



Citation: *Minister of Employment and Social Development v MS*, 2023 SST 1256

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Ian McRobbie

Respondent: M. S.

Added Party: S. S.

Decision under appeal: General Division decision dated July 26, 2023
(GP-22-764)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **September 12, 2023**

File number: AD-23-801

[1] I'm allowing the appeal. The Claimant is entitled to be paid the Guaranteed Income Supplement (GIS) at the single rate from October 2015 to March 2021. These are the reasons for my decision.

Background

[2] The Claimant started to receive the GIS in 2006. He was paid at the married rate until he told the Minister of Employment and Social Development (Minister) that he was separated from his spouse for reasons beyond their control since March 2015. The Minister then started paying him at the single rate.

[3] In 2021, the Claimant told the Minister that he and his spouse applied for seniors' housing to live together in 2015; but due to a seniors' housing shortage, they lived apart for three months from March to May 2015. The Minister found that their GIS should have been paid at the married rate since June 2015, when they were presumed to have begun living together again, and decided the Claimant was overpaid as a result.

[4] The Claimant asked the Minister to reconsider, but the Minister didn't change its decision. The Claimant and his spouse each appealed.

[5] The General Division dismissed the appeal. The General Division concluded that the Claimant was only entitled to be paid at the married rate for GIS from July 2015 onward, since he was still legally married at that time.

The parties agree on the outcome of the appeal

[6] The parties have asked for a decision based on an agreement they reached during a settlement conference on September 8, 2023.¹

[7] The parties agree on the following:

- The Appeal Division should allow the appeal.

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

- According to section 15(4.1) of the *Old Age Security Act* (OAS Act) the Claimant is entitled to receive the GIS at the single rate starting three months after he was separated.
- The Claimant was separated from his spouse in June 2015 and continued to be separated for July 2015 (month 1), August 2015 (month 2) and September 2015 (month 3). According to section 15(4.1), the Claimant is entitled to the single rate from October 2015 to March 2021.

I accept the parties' agreement

[8] I accept the parties' agreement in its entirety. I'm satisfied that although the Claimant remained legally married, he was entitled to the GIS at the single rate from October 2015 to March 2021. I reach that conclusion by applying section 15(4.1) of the OAS Act. That section directs the Minister to deal with applications in which there has been three months of separation as though the person stopped having a spouse.

Conclusion

[9] I allow the appeal. The Claimant is entitled to the GIS at the single rate starting from October 2015 to March 2021.

Kate Sellar
Member, Appeal Division