

Docket: 2017-2663(OAS)

BETWEEN:

LYSE-MARTHE ST-SAUVEUR,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on July 13, 2018, at Montreal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

For the Appellant:	The Appellant herself
Counsel for the Respondent:	Ms. Nancy Azzi

JUDGMENT

The appeal filed by the Appellant against the Respondent's decision regarding the calculation of the guaranteed income supplement that she was entitled to under the *Old Age Security Act* for the months of February to June 2014 (included within the payment period of July 1, 2013 to June 30, 2014) is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 12th day of December 2018.

“Réal Favreau”

Favreau J.

Citation: 2018 TCC 221
Date: 20181212
Docket: 2017-2663(OAS)

BETWEEN:

LYSE-MARTHE ST-SAUVEUR,

Appellant,

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Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Favreau J.

[1] Ms. St-Sauveur is appealing a decision by the Minister of Employment and Social Development (the “Minister”) dated March 17, 2015, which confirms the Appellant’s income for the purpose of calculating the amounts of the guaranteed income supplement (the “GIS”) provided for under the *Old Age Security Act*, R.S.C. 1985, c. O-9 (the “OASA”) to which she was entitled for the months of February to June 2014 (included within the payment period of July 1, 2013 to June 30, 2014).

[2] To establish the Appellant’s income for the purpose of determining the GIS amounts that she was entitled to for the months of February to June 2014 (included within the payment period of July 1, 2013 to June 30, 2014), the Minister assumed the following facts:

- a) The Appellant was single at all relevant times.
- b) In April 2010, the Appellant retired.
- c) On May 10, 2012, the Appellant received a final employment insurance benefit.
- d) In January 2014, the Appellant reached the age of 65.

- e) On May 16, 2014, the Appellant applied to receive the old age security (OAS) pension and the GIS.
- f) On that same day, at the same time as applying for the OAS pension and the GIS, the Appellant submitted two forms to the Minister entitled “Statement of Estimated Income after Retirement or Reduction in Retirement Income – Year 2012” and “Statement of Estimated Income after Retirement or Reduction in Retirement Income – Year 2013” (election forms 2012 and 2013).
- g) The Minister calculated the GIS amounts that the Appellant was entitled to for the months of February to June 2014 (included within the payment period of July 2013 to June 2014), not using her income for the 2012 base calendar year, but using an estimate of her income for the 2013 calendar year.
- h) That alternate method of calculating a recipient’s income for GIS purposes is commonly called “Election”.
- i) The Appellant’s estimated income for the 2013 calendar year consisted of the following:

2013 ESTIMATED INCOME	
SOURCE OF INCOME	INCOME
Quebec Pension Plan 2013	\$990.96
Interest income 2012	\$28
RRSP 2012	\$12,093.73
TOTAL	\$13,113.32

- j) The Appellant’s income using the base calendar year method (2012 calendar year) is as follows:

2012 BASE CALENDAR YEAR INCOME	
SOURCE OF INCOME	INCOME
Quebec Pension Plan 2012	\$973.44
Employment insurance benefits 2012	\$228
Interest income 2012	\$28
RRSP 2012	\$12,093.73
TOTAL	\$13,323.80

- k) The election method (estimated income of the 2013 calendar year) for calculating the Appellant’s income for GIS purposes was more advantageous than the base calendar year method (2012 calendar year).
- l) The Appellant’s income calculated using the election method entitled her to the GIS.

- m) On September 25, 2014, the Minister informed the Appellant that her eligibility for the GIS had been calculated using the election method for the months of February to June 2014 (included within the payment period of July 2013 to June 2014).
- n) On December 20, 2014, the Appellant submitted an application for reconsideration of the Minister's decision.
- o) In a letter dated March 17, 2015, the Minister informed the Appellant that he was staying with his decision of September 25, 2014.

[3] The Minister also relied on the following facts:

- a) On June 3, 2015, the Appellant submitted to the Minister a copy of a Notice of Reassessment for her 2012 taxation year. That notice is dated April 27, 2015.
- b) That Notice of Reassessment shows a decrease in the Appellant's income due to the use of an RRSP deduction of \$1,973 to which she was entitled.
- c) Therefore, the Appellant's estimated income for the 2013 calendar year now consists of the following:

2013 ESTIMATED INCOME - REVISED	
SOURCE OF INCOME	INCOME
Quebec Pension Plan 2013	\$990.96
Interest income 2012	\$28
RRSP 2012	\$12,093.73
RRSP deduction 2012	(\$1,973)
TOTAL	\$11,140.32

- d) The Appellant's income using the base calendar year method (2012 calendar year) is now as follows:

2012 BASE CALENDAR YEAR INCOME - REVISED	
SOURCE OF INCOME	INCOME
Quebec Pension Plan 2012	\$973.44
Employment insurance benefits 2012	\$228
Interest income 2012	\$28
RRSP 2012	\$12,093.73
RRSP deduction 2012	(\$1,973)
TOTAL	\$11,350.80

- e) The election method (estimated income of the 2013 calendar year) for calculating the Appellant's income for GIS purposes is still more advantageous than the base calendar year method (2012 calendar year).

- f) The Appellant's revised estimated income for the 2013 calendar year entitled her to a \$410 refund from the Minister as a GIS.

[4] The Appellant is challenging how the Minister calculated her estimated 2013 income because he included the payments drawn by the Appellant in 2012 from a registered retirement savings plan ("RRSP"). She believes that this income should be excluded from the calculation of her estimated income for 2013. The Appellant was apparently unaware that the amounts withdrawn from her RRSP would affect her entitlement to the GIS.

I. Analysis

[5] The GIS benefit applies to a payment period that extends from July 1 of each year to June 30 of the following year and is based on the income that the applicant received during the calendar year preceding the start of the payment period. The previous calendar year is called the "base calendar year", and the applicant is required to file a statement of income for that base calendar year, pertaining to each payment period.

[6] Subsections 14(2) to (6) of the OASA also allow a GIS applicant to produce an additional statement of his/her estimated income for the year after the base calendar year if he/she ceases to hold an office or employment or ceases to carry on a business – or if he/she suffers a termination of or reduction in pension income during the year. These provisions allow the Minister to take into account the fact that the applicant's income from those sources will be less than what he/she received during the base calendar year. However, an income estimate still factors in the amount of income that the applicant received from all other sources during the base calendar year.

[7] Section 2 of the OASA provides that a person's income for a calendar year is, subject to a few exceptions not applicable in this case, the income that is calculated in accordance with the *Income Tax Act*.

[8] In this case, Ms. St-Sauveur retired in April 2010 and reached the age of 65 in January 2014. Therefore, she was entitled to file a statement of estimated income for 2013, as per paragraph 14(6)(a) of the OASA. Under subparagraphs 14(6)(a) (i) and (ii), she was entitled to estimate the income she would receive under any pension plan and from any office or employment or any business for 2013. However, subparagraph 14(6)(a)(iii) required her to add into her estimated income for 2013 the income from all other sources during the 2012 base calendar

year, as though she had no income during the base calendar year from any office or employment or any business and no pension income.

[9] Paragraph 14(6)(a) of the OASA reads as follows:

Additional statement if loss of pension before current payment period

(6) If, in the circumstances described in paragraph (a) or (b), 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), suffers a loss of income due to a termination of or reduction in pension income, the person may, not later than the end of the payment period that is immediately 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,

(a) if the loss is suffered in the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period, which income shall be calculated as the total of

(i) any pension income received by the person in that calendar year,

(ii) the income from any office or employment or any business for that calendar year, and

(iii) 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;

[10] In Ms. St-Sauveur's case, the loss of income in 2012 was due to her employment insurance benefits ending in May 2012 which, under section 14 of the *Old Age Security Regulations* C.R.C., c. 1246, (the "Regulations"), are included in the pension income.

[11] Subparagraph 14(6)(a)(iii) requires that the applicant's income for the base calendar year be calculated on the assumption that the applicant had no income from any office or employment or any business and no pension income.

[12] In calculating the Appellant's estimated income for 2013, the Minister included the income drawn from her RRSP for 2012 under subparagraph 14(6)(a)(iii) of the OASA.

[13] Whether payments drawn from an RRSP constitute pension income as that term is defined for the purposes of the OASA, namely in section 14 of the Regulations, was considered in at least three other cases before this Court:

- *Drake v. Human Resources*, 2005 TCC 498;
- *Gonder v. Human Resources*, 2011 TCC 505; and
- *Brighton v. Human Resources*, 2013 TCC 323.

[14] In each of those decisions, the Court found that payments drawn from an RRSP are not pension income as defined in section 14 of the Regulations:

Definition of Pension Income

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;
- 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.

[15] Therefore, the Minister did not err in including the payment from the Appellant's RRSP in his calculation of the estimated 2013 income, even though the

payment from the RRSP occurred only once in 2012 and even though there was no payment from an RRSP for 2013.

[16] It is clear that Ms. St-Sauveur received the payment in 2012, that she was required to include it in her income under subsection 146(8) and paragraph 56(1)(h) of the *Income Tax Act* and that, for the purposes of the OASA, that payment was part of her income for the 2012 base calendar year.

[17] Parliament decided not to include RRSP withdrawals in the definition of “pension income” in the Regulations, and the Court must apply the legislation as written. The only remedy to the Appellant’s situation would be an amendment of the OASA or the Regulations by the federal Parliament.

[18] Therefore, I must dismiss the appeal because the decision giving rise to the appeal is well founded in law.

II. Addendum

[19] At the hearing, the Appellant requested that her name not appear in full in the judgment because her 2012 and 2013 incomes would be disclosed. She does not have a credit history and is concerned that if the financial information in question is disclosed, she will have difficulty finding housing. Ms. St-Sauveur had made a similar request to the Social Security Tribunal.

[20] I reviewed the Appellant’s request for preservation of anonymity (as opposed to a request for an in camera session, for confidentiality or for non-publication) and I found that there was no basis for issuing such an order under the circumstances because the Appellant’s rationale did not represent a serious enough risk of harm for the public nature of the Court’s hearings and the resulting judgments to be set aside.

Signed at Ottawa, Canada, this 12th day of December 2018.

“Réal Favreau”

Favreau J.

CITATION: 2018 TCC 221

COURT FILE NO.: 2017-2663(OAS)

STYLE OF CAUSE: Lyse-Marthe St-Sauveur and the Minister of
Employment and Social Development

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: July 13, 2018

REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau

DATE OF JUDGMENT: December 12, 2018

APPEARANCES:

For the Appellant: The Appellant herself
Counsel for the Respondent: Ms. Nancy Azzi

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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