



[TRANSLATION]

Citation: *AC v Minister of Employment and Social Development*, 2026 SST 249

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. C.
Representative: M. O.

Respondent: Minister of Employment and Social Development
Representatives: Lucky Ingabire and Érélegna Bernard

Decision under appeal: General Division decision dated
January 22, 2025 (GP-23-191)

Tribunal member: Jean Lazure

Type of hearing: Videoconference
Hearing date: January 20, 2026
Hearing participants: Appellant
Appellant's representative
Respondent's representatives

Decision date: March 18, 2026
File number: AD-25-281

Decision

[1] The appeal is allowed in part.

[2] I am of the view that the Appellant wasn't a resident of Canada from March 13, 1997, to May 7, 2017. But I find that he was a resident of Canada from May 8, 2017, up until the hearing on January 20, 2026.

Overview

[3] The Appellant applied for an Old Age Security (OAS) pension on January 3, 1996.¹ The Minister of Employment and Social Development (Minister) approved his application for a partial pension of 18/40. It also approved that the Guaranteed Income Supplement (GIS) be paid as of February 1996.

[4] But the Minister then investigated the Appellant's residence, and it found that he hadn't been residing in Canada since March 13, 1997. He was no longer eligible for the GIS as of October 1997. This resulted in an overpayment.² The Appellant asked for this decision to be reconsidered.³ In a Reconsideration Decision Letter, the Minister upheld its initial decision.⁴

[5] The Appellant appealed to the Social Security Tribunal (Tribunal) on January 24, 2023.⁵ The Tribunal's General Division found that he wasn't a resident of Canada from March 13, 1997, up to the day of the hearing.⁶ On March 20, 2025, the Appellant applied for permission to appeal to the Appeal Division.⁷ I gave him permission to appeal.⁸ On May 2, 2025, the Minister asked to know the reasons for my decision, and I gave them that same day.⁹

¹ See GD2-243.

² See the letter dated May 6, 2020, at GD2-13.

³ This was on October 14, 2020.

⁴ This was on November 7, 2022. See GD2-3.

⁵ See GD1-1.

⁶ See para 67 of the General Division decision, given on January 20, 2025.

⁷ See AD01-1.

⁸ This was on April 28, 2025.

⁹ See AD02-1.

Issue

[6] For you to receive the GIS while receiving an OAS pension, you have to be a resident of Canada.¹⁰

[7] So, the issue is as follows:

Was the Appellant a resident of Canada at any time during the period from March 13, 1997, to the January 20, 2026, hearing. If so, when?

Analysis

[8] I found that the Appellant wasn't a resident of Canada from March 13, 1997, to May 7, 2017. But I found that he was a resident of Canada from May 8, 2017, up until the hearing on January 20, 2026. This is why.

What the Appellant has to prove

[9] The factors that I have to weigh to find whether the Appellant was a resident of Canada were set out by the Federal Court in *Canada (Minister of Development and Human Resources) v Ding*:¹¹

- ties in the form of personal property
- social ties in Canada
- other ties in Canada (medical coverage, driver's licence, 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

¹⁰ See section 11(7)(d) of the *Old Age Security Act*, R.S.C., 1985, c. O-9.

¹¹ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. Also, this list of factors doesn't cover everything.

- the person's mode of living, or whether the person living in Canada is sufficiently deep rooted and settled

[10] The burden of proving residence in Canada is on the Appellant.¹² He has to prove this on a balance of probabilities.

The Appellant wasn't a resident of Canada from March 13, 1997, to May 7, 2017

– The Appellant's testimony wasn't useful

[11] The Appellant testified at the hearing. He seemed like a nice and sincere man, but he was mainly confused. This is understandable, given that he is 95 years old.¹³ Also, when he started testifying, he said that he was 96 years old, and that he was going to be 97.

[12] The Appellant's representative argued that he was confused, and that this could be misunderstood as him not being credible. But the problem isn't so much whether his testimony is credible, but rather whether it is reliable.

[13] For example, the Appellant testified that he had six children. He wasn't able to say exactly how many were in Canada. His representative argued that he had three in Canada, two in France, and one in Israel. Also, he allegedly told the Minister in 2018 that he had only one child in Canada, who was incarcerated at the time, and that the others were in France and Israel.¹⁴ So, I don't know exactly where his children live.

[14] Under cross-examination, the Minister's representative asked the Appellant about an imprisonment sentence in 1997. For context, the Minister found that he was no longer a resident of Canada since March 13, 1997. This was because he had completed a sentence for abducting his children at the time.

¹² 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.

¹³ See the Appellant's birth certificate at GD2-262. He was born in Algiers, Algeria, on January 1, 1931.

¹⁴ See GD2-16.

[15] Before that, the Minister had also investigated the Appellant's residence. He allegedly told the investigator at the time that he had gone back to Canada only to be tried for abduction, and that he intended to leave after his incarceration to go live in Israel.¹⁵ At the hearing, he admitted in his testimony that he abducted his children, and he allegedly also admitted this to the Minister in July 2019.¹⁶

[16] Also, the Appellant testified that he had never gone to prison. But there is a letter on file from him addressed to an investigator for the Minister in 1997. In this letter, he listed his address as the [translation] "Prairies detention centre" in Rivière-des-Prairies.¹⁷ He allegedly also admitted to the Minister in 2019 that he had been incarcerated for six months.¹⁸

[17] The Appellant said that he had passports from three countries: Canada, Israel, and France. He allegedly also has children in each of those three countries. This is where the problem starts. The Minister alleges that he has spent a significant amount of time in those countries since March 13, 1997.

[18] I don't believe that the Appellant lied in his testimony. But he has serious memory issues, so his testimony can't be relied on. His difficulties at the hearing were significant enough that his representative had to end his testimony quickly. I sympathize with him. It is very unfortunate, and above all, it is beyond his control.

[19] But the Appellant's testimony wasn't useful.

[20] It is common for appellants of a certain age to experience cognitive difficulties in cases involving the *Old Age Security Act*. In these cases, documentary evidence can often be very useful in trying to make sense of the situation.

¹⁵ I am not saying this to prove anything against the Appellant. I am saying it for context, to explain the Minister's decision to no longer recognize his residence in Canada. I also reiterate that he has the burden of proving residence.

¹⁶ See GD2-17.

¹⁷ See the letter addressed to investigator Robert DeChantal at GD2-202.

¹⁸ See GD2-17.

– **There is little documentary evidence for this period, and it doesn't prove the Appellant's residence in Canada**

[21] The documentary evidence on file is rather unusual. Here is what is missing from the file:

- statements of account for utilities such as electricity, heating, cable television, and cell phone
- bank statements¹⁹
- credit card statements
- There are very few tax returns, only for the years 2001 and 2011, even though the Appellant testified that he filed his tax returns in Canada every year.²⁰

[22] This evidence, often found in files of this type, can help establish that you were a resident of Canada.

[23] There is no actual housing lease on file. But there is evidence that the Office municipal d'habitation de Montréal [Montréal municipal housing bureau] (OMHM) allocated housing to the Appellant on September 14, 2011.²¹ There are also lease-renewal notices on file, up to October 2019.²² Finally, the Régie du logement [rental commission] gave a decision cancelling the lease as of October 28, 2019.²³ The Appellant testified that he hadn't been living in that housing unit since 2018.

[24] The Minister alleges that the Appellant never actually lived in that housing unit. A third party was living there, and the OMHM allegedly told him about this. The Appellant allegedly told the Minister in July 2019 that it was his friend and partner who had signed

¹⁹ The Minister's investigation report dated November 5, 2019, suggested that they had looked at the Appellant's bank accounts. See GD2-17. But they aren't on file. According to the Minister's investigation report, it didn't seem that the bank accounts had been favourable to the Appellant.

²⁰ See GD2-134 and GD2-146 for the year 2001. See GD2-119 for the year 2011.

²¹ See GD6-34.

²² See GD6-29 to GD6-31.

²³ See GD6-27.

the offer for that housing unit in 2011.²⁴ The Minister also alleges that the Appellant's representative showed it a lease that he had signed for a housing unit in France. The lease was for three years starting in September 2014.²⁵

[25] Given how unclear the details are regarding that specific residence of the Appellant, other things should be focused on. As for the Appellant's family ties, as I said above, it is difficult to know where his children are. He did have a wife as of 2005. He married in Montréal in August 2005.²⁶ But she appears to have been living in Israel since then, and it seems that she has never lived in Canada. It appears that the spouses had a religious divorce, but it isn't clear exactly when this happened. These family ties don't help establish that the Appellant was a resident of Canada.

[26] Also, the following things are missing from the file: a list of comings and goings; a statement from the Appellant, something that is often found in files of this type; and plane tickets. There is a history of his passages that the Canada Border Services Agency provided, covering the period from August 1, 2000, to September 1, 2020.²⁷ But it is impossible to determine his actual comings and goings by reading the report. Also, the passports that he submitted don't allow for any findings to be made, either because they aren't complete or because they are difficult to read.²⁸

[27] Finally, the Appellant provided a history of his medical services that the Régie de l'assurance maladie du Québec [Quebec health insurance board] (RAMQ) had covered.²⁹ This history is often useful in cases where residency is an issue. But visits to the doctor weren't frequent before 2017:

- There were 3 visits in March 1997.
- Then there were 2 visits in August and September 2000.

²⁴ See GD2-17.

²⁵ See GD2-17.

²⁶ See GD6-39.

²⁷ See GD6-91.

²⁸ See GD6-93 to GD6-105.

²⁹ See AD3-17.

- There were no visits until 2002. Then there was a visit in May and another visit in October.
- There were no visits until October 2003. Then there were 9 visits between October 31, 2003, and February 2004.
- There were no visits until 2005. Then there were 2 visits in February and May.
- There were no visits until another visit in June 2006.
- There were no visits until 2007. Then there was a visit in January, a visit in April, and another visit in July.
- There were no visits until November 2009.
- There were no visits until October 2011.
- There were no visits until July 2012.
- There were no visits until May 2013. Then there was a visit in June and another visit in August 2013.
- There were no visits between August 2013 and September 2016.
- There were 4 visits in September 2016. Then there were none until May 7, 2017.

[28] From March 1997 to just before September 2016, I count 28 visits in about 20 years, an average of just over 1 visit per year. There were even 3 at the beginning of March 1997. This is significant, but the visits are so far apart that I can't infer from them that the Appellant was a resident of Canada. Also, there were no visits for many years, including in 2001, 2008, 2010, 2014, and 2015.

[29] The RAMQ provided a history of pharmacy services that were covered, from January 1, 1997, to April 13, 2025. This history strengthens this finding.³⁰ Between 1997 and 2016, that is, for 20 years, the Appellant visited the pharmacy only 9 times. These records don't prove that he was a resident of Canada during that period.

[30] Finally, I am of the view that, on a balance of probabilities, the documentary evidence, like the testimonial evidence at the hearing, doesn't prove that the Appellant was a resident of Canada from March 13, 1997, to May 7, 2017.

The Appellant was a resident of Canada from May 8, 2017, to January 20, 2026

[31] Unfortunately, the Appellant's testimony isn't more useful for this period than it was for the period before. The evidence that often helps establish residence in Canada is also missing:

- There are no statements of account for utilities such as electricity, heating, cable television, and cell phone.
- There are no bank account or credit card statements.
- There are no tax returns, despite what the Appellant testified. But there are notices of assessment from Revenu Québec [Quebec's taxation authority] for the years 2020 through 2022.³¹
- There is no list of the Appellant's comings and goings.

[32] I find that the Appellant was a resident of Canada during that period for the following reason: In my opinion, there is new evidence, not found for the previous period, that establishes his residence in Canada.

³⁰ See AD3-24.

³¹ See GD6-64.

[33] First, as of May 2017, the history of services that the RAMQ covered shows that visits became much more frequent, continuing through December 2024.³²

- 6 visits in 2017
- 4 visits in 2018
- 17 visits in 2019
- 1 visit in 2020 and 2021
- 6 visits in 2022
- 5 visits in 2023
- 4 visits in 2024

[34] I count 43 visits by the Appellant to the doctor over 8 years. This is more than 5 per year, unlike the period before, when the average was just over 1 visit per year. And it is possible that the fact there were almost no visits in 2020 and 2021 was because of the pandemic. Also, his visits to the doctor during this period also seem to be farther apart than those before May 2017.

[35] And, as for the previous period, the history of pharmacy services that were covered strengthens my finding, if not the finding that the Appellant was a resident of Canada.³³ In fact, as of May 2017, he visited the pharmacy very frequently, almost every month of every year. While his pharmacy visits from 1997 to 2016 took up half a page in the file, the visits from 2017 to 2024 cover 22 pages.³⁴

[36] Also, for this period, the Appellant submitted a statement of last-resort financial assistance benefits that he had been receiving monthly since June 2018.³⁵ I give

³² See AD3-20 to AD3-23.

³³ See AD3-24.

³⁴ See AD3-24 to AD3-45.

³⁵ See AD3-6.

significant weight to the statements I have just addressed, and I find that they, on their own, justify a finding different from the one made for the previous period.

[37] But there is more. The Appellant submitted a letter from a community centre called Mada, confirming that he has been a client of that centre since 2017. He has been using their food bank since 2017, and he has been participating in a meal-sharing program since May 2020. Unfortunately, this shows that the Appellant's lifestyle is unstable. But it also shows that he was a resident of Canada during that period.

[38] The Appellant also submitted sworn statements dated 2025 from three witnesses: one woman has known him since 2001, another since 2018, and another since 2022.³⁶ They all testified that he lived on Kent Street in Montréal, and that he had memory problems. They said that he kept in touch with some of his children in Canada, though they didn't specify how many. Finally, they testified that they helped him get to Mada, the grocery store, and the hospital.

[39] The sworn statements are a little vague and similar. But, given that there are three of them, and given how long the witnesses said they had known the Appellant, I am of the view that they help establish that he was a resident of Canada during that period.

[40] Finally, the Appellant submitted a report from a credit bureau. This report seems to show that there was little activity before 2017, but that activity became more regular after that.³⁷

[41] So, I believe that this evidence supports my finding that the Appellant has been a resident of Canada since May 8, 2017, when he first visited a doctor and a pharmacy in 2017. He continued to be a resident up until the hearing.

³⁶ See AD3-2, AD3-3, and AD3-5. It should be noted that there is also a letter from one of the signatories on file. She said that she had been accommodating the Appellant since May 2018. See GD6-19.

³⁷ See GD6-8.

Conclusion

[42] In my view, the Appellant wasn't a resident of Canada from March 13, 1997, to May 7, 2017. But I am of the view that he was a resident of Canada from May 8, 2017, up until the hearing on January 20, 2026.

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

Jean Lazure
Member, Appeal Division