



[TRANSLATION]

Citation: *JR v Minister of Employment and Social Development*, 2026 SST 87

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

**Decision**

**Appellant:** J. R.  
**Representative:** E. R.  
**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated August 13, 2024  
(issued by Service Canada)

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**Tribunal member:** Pierre-André Thériault  
**Type of hearing:** Videoconference  
**Hearing date:** January 21, 2026  
**Hearing participants:** Appellant  
Appellant's representative  
Minister's representative  
**Decision date:** February 9, 2026  
**File number:** GP-24-1921

## Decision

[1] The appeal is allowed.

[2] The Appellant, J. R., is eligible for a partial Old Age Security (OAS) pension of 11/40. Payments start as of June 2022.

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

## Overview

[4] The Appellant was born in Haiti on March 5, 1947.

[5] She came to Canada as a permanent resident on October 19, 2010. She became a Canadian citizen on May 22, 2019.

[6] The Appellant applied for an OAS pension on May 8, 2023.<sup>1</sup>

[7] The Minister of Employment and Social Development (Minister) refused the Appellant's application on August 13, 2024. It found that she didn't have 10 years of residence in Canada.<sup>2</sup>

[8] The Appellant appealed this decision to the Social Security Tribunal's General Division.

[9] I note that this is the Appellant's second application for the OAS pension. She previously applied on October 23, 2020.<sup>3</sup> That application was refused on reconsideration, on December 21, 2022.<sup>4</sup>

[10] The Appellant argues that she has resided in Canada since she arrived as a permanent resident on October 19, 2010. She recognizes that she left Canada many

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<sup>1</sup> See GD2-14 to GD2-23.

<sup>2</sup> The Minister of Employment and Social Development manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD2-230 and GD2-231.

<sup>3</sup> See GD2-3 to GD2-10.

<sup>4</sup> See GD2-117 to GD2-119.

times, mainly to visit family members in Haiti and the United States. But she argues that these absences didn't interrupt her residence in Canada.

[11] The Minister's position on the Appellant's periods of residence has changed significantly.

[12] In the reconsideration decision, the Minister found that the Appellant had resided in Canada for only one year, from April 2018 to July 2019.<sup>5</sup>

[13] The Minister changed its position after the notice of appeal was filed. It now says that it is willing to recognize that the Appellant resided in Canada from July 8, 2013, to July 3, 2019, and as of March 19, 2020. According to the Minister's calculation, she would have had 10 years of residence in Canada in March 2024, making her eligible for a partial pension of 10/40 as of April 2024.<sup>6</sup>

## **What the Appellant has to prove**

[14] To receive a **full** OAS pension, the Appellant has to prove she resided in Canada for at least 40 years after she turned 18.<sup>7</sup> This rule has some exceptions. But the exceptions don't apply to her.<sup>8</sup>

[15] 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. For example, a person with 12 years of residence receives a partial pension of 12/40 the full pension.

[16] To receive a partial OAS pension, the Appellant has to prove she resided in Canada for at least 10 years after she turned 18.

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<sup>5</sup> See GD2-230 and GD2-231.

<sup>6</sup> See GD7-16 to GD7-18 and GD7-30.

<sup>7</sup> See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to be at least 65 years old and a Canadian citizen or legal resident of Canada. And she also has to have applied for the pension. The Appellant has met these requirements.

<sup>8</sup> See section 3(1)(b) of the OAS Act.

[17] The Appellant has to prove she resided in Canada. 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 during the relevant periods.<sup>9</sup>

## **Matter I have to consider first**

[18] At the hearing, the Appellant's representative, who happens to be her daughter, said that she wanted to testify. I swore her in, and I heard her testimony.

## **Reasons for my decision**

[19] I find that the Appellant is eligible for a partial OAS pension of 11/40.

[20] The Appellant has resided in Canada for 11 years and 205 days.

[21] I considered the Appellant's eligibility from October 19, 2010, up to and including May 8, 2022.

[22] I chose the first date because that was when the Appellant arrived in Canada as a permanent resident. I chose the second date because that was when the approval of her pension application was made effective.

[23] Payments start as of June 2022.

[24] Here are the reasons for my decision.

## **The test for residence**

[25] The law says that being present in Canada isn't the same as residing in Canada. "Residence" and "presence" each have their own definition. I have to use these definitions in making my decision.

[26] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.<sup>10</sup>

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<sup>9</sup> See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>10</sup> See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

[27] A person is **present** in Canada when they are physically present in any part of Canada.<sup>11</sup>

[28] When I am deciding whether the Appellant resided in Canada, I have to look at the overall picture and factors such as:<sup>12</sup>

- where she had property, like furniture, bank accounts, and business interests
- where she had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organization
- where she had other ties, like medical coverage, rental agreements, mortgages, or loans
- where she filed income tax returns
- what ties she had to another country
- how much time she spent in Canada
- how often she was outside Canada, where she went, and how much time she spent there
- what her lifestyle was like in Canada
- what her intentions were

[29] This isn't a complete list. Other factors may be important to consider. I have to look at **all** the Appellant's circumstances.<sup>13</sup>

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<sup>11</sup> See section 21(1)(b) of the OAS Regulations.

<sup>12</sup> See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; and *De Carolis v Canada (Attorney General)*, 2013 FC 366.

<sup>13</sup> See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

## **When the Appellant resided in Canada**

### **– The Appellant resided in Canada from October 19, 2010, to July 7, 2013**

[30] The Appellant **resided in Canada** from October 19, 2010, to July 7, 2013.

[31] The Minister doesn't dispute that the Appellant arrived in Canada on October 19, 2010, and that she became a permanent resident on the same day. I note that the Canada Border Services Agency (CBSA) passage report confirmed that she arrived by plane in Montréal on October 19, 2010.<sup>14</sup>

[32] I find that the evidence shows that the Appellant established strong ties to Canada as soon as she arrived in October 2010.

[33] The Appellant was frank when she testified at the hearing, and I accept her testimony.

[34] At the hearing, the Appellant said that, before becoming a permanent resident of Canada, she lived primarily in Haiti, even though she often visited her family in the United States. Four of her eight siblings still live in the United States.<sup>15</sup>

[35] When she was in Haiti before coming to Canada, she divided her time between two places. She stayed at her mother's home in Ouanaminthe. She also stayed in a residence in Port-au-Prince. This was where she raised her children, and where the only one of her four children who still lives in Haiti resided. Her mother died in 2013.

[36] The Appellant's daughter testified at the hearing that the house in Port-au-Prince was a rented house, and that the lease was in the Appellant's name. But, by October 2010, the Appellant's son had already been paying the rent and housing-related expenses for a long time. She didn't live there permanently.

[37] At the hearing, the Appellant said that she was in the United States when the earthquake hit Haiti in January 2010. She said that her son, who was living in Canada,

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<sup>14</sup> See GD2-124.

<sup>15</sup> See GD2-175.

applied for family sponsorship after the earthquake. The application was processed quickly, leading to her arriving in October 2010.<sup>16</sup>

[38] She said that she arrived in Canada with little money and a few personal belongings, other than the clothes she was wearing.

[39] I note that many of the Appellant's family members live in Canada. In addition to her son, who sponsored her, two of her four children were already in Canada in October 2010. She also has six grandchildren, two sisters, and many nephews and cousins in Canada.<sup>17</sup>

[40] Since she arrived, the Appellant has always lived in her daughter's home and at her children's expense.<sup>18</sup>

[41] I recognize that the Appellant has never owned a home in Canada, has never had a lease in her name, and has never received a bill in her name. But I find that this is because of her being financially unstable, the fact that she arrived in Canada with very few resources, and the fact that her children are caring for her.

[42] The Appellant testified that she has had a bank account in Canada since 2011.

[43] She also testified that she has been earning a modest income in Canada since 2011 as a caregiver and housekeeper within her family. She says that she has been filing tax returns in Canada since 2011.<sup>19</sup> The information from the Canada Revenue Agency (CRA) confirms that the Appellant filed her tax returns on time from 2011 to 2022. I note that the information received confirms that income was reported from 2020 to 2022. It seems that no information about income before 2020 was asked for during the investigation.<sup>20</sup>

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<sup>16</sup> See GD3-2.

<sup>17</sup> See GD2-175.

<sup>18</sup> See GD3-3.

<sup>19</sup> See GD2-157.

<sup>20</sup> See GD2-162.

[44] The Appellant testified that she has been going to church regularly in Canada since she arrived, mainly to help her orient herself and integrate. She also consulted doctors in Canada starting in January 2011.<sup>21</sup>

[45] The Appellant provided a detailed travel history.<sup>22</sup>

[46] The stamps in the Appellant's passports,<sup>23</sup> the history of her medical visits,<sup>24</sup> and the information the CBSA provided<sup>25</sup> largely confirm the history that she gave.

[47] The evidence on file supports the finding that the Appellant was absent from Canada during the following periods:

- from February 23, 2011, to July 25, 2011
- from November 12, 2011, to November 17, 2011
- from December 12, 2011, to June 7, 2012
- from December 13, 2012, to July 8, 2013

[48] It was mainly because of these absences that the Minister found that the Appellant hadn't established her residence in Canada before July 2013.<sup>26</sup>

[49] The Appellant said that her stays in Haiti during that period were to visit her son and her mother. Her son was having difficulties because his child had died.<sup>27</sup>

[50] I recognize that these absences were relatively long. Apart from being absent for a few days in November 2011, each absence lasted a little over five months.

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<sup>21</sup> See GD2-125.

<sup>22</sup> See GD3-4 and GD3-5.

<sup>23</sup> See GD2-49 to GD2-112.

<sup>24</sup> See GD2-125 to GD2-131.

<sup>25</sup> See GD2-124.

<sup>26</sup> See GD2-16 and GD2-17.

<sup>27</sup> See GD3-2.

[51] But I find that the Appellant's ties to Canada have stayed strong, even though she has been absent many times.

[52] It should be noted that the Appellant didn't go only to Haiti when she was absent. She also went to the United States to visit her four siblings who live there.

[53] At the hearing, the Appellant testified that she didn't remember exactly how much time she spent in each country.

[54] The stamps in her passports show that she was, in fact, in the United States for part of the absence from December 2011 to June 2012, and from December 2012 to July 2013. The Appellant's passports don't show exactly how much time she spent in the United States. But it is clear that the short absence in November 2011 was spent entirely in the United States. I found no information on file showing that she was in the United States when she was first absent from February 2011 to July 2011.

[55] That said, the Appellant's daughter talked about the first time the Appellant had gone abroad at the hearing. She said that she had arrived in Canada suddenly. I note that the Appellant testified that she had been in the United States in January 2010 when the earthquake happened, and that she stayed there until she arrived in Canada in October 2010. So, she left some matters pending in Haiti. Specifically, she had to go back to Haiti to finalize ending the lease of the former family home. It was the house where her son had continued to live, and it was destroyed in the January 2010 earthquake.<sup>28</sup> She also helped her son find another house to live in.

[56] The Appellant testified that she ended her job in Haiti in 2001 and then started a small business selling children's items. She said that she stopped this before becoming a permanent resident of Canada, and that she never worked in Haiti after October 2010. She said at the hearing that the Haitian income she reported in her forms is pension income, not employment income.<sup>29</sup>

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<sup>28</sup> See GD3-2.

<sup>29</sup> See GD2-48.

[57] She also testified that she hasn't seen a doctor in Haiti since October 2010.

[58] But it is clear that the Appellant continued to have some ties to Haiti during this period.

[59] In particular, she spent many months in Haiti without going back to Canada, including a continuous five-month stay in 2011. One of her sons and two granddaughters were living in Haiti, and they continue to live there. Her mother also lived there until she died in 2013.

[60] Also, the Appellant had a lease in her name in Haiti until 2011. But I note that the January 2010 earthquake destroyed that house. She never stayed in that house during the period in question.

[61] I also recognize that the Appellant jointly inherited her mother's house with her siblings after her mother died in 2013. But I note that there is still doubt as to whether the transfer of ownership was made during the relevant period. I also note that the Appellant testified that she was never responsible for the costs related to this house.

[62] Considering all the evidence, I find that the Appellant's ties to Haiti were weaker than her ties to Canada during that period.

[63] I find that the Appellant resided in Canada from October 19, 2010, to July 7, 2013.

– **The Appellant resided in Canada from July 8, 2013, to May 8, 2022**

[64] The Minister now recognizes that the Appellant resided in Canada as of July 8, 2013. This finding is mainly based on her reducing her absences from the country, getting her Canadian citizenship in May 2019, and having more regular medical visits.<sup>30</sup>

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<sup>30</sup> See GD2-17 and GD2-18.

[65] The Minister argues that this period of residence was interrupted for a few months starting on July 4, 2019, when the Appellant stayed abroad for an extended period.

[66] For the period starting in July 2013, I agree with the Minister that the Appellant was residing in Canada. But I find that her stay abroad starting in July 2019 didn't interrupt her residence.

[67] At the hearing, the Appellant testified that she went to Haiti to visit her family in July 2019. At the time, she intended to go back to Canada in October 2019, about three months later. But she said that flights from Haiti had allegedly been cancelled by then. When flights resumed, she wasn't able to immediately go back to Canada because of restrictions related to the COVID-19 pandemic. The COVID-19 vaccine wasn't available in Haiti. She had to go to Miami to get two doses of the vaccine. She said that if she hadn't been vaccinated, she would have been required to quarantine in a hotel in Canada. This was a stay she could not afford. She finally arrived back in Canada on June 19, 2020.<sup>31</sup>

[68] The Appellant didn't submit any evidence about the circumstances that led to flights from Haiti being cancelled when she was scheduled to leave. But I accept her explanation that the COVID-19 pandemic measures delayed her return to Canada. I also note that she didn't stay in Haiti throughout this entire period, and that she also spent some time in the United States, even though it hasn't been established how long that stay lasted.

[69] The Appellant's absence from July 2019 to June 2020 lasted less than a year, and, given the circumstances, I find that it was a temporary absence. She didn't sever ties to Canada during this period, and she didn't establish strong ties with Haiti again. Also, exceptional circumstances related to the COVID-19 pandemic delayed her return. Under section 21(4) of the *Old Age Security Regulations*, this absence is deemed not to have interrupted the Appellant's residence.

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<sup>31</sup> See GD2-124.

[70] I note that the Minister finds that the Appellant's residence was re-established on March 19, 2020. At the hearing, the Minister's representative said that this date was chosen because the Minister found that it marked the start of special travel measures related to the COVID-19 pandemic. The Minister is of the view that the Appellant's residence continued until May 2024, when she became eligible for the OAS pension.

[71] I agree with the Minister that the Appellant's residence continued. But, based on my finding about her periods of residence, she became eligible for the OAS pension in May 2022. This will be explained below.

### **The Appellant was eligible for a partial OAS pension in May 2022**

[72] The Appellant became eligible for a partial OAS pension of 11/40 on May 8, 2022. As I explain below, this was when the approval of her pension application was made effective.

[73] Before that day, the Appellant had already met most of the requirements for the OAS pension:

- She met the age requirement of turning 65 years old on March 5, 2012.
- She met the requirement of having been a resident for at least 10 years on October 19, 2020.
- There is no dispute that the Appellant was a citizen or legal resident of Canada on May 7, 2022.

[74] But she still had to meet another requirement. She had to apply for an OAS pension. She applied on May 8, 2023.

[75] The Appellant was 76 years old when she applied. When you apply for a pension after turning 65, the approval of the pension application becomes effective as of the latest of:<sup>32</sup>

- the day that is one year before the day the application was received—in this case, May 8, 2022
- the day you met the requirement of having been a resident for at least 10 years after turning 65—in this case, October 19, 2020
- the month immediately before the date you specified in writing—in this case, the Appellant didn't specify a date and asked that her pension start as soon as she became eligible

[76] The latest of these dates is May 8, 2022. This was when the approval of the Appellant's pension application was made effective. The pension amount is based on the number of years she resided in Canada up to that date.

[77] The Appellant started residing in Canada on October 19, 2010. She continued to reside in Canada until May 8, 2022. As of May 8, 2022, she had resided in Canada for 11 years and 205 days after she turned 18.

## **When payments start**

[78] The Appellant's pension starts in June 2022.

[79] OAS pension payments start the month after the pension application is approved.<sup>33</sup> As explained above, the approval of the Appellant's pension application was made effective in May 2022. The next month was June 2022.

## **Conclusion**

[80] The Appellant is eligible for a partial OAS pension of 11/40. Payments start as of

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<sup>32</sup> See section 5(2) of the OAS Regulations.

<sup>33</sup> See sections 8(1) and 8(2) of the OAS Act.

June 2022.

[81] This means that the appeal is allowed.

Pierre-André Thériault  
Member, General Division – Income Security Section