his fair share of misfortune over the years, but it also suggested that he has been able to take steps to address his problems when necessary. He acted on his ex-wife's desire to buy out her share of a jointly owned property so that he could return to her home country. He took out a loan to make that transaction happen. He applied for a government pension when his finances reached a breaking point. He wanted back surgery and was frustrated by his surgeons' reluctance to provide it.

[31] The fact that the Appellant needs prodding to take action does not mean he is incapacitated; it only means that he, like most of us, sometimes relies on the counsel and assistance of others to deal with life's challenges.

[32] The Appellant's consumption of narcotic painkillers did give me pause, and I wondered whether the doses he was prescribed might have impaired his cognition. However, I considered evidence that the Appellant has been taking strong pain medications for many years, before and during his period of alleged incapacity. I noted that they had not prevented him from managing his affairs or from applying for OAS benefits the first time.

[33] There was also the testimony of the Appellant's nephew, N. S., who said that his uncle had been on heavy painkillers since his workplace injury in 1984. However, he said that the Appellant was sharper when he took medications; he became "clueless" only when they wore off. This evidence was the opposite of what I had expected, but it nevertheless suggested that there were periods in which the Appellant was relatively aware and alert.

[34] As well, I heard testimony from P. S., the friend who helped the Appellant apply for OAS benefits in 2022. He said that he had known the Appellant since 2015 and had helped him sort out various legal and financial problems over the years.

[35] Mr. S., a retired lawyer, emphasized that the Appellant is capable of doing certain things in a day-to-day context; he can get up and get ready and accomplish personal tasks, such as getting his hair cut. But he has significant problems managing money and property. He has had default judgments registered against him on a number of occasions. He once entered into an extremely one-sided joint venture that led to the loss of one of his properties. When they first met each other, the Appellant had two properties under power of sale and another under foreclosure. He wouldn't rent any of them out, and he wouldn't sell any of them either. He didn't understand that his debt load was becoming increasingly unmanageable and that he lacked the means to maintain all three properties. One of his lawyers thought he needed a litigation guardian.

[36] Mr. S. said that it's not that the Appellant makes bad decisions — he makes no decisions. He's had 10 lawyers, but he can't absorb the information they give him. He pestered the Appellant to apply for an OAS pension, but he never did. Finally, when his financial situation became dire, he prevailed upon the Appellant to sign an application, although he completed most of it on his friend's behalf. Asked whether he had any qualms about, in effect, coercing what he described as an incompetent person to apply for government benefits, he replied that he didn't — it was for the Appellant's own good.

[37] Everyone would benefit from having a friend as good as Mr. S., but his testimony failed to convince me that the Appellant was incapacitated according to the statutory definition. It's clear that the Appellant has neglected his affairs and made some unwise financial decisions, but neither rise to the level of incapacity.

[38] What initially held the Appellant back from applying for OAS benefits was a lack of awareness about them. Later, after Mr. S. told him about the benefits, he refused to apply for them. When he finally submitted an application with Mr. S.'s help in December 2022, his mental capacity appears to have been much the same as it had been years earlier. The difference was a dramatic deterioration in the Appellant's finances, which finally compelled him to make a claim for a much-needed income stream. The evidence shows that, when faced with an imminent threat of bankruptcy or homelessness, he was able to form a specific intention to apply for the OAS pension.

[39] It must be remembered that “forming” an intention calls for mental activity only. The Appellant’s diagnosed conditions — chronic pain, depression, and possibly drug dependency — may have interfered with the Appellant’s **will** to make an application, but I don’t see how they diminished his essential **cognitive powers** to form an intention to make an application. The record shows that, when the Appellant was given options and advised which one to choose, he was able to form a specific intention to accomplish a specific action to prevent a foreseeable outcome.²³

***Blue* has limited relevance to this case**

[40] The test for incapacity has been illuminated by two recent Federal Court of Appeal cases. *Blue* involved a claimant who was functional in many ways (for instance, she was raising her young daughter as a single mother), yet she was still found to be incapacitated for CPP purposes.²⁴ However, Ms. Blue introduced specific psychiatric evidence that the very thought of having to formally document her mental health issues before a government authority sent her into a paralyzing dissociative state. The Appellant has no comparable evidence.

[41] The Court made it clear that *Blue* was exceptional:

Before concluding, it must be noted that this is a most unusual case. In many cases, the ability of an individual to carry on ordinary life activities may well be indicative of their capacity to formulate or express the intent to apply for a disability pension. However, in this case, Ms. Blue’s disability, while severe, is narrowly focussed, with both her trauma and her mental health issues arising out of or relating to engagement with hospitals, the medical profession and persons in authority.²⁵

[42] As if to reinforce that point, the Federal Court of Appeal soon issued a decision in a case called *Walls* that upheld a finding of capacity, even though the claimant suffered from physical and mental impairments that put him into a “vegetative zombie-like mental state.”²⁶ In that case, the Court found that Mr. Walls, unlike Ms. Blue, did not produce

²³ See *Grosvenor v Canada (Attorney General)*, 2018 FC 36.

²⁴ See *Blue v Canada (Attorney General)*, 2021 FCA 211.

²⁵ See *Blue*, *supra*, paragraph 45.

²⁶ See *Walls v Canada (Attorney General)*, 2022 FCA 47.

the kind of psychological evidence needed to discount his day-to-day activities during his claimed period of incapacity.

[43] That is true of this case too. The Appellant has submitted medical evidence indicating that he suffers from chronic pain and depression, but it does not show that he lacked the ability, when presented with specific options, to make informed life choices during the relevant period. As we have seen, the Appellant may have lacked **initiative**, but that is not the same thing as **capacity**.

[44] The available written and oral evidence suggests that, prior to December 2022, the Appellant made decisions and took actions that were not dissimilar from forming an intention to make an application for benefits.

Conclusion

[45] Although I tried, I couldn't find a way to grant the Appellant additional retroactive benefits. In the end, there simply wasn't enough evidence that he lacked the capacity to form or express an intention to apply for the OAS pension before December 2022. For that reason, he is not entitled to receive payments earlier than January 2022.

[46] The appeal is dismissed.



Member, Appeal Division