



Citation: *The Estate of KB v Minister of Employment and Social Development*, 2026 SST 78

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: The Estate of K. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 8, 2025
(GP-24-2026)

Tribunal member: Neil Nawaz

Decision date: February 5, 2026

File number: AD-25-673

Decision

[1] I am refusing the Applicant an extension of time in which to apply for leave to appeal. This appeal will not be going forward.

Overview

[2] The late K. B. applied for an Old Age Security (OAS) pension in February 2018.¹ Service Canada, the Minister's public facing agency, approved the application effective March 2017, or 11 months before the application date, which it said was the earliest first payment date allowed under the law.²

[3] In April 2022, the Applicant also applied for the Guaranteed Income Supplement (GIS).³ Service Canada approved that application, effective May 2021, again applying the 11-month limitation on retroactive payment.

[4] Mrs. K. B. or her family thought that her OAS and GIS payments should have started earlier. In November 2024, she appealed the start dates to the Social Security Tribunal's General Division.

[5] In February 2025, Mrs. K. B. passed away. Her son represented her estate at the teleconference hearing five months later. He argued that the estate should be entitled to more retractive benefits because his mother had been incapacitated from applying for them earlier than she did.

[6] In a decision dated July 8, 2025, the General Division dismissed the appeal. It found insufficient evidence that Mrs. K. B. had been incapable of forming or expressing an intention to apply for benefits before her death.

[7] On October 22, 2015, the Applicant submitted an application requesting leave, or permission, to appeal to the Tribunal's Appeal Division.⁴ The Applicant's representative

¹ See the Applicant's application for the OAS pension dated February 20, 2018, GD2R-3.

² Under sections 8(1), 8(2), and 11(7)(a) of the *Old Age Security Act*, a person cannot receive more than 11 months of retroactive OAS pension payments.

³ See the Applicant's Application for the Guaranteed Income Supplement dated April 12, 2022, GD2R19.

⁴ See the Applicant's application for leave to appeal to the Appeal Division emailed on to the Tribunal October 22, 2025, AD1.

alleged that, in coming to its decision, the General Division made mistakes, and he said that he would be submitting additional details and documents. He added that his application was late because he had been on extended travels for personal and business reasons.

[8] On October 23, 2025, the Tribunal sent the Applicant's representative a letter asking him to explain why he was unable to communicate by email and file his appeal while travelling.⁵ The Tribunal also asked him to describe in detail what error or errors the General Division might have made and what kinds of additional documents he expected to submit.

[9] The Tribunal subsequently extended the Applicant's submission deadline twice. On January 26, 2026, the Applicant filed additional submissions. He alleged that, in coming to its decision, the General Division made the following errors:

- It misapplied the legal test for incapacity under the *Old Age Security Act*;
- It substituted its own lay assessment for uncontradicted medical evidence from two physicians;
- It conflated isolated functional abilities (speech, orientation, travel with assistance) with legal capacity to form or express an intention;
- It discounted sworn medical certifications without adequate reasons; and
- It relied on reasoning mirroring submissions from the Minister that were explicitly rejected as late and inadmissible.

[10] In his additional submissions, the Applicant's representative did not explain why his travels forced him to submit his application late.

Issues

[11] At this stage, I have to consider the following questions:

⁵ See the Tribunal's letter dated October 23, 2025, AD2.

- Was the Applicant's request for leave to appeal filed on time?
- If the appeal was late, does the Applicant have a reasonable explanation for the delay?
 - If the Applicant has a reasonable explanation for the delay, does he meet the grounds of appeal?

Analysis

The Applicant's request for leave to appeal was late

[12] An application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision was communicated to the applicant.⁶ The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision was communicated to the applicant.

[13] In this case, the General Division issued its decision on July 8, 2025. The next day, it, like all the Tribunal's correspondence with the Applicant, was sent to the email address that he had provided. However, the Tribunal did not receive the Applicant's application for leave to appeal until October 22, 2025 — more than two weeks past the 90-day filing deadline.

[14] In his application, the Applicant acknowledged that he was late. He offered an explanation, but it was vague and implausible.

The Applicant did not have a reasonable explanation for the delay

[15] When an application for leave to appeal is submitted late, the Tribunal may grant the applicant an extension of time if they have a reasonable explanation for the delay.⁷ In deciding whether to grant an extension, the interests of justice must be served.⁸

⁶ See section 57(1)(b) of the *Department of Employment and Social Development Act* (DESDA).

⁷ See section 27 of the *Social Security Tribunal Rules of Procedure*.

⁸ See *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[16] In its application form, the Tribunal asks parties requesting leave to appeal after the deadline to explain why they are late.⁹ In this case, the Applicant wrote,

Sorry for the delay, I have been on extended travels due to personal and business travels. Also I am scheduled to travel again whole of November our [sic] of country. I will provide additional details and documents as soon as possible upon my return please.

[17] I understand that the Applicant was busy; many people are busy. But filing deadlines exist for a reason. They are meant to speed along the appeals process. They are meant to bring finality to proceedings.

[18] We live in an age of instant communication. At this point, only the most isolated parts of the world lie outside global information networks. It was not clear to me why travel prevented the Applicant from listing possible errors or filing new documents within the mandated three-month window.

[19] The Tribunal offered the Applicant an opportunity to elaborate on his scant explanation, but he chose not to take it. He could have said, for instance, that he was in a remote village without access to the internet or that he was in a totalitarian country cut off from the rest of the world. However, he said nothing like those things. Instead, after a nearly three-month delay, he sent in a response that ignored the question.

[20] The rules require applicants to provide a reasonable explanation when they submit their applications late. Although he was given ample opportunity, the Applicant did not do so. Under the circumstances, I am not willing to allow this matter to proceed any further.

The Applicant wouldn't have qualified for leave to appeal anyway

[21] Because the Applicant had no reasonable explanation for missing the filing deadline, I don't have to decide whether his application met the grounds of appeal.

⁹ See section 9 of the Applicant's application to the Appeal Division – Income Security dated October 22, 2025, AD1-22.

However, I think it is only fair to explain to the Applicant that, even if he had filed his application on time, his appeal would have still failed.

– The Appeal Division initially focuses on errors

[22] There's no automatic right to appeal a General Division decision. The Appeal Division must first grant leave to appeal. It will only do so if an applicant produces new evidence or if they present an arguable case that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers; or
- made an error of law or fact or some combination of the two.¹⁰

[23] Although he promised to do so, the Applicant never submitted new evidence. However, he did argue that the General Division made several mistakes.

– There's no arguable case that the General Division made errors

[24] The Applicant's arguments are variations on two themes: (i) the General Division misinterpreted the applicable law and (ii) either ignored relevant evidence or emphasized irrelevant evidence.

[25] I don't see an arguable case on either count. I have reviewed the General Division's decision and see nothing to suggest it misunderstood the law around incapacity. I also don't see any indication that it improperly assessed the evidence. I will briefly address the Applicant's specific points:

- The Applicant alleges that the General Division erred by treating functional activities — such as speaking, recognizing people, signing forms, attending appointments — as determinative of legal capacity. However, case law makes it clear that everyday activities are factors that a decision-maker can consider in assessing capacity.¹¹

¹⁰ See section 58.1(b) of the DESDA.

¹¹ See *Grosvenor v Canada (Attorney General)*, 2018 FC 36, *Sedrak v Canada (Attorney General)*, 2008 FCA 86; and *Kirkland v Canada (Attorney General)*, 2008 FCA 144. The Applicant cited the latter two

- The Applicant alleges that the General Division minimized evidence that Mrs. K. B. was completely dependent her family to handle the logistics of daily life, such as managing her finances and making travel arrangements. However, the General Division considered factors such as Mrs. K. B.'s cognitive testing results, her lack of facility with English, and her hearing impairment before concluding that her dependency stemmed from reasons other than mental incompetency.
- The Applicant alleges that the General Division “cherry picked” its findings and discounted reports from Dr. Chen and Dr. Egier without providing cogent reasons for doing so. However, the General Division did offer reasons for giving those reports limited weight: Dr. Chen’s assessment conflicted with other evidence on the record, and Dr. Egier didn’t start treating Mrs. K. B. until May 2021, when she moved into a long-term care facility.
- The Applicant, citing a case called *Danielson*, alleges that the General Division erred by relying heavily on the fact that Mrs. K. B. signed applications.¹² “The mere ability to sign documents does not establish capacity to form or express an intention.” However, *Danielson* does not contain this quote or anything resembling it. Moreover, the General Division didn’t rely “heavily” on Mrs. K. B. having signed forms (it briefly referred to this fact in a footnote) and, in any event, her having done so was only one of many factors that went into its decision.
- The Applicant accuses the General Division of breaching a principle of procedural fairness by refusing the Minister’s late submission and then relying on it later.¹³ However, I don’t see any particular resemblance between the Minister’s late submissions and the General Division’s written reasons,

cases in his submissions, but they don’t appear to stand for what the Applicant says they do. Instead, they say, contrary to the Applicant’s argument, that the capacity to form the intention to apply for benefits is similar in kind to the capacity to form an intention with respect to other choices in life.

¹² See *Canada (Attorney General) v Danielson*, 2008 FCA 78.

¹³ See the Minister’s addendum dated My 22, 2025, GD10.

other the fact that the two documents addressed much of the same evidence, which the Applicant had filed earlier.

- The Applicant criticizes the General Division for “noting” the absence of a power of attorney, calling it “legally irrelevant.” However, I don’t know of any case that stands for that proposition and, while the Applicant is correct in saying the *Old Age Security Act* doesn’t require a power of attorney to establish incapacity, it also doesn’t rule out drawing an inference from the lack of one either. I note that the General Division didn’t entirely base its decision on the absence of a power of attorney but only considered it as one factor among many.

[26] It was open to the General Division, as trier of fact, to sift through the available evidence and decide what was important and what was not.¹⁴ The Applicant may not agree with how the General Division weighed the information before it, but that is not an error that falls under one of the grounds of appeal.

[27] I don’t see an arguable case that the General Division committed a legal or factual error in law or otherwise violated a principle of procedural fairness. Ultimately, the Applicant’s submissions amount to a complaint that the General Division didn’t give him his desired result. However, that is not enough to advance his appeal.

Conclusion

[28] I am refusing the Applicant an extension of time in which to apply for leave to appeal. This means that the appeal will not proceed.



Member, Appeal Division

¹⁴ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.