



Citation: *JM v Minister of Employment and Social Development*, 2026 SST 72

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: J. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 6, 2025 (issued by
Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: Videoconference

Hearing date: January 22, 2026

Hearing participants: Appellant
Respondent's representative

Decision date: February 12, 2026

File number: GP-25-1486

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. M., isn't entitled to more time to ask the Minister of Employment and Social Development (Minister) to reconsider its decisions dated February 1, 2018, or August 6, 2019.

Overview

[3] On June 26, 2017, the Appellant applied for Old Age Security (OAS).¹ The Minister denied his application.² On March 6, 2019, the Appellant applied again for OAS.³ The Minister denied his application.⁴ I will call the Minister's first two decisions the "denial decisions."

[4] On December 29, 2023, the Appellant applied again for OAS.⁵ This time the Minister approved his application with payments starting 11 months before his application was received.⁶ I will call this the "approval decision."

[5] The Appellant asked the Minister to reconsider.⁷ He wanted his OAS payments to start earlier because he first applied in 2017.

[6] The Minister said it would not consider his reconsideration request because it was late and didn't have a reasonable chance of success.

¹ See GD2-3 to GD2-7.

² See GD2-22 and GD2-23.

³ See GD2-24 to GD2-30.

⁴ See GD2-44 and GD2-45.

⁵ GD2-GD2-46 to GD2-53.

⁶ See GD2-58 to GD2-61.

⁷ See GD2-62 to GD2-87.

[7] The Appellant says he didn't receive the denial decisions and wasn't capable of addressing the situation earlier because of severe and chronic health issues.

What I must decide

[8] I must decide whether the Appellant's reconsideration request was late.

[9] If it was, then I must decide whether the Minister exercised its discretion judicially (made its decision properly) when it refused to give the Appellant more time.

[10] If the Minister didn't exercise its discretion judicially, I will make the decision it should have made. In this case, I will focus on whether the Appellant has a reasonable chance of success and always intended to ask the Minister to reconsider the decisions.

Matters I have to consider first

I didn't accept a late document

[11] The Appellant submitted a document after the hearing. The document contained submissions. I didn't accept it because:⁸

- part of the submissions were arguments the Appellant made before and at the hearing and were therefore not new
- the Appellant could have made those arguments earlier
- giving the Appellant permission would be unfair to the Minister unless I gave the Minister an opportunity to reply, and doing so would cause a delay

Reasons for my decision

The Appellant was notified of the denial decisions

[12] The Appellant says he never received the Minister's denial decisions. I find that he did.

⁸ Section 42(2) of the Social Security Tribunal Rules of Procedure sets out what factors I must consider when deciding whether to accept late documents.

[13] In 2018 the Social Security Tribunal's Appeal Division said that "it is the Minister's obligation to prove that its decision was effectively communicated to the Appellant on the alleged date."⁹ The Appeal Division didn't specify what it meant to "effectively communicate." I interpret it to mean that the Minister has to prove that a decision was **received**.

[14] However, in 2025 the Appeal Division found that if the Minister is required to notify someone, the Minister only need prove notification was **sent**.¹⁰ Although the decision was about a different section of the *Old Age Security Act*, both sections talk about notifying someone.¹¹

[15] I don't need to decide which decision I agree with because I find that the Minister sent the denial decisions **and** they were received by the Appellant.

[16] I find that the Minister sent the denial decisions for two reasons. First, the Minister provided copies of those decisions.¹² Second, the Minister made a note to the file that the decisions were sent.¹³

[17] The Appellant says he didn't receive either denial decision letter. He hasn't persuaded me of this. At the hearing he confirmed that he was living at the address to which the letters were sent. I asked him if he could think of a reason why he wouldn't have received the letters. He couldn't think of a reason.

The Appellant's request for reconsideration was late

– **The Appellant requested reconsideration more than a year after the decisions**

[18] The Appellant's request was late.

⁹ See paragraph 16 of *T.H. v. Minister of Employment and Social Development*, 2018 SST 569

¹⁰ See paragraphs 27 to 30 of *Minister of Employment and Social Development v JP*, 2025 SST 1377.

¹¹ See sections 27.1(1) and 5(5) of the *Old Age Security Act*.

¹² See GD2-22, GD2-23, GD2-44 and GD2-45.

¹³ See GD6-7.

[19] An appellant has 90 days to ask the Minister to reconsider a decision.¹⁴ If the appellant waits more than 90 days, then their request is considered late.

[20] I find that on a balance of probabilities the Appellant received the Minister's decisions 10 days after they were sent by regular mail. This is because the decisions were sent by mail and mail delivery within Canada usually doesn't take more than 10 days. That means the Appellant would have received the Minister's letters dated:

- February 1, 2018, on February 11, 2018
- August 6, 2019, on August 16, 2019

[21] The Appellant didn't ask for reconsideration of these denial decisions until September 18, 2024. This is more than one year after the Appellant was notified in writing of the Minister's decisions.

– **The incapacity rule does not apply to reconsideration requests**

[22] The Appellant says he was incapable of asking the Minister to reconsider the denial decisions before he did. He says that I should consider section 28.1 of the *Old Age Security Act*.¹⁵

[23] Section 28.1 says that an application for a benefit can be deemed to have been made earlier than it was if the applicant was incapable of forming or expressing an intention to apply earlier.

[24] There is a parallel incapacity provision in the *Canada Pension Plan*.¹⁶ The Federal Court said that the section "applies only to applications for benefits, not to appeals from the rejection of applications."¹⁷ This appeal isn't about an application. It is about the Appellant's reconsideration request.

¹⁴ See section 27.1 of the *Old Age Security Act*.

¹⁵ See GD15.

¹⁶ See section 60(8) of the *Canada Pension Plan*.

¹⁷ See paragraph 7 of *Baines v. Canada (Human Resources and Skills Development)*, 2011 FCA 158.

What to consider when a request for reconsideration is late

[25] The Minister can reconsider a decision even if the reconsideration request is late.

[26] For this to happen, the law says that an appellant has to convince the Minister of two things. The appellant has to show that:¹⁸

- they have a reasonable explanation for why they are late
- they always meant to ask the Minister to reconsider its decision – this is called their “continuing intention”

[27] If the appellant asked the Minister to reconsider its decision more than 365 days after the Minister told them about it in writing, then the law says that the appellant has to convince the Minister of two other things too. The appellant has to show that:¹⁹

- their reconsideration request has a reasonable chance of success
- giving them more time would not be unfair to another party

[28] These are four factors that an appellant has to meet. This means that if the Appellant doesn’t meet one of these four factors, then he isn’t entitled to have the Minister’s overpayment decision reconsidered.

The Minister must exercise its discretion judicially

[29] The Minister’s decision whether to consider a late reconsideration request is discretionary. Discretion is the power to decide whether to do something. The Minister has to exercise its discretion judicially.²⁰

[30] If the Minister has done one of the following, then it didn’t exercise its discretion judicially:²¹

- acted in bad faith
- acted for an improper purpose or motive

¹⁸ See section 29.1(1) of the *Old Age Security Regulations*.

¹⁹ See section 29.1(2) of the *Old Age Security Regulations*.

²⁰ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

²¹ See *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

- considered an irrelevant factor
- ignored a relevant factor
- acted discriminatorily (unfairly)

– **The Minister didn't exercise its discretion judicially**

[31] In a file note, the Minister said it wouldn't give the Appellant more time because his request didn't have a reasonable chance of success.²² The Minister didn't explain how it came to that conclusion. In the absence of any explanation, I don't know what factors the Minister considered in coming to its conclusion. In these circumstances, I find that it is appropriate to decide in the Appellant's favour and find that the Minister ignored a relevant factor.

– **The Appellant reconsideration request does not have a reasonable chance of success**

[32] The Appellant only asked for reconsideration of the Minister's denial decisions **after** the Minister made its approval decision. I find that this is what is called a "collateral attack" on the Minister's approval decision. In a decision of the Federal Court of Appeal, the court said that collateral attacks of decisions aren't allowed.²³

[33] In a decision called *Dillon*, the Federal Court said: "there is no authority to order the Minister to reopen any decision relating to the applicant's first application since the Minister has subsequently given a final decision on the applicant's second application...."²⁴

[34] The *Dillon* decision was considered by the Tribunal. The Tribunal said:²⁵

[31] I can find no way to distinguish Dillon from the Appellant's case. Mr. Dillon was granted a CPP disability pension and was given the maximum 11 months of retroactive payments. He wanted to overturn an earlier Minister's decision so he could get

²² See GD6-2.

²³ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41.

²⁴ See paragraph 15 of *Dillon v Canada (Attorney General)*, 2007 FC 900.

²⁵ See paragraphs 31 and 32 of *MP v Minister of Employment and Social Development*, 2024 SST 1465.

more retroactivity. But he had not asked the Minister to reconsider the first decision within the 90-day time limit.

[32] The Court found that the Minister did not have jurisdiction (legal power) to change the first decision, after having made a decision on Mr. Dillon's second application. It noted that Mr. Dillon decided to file a second application, rather than ask the Minister to reconsider the earlier decision within the 90-day time limit. By doing so, he chose the procedural avenue to be followed. He could not later try to overturn the first decision. Doing so is called a "collateral attack" on the second decision. The second decision must be attacked directly, not collaterally.

[35] For the same reasons, I find that the Appellant's reconsideration request doesn't have a reasonable chance of success.

– **The Appellant didn't always intend to ask the Minister to reconsider**

[36] The Appellant didn't initially ask the Minister to reconsider the denial decisions. I asked him why. He said he didn't know that the Minister had denied his first two applications. I asked him why he didn't contact the Minister to enquire about his first two applications. He said he didn't understand the process. He could have contacted the Minister to ask about the process.

[37] The Appellant also says that he always intended to pursue his right to old age security. That isn't the issue. The issue is whether he always intended "to request a reconsideration."²⁶

[38] Regardless of his reasons, the Appellant chose to reapply twice, rather than contact the Minister to enquire about the status of his first two applications and request reconsideration of the Minister's denials. This shows that the Appellant didn't always intend to ask the Minister to reconsider its denial decisions.²⁷

²⁶ See section 29.1(1) of the *Old Age Security Regulations*.

²⁷ See paragraph 34 of *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41.

The Appellant's other arguments

[39] At the hearing the Appellant argued that regardless of what the courts have said, there are extenuating circumstances in his case. He said that I need to go beyond "the letter of the law."

[40] I have some sympathy for the Appellant. His OAS payments didn't start until nearly six years after his first application. But I cannot decide this appeal based on my sympathies. I have to follow the law.

Conclusion

[41] The Appellant isn't entitled to more time to ask for reconsideration of the Minister's denial decisions.

[42] This means the appeal is dismissed.

Wayne van der Meide
Member, General Division – Income Security Section