



[TRANSLATION]

Citation: *CE v Minister of Employment and Social Development*, 2025 SST 741

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: C. E.
Representative: A. F.

Respondent: Minister of Employment and Social Development
Representative: Érélegna Bernard

Decision under appeal: General Division decision dated
March 28, 2024 (GP-20-716)

Tribunal member: Jean Lazure

Type of hearing: Teleconference
Hearing date: January 13, 2025
Hearing participants: Appellant
Appellant's representative
Respondent's representative

Decision date: July 18, 2025
File number: AD-24-437

Decision

[1] The appeal is allowed in part.

[2] As of January 13, 2025, the Appellant had 8 years and 227 days of residence in Canada. This means that she isn't eligible for an Old Age Security (OAS) pension.

Overview

[3] The Appellant applied for an OAS pension for the first time on July 6, 2001.¹ The Minister of Employment and Social Development (Minister) refused her application.² She applied for an OAS pension a second time on September 30, 2004.³ The Minister approved her application, granting her a partial pension of 10/40.⁴

[4] Then, in 2018, the Minister investigated the Appellant's residence. On November 19, 2018, the Minister decided that she wasn't eligible for an OAS pension. This resulted in her being overpaid \$21,342.36 in the OAS pension and \$157,081.18 in the Guaranteed Income Supplement.⁵

[5] The Appellant asked for this decision to be reconsidered.⁶ In a Reconsideration Decision Letter, the Minister upheld its initial decision, saying that she had resided in Canada for 6 years and 194 days—from April 10, 1995, to October 20, 2001.⁷

[6] The Appellant appealed to the Social Security Tribunal (Tribunal) on March 24, 2020.⁸ On March 27, 2024, the Tribunal's General Division decided that she wasn't eligible for an OAS pension because she hadn't resided in Canada for at least 10 full years.

¹ See GD2-3.

² This was on October 16, 2001. See GD2-20.

³ See GD2-22.

⁴ This was on July 15, 2005. See GD2-35.

⁵ See GD2-114.

⁶ This was on February 19, 2019. See GD2-153.

⁷ This was on December 16, 2019. See GD1-7 and GD2-288.

⁸ See GD1-1.

[7] On June 26, 2024, the Appellant asked the Appeal Division for permission to appeal.⁹ On July 15, 2024, the Appeal Division gave her permission to appeal.

Issues

[8] To receive a **full** OAS pension, the Appellant has to prove she resided in Canada for at least 40 years after she turned 18.¹⁰ This rule has some exceptions. But the exceptions don't apply to the Appellant.¹¹

[9] If the Appellant doesn't qualify for a full OAS pension, she might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18.

[10] For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount. To receive a partial OAS pension, the Appellant has to prove that she resided in Canada for at least 10 years after she turned 18.¹²

[11] So, for the Appellant to succeed, she has to prove to me that she resided in Canada for a period of at least 10 years after she turned 18. I note that the Minister has accepted a period of 6 years and 194 days of residence, from April 10, 1995, to October 20, 2001.

[12] So, the issue is the following: Did the Appellant have at least 3 years and 171 days of residence in Canada since October 21, 2001, to reach 10 years of residence—the minimum threshold for a partial pension?

⁹ See AD1-1.

¹⁰ See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to be at least 65 years of age and a Canadian citizen or legal resident of Canada. And she has to have applied for the pension. The Appellant has met these requirements.

¹¹ See section 3(1)(b) of the OAS Act.

¹² To the extent that she resided in Canada on the day before her application was approved, under section 3(2)(b) of the OAS Act.

Analysis

[13] I have found that the Appellant isn't eligible for an OAS pension. I will now explain why.

What the Appellant has to prove

[14] The factors¹³ that I have to consider in determining whether the Appellant has any periods of residence in Canada were set out by the Federal Court in *Canada (Minister of Human Resources Development) v Ding*:¹⁴

- ties in the form of personal property
- social ties in Canada
- other ties in Canada (medical coverage, driver's license, rental lease, tax records, etc.)
- ties in another country
- regularity and length of stay in Canada, and the frequency and length of absences from Canada
- the person's mode of living, or whether the person living in Canada is sufficiently deep-rooted and settled

[15] The Appellant has the burden of proving the periods of residence in Canada.¹⁵ She has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she resided in Canada for at least 10 years after turning 18.¹⁶

¹³ Also, the list of these factors isn't exhaustive.

¹⁴ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.

¹⁵ Periods of residence have to be proven on a balance of probabilities, as set out in *De Carolis v Canada (Attorney General)*, 2013 FC 366.

¹⁶ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

The Appellant didn't have 3 years and 171 days of residence in Canada since October 21, 2001

[16] I find that the Appellant had only 2 years and 33 days of residence between October 21, 2001, and January 13, 2025. I will now explain why. Also, I divided my analysis into two separate periods. The first period is from October 21, 2001, to December 11, 2022—that is, before her husband died on December 12, 2022. The second period is from December 12, 2022, to January 13, 2025—that is, the hearing date in this matter.

– Period from October 21, 2001, to December 11, 2022

[17] The Minister is of the view that the Appellant didn't have a mode of living rooted in Canada. This is because she frequently travelled back and forth between Canada and Haiti during that period—sometimes for health reasons of her own, and sometimes to visit her husband or care for him while he had cancer. In Haiti, she could also stay in a residence that belonged to the couple.

[18] The Appellant is of the view that [translation] “[her] only housing is in Canada,” and that her “children, grandchildren, and other relatives are in Canada, except for one brother and one sister in the United States.”¹⁷ She says that her [translation] “intentions are and have been, since April 10, 1995, to reside in Canada,” and that her “friends and all [her] social relations are in Canada.” She has [translation] “always kept [her] bank account and [her] health insurance card in Canada,” and her “passport is Canadian.”¹⁸ Finally, she says the following: [translation] “Quite honestly, I don't see how I could be more of a resident of Canada, especially in the past five years.”¹⁹

[19] As for this period, I have to agree with the Minister's arguments: This period doesn't constitute residence. The Appellant's mode of living means that she is simply

¹⁷ It should be noted that these submissions, found at AD1-10, were written on June 26, 2024—after the Appellant's husband died on December 12, 2022.

¹⁸ See AD1-10.

¹⁹ See AD1-10.

not in Canada long enough to claim to be deep-rooted and settled there during this period.

- **The first four *Ding* criteria (excluding the Appellant’s presence in Canada, her absence from Canada, and her mode of living)**

[20] As for personal property, there is no evidence that the Appellant owned any personal property of any value in Canada: She reported [translation] “furniture and a few personal effects” in 2023.²⁰ But the residence she owned with her husband—where she stayed when she travelled to Haiti—is furnished with personal property.²¹

[21] The evidence on file shows that the Appellant has social ties in Canada. In 2017, she said that she has five sons and two daughters in Quebec, and another daughter in Vancouver.²² In 2024, she said that her children, grandchildren, and other relatives are in Canada, [translation] “except for one brother and one sister in the United States.”²³ The testimonial evidence given at the hearing supported this. Also, she isn’t a member of any professional association.²⁴

[22] The Appellant is a Canadian citizen. She submitted her tax returns filed in Canada between 1995 and 2017, and they are on file.²⁵ The list of her federal and provincial notices of assessment is also on file.²⁶

[23] During that period, the Appellant was able to receive medical services covered by Quebec health insurance. Evidence of her visits is on file,²⁷ and I summarize the list of her visits below:

- 2001: 2 visits in July, and 1 visit in October

²⁰ See GD8-7.

²¹ See GD2-69, where the Appellant answered this to question ix of a questionnaire she signed on November 15, 2017.

²² See GD2-71.

²³ See AD1-10.

²⁴ See GD8-7.

²⁵ See GD2-523 to GD2-554.

²⁶ See GD2-184 to GD2-251.

²⁷ See GD2-433 to GD2-444.

- 2002: 3 visits between July 27 and October 1
- 2003: no visits
- 2004: 2 visits between June 15 and July 16
- 2005: 9 visits between March 25 and August 10
- 2006: 6 visits between July 3 and September 14
- 2007: 5 visits between April 6 and September 4
- 2008: 2 visits in May, and 3 visits between August 29 and October 27
- 2009: 3 visits between May 22 and June 17
- 2010: 5 visits between February 11 and February 25, and 2 visits between November 23 and November 27
- 2011: 1 visit in June, and 1 visit in September
- 2012: 10 visits between May 8 and September 17
- 2013: 4 visits between May 3 and July 16
- 2014: 1 visit on May 24, and 1 visit on October 20
- 2015: 1 visit on June 20, and 2 visits on November 16 and November 17
- 2016: 2 visits on May 23 and June 18
- 2017: 2 visits in late March and early April, and 9 visits between October 6 and December 13
- 2018: 6 visits between January 8 and April 25

[24] In general, over a period of nearly 18 years, it seems to me that the Appellant didn't visit very often for someone aged between 64 and 81 during that period. But,

more importantly, it seems to me that the visits were generally limited to short periods each year. Given the above, I am of the view that it is rather difficult for me to find that there was residence in Canada.

[25] There are also bank statements on file for an account that the Appellant held between 2011 and 2018.²⁸ The Minister also tells me that it could be difficult to make any findings from these, since [translation] “her son has had a power of attorney since October 2011, and he has an access card for the account.”²⁹

[26] The Minister also points out to me that the Appellant never had a lease, having always lived in Canada with her children. Also, she didn’t present any utility bills in her name.

[27] As for the criteria of having ties in another country, it is clear that the Appellant kept some ties in her country of origin, Haiti, since her husband lived there until he died in 2022. She visited him regularly. The couple owned a residence there,³⁰ and the Appellant now owns it.³¹ I will come back to this point below.

[28] I am of the view that the *Ding* criteria I have listed above aren’t conclusive. On the one hand, the Appellant owns personal property and a house in Haiti, and her husband was there. On the other hand, all her children, grandchildren, and relatives are in Canada. She has some ties in Canada like citizenship, tax returns, and a bank account she held for many years. As for health insurance, the medical visits didn’t happen often enough, and they were too close together to be able to find that there was residence.

²⁸ See GD2-558 to GD2-612.

²⁹ See AD7-13.

³⁰ See the Appellant’s answers to questions viii and xvii at GD2-69 and GD2-70.

³¹ See GD8-7.

[29] Finally, the Appellant still claims that she intended to reside in Canada since arriving in the country on April 10, 1995.³² But residence isn't only a matter of intention; it is above all a matter of fact.

○ **The criteria of the regularity and length of stays in Canada, the frequency and length of absences from Canada, and the Appellant's mode of living**

[30] The evidence shows that, between 2001 and 2022, the Appellant was repeatedly absent from Canada for long periods of time to travel to Haiti.

[31] The evidence for the years 2001 to 2010 is more difficult because the Appellant didn't submit a passport for that period.³³ But this period starts with a time when she admits she lived in Haiti from October 20, 2001, to July 7, 2002.³⁴ It was this initial period of absence that led the Minister to no longer recognize her residence after October 20, 2001.

[32] The Minister noted in its September 27, 2024, submissions that it was difficult to prove when the Appellant was present or absent until October 2010.³⁵ But it still seems that the available evidence shows only the Appellant present for a few months per year:

- 4 months in 2002, after the Appellant got back on July 7
- unknown presence in 2003
- 3 months in 2004, from May to July
- 4 months in 2006, from June to September (on August 30, 2006, the Appellant also reported taking a 9-month trip in 2005-2006)³⁶
- 6 months in 2007, from April to September

³² See AD1-10.

³³ See the Appellant's letter dated February 2, 2018, at GD2-109.

³⁴ See GD2-24.

³⁵ "The evidence on file regarding the Appellant's comings and goings between 2001 and 2010 is incomplete because her departures from Canada aren't all recorded. She wasn't able to provide any passport covering that period."

³⁶ See GD2-40.

- 7 months in 2008, from April to October
- 2 months in 2009, from May to June

[33] The Minister also listed when the Appellant was present and absent from Canada between 2011 and 2018:³⁷

- 3.5 months in 2011, from May 23 to September 14
- 6 months in 2012, from March 29 to October 1
- 3 months in 2013, from April 17 to August 2
- 5.5 months in 2014, from February 12 to June 23, and from October 14 to November 26
- 3 months in 2015, from May 1 to June 30, and from October 28 to November 25
- 4.5 months in 2016, from March 8 to June 30, and from October 25 to November 30
- 6 months in 2017, from March 22 to June 14, and from September 26 to December 31
- 7 months in 2018, from January 1 to June 14, 2018

[34] It should be noted that, at the hearing, the Appellant's representative acknowledged that the dates the Minister listed in its submissions—showing when the Appellant was present and absent—were accurate. I also summarized them above.

³⁷ See AD7-10 and AD7-11.

[35] As for the years after 2018, I note that the Appellant herself provided a list of when she was present and absent.³⁸ I summarize it below:

- present from July 31, 2018, to September 2, 2019 (399 days)
- absent from September 2, 2019, to December 31, 2019 (121 days)
- present from December 31, 2019, to October 21, 2020 (295 days)
- absent from October 21, 2020, to March 13, 2022 (509 days, or 1 year and 144 days)
- present from March 14, 2022, until the day of the hearing

[36] It seems clear to me that the Appellant was absent for long periods, frequently, and even regularly. I am of the view that these periods of being present in Canada and absent from it are simply inconsistent with finding her to be a resident of Canada.

[37] Given that the Appellant was absent for a very long period from October 21, 2020, to March 13, 2022, and given that this is part of a pattern of repeated long absences between 2001 and 2018, I simply can't find that she was a resident between 2018 and 2020.

[38] I have to point out that, both in the testimonial evidence given at the hearing and in the documentary evidence, the Appellant didn't try to deny how long her trips to Haiti lasted—that is, how long she was absent from Canada. Instead, she tried to justify them, giving two reasons: first, for reasons related to her personal health;³⁹ and second, for [translation] “compassionate reasons,” since she had to visit her husband, who had cancer.⁴⁰

[39] I also point out that the testimonial evidence given at the hearing showed that the Appellant's husband never wanted to leave Haiti, and that she wanted to visit him all

³⁸ See AD6-4.

³⁹ See GD8-8.

⁴⁰ See GD6-3.

those years. This isn't surprising since they stayed married until her husband died in December 2022.

[40] At the hearing, the Minister told me that there is no documentary evidence on file to support that the visits were necessary for health reasons. Also, the Minister noted at the hearing that the Appellant's husband was diagnosed with cancer in 2015.

[41] But, in any event, I note that residence isn't only a matter of intention; it is above all a matter of fact. No matter how sympathetic I might feel toward the Appellant, her justifications carry little weight. In fact, as I said above, it is clear that between 2001 and 2022, she wasn't a resident of Canada because she was repeatedly absent from Canada for long periods of time. Even though she had ties in Canada—the ones I mentioned above—I find that she didn't have a deep-rooted and settled mode of living in Canada.

– **Period from December 12, 2022, to January 13, 2025**

[42] When I asked her about this at the hearing, the Minister's representative said that the Minister wasn't [translation] "prepared to make any admission about her being in Canada after 2018," and that it wasn't "prepared to comment on 2022." She had [translation] "no instructions from [her] client to admit anything after 2022."

[43] As for the Appellant and the witnesses at the hearing, they insisted that she has been fully residing in Canada since her husband died on December 12, 2022, because she hasn't left Canada since then.

[44] But, in my view, the Appellant was a resident of Canada during that period, consisting of 2 years and 33 days.

[45] The evidence shows that the Appellant got back from her last trip to Haiti on March 13, 2022. This last trip, where she visited her husband, lasted almost a year and a half, from October 21, 2020, to March 13, 2022.⁴¹

⁴¹ See AD6-4.

[46] The evidence, both documentary and testimonial, also shows that the Appellant hasn't left Canada since then. With her husband's death, the main reason for her trips to Haiti no longer exists. The witnesses at the hearing also said that there was no question of her going back. In addition, the *Ding* criteria that the Appellant met before December 12, 2022—particularly her having social ties in Canada, with her children and grandchildren there—still apply.

[47] Also, given that the Appellant was repeatedly absent for long periods between October 21, 2001, and March 13, 2022, and given that her husband only died in December 2022, I am not prepared to find that she was a resident before her husband's death on December 12, 2022. I believe that her husband dying is the event that truly ended the Appellant's long and repeated absences between 2001 and 2022. I have no evidence that this pattern ended at any point between March 13 and December 12, 2022.

[48] Because of this, I find that the Appellant has been a resident of Canada since December 12, 2022.

[49] By adding this period of 2 years and 33 days to the period of 6 years and 194 days that the Minister initially recognized, I find that, as of the hearing date in this matter—January 13, 2025—the Appellant had been a resident of Canada for a total period of 8 years and 227 days.

[50] I am well aware that this finding leaves the Appellant 1 year and 138 days short of the 10-year threshold of residence in Canada needed for a partial OAS pension. But, in good conscience, I have to give a decision in accordance with the law. I sympathize completely with the Appellant, but I have no equitable jurisdiction. This means that I can't ignore the law and decide in her favour because of the sympathy I have for her.

[51] I respectfully suggest to the Appellant that she can apply again for the OAS pension once she has reached 10 years of residence in Canada.

Conclusion

[52] The Appellant has 8 years and 227 days of residence in Canada. This means that she isn't eligible for an OAS pension.

[53] This means that the appeal is allowed in part.

Jean Lazure
Member, Appeal Division