

Docket: 2019-852(OAS)

BETWEEN:

PAULETTE TOURANGEAU,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on January 13, 2020, at Montreal, Quebec

Before: The Honourable Justice Réal Favreau

Appearances:

|                             |                       |
|-----------------------------|-----------------------|
| For the appellant:          | The appellant herself |
| Counsel for the respondent: | Annie Laflamme        |

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**JUDGMENT**

The appeal from the decision rendered by the Minister of Employment and Social Development on April 17, 2018, concerning the determination of the appellant's income for the purpose of calculating the Guaranteed Income Supplement amounts under the *Old Age Security Act* to which she was entitled for the July 2017 to June 2018 payment period is dismissed, and the Minister's decision is confirmed, in accordance with the attached Reasons for Judgment.

Signed at Montreal, Quebec, this 4th day of August 2020.

"Réal Favreau"

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Favreau J.

Citation: 2020 TCC 74  
Date: 20200804  
Docket: 2019-852(OAS)

BETWEEN:

PAULETTE TOURANGEAU,

Appellant,

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THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

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### **REASONS FOR JUDGMENT**

Favreau J.

[1] Ms. Tourangeau is appealing from a decision by the Minister of Employment and Social Development (the Minister) concerning the determination of the amounts of the Guaranteed Income Supplement (the GIS) under the *Old Age Security Act*, R.S.C. 1985, c. O-9, as amended (the OASA).

[2] The GIS is calculated based on a person's income, as defined in section 2 of the OASA, meaning on the basis of the person's income in accordance with the *Income Tax Act* (the ITA) after having applied certain deductions specified in section 2 of the OASA.

[3] The appellant is disputing the fact that the sums withdrawn from the Registered Retirement Income Funds inherited from her late spouse (the RRIFs) must be included in her income in accordance with section 2 of the OASA.

[4] To establish the appellant's income for the purpose of determining her eligibility for the GIS during the July 2017 to June 2018 payment period, the Minister relied on the following assumptions of fact set out in paragraph 3 of the reply to the notice of appeal:

a) In January 2013, the appellant turned 65.

- b) In February 2013, the appellant began receiving the Old Age Security (OAS) pension.
- c) In January 2016, the appellant began receiving the GIS.
- d) In January 2017, the appellant's annual Registered Retirement Income Fund (RRIF) income was reduced.
- e) In July 2017, the appellant was notified that, as of July 2017, she would no longer be entitled to the GIS because her income was too high.
- f) On August 3, 2017, the Minister received the appellant's request for reconsideration.
- g) In a letter dated April 17, 2018, the Minister informed the appellant that he was confirming his decision from July 2017.
- h) On July 3, 2018, the appellant filed a notice of appeal before the Social Security Tribunal.
- i) In August 2018, the appellant submitted a form to the Minister entitled "Statement of Estimated Income after Retirement or Reduction in Pension Income – Year 2017" for a reduction in pension (RRIF) income in January 2017.
- j) The appellant's estimated income for the months of January to June 2017 (within the July 2016 to June 2017 payment period) and for the July 2017 to June 2018 payment period was as follows:

| <b>2017 ESTIMATED INCOME</b> |                    |
|------------------------------|--------------------|
| <b>SOURCE OF INCOME</b>      |                    |
| Quebec Pension Plan (QPP)    | \$7,903.00         |
| Pension income               | \$13,533.72        |
| Annual RRIF                  | \$2,234.25         |
| Foreign pension              | \$625.00           |
| <b>TOTAL</b>                 | <b>\$24,295.97</b> |

- k) For the months of January 2017 to June 2017 (within the July 2016 to June 2017 payment period), it was more advantageous for the appellant to use her income for the 2015 base calendar year of \$2,155 rather than her 2017 estimated income of \$24,295.97.
- l) The appellant was therefore entitled to the GIS for the months of January 2017 to June 2017 (within the July 2016 to June 2017 payment period) based on her income for the 2015 base calendar year of \$2,155.
- m) For the July 2017 to June 2018 payment period, it was more advantageous for the appellant to use her estimated income of \$24,295.97 rather than her income for the 2016 base calendar year of \$42,652.
- n) The appellant was not entitled to the GIS for that period because her income was above the maximum threshold of \$17,687.99 that entitled a person living alone to the GIS for that period.
- o) On February 21, 2019, the appellant was notified that following her option application, her eligibility for the GIS for the months of January 2017 to June 2017 (within the July 2016 to June 2017 payment period) would be calculated using her income for the 2015 base calendar year, as that was to her advantage, and that an estimated income for 2017 of \$24,295.97 would be used to calculate her eligibility for the GIS for the July 2017 to June 2018 payment period.
- p) In that same letter, she was also informed that her eligibility for the GIS for the July 2018 to June 2019 payment period was evaluated using her 2018 estimated income, but that it was above the GIS eligibility threshold for that period.
- q) On March 1, 2019, the appeal was transferred to the Tax Court of Canada.

[5] Ms. Tourangeau testified at the hearing and stated that she was 71 years old and had been living alone since December 2015 following the death of her spouse.

[6] During her testimony, Ms. Tourangeau denied paragraph 3(c) of the Minister's assumptions of fact, stating that she had begun receiving the GIS in January 2017 rather than in January 2016. She had applied for the GIS in 2016 but did not receive it in 2016.

[7] Ms. Tourangeau received the GIS for the January to June 2017 period but does not understand why she was denied the GIS for the July 2017 to June 2018 period when a precedent had been set and her total income for 2017 was identical to her total income for 2016.

[8] Ms. Tourangeau feels that she received unfair treatment and is seeking compensation for delays in benefits needed to cover her basic needs that were not paid.

[9] The issue is to determine whether the Minister correctly established the appellant's income for the purpose of calculating the GIS for the July 2017 to June 2018 payment period.

### I. Analysis

[10] GIS benefits apply to a payment period, which begins on July 1 of each year and ends on June 30 of the subsequent year, and are calculated based on the income the applicant received during the calendar year preceding the start of the payment period. The preceding calendar year is referred to as the "base calendar year," and the applicant is required to provide a statement of his or her income for that base calendar year, for each payment period.

[11] Subsections 14(2) to (6) of the OASA also permit a GIS applicant to file an additional statement of estimated income for the year following the base calendar year if the applicant has ceased to hold an office or employment or to carry on a business or has incurred a termination or reduction of pension income during the year. Those provisions enable the Minister to consider the fact that the income the applicant receives from those sources will be lower than the amount they received during the base calendar year. However, the estimated income still accounts for the amount of income the applicant received from all other sources during the base calendar year.

[12] Section 2 of the OASA provides that a person's income for a calendar year is, subject to a few exceptions that do not apply in this case, the person's income computed in accordance with the ITA.

[13] In this case, Ms. Tourangeau turned 65 in January 2013 and began receiving the Old Age Security pension in February 2013. Ms. Tourangeau's income for the years 2015, 2016 and 2017 was as follows: \$2,155; \$42,652 and \$24,296, respectively. Her 2016 income included RRIF withdrawals totalling \$17,871, and her 2017 income included RRIF withdrawals totalling \$2,234.25.

[14] In 2016, Ms. Tourangeau applied for the GIS, which she was granted for the period from January 1, 2017, to June 30, 2017 (within the July 2016 to June 2017

payment period), on the basis of her income for the 2015 base calendar year of \$2,155.

[15] In 2017, Ms. Tourangeau renewed her GIS application for the payment period from July 1, 2017, to June 30, 2018. That application was denied because her income of \$42,652 for the 2016 base calendar year exceeded the maximum income threshold to qualify for the GIS.

[16] In August 2018, Ms. Tourangeau submitted a form to the Minister entitled "Statement of Estimated Income after Retirement or Reduction in Pension Income – Year 2017" to account for the reduction in her income from the RRIFs beginning in January 2017.

[17] Ms. Tourangeau was entitled to file a statement of estimated income for 2017, as provided in paragraph 14(6)(b) of the OASA. Under subparagraphs 14(6)(b)(i) and (ii), she was entitled to estimate the income she would receive from any pension plan and from any office or employment or any business for 2017. However, subparagraph 14(6)(b)(iii) required that she add to her estimated income for 2017 any income received from any other sources during the 2016 base calendar year, excluding the income received during the base calendar year from any office or employment or any business or from any pension plan.

[18] Paragraph 14(6)(b) of the OASA reads as follows:

**Additional statement if loss of pension income 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,

...

(b) if the loss is suffered in a month that is before the payment period and after 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 part of that calendar year that is after the month immediately before the month in which the loss is suffered, divided by the number of months in that part of that calendar year and multiplied by 12,

(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.

[19] In Ms. Tourangeau's case, the loss of income in 2017 was the result of a reduction in the amounts withdrawn from her RRIFs, which, under paragraph 14(f) of the *Old Age Security Regulations*, C.R.C., c. 1246 (the Regulations), are included in pension or retirement income.

[20] Subparagraph 14(6)(b)(iii) of the OASA requires that the applicant's income for the base calendar year be calculated as though the person had no income from any office or employment or any business and no pension income.

[21] To determine the appellant's eligibility for the GIS for the months of January to June 2017 (within the July 2016 to June 2017 payment period) and for the July 2017 to June 2018 payment period, the Minister calculated her estimated income for 2017 as follows:

|                                |              |
|--------------------------------|--------------|
| Quebec Pension Plan (QPP):     | \$7,903      |
| Pension income:                | \$13,533.72  |
| RRIFs (minimum annual amount): | \$2,234.25   |
| Foreign pension:               | <u>\$625</u> |
| Total                          | \$24,295.97  |

[22] In calculating the appellant's estimated income for 2017, the Minister did not include the appellant's income for the 2015 base calendar year for the months of January to June 2017 and the appellant's income for the 2016 base calendar year for the July 2017 to June 2018 payment period, in accordance with subparagraph 14(6)(b)(iii) of the OASA.

[23] Nevertheless, the addition of those amounts would not have changed the outcomes of the analysis, meaning that it was more advantageous for the appellant to use her income for the 2015 base calendar year for the period from January 1 to

June 30, 2017, and to use her 2017 estimated income of \$24,295.97 rather than her income for the 2016 base calendar year of \$42,652. However, the appellant cannot be entitled to the GIS for that latter period because, regardless, her 2017 estimated income was above the maximum threshold of \$17,687.99 that entitled a person living alone to the GIS for that period.

[24] In rendering its judgment, the Court is required to consider only the legislative provisions applicable to the dispute and cannot base its decision on arguments of needs, sympathy or fairness. The Court's only jurisdiction in this matter consists of determining whether the Minister's decision that is subject to the appeal was made in accordance with the provisions of the OASA, and it cannot grant any remedies.

[25] For all of these reasons, the appeal must be dismissed because the Minister's decision that is subject to the appeal is well-founded under the OASA.

Signed at Montreal, Quebec, this 4th day of August 2020.

"Réal Favreau"

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Favreau J.



CITATION: 2020 TCC 74

COURT FILE NO.: 2019-852(OAS)

STYLE OF CAUSE: Paulette Tourangeau and the Minister of  
Employment and Social Development

PLACE OF HEARING: Montreal, Quebec

DATE OF HEARING: January 13, 2020

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: August 4, 2020

APPEARANCES:

For the appellant: The appellant herself  
Counsel for the respondent: Annie Laflamme

COUNSEL OF RECORD:

For the appellant:

Name:

Firm:

For the respondent: Nathalie G. Drouin  
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