

Docket: 2017-902(OAS)

BETWEEN:

VIRGINIA VINCENT,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

Heard by written submissions due on November 30, 2017 emanating
from an appeal commenced at Edmonton, Alberta

Before: The Honourable Mr. Justice Randall S. Boccock

Appearances:

Agent for the Appellant: Al Tywoniuk
Counsel for the Respondent: Allan Mason

JUDGMENT

IN ACCORDANCE with the Reasons for Judgment attached, the appeal concerning the determination of the Appellant's income by the Minister of Employment and Social Development is dismissed on the basis that the inclusion of the lump-sum payment of \$11,683.00 into total income in 2014 and into income for the purposes of determining the Appellant's entitlement to the Guaranteed Income Supplement was correct.

Signed at Ottawa, Canada, this 19th day of December 2017.

“R.S. Boccock”

Boccock J.

Citation: 2017 TCC 254
Date: 20171219
Docket: 2017-902(OAS)

BETWEEN:

VIRGINIA VINCENT,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

REASONS FOR JUDGMENT

Bocock J.

I. Introduction and factual background

[1] Virginia Vincent (“Ms. Vincent”) was denied Guaranteed Income Supplement (“GIS”) benefits for the period July 2015 to June 2016 (the “payment period”) by the Minister of Employment and Social Development (the “Minister”). The Minister did so after re-calculating Ms. Vincent’s GIS benefit income for the relevant based year, 2014. In turn, that re-calculation occurred because the Canada Revenue Agency (the “CRA”) reassessed Ms. Vincent’s income for the base year 2014 (the “base year”). The CRA added an additional amount on account of “other pension/superannuation income” as a lump-sum. This changed Ms. Vincent’s base year total for such source of income to \$14,039.00 from the previous \$2,356.00 and her total income to \$35,553.00 (“Total Income”).

[2] The base year is used by the Minister to determine whether Ms. Vincent falls below an income level warranting payment of GIS benefits for the subsequent payment period. The Minister asserts the lump-sum payment pushed Ms. Vincent’s income above the maximum income threshold for GIS and therefore she was denied the GIS benefit. The Minister’s decision involved a determination of income. Therefore, the Social Security Tribunal, when Ms. Vincent exercised her right of appeal, referred the matter to this Court pursuant to the *Old Age Security Act*, R.S.C., 1985, c. O-9 (the “OAS Act”).

[3] The reassessment by CRA arose because it received a T1198 (Statement of Qualifying Retroactive Lump-Sum Payment) and T4A from the Alberta Pensions Services Corporation indicating that an additional lump-sum pension benefit of \$11,683.00 was received by Ms. Vincent in 2014.

[4] Based upon this T1198 and T4A, the CRA adjusted Ms. Vincent's Total Income. As well, the CRA applied section 110.2 of the *Income Tax Act*, RSC 1985, c.1, as amended (the "ITA"). This discretionary adjustment assigned \$9,326.00 of the lump-sum to taxation years prior to 2014 for the purposes of calculating tax payable. Therefore, Ms. Vincent did not pay income tax on this reallocated amount in 2014. However, Ms. Vincent's total income in 2014 was not altered by the CRA. The continued inclusion of the entire lump-sum in 2014 Total Income has direct bearing of the calculation of income for GIS benefit purposes. Therefore, the appeal before the Court.

[5] As to process for the hearing, Ms. Vincent's agent requested that the hearing of the appeal be conducted by written representations, given Ms. Vincent's ongoing health issues. On motion to the Court and in accordance with the latitude permitted under the relevant rules, the hearing was held through written submissions. On November 30, 2017, the period for submissions expired. Therefore, the Court proceeds to render its decision based upon the submissions received.

(a) Issue

[6] The overriding issue for the Court is whether the Minister correctly determined Ms. Vincent's base year income (2014) for the purpose of calculating her GIS benefits during the payment period.

(b) Some Additional Facts

[7] The T1198 prepared by the Alberta pensions official on September 25, 2014 recorded the total of the "qualifying retroactive lump-sum" as \$11,683.39. The T1198 also separated the aggregate lump-sum over four years: \$12.56 in 2011, \$4,634.88 in 2012, \$4,679.40 in 2013 and (by handwritten entry) \$2,356.56 in 2014. The corresponding T4A recorded the aggregate Pension or Superannuation benefits as \$14,039.95, being some \$2,356.00 greater than the amount recorded in the T1198. Since these differing amounts ultimately bear on the determination of total income for 2014, the Court will attempt to resolve that conflict later in these reasons.

II. The Law: calculating GIS “qualifying” income

a) The period to measure

[8] The calculation period is not in dispute. The base calendar year is 2014 and the payment period is July 2015 to June 30, 2016: *OAS Act* at section 10.

b) Calculating income for GIS purposes: what goes in, what stays out

[9] The inclusion requirements for computing income for GIS purposes are provided for in the *OAS Act* and the *Regulations*. These rules for computing income for such purposes are distinct from, but reference the *ITA*.

[10] Section 2 of the *OAS Act* defines a pensioner’s income as determined under the *ITA*. The *ITA*, within paragraph 56(1)(a)(i), provides for the inclusion of pension benefits where it is written:

SECTION 56: Amounts to be included in income for year

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

Pension benefits, unemployment insurance benefits etc.

(a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

...

(C) the amount of any payment out of or under a specified pension plan, and ...

[11] To calculate one’s income for the purposes of the *OAS Act* and specifically GIS benefits one follows a prescribed route. The *OAS Act* directs a taxpayer to the *ITA*. The *ITA* provides general guidance regarding various inclusions from pension type payments. For GIS specifically, one turns back to the *OAS Act* and *Regulations*. The calculation of income for GIS purposes is then made. If one exceeds the maximum allowable income threshold, GIS benefits are not paid.

(c) Ms. Vincent's submissions

[12] Ms. Vincent's agent asserts several bases as to why the lump-sum should be excluded from GIS qualifying income. These submissions may be summarized as follows:

- (i) the \$9,325.00 should not be included in total base year income because it factually arose from retroactive payments in 2014, but related to previous years;
- (ii) although the CRA increased total income by \$14,039.00, the CRA nonetheless "reduced your [Ms. Vincent's] 2014 income by \$9,325.00 which is the amount of the payment that applies to previous years";
- (iii) the T1198 clearly apportions \$9,325.00 to the 2011, 2012 and 2013 taxation years; and
- (iv) the quantum of the GIS benefits denied is a significant amount of money to Ms. Vincent and represents a financial burden for her.

III. Analysis and Decision

[13] The views and sentiments of Ms. Vincent's agent are similar to many others who come to this Court concerning the measurement of income for GIS purposes. They assert that the measurement of income for GIS benefits should be taxable income and not total income. Regrettably, it is the opposite. While there are some permitted adjustments to total income (Part I, Division B income) for GIS determination purposes, lump-sum retroactive pension payments are not among them: *Gaisford v. Canada* (Minister of Human Resources and Skills Development), 2011 FCA 28 at paragraph 4. Ms. Vincent did not pay tax on the lump-sum retroactive payments because, although they are included and remain in total income, a portion of such payments may, where section 110.2 of the *ITA* is applied, be deducted from taxable income. This discretionary ministerial re-allocation is made to taxable income. However, the fact that a portion of the lump-sum is not included in taxable income in a given year does not mean it is excluded from total income. Instead, the measure of taxable income (Part I, Division C) and deduction of a portion of the lump-sum retroactive pension payment are not relevant to the measure of total income (Part I, Division B) and related GIS income calculation: *Burchill v. HMQ*, FCA 145 at paragraphs 4 and 5.

[14] On this particular ground of appeal, Ms. Vincent cannot succeed. Simply, she has not paid tax as taxable income on a portion of the lump-sum paid in 2014 pursuant to section 110.2, but she must include it in 2014 total income for GIS purposes. The CRA accurately reflected this in the notice of reassessment which clearly illustrates the disparity between 2014 filed and revised “Total Income” and “Taxable Income”: \$35,353.00 up from \$23,870.00 versus \$20,366.00 up from \$18,008.00. Since GIS benefits are based upon total income (with some exclusions) and not taxable income, the amounts determined are generally correct.

[15] On the final issue regarding Ms. Vincent’s “double counting” argument, it is uncertain whether there is an error in the calculation of Total Income for 2014. In 2014, the amount of \$2,356.56, which appeared as a “Qualifying Retroactive Lump-Sum Payment, was initially included in her filed return as 2014 pension income.

[16] The amount is also coincidentally equal to the amount reflected by a handwritten notation as being paid as a retroactive lump-sum in 2014. As further coincidence, it is also one-half of the amounts paid as lump-sum retroactive payments for 2012 and 2013. Adding this handwritten \$2,356.56 to the amount initially reported also coincidentally equals the full amount of the retroactive lump-sum payments recorded for 2012 and 2013. The court simply cannot determine on the basis of the evidence before it which is correct. Is the \$2,356.56 recorded on the T1198 and T4A for 2014 additional to the amount then already received and reported by Ms. Vincent? If so, this would bring her 2014 pension benefits to amounts consistent with the 2012 and 2013 lump-sum payments. Alternatively, is the \$2,356.56 double counted? Fortunately, such an error would be inconsequential. The margin of error makes no difference to Ms. Vincent regarding the maximum income threshold calculation for GIS benefit purposes. If it had, Ms. Vincent may rest assured the Court would have requested further information and made a decision. However, even if double counted in error, the reduction to Ms. Vincent’s total income would still place total income above the maximum income threshold for GIS benefit purposes. Therefore, the Court need not undertake the request for further information needed to resolve this final assertion.

[17] For the foregoing reasons, the appeal is dismissed without costs. Based upon the T4A dated September 25, 2014 received by the CRA from the Alberta Pension Services Corporation and the other declared amounts of income, the Minister’s determination of income for GIS benefit purposes was correct.

Signed at Ottawa, Canada, this 19th day of December 2017.

“R.S. Boccock”

Boccock J.

CITATION: 2017 TCC 254

COURT FILE NO.: 2017-902(OAS)

STYLE OF CAUSE: VIRGINIA VINCENT AND THE
MINISTER OF EMPLOYMENT AND
SOCIAL DEVELOPMENT

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: November 30, 2017

REASONS FOR JUDGMENT BY: The Honourable Mr. Justice Randall S.
Bocock

DATE OF JUDGMENT: December 19, 2017

APPEARANCES:

Agent for the Appellant: Al Tywoniuk
Counsel for the Respondent: Allan Mason

COUNSEL OF RECORD:

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