



[TRANSLATION]

Citation: *AL v Minister of Employment and Social Development and The Estate of MC*, 2024 SST
1651

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: A. L.

Respondent: Minister of Employment and Social Development

Added Party: The Estate of M. C.

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

Tribunal member: Antoinette Cardillo

Type of hearing: Teleconference

Hearing date: October 8, 2024

Hearing participants: Appellant
Added Party's representative
Minister's representative (present but didn't participate
in the hearing—technical issue prevented the member
from admitting him to the hearing)

Decision date: December 20, 2024

File number: GP-24-846

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. L., isn't eligible for the Guaranteed Income Supplement (GIS) as a single person, but rather as a person in a common-law relationship for the period from June 2020 to April 2023.

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

Overview

[4] The Minister of Employment and Social Development (Minister) started paying the Appellant an Old Age Security (OAS) pension in November 2010—the month after he turned 65.¹

[5] A person who receives an OAS pension is also eligible for the GIS if they meet certain requirements. For example, their income needs to be below a certain level. And they have to stay in Canada.

[6] The Minister started paying the Appellant the GIS in November 2010. The GIS benefits were given to him on a single person basis.

[7] After investigating, the Minister decided that the GIS had to be paid to the Appellant as a person in a common-law relationship, rather than as a single person. So, the Minister asked him to pay back \$8,890.74 for the period from June 2020 to April 2023 because his marital status changed.

[8] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

¹ The Minister of Employment and Social Development manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD2J-91.

[9] The Appellant alleges that the Minister made an administrative error by not considering his marital status that was reported to the Canada Revenue Agency (CRA).

[10] The Minister says that the Tribunal doesn't have jurisdiction to hear appeals on the grounds of alleged administrative error or erroneous advice.

The GIS

– Conditions for receiving GIS benefits

[11] The GIS is paid to the recipient of an OAS pension who meets certain conditions.

[12] The GIS amount depends on the person's income. If the person has a spouse or a common-law partner, the income of that spouse or common-law partner is considered when deciding whether the person is eligible for the GIS and how much they will receive in benefits.²

[13] Every person by whom an application for a supplement in respect of a payment period is made shall, in the application, state whether the person has or had a spouse or common-law partner at any time during the payment period or in the month before the first month of the payment period, and, if so, the name and address of the spouse or common-law partner and whether, to the person's knowledge, the spouse or common-law partner is a pensioner.³ An applicant who becomes the spouse or common-law partner of another person, ceases to have a spouse or common-law partner, or separates from their spouse or common-law partner, has to let the Minister know right away.

– Tribunal's jurisdiction

[14] The Minister's decisions about administrative errors can't be subject to review by the Tribunal.⁴ Applications alleging administrative errors are subject to judicial review and have to be brought before the Federal Court of Canada.

² See sections 15(1) and (9) of the *Old Age Security Act* (OAS Act).

⁴ See sections 27.1(1), 27.1(2), and 28(1) of the OAS Act.

Reasons for my decision

[15] I am of the view that the Appellant isn't eligible for the GIS as a single person, but rather as a person in a common-law relationship for the period from June 2020 to April 2023.

[16] On April 1, 2011, the Appellant applied for the GIS, and he submitted a Statutory Declaration of Common-law Union saying that he had been in a common-law relationship since December 2009. His GIS was recalculated starting in January 2011 to reflect his marital status. He received a retroactive underpayment of \$1,460.45 for the period from January 2011 to August 2011.

[17] On April 11, 2018, the Appellant sent a voluntary separation form starting on October 5, 2017. The GIS was recalculated to reflect this new change in his marital status. The calculation was based on a single person starting in February 2018. He received an underpayment of \$332.78 for the period from February 2018 to April 2018.

[18] After an investigation into discrepancies between the marital status that the Appellant reported to the CRA and Service Canada, he is considered to have been in a common-law relationship since June 1, 2019. His GIS benefits have been recalculated based on family income since July 2020.

[19] Since the common-law relationship started on June 1, 2019, it is recognized as effective from June 2020. So, the Appellant was asked to pay back a \$8,890.74 overpayment for the period from June 2020 to April 2023, reflecting his new marital status and the couple's total income.

[20] The Appellant doesn't dispute the facts about his common-law relationship that started in June 2019. But he disputes the fact that Service Canada didn't consider that his marital status was reported to the CRA, and that he isn't at fault.

[21] Unfortunately, the Appellant's spouse died in October 2023. The Minister recalculated his GIS benefits. An underpayment of \$1,893.80 was created for the period

from November 2023 to April 2024. This underpayment was applied to the amount that the Minister was claiming.

[22] So, the debt claimed is \$6,996.94.

[23] After the Appellant's request for reconsideration, the Minister upheld the initial decision and offered him recourse to the Tribunal. But the Tribunal doesn't have jurisdiction to hear appeals on the grounds of an alleged administrative error. The Minister should have offered him recourse to the Federal Court in its April 8, 2024, reconsideration decision letter.

[24] The Minister has now committed to providing a new recourse to the Federal Court. This will allow the Appellant, if he wants, to file an application for judicial review as soon as the Tribunal gives a decision.⁵

Conclusion

[25] The Appellant isn't eligible for the GIS as a single person, but rather as a person in a common-law relationship for the period from June 2020 to April 2023.

[26] This means that the appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security Section

⁵ See GD4-7.