



[TRANSLATION]

Citation: *LM v Minister of Employment and Social Development*, 2025 SST 470

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

# Decision

**Appellant:** L. M.

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

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated March 26, 2024 (issued  
by Service Canada)

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**Tribunal member:** François Guérin

**Type of hearing:** Videoconference

**Hearing date:** February 6, 2025

**Hearing participants:** Appellant  
Respondent (also referred to as the Minister)  
Respondent (Observer)

**Decision date:** February 7, 2025

**File number:** GP-24-936

## Decision

[1] The appeal is dismissed.

[2] The Appellant, L. M., isn't eligible to receive the Allowance (ALW) retroactively for more than 11 months before the month the ALW application was received.

[3] Her spouse, J. G., also isn't eligible to receive the Guaranteed Income Supplement (GIS) retroactively for more than 11 months before the month the GIS application was received.

[4] The Social Security Tribunal (Tribunal) doesn't have jurisdiction over the issue of administrative error.

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

## Overview

[6] J. G., the Appellant's spouse, was born on November 24, 1952. He applied for an Old Age Security (OAS) pension on February 12, 2018.<sup>1</sup> In that application, he asked to be considered for the GIS.<sup>2</sup> The Minister approved the OAS application on February 26, 2018, for a full pension effective December 2017.<sup>3</sup> The forms he needed to fill out to establish his eligibility for the GIS were sent to him on February 26, 2018.<sup>4</sup>

[7] The Minister received J. G.'s initial GIS application on January 12, 2023, through his spouse L. M.'s OAS application, which was filed on January 12, 2023.<sup>5</sup> It was processed on February 21, 2023. And the Minister retroactively paid J. G. the GIS benefits allowed under the *Old Age Security Act* (OAS Act), effective February 2022.<sup>6</sup>

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<sup>1</sup> See GDJ2-3 to GDJ2-6.

<sup>2</sup> See section 11 at GDJ2-4.

<sup>3</sup> See the bottom of the page at GDJ2-6.

<sup>4</sup> See GDJ2-22.

<sup>5</sup> See GD2-3 to GD2-6.

<sup>6</sup> See GDJ2-22.

[8] L. M. was born on July 30, 1957, and applied for the ALW on May 17, 2023.<sup>7</sup> She applied for an OAS pension on January 12, 2023. It was approved on August 10, 2023. The Minister retroactively paid L. M. the AWL benefits allowed under the OAS Act, using the date her OAS application was received, effective February 2022.<sup>8</sup>

[9] This appeal is about J. G. and L. M.'s request for more retroactivity of their GIS and ALW than the 11 months allowed under the OAS Act.<sup>9</sup>

### **What is J. G. and L. M.'s position?**

[10] J. G. argues that he was eligible for the GIS starting when he turned 65, that an error was made in the analysis of his file, and that the involuntary separation from his spouse should have been considered in the analysis of his file.<sup>10</sup>

[11] L. M. argues that she was eligible for the ALW starting when she turned 60, and that she hadn't been told about her eligibility.<sup>11</sup>

### **What is the Minister's position?**

[12] The Minister says that it paid J. G.'s GIS and L. M.'s ALW using the maximum retroactivity allowed under the OAS Act. This made those benefits effective in February 2022—11 months before the applications were received.<sup>12</sup>

### **What J. G. and L. M. have to prove**

[13] For J. G. and L. M. to succeed, they have to prove they filed their GIS and ALW applications before January 12, 2023.

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<sup>7</sup> See GD2-14 to GD2-17.

<sup>8</sup> See GD2J-26 to GD2J-29.

<sup>9</sup> See sections 11(7)(a) and 19(6)(a) of the *Old Age Security Act* (OAS Act).

<sup>10</sup> See section 6 at GDJ1-4 and section 4 at GDJ2-19.

<sup>11</sup> See section 6 at GD1-4 and section 4 at GD2-35.

<sup>12</sup> See paragraph 2 at GD6-2.

## Matter I have to consider first

### The Tribunal administratively joined the two notices of appeal

[14] J. G. submitted a notice of appeal to the Tribunal on May 28, 2024 (GP-24-937).<sup>13</sup> L. M. also submitted a notice of appeal to the Tribunal on the same day (GP-24-936).<sup>14</sup> On August 21, 2024, the Minister sent the Tribunal a request asking that L. M. be added to J. G.'s appeal (GP-24-937) as an Added Party.

[15] On August 22, 2024, the Tribunal member assigned to these appeals at the time asked the Tribunal's operations to join the two appeals instead of including Added Parties in the appeals. The Tribunal closed J. G.'s appeal (GP-24-937) and transferred the documents to L. M.'s appeal (GP-24-936).

## Reasons for my decision

### OAS Act and regulations

[16] The GIS provides a supplement to the basic OAS pension and is paid to low-income seniors. This means the GIS depends on income and is calculated based on income from the past year (base calendar year). The GIS is adjusted when the tax return is filed if the reported income has changed.

[17] Section 11 of the OAS Act provides for the payment of the GIS to eligible pensioners based on the provisions set out in the OAS Act and its regulations. The GIS is paid only if the pensioner applies for it. **The pensioner has to apply every year to qualify.**

[18] Section 11(7)(a) of the OAS Act says that no GIS can be paid for any month that is more than 11 months before the month the application is received.

[19] Section 19 of the OAS Act provides for the payment of an ALW to the spouse or common-law partner of a pensioner based on the provisions set out in the OAS Act and

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<sup>13</sup> See GDJ1.

<sup>14</sup> See GD1.

its regulations. The ALW is paid only if the claimant applies for it. **The claimant has to apply every year to qualify.**

[20] Section 19(6)(a) of the OAS Act says that no ALW can be paid for any month that is more than 11 months before the month the application is received.

## **Analysis**

[21] At the hearing, L. M. confirmed that she didn't dispute the fact that she submitted her spouse's GIS application on January 12, 2023. The Minister used that date as the date of receipt of the GIS application and the ALW application when calculating the retroactivity allowed under the OAS Act. She confirmed that the Minister did in fact pay both applications retroactively to February 2022. What she is asking the Tribunal to do is to grant more retroactivity than what the OAS Act allows.

[22] The Tribunal is very sympathetic to J. G. and L. M.'s position and circumstances. But, as a legislative body, the Tribunal has only the powers that the law gives it. The Tribunal interprets and applies the provisions as they are set out in the OAS Act.

[23] The Tribunal finds that sections 11(7)(a) and 19(6)(a) of the OAS Act don't allow payments of the GIS or the ALW, respectively, for any month that is more than 11 months before the month the application is received.

[24] As a result, the Tribunal finds that J. G. submitted his initial GIS application on January 12, 2023. The Minister approved retroactive payment of the GIS based on the 11 months allowed under the OAS Act, making the GIS effective in February 2022. This meant that the Minister also approved L. M.'s ALW with 11 months of retroactivity, making it effective in February 2022 as well.

[25] At the hearing, the Minister argued that it hadn't analyzed this application from the perspective of administrative error and hadn't made a decision on it. Once a decision is made on the administrative error, the appellant will have a right to appeal to

the Federal Court. The Tribunal doesn't have jurisdiction to deal with issues of administrative errors.<sup>15</sup>

[26] Section 32 of the OAS Act deals with the measures the Minister can provide to a person who has been denied a benefit, or a portion of a benefit, because of erroneous advice or an administrative error.

[27] But a decision made under section 32 of the OAS Act is the Minister's alone. So, it is outside this Tribunal's jurisdiction.

## **Conclusion**

[28] I am sympathetic to J. G. and L. M.'s circumstances. But sections 11(7)(a) and 19(6)(a) of the OAS Act don't allow payment of the GIS or the ALW, respectively, for any month that is more than 11 months before the month the GIS or the ALW application was received. The Tribunal has to apply the OAS Act.

[29] Based on L. M.'s testimony for herself and for J. G., the Tribunal finds that it doesn't have jurisdiction to grant more retroactivity than what the OAS Act allows.

[30] The Tribunal also doesn't have jurisdiction over an administrative error.

[31] This means the appeal is dismissed.

François Guérin  
Member, General Division – Income Security Section

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<sup>15</sup> See section 32 of the OAS Act.