



Citation: *Minister of Employment and Social Development v DK*, 2023 SST 679

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Andrew Kirk

Respondent: D. K.
Representative: D. M.

Decision under appeal: General Division decision dated February 17, 2023
(GP-21-1574)

Tribunal member: Kate Sellar

Type of hearing: In Writing
Decision date: **May 31, 2023**
File number: AD-23-431

Decision

[1] I'm allowing the appeal. The Claimant is entitled to an *Old Age Security* (OAS) pension of 14/40ths with payments starting February 2011. These are the reasons for my decision.

Background

[2] D. K. (Claimant) was born in Palestine. She arrived in Canada in 1990 with her family. Since then, she has spent time in and outside of Canada.

[3] The Claimant applied for an OAS pension and the Guaranteed Income Supplement (GIS) in May 2010. She said she wanted her pension to start as soon as she qualified.

[4] The Minister of Employment and Social Development (Minister) granted the Claimant a partial pension of 20/40ths and GIS beginning February 2011. But in November 2019, the Minister said that the Claimant never resided in Canada and did not qualify for either benefit. The Minister said it overpaid the Claimant by \$141,464.17. The Claimant appealed the Minister's decision to this Tribunal. The General Division decided that the Claimant was eligible for a partial OAS pension of 15/40ths with payments starting February 2011.

The parties agree on the outcome of the appeal

[5] The parties have asked for a decision based on an agreement they reached during a settlement conference on May 30, 2023.¹

[6] The parties agree on the following:

- The Appeal Division should allow the Minister's appeal.

¹ See section 39(2) of the *Social Security Tribunal Rules of Procedure*.

- The Claimant resided in Canada for the following periods:
 - a) December 8, 1990 to December 31, 1996
 - b) July 5, 2002 to November 28, 2022
- To establish partial pension eligibility, the General Division calculated this as 15 years of Canadian residence as of January 2011.
- In fact, when added, this equals 14 years, 6 months, and 18 days calculated as follows:
 - a) December 8, 1990 to December 31, 1996 (6 years and 23 days)
 - b) July 5, 2002 to January 1, 2011 (8 years, 5 months, and 27 days)
- The calculations are:
 - 8 years + 6 years = 14 years
 - 5 months + 23 days + 27 days = 6 months + 18 days
 - Total as of January 2011 = 14 years, 6 months, and 18 days
- The Claimant is entitled to a partial OAS pension of 14/40ths, with payments starting February 2011.

I accept the parties' agreement

[7] I accept the parties' agreement. The Claimant resided in Canada for 14 years, 6 months, and 18 days. In accordance with the OAS Act, the Claimant is entitled to 14/40ths of an OAS pension.²

² See section 3 of the *Old Age Security Act*, including section 3(4) which requires rounding down to 14/40ths in this case.

Conclusion

[8] I allow the Minister's appeal. The Claimant is entitled to a partial OAS pension of 14/40ths, with payments starting February 2011.

Kate Sellar
Member, Appeal Division