

Docket: 2010-2256(OAS)

BETWEEN:

SOROOR LANKARANI,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT,

Respondent.

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Appeal heard on January 20, 2011, at Vancouver, British Columbia.

Before: The Honourable Justice Robert J. Hogan

Appearances:

Agent for the Appellant: R.J. Marsh

Counsel for the Respondent: Scott England

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**JUDGMENT**

Whereas the Appellant appealed to a Review Tribunal from a decision made by the Respondent under the *Old Age Security Act* (“OASA”);

Whereas the ground of the Appellant’s appeal was that the determination by the Minister of Human Resources and Skills Development regarding her entitlement to the guaranteed income supplement for the payment period from July 1, 2009 to June 30, 2010 was incorrectly made;

Whereas the said determination was referred for decision to the Tax Court of Canada under subsection 28(2) of the *OASA*;

And having heard the submissions of both parties;

The Court holds that Sorour Lankarani was required by subsection 146(8) of the *Income Tax Act* to include \$7,542.86 in her income for the calendar year ending December 31, 2008. The appeal is therefore dismissed, without costs, in accordance with the attached reasons for judgment, and the Commissioner of Review Tribunals shall be so advised.

Signed at Ottawa, Canada, this 22nd day of March 2011.

"Robert J. Hogan"

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Hogan J.

Citation: 2011 TCC 176  
Date: 20110322  
Docket: 2010-2256(OAS)

BETWEEN:

SOROOR LANKARANI,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT,

Respondent.

### **REASONS FOR JUDGMENT**

#### **Hogan J.**

#### **Introduction**

[1] This is a reference pursuant to subsection 28(2) of the *Old Age Security Act*<sup>1</sup> (“OASA”) for a determination of income as defined in section 2 of the OASA.

#### **Factual Background**

[2] Under the OASA, the guaranteed income supplement (GIS) is an adjunct to the old age security pension for recipients who have low incomes. The general scheme of the GIS was described by Hershfield J. of this Court in *Ward v. Minister of Human Resources and Social Development*.<sup>2</sup>

4 . . . Firstly, the entitlement to the GIS for the 12 month period commencing June 1 of any year and ending July 31 of the next year depends on the income of the applicant in that applicant’s base calendar year which is the taxation year preceding the particular 12 month period in respect of which an application for GIS is being made. That particular 12 month period is referred to as the “current payment period”. To account for certain situations where one’s income is expected to go

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<sup>1</sup> R.S.C. 1985, c. O-9.

<sup>2</sup> 2008 TCC 25.

down during the upcoming GIS payment period and hence leave an applicant in a worse income position than projected by looking at the previous calendar year's income, applicants are permitted in limited circumstances to make estimates of reduced income so that the Minister can make any necessary adjustments to the amount of the GIS to be paid to that applicant.

[3] The Appellant submitted an application for the GIS dated June 24, 2008. She retired on January 11, 2009 and began receiving the GIS in February 2009. The Appellant's "first estimate" of income was received by the Minister of Human Resources and Skills Development ("Minister") on January 14, 2009, and this estimate was used to determine the Appellant's eligibility for the GIS for the 2009-2010 payment period.

[4] On September 24, 2009, the Minister notified the Appellant that because she had not reported an RRSP withdrawal of \$7,542.86 made in 2008, she had received a GIS overpayment. The Minister consequently reduced the Appellant's GIS entitlement and requested the return of the overpayment.

[5] The Appellant subsequently initiated the appeal process and, since the issue in this case has to do with income, the Review Tribunal referred the notice of appeal to this Court.

### Respondent's Position

[6] The Respondent argues that the Minister calculated the income of the Appellant correctly with respect to the period covered by the appeal. Since the calculation of income under the *OASA* is based on how income is determined under the *Income Tax Act*<sup>3</sup> ("*ITA*"), and RRSP withdrawals are income in the year in which they are taken, the reduction of the GIS entitlement is correct under paragraph 14(2)(c) of the *OASA*.

### Analysis

#### **Statute**

[7] The *OASA* provides in section 2 a definition of "income" which reads in part as follows:

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<sup>3</sup> R.S.C. 1985 (5th Supp.), c. 1.

“income” of a person for a calendar year means the person’s income for the year, computed in accordance with the *Income Tax Act*, except that . . .

[8] The amount of the GIS benefit that a recipient is entitled to is calculated in accordance with section 12. The calculation is based on income, and the relevant provision of section 12 of the *OASA* for the purposes of this appeal is the following:

(6) In this section, “monthly base income” means, in relation to the calculation of the supplement for a month in any given payment quarter,

(a) in the case of a person other than an applicant described in paragraph (b) or (c), one-twelfth of the income of that person for the base calendar year;

...

[9] Section 10 of the *OASA* defines “base calendar year” and “current payment period” as follows:

“base calendar year” means the last calendar year ending before the current payment period.

“current payment period” means the payment period in respect of which an application for a supplement is made by an applicant.

[10] Where an old age security pension recipient retires during a payment period, subsection 14(2) allows the recipient to file an estimate of how his income will be affected so that the Minister can adjust the GIS payment accordingly. That subsection requires all other income from the base calendar year to be added to the estimated pension and employment income for the purpose of calculating the adjusted GIS payment. Subsection 14(2) of the *OASA* provides:

(2) If in a current payment period a person who is an applicant, or is an applicant’s spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), ceases to hold an office or employment or ceases to carry on a business, that person may, not later than the end of the second payment period after the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in addition to filing a statement as described in paragraph 15(2)(a) in the case of the applicant’s spouse or common-law partner, file a statement of the person’s estimated income for the calendar year in which the person ceased to hold that office or employment or ceased to carry on that business, which income shall be calculated as the total of

(a) any pension income received by the person in that part of that calendar year that is after the month in which the person ceases to hold that office or

employment or to carry on that business, divided by the number of months in that part of that calendar year and multiplied by 12,

(b) the income from any office or employment or any business for that calendar year other than income from the office, employment or business that has ceased, and

(c) the person's income for the base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income.

[11] Section 14 of the *Old Age Security Regulations*<sup>4</sup> defines "pension income" for the purposes of section 14 of the *OASA* as follows:

14 For the purposes of section 14 of the Act, "pension income" means the aggregate of amounts received as

(a) annuity payments;

(b) alimony and maintenance payments;

(c) employment insurance benefits;

(d) disability benefits deriving from a private insurance plan;

(e) any benefit, other than a death benefit, under the *Canada Pension Plan* or a provincial pension plan as defined in the *Canada Pension Plan*;

(f) superannuation or pension payments, other than a benefit received pursuant to the Act or any similar payment received pursuant to a law of a provincial legislature;

(g) compensation under a federal or provincial employee's or worker's compensation law in respect of an injury, disability or death;

(h) income assistance benefits under an agreement referred to in subsection 33(1) of the *Department of Human Resources Development Act* by reason of a permanent reduction in the work force as described in that subsection; and

(i) income assistance benefits under the Plant Workers' Adjustment Program, the Fisheries Early Retirement Program or the Northern Cod Adjustment and Recovery Program by reason of a permanent reduction in the work force.

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<sup>4</sup> C.R.C., c. 1246.

[12] The *ITA* deals with the taxation and administration of RRSPs. It prescribes in subsection 146(8) that amounts withdrawn from an RRSP are to be included in income for the year in which they are withdrawn:

(8) There shall be included in computing a taxpayer's income for a taxation year the total of all amounts received by the taxpayer in the year as benefits out of or under registered retirement savings plans, other than excluded withdrawals (as defined in subsection 146.01(1) or 146.02(1)) of the taxpayer and amounts that are included under paragraph (12)(b) in computing the taxpayer's income.

[13] Further, paragraph 56(1)(h) of the *ITA* confirms that withdrawals from RRSPs are taxable:

56(1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year,

...

(h) amounts required by section 146 in respect of a registered retirement savings plan or a registered retirement income fund to be included in computing the taxpayer's income for the year;

...

[14] In *Chubak v. Canada (Minister of Human Resources Development)*,<sup>5</sup> Beaubier J. held that amounts withdrawn from an RRSP are income to the taxpayer for the purposes of the *OASA*, due to the operation of paragraph 56(1)(h) and section 146 of the *ITA*.

[15] Further, in *Gramaglia v. Minister of Human Resources and Social Development*,<sup>6</sup> Beaubier J. held that amounts withdrawn from an RRSP under the Home Buyers' Plan (HBP) and not paid back into the RRSP as scheduled are to be included in income in making determinations of GIS entitlement. Moreover, Bowie J. held in *Furma v. Minister of Human Resources Development*<sup>7</sup> that when the RRSP matures before repayment under the HBP, the amounts not repaid under the plan are income for the purposes of determining GIS entitlement.

[16] In summary, it is clear that withdrawals from an RRSP are to be included in income under the *ITA*. Case law makes it clear that RRSP withdrawals must also be reflected in the income used to determine GIS entitlement.

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<sup>5</sup> [2000] T.C.J. No. 765 (QL).

<sup>6</sup> 2007 TCC 218.

<sup>7</sup> 2004 TCC 229.

[17] For the determination of the GIS amount to which she was entitled, the Appellant had to navigate a technical set of rules that cannot be easily understood by most taxpayers.

[18] First, when determining income under the *OASA*, one must first look at the payment period in question. In this case, it is the 2009-2010 payment period, which runs from July 1, 2009 to June 30, 2010. In general, to determine entitlement for this period, one must look at the income from the base calendar year.

[19] The base calendar year in this case is the calendar year that ended prior to the payment period in question, and that year is the 2008 taxation year. Therefore, the Minister is correct in using 2008 income figures to determine GIS eligibility for the 2009-2010 payment period.

[20] The next issue to resolve is whether the RRSP withdrawal was properly included in the income figures used to calculate the GIS. The RRSP withdrawal is assumed to have occurred in 2008. Pursuant to subsection 146(8) of the *ITA*, withdrawals made from an RRSP in a year are to be included in income for that year, and this is reiterated in paragraph 56(1)(h) of the *ITA*. The cases mentioned above confirm this. Therefore, the RRSP withdrawal made by the Appellant in 2008 is to be included in her 2008 income under the *ITA*.

[21] Since section 2 of the *OASA* states that income under that Act is the same as income under the *ITA* (with some exceptions, which do not apply here), the RRSP withdrawal amount was properly included in the Appellant's income for 2008 for the purposes of the *OASA* as well.

[22] The last issue, then, is whether or not the RRSP amount was properly included in the income figure used to determine whether the Appellant's entitlement to the GIS should be adjusted. Withdrawals from an RRSP are neither pension income nor employment income under subsection 14(2) of the *OASA*. Therefore, these withdrawals should be included under paragraph 14(2)(c). Section 14 includes all income from the base calendar year which is not pension or employment income.

[23] Therefore, since the RRSP withdrawal was income in the 2008 taxation year, which is the base calendar year for the 2009-2010 payment period, that withdrawal was properly included by the Minister in determining the GIS entitlement for the 2009-2010 payment period under subsection 14(2) of the *OASA*.

## Conclusion

[24] For these reasons, it is the decision of this Court that Sorour Lankarani was required by subsection 146(8) of the *ITA* to include \$7,542.86 in her income for the calendar year ending December 31, 2008, and the Commissioner of Review Tribunals shall be so advised.

Signed at Ottawa, Canada, this 22nd day of March 2011.

"Robert J. Hogan"

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Hogan J.

CITATION: 2011 TCC 176

COURT FILE NO.: 2010-2256(OAS)

STYLE OF CAUSE: SOROUR LANKARANI v. THE  
MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: January 20, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Robert J. Hogan

DATE OF JUDGMENT: March 22, 2011

APPEARANCES:

Agent for the Appellant: R.J. Marsh

Counsel for the Respondent: Scott England

COUNSEL OF RECORD:

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