



Citation: *DK v Minister of Employment and Social Development*, 2025 SST 1261

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

# Decision

**Appellant:** D. K.  
**Representative:** D. B.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development reconsideration decision dated April 1, 2025 (issued by Service Canada)

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**Tribunal member:** Brianne Shalland-Bennett  
**Type of hearing:** In person  
**Hearing date:** November 10, 2025  
**Hearing participants:** Appellant  
Appellant's witness and support person  
Respondent's representative  
**Decision date:** December 3, 2025  
**File number:** GP-25-892

## Decision

[1] The appeal is allowed.

[2] The Appellant, D. K., can have more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decision about the start date of his Guaranteed Income Supplement (GIS) payments.

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

## Overview

[4] The Appellant's representative applied for the GIS on the Appellant's behalf on August 1, 2023.<sup>1</sup> The Minister approved the application on August 10, 2023. It said his payments were effective July 2023.<sup>2</sup> In September 2023, after getting more information, the Minister said his benefits were effective September 2022.<sup>3</sup>

[5] From September 2023 to November 2024, the Appellant's member of parliament (MP), a friend, and his representative tried to help him sort out his GIS payments. This included submitting a declaration of incapacity to get retroactive benefits.<sup>4</sup>

[6] The Appellant's representative asked the Minister to reconsider its decision on November 29, 2024. She asked for his GIS payments to start before September 2022.<sup>5</sup> The Minister denied the request. It said the request was too late.<sup>6</sup>

[7] The Appellant's representative disagrees. She appealed the Minister's decision to the General Division of the Social Security Tribunal on his behalf. She says the Appellant is incapacitated. She and his MP have been trying to get his GIS organized. She has been trying to figure it out for over a year.

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<sup>1</sup> See GD2-16 to 19.

<sup>2</sup> See GD2-13 to 15.

<sup>3</sup> See GD2-34 and GD2R-37.

<sup>4</sup> See GD2-31, and GD2R-41 to 42.

<sup>5</sup> See GD2R-14 to 17.

<sup>6</sup> See GD2-3 to 7.

## **Matters I considered first**

### **I allowed the Appellant's witness to testify**

[8] If a party wants to have a witness testify at the hearing, they have to file a notice with the Tribunal by their filing deadline.<sup>7</sup> But I can decide that a party doesn't have to follow these rules if it is in the interest of justice.<sup>8</sup>

[9] The Appellant didn't file a notice with the Tribunal. At the hearing, I decided to let the Appellant's representative (D. B.) testify. This is because it is in the interest of justice to let her participate as a witness.

[10] The Appellant has limitations with his memory because of his mental health. It is clear to me that D. B. has been the main person trying to get his affairs organized on his behalf since 2020. She applied for his GIS, asked for a reconsideration, and navigated the appeal process at the Tribunal on his behalf. The Minister didn't object to me allowing D. B. to testify.

### **The credibility of the participants in the appeal**

[11] I find the Appellant had difficulty participating in the hearing. He could not answer my questions about the appeal. He deferred to D. B. to answer most questions. When he did speak, he spoke about matters unrelated to his appeal.

[12] I found D. B. to be a credible witness. I believe she testified honestly about her experiences in trying to help the Appellant. What she said is consistent with the evidence in the appeal file, so I find her evidence reliable.

### **What I have to decide**

[13] This appeal isn't about if the Appellant should get retroactive GIS payments. It is about if he made his request for reconsideration late. If his request was late, I must consider if the Minister should have given him more time to ask for a reconsideration.

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<sup>7</sup> See section 41(1) of the *Social Security Tribunal Rules of Procedure* (Rules).

<sup>8</sup> See section 8(4) of the Rules.

[14] First, I must decide if the request for reconsideration was late.

[15] If the request was late, I must decide if the Minister acted judicially (made its decision properly) when it refused the Appellant more time to ask for a reconsideration.<sup>9</sup>

[16] If I find the Minister didn't make its decision properly, then I must assess if the Appellant's request for a late reconsideration should have been granted. There are two possible outcomes of this assessment:

- If I find the request should be granted, I must send the issue back to the Minister with instructions to let him have more time to make his request.
- If I find the request should not be granted, then I must dismiss the appeal.

## **Reasons for my decision**

[17] The Appellant's request for reconsideration was made late. The Minister didn't act judicially. The Appellant should have more time to request a reconsideration. He meets the four requirements to allow me to approve this appeal.

[18] I explain the reasons for my decision below.

### **The Appellant's request for reconsideration was made late**

[19] If a person disagrees with the decision of the Minister, they can ask the Minister to reconsider. They must do this within 90 days of being told about the decision in writing. If a person waits over 90 days before asking the Minister to reconsider its decision, then the request for reconsideration is considered late.<sup>10</sup>

[20] The Minister sent its decision to the Appellant on August 10, 2023. The Minister told the MP that the Appellant's GIS would be backdated to September 2022 in a phone

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<sup>9</sup> The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

<sup>10</sup> See section 27.1(1) of the *Old Age Security Act*.

call on September 8, 2023.<sup>11</sup> Despite the Minister's call record saying a second letter was sent to the Appellant, the Minister confirmed that only the August letter was sent.<sup>12</sup>

[21] The Appellant doesn't remember getting the August 2023 letter. D. B. explained other people let him know he has mail, or they place it in a folder. He is supposed to give the folder to the people who help him manage his life to figure out, like D. B.. Sometimes he doesn't give it to anyone.

[22] D. B. confirms that the Appellant got the August 2023 letter but probably didn't open it. In 2025, she found an unopened envelope in a folder of documents. The owner of the home the Appellant lives in gave her these documents.<sup>13</sup>

[23] I find the Appellant more than likely got a copy of the initial decision letter that had information about how to request a reconsideration. The Minister sent it to the home he lives in. He didn't open the letter. The letter was left in a folder.

[24] I take official notice that mail in Canada usually arrives within 10 days. Ten days after August 10, 2023, is August 20, 2023. August 20, 2023, was a Sunday. So, I find the decision was communicated to the Appellant on August 21, 2023.

[25] The Minister got the request for reconsideration on November 29, 2024. This is over a year after I find the decision was communicated to him. This means his request for reconsideration was made late.

### **The Minister didn't act judicially**

[26] The Minister didn't act judicially when it decided not to give the Appellant more time to ask for a reconsideration.

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<sup>11</sup> See GD2R-37.

<sup>12</sup> See GD14-1.

<sup>13</sup> See GD10-4.

[27] The Minister can reconsider a decision even if the reconsideration is late. The Minister can do that if:<sup>14</sup>

- there is a reasonable explanation for asking for a longer period, and
- the person has shown a continuing intention to request a reconsideration

[28] If a person asks for a reconsideration over a year after getting the initial decision (which is the case here), then the Minister must also find:<sup>15</sup>

- the request for reconsideration has a reasonable chance of success
- a longer period to request a reconsideration would not prejudice the Minister

[29] The Appellant can only get more time for his request for reconsideration if he meets **all** four factors.

[30] When the Minister is considering these factors, the Minister must act judicially. This means it must not:<sup>16</sup>

- act in bad faith
- act for an improper purpose or motive (the wrong reason)
- consider an irrelevant factor
- discriminate against the Appellant

– **The Minister considered an irrelevant factor**

[31] The Minister considered an irrelevant factor. It used the wrong test when it found the Appellant didn't have a reasonable explanation for being late.

[32] The Minister said the Appellant didn't provide an "exceptional or extenuating circumstance" during the 90-day time limit. It also said he wasn't incapacitated from the

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<sup>14</sup> See section 74.1(3) of the *Canada Pension Plan Regulations*.

<sup>15</sup> See section 74.1(4) of the *Canada Pension Plan Regulations*.

<sup>16</sup> See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

date of his application to the date he submitted his reconsideration request. So, it can't give him an extension of time to submit a reconsideration.<sup>17</sup>

[33] Both explanations show the Minister considered irrelevant factors. The law doesn't say that the Appellant's explanation must be an exceptional or extenuating circumstance. The law also doesn't say he must be incapacitated.

[34] The law only says that the Appellant must meet the four factors I have explained earlier in my decision. I will outline them next.

### **The Appellant can have more time to ask for a reconsideration**

[35] Because the Minister didn't act judicially, I must now decide if the Appellant should have more time to ask for a reconsideration. When I do this, I must consider the same factors the Minister had to consider. In other words, the Appellant must show on a balance of probabilities (more likely than not):

- he has a reasonable explanation for being late,
- he has a continuing intention to ask for a reconsideration,
- his request for reconsideration has a reasonable chance of success, and
- allowing him more time would not prejudice the Minister

[36] The Minister agrees that the Appellant's request for reconsideration would not prejudice the Minister.<sup>18</sup> So, I will consider the other three factors.

#### **– The Appellant has a reasonable explanation for the delay**

[37] I am satisfied the Appellant has a reasonable explanation for the delay.

[38] I accept the Appellant's mental health impacts his ability to process, prepare, understand, share, and submit information. His doctor said this is because of his depression, severe anxiety disorder, and dysphoria.<sup>19</sup>

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<sup>17</sup> See GD2-3 to 7.

<sup>18</sup> The Minister's representative confirmed this at the hearing.

<sup>19</sup> See GD2R-25.

[39] The Appellant's doctor also said that the Appellant has difficulty with his capacity to carry on everyday affairs, especially administrative functions. He relies heavily on family, friends, and third parties to help him with banking, taxes, and procedural issues. He has significant difficulties with his focus and can't retain information. He is sometimes so anxious that he can't provide simple information like his address or his social insurance number.<sup>20</sup>

[40] D. B.'s evidence at the hearing supports the Appellant's doctor's finding. She explained he needs help to fill out and submit applications, like the GIS. She explains that this process has been very challenging. She has tried to contact Service Canada many times to help the Appellant. She also enlisted his MP to try and help him.

– **The Appellant has shown a continuing intention to ask for a reconsideration**

[41] I am satisfied the Appellant has shown a continuing intention to ask for a reconsideration.

[42] The Appellant, with help from D. B., his friend, and his MP's office, has shown a continuing intention to ask for a reconsideration since August 2023. The evidence shows that for almost a year different parties have been working to get him his GIS, and retroactive benefits for the GIS.

[43] In the 90 days after the August 2023 letter, D. B. asked Service Canada for information about retroactive benefits. She and the Appellant attempted to get documents in support of his request for retroactive benefits.

[44] In the month right after the decision was made, the Appellant tried to get retroactive benefits. The Minister's representative and D. B. agree that after the August 2023 letter, there was some "back and forth" that led to the Appellant being approved for additional retroactive benefits in September 2023. This seems to have been communicated to the MP, who then told D. B.

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<sup>20</sup> See GD2-25.

[45] In September or October 2023, D. B. said she contacted Service Canada to see how the Appellant could get retroactive benefits beyond September 2022. She says the Service Canada representative told her about incapacity. They sent the Appellant a declaration of incapacity form in October 2023.<sup>21</sup>

[46] D. B. said she sent the Appellant the form filled out by his doctor. She explained she wrote instructions on a piece of paper for him to follow. Getting the doctor to fill out the information took some time. In December 2023, his doctor eventually filled out a declaration of incapacity and sent a letter in support of his incapacity.<sup>22</sup>

[47] After the 90-day period from the Minister's August 2023 decision, different parties tried to help the Appellant organize his GIS and get retroactive benefits.

[48] The Minister's call record shows it got the declaration of incapacity and supporting letter in January 2024.<sup>23</sup> There is no evidence the Minister took action with this document until May or June 2024.

[49] In January 2024, there were a series of events that led to D. B. prioritizing reinstating the Appellant's GIS and getting information to allow him to have other benefits. The Minister suspended his GIS payments in December 2023.<sup>24</sup> That same month D. B. and the Appellant's friend asked the Minister to unsuspend his payments and to give him information about his benefits.<sup>25</sup> The Minister gave him this information and resumed payments in January 2024.<sup>26</sup>

[50] In May 2024, the Minister sent a letter about the Appellant's request to get retroactive GIS benefits.<sup>27</sup>

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<sup>21</sup> See GD2R-38.

<sup>22</sup> See GD2-22 to 23 and GD2R-25.

<sup>23</sup> See GD2R-42.

<sup>24</sup> See GDR-39.

<sup>25</sup> See GD2R-38 to 39.

<sup>26</sup> See GD2-32 to 33, and GD2R-40.

<sup>27</sup> See GD2-31.

[51] In June 2024, the Minister's call log shows it again got the declaration of incapacity form. The Minister's records say it sent the form to the Canada Pension Plan division.<sup>28</sup>

[52] In October 2024, the Appellant's MP attempted to help the Appellant.<sup>29</sup> They requested the Minister review his file to see if he could get retroactive benefits with the declaration of incapacity.

[53] In November 2024, D. B. filed the request for reconsideration. Information from the MP wasn't shared with her. She had to work on figuring out what happened with his GIS on her own. When she did, she asked for a reconsideration on the Appellant's behalf, and ultimately filed an appeal with the Tribunal. This was after she realized what happened and didn't happen with his GIS after she had the Appellant get the declaration of incapacity and send it to the Minister.

– **There is a reasonable chance of success**

[54] At the hearing, the Minister's representative said they didn't assess capacity at all. The Minister's position is that, for an incapacity request to be accepted and assessed, there has to be an outstanding application. If a decision has been made on a file, then that file has been closed. Incapacity needed to have been raised before.

[55] I disagree. The Minister has made a finding on incapacity, but not for his GIS application. In the April 2025 reconsideration letter, the Minister says the Appellant wasn't incapacitated from the date of his application to the date he submitted his reconsideration request.

[56] A person can ask for a reconsideration and explain the reasons for the reconsideration. In the Appellant's case, the reason D. B. asked for a reconsideration was because of his incapacity. I note various people attempted to inform the Minister of his incapacity before she submitted a request for reconsideration.

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<sup>28</sup> See GD2R-41.

<sup>29</sup> See GD2R-41.

[57] So, I will explain what the law is. Then I will explain if the Appellant has a reasonable chance of success.

[58] For the Appellant's request for reconsideration to succeed, he must prove that he was eligible for the GIS before September 2022. This would include proving that he was incapacitated within the meaning of the Canada Pension Plan.

[59] In other words, the Appellant would need to prove that he was incapable of forming or expressing the intention to file his application for the GIS before he did.

[60] The GIS is a monthly benefit for people who get an Old Age Security pension. GIS payment periods go from July of one year to June of the following year. A person's GIS amount for each payment period is usually based on their income in the previous calendar year.

[61] To get the GIS, a person must apply for it yearly.<sup>30</sup> The GIS application must include a statement of their income for the previous year.<sup>31</sup> Once a person has applied for the GIS, the Minister may waive the requirement for a statement of income in subsequent payment periods.<sup>32</sup> The Minister usually does this when the person files their income tax returns for the previous year. The Minister then gets the income information from the Canada Revenue Agency. In that case, a statement of income is deemed to have been made.<sup>33</sup>

[62] The GIS cannot be paid more than 11 months before the Minister gets the application, the application is deemed to have been made, or the requirement for making the application has been waived.<sup>34</sup>

[63] The only way the Appellant's application can be deemed to have been made earlier is if it is more likely than not, he was incapable of forming or expressing an

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<sup>30</sup> See section 11(2) of the *Old Age Security Act*.

<sup>31</sup> See section 14(1) of the *Old Age Security Act*.

<sup>32</sup> See section 11(4) of the *Old Age Security Act*.

<sup>33</sup> See section 14(1.01) of the *Old Age Security Act*.

<sup>34</sup> See section 11(7)(a) of the *Old Age Security Act*.

intention to apply for the GIS before August 2023. Also, the period of incapacity must be continuous.<sup>35</sup>

[64] I am satisfied the Appellant has a reasonable chance of success.

[65] At the hearing, D. B. explained the limits of the Appellant's ability to function. She has been taking care of the Appellant's finances since 2020. Her actions on behalf of the Appellant show he may lack capacity.

[66] At the hearing, D. B. also confirmed his taxes are now up to date, so the Minister should be able to process the GIS retroactively.

[67] At the hearing, I also noticed the Appellant could not answer questions or generally participate in the hearing. I explained this earlier in my decision. D. B. said this has been ongoing since the Appellant was 28 years old.

[68] The Appellant provided medical documents in support of his claim of incapacity. His doctor said he has been incapacitated since about 2013. He says the Appellant's extreme anxiety and dysphoria prevented him from forming or expressing the intention to apply earlier than he did. He says the Appellant can't retain information long enough to make decisions and complete tasks.<sup>36</sup>

[69] So, I find there is evidence available that may allow for a reasonable chance of success in the Appellant's request for reconsideration.

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<sup>35</sup> See section 28.1 of the *Old Age Security Act*.

<sup>36</sup> See GD2R-22 to 25.

## **Conclusion**

[70] I find the Appellant meets the four requirements to get an extension of time to ask the Minister for a reconsideration. The file will be sent back to the Minister to make a decision on the Appellant's retroactivity for the GIS based on incapacity.

[71] This means the appeal is allowed.

Brianne Shalland-Bennett  
Member, General Division – Income Security Section