

Docket: 2011-2012(OAS)

BETWEEN:

RACHELE PARROTTA,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT,

Respondent.

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Appeal heard on common evidence with the appeal of  
Domenico Parrotta (2011-2007(OAS))  
on March 21, 2012, at Toronto, Ontario

Before: The Honourable Justice B. Paris

Appearances:

Agent for the Appellant: Domenico Parrotta  
Counsel for the Respondent: Stéphanie Côté

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**JUDGMENT**

The Appellant's appeal from the Respondent's calculation of her income for the 2008 and 2009 base calendar years and from the Respondent's calculation of her income pursuant to subsection 14(2) of the *Old Age Security Act* is dismissed, without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of May 2012.

“B. Paris”

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Paris J.

Docket: 2011-2007(OAS)

BETWEEN:

DOMENICO PARROTTA,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT,

Respondent.

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Appeal heard on common evidence with the appeal of  
Rachele Parrotta (2011-2012(OAS))  
on March 21, 2012, at Toronto, Ontario

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Stéphanie Côté

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**JUDGMENT**

The Appellant's appeal from the Respondent's calculation of his income for the 2008 and 2009 base calendar years and from the Respondent's calculation of his income pursuant to subsection 14(2) of the *Old Age Security Act* is dismissed, without costs, in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 18th day of May 2012.

“B. Paris”

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Paris J.

Citation: 2012TCC172  
Date: 20120518  
Dockets: 2011-2012(OAS)  
2011-2007(OAS)

BETWEEN:

RACHELE PARROTTA,  
DOMENICO PARROTTA,

Appellants,

and

THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT,

Respondent.

### **REASONS FOR JUDGMENT**

Paris J.

[1] Mr. and Mrs. Parrotta are appealing the calculation of their combined income used to determine the amount of their Guaranteed Income Supplement (GIS) under the *Old Age Security Act* (OASA) for the payment periods from July 1, 2009 to June 30, 2010 and from July 1, 2010 to June 30, 2011.

[2] Mr. Parrotta represented himself and his spouse and was the only witness at the hearing.

[3] The amount of a GIS benefit is based on a recipient's income determined according to the *Income Tax Act* (ITA) for certain periods which I will describe below.

[4] The Court's jurisdiction in this matter is set out in subsection 28(2) of the OASA, and is limited to determining the amount of the Appellants' income from any

particular source or sources in accordance with the ITA for the relevant period or periods.

[5] In most cases, the GIS benefit is based on a recipient's income for the calendar year immediately prior to the benefit payment period. The benefit payment period begins on July 1 each year and runs to June 30 of the following year. The calendar year immediately prior to the benefit period is referred to as the "base calendar year". Under the OASA, GIS applicants are required to provide a statement of their income for the base calendar year in relation to each benefit payment period.

[6] The OASA also provides for the case where an applicant's income is expected to drop subsequent to the base calendar year because of the loss of a business, employment or office source of income, or because of a reduction in pension income. These provisions allow the benefit to be based on the applicant's current reduced income rather than on his or her income for the base calendar year. An applicant who has a reduction in income from an office, employment, business or pension may file an additional statement of income during a payment period. The Minister then recalculates the applicant's income according to subsections 14(2) to (6) of the OASA. Generally speaking, the recalculation includes the following amounts:

- the applicant's pension income for the current year;
- the applicant's income from an office or employment for the current year; and
- the applicant's income from all other sources for the base calendar year.

[7] The relevant provision for the purposes of this case is subsection 14(2), which reads as follows:

[...]

**14(2) Additional statement if retirement in current payment period --** If in a current payment period 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), ceases to hold an office or employment or ceases to carry on a business, that person may, not later than the end of the second payment period 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, file a statement of the person's estimated income for the calendar year in which the person ceased to hold that office or employment or ceased to carry on that business, which income shall be calculated as the total of

(a) any pension income received by the person in that part of that calendar year that is after the month in which the person ceases to hold that office or employment or to carry on that business, divided by the number of months in that part of that calendar year and multiplied by 12,

(b) the income from any office or employment or any business for that calendar year other than income from the office, employment or business that has ceased, and

(c) 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.

[8] In this case, Mr. and Mrs. Parrotta disposed of a jointly-owned rental property in 2009. Mr. Parrotta also ceased operating a business in 2009. They then each filed additional statements of income for 2009 and 2010 and expected that their GIS benefits would be increased because of the loss of these sources of income.

[9] Since the relevant provisions of the OASA do not permit a recalculation of income based on a reduction in rental income, the Minister only took into account the loss of business income to Mr. Parrotta. However, Mr. Parrotta had a loss from business in 2008, which was eliminated from the recalculated income, and therefore the resulting recalculated income was higher than his income for the base calendar year. The recalculation for 2010 also resulted in higher income for Mr. Parrotta than in the base calendar year, for the same reason: he had reported a loss from his business in 2009. Since it was more advantageous to the Parrottas, the Minister continued to base their GIS benefits on their combined income in each of the 2008 and 2009 base calendar years.

[10] The Minister's calculations are set out below:

Mr. and Mrs. Parrotta's combined income for the 2008 base calendar year:

Canada Pension Plan income	\$8,562.00
Rental income	\$1,305.00
Business (self-employment)	<u>(\$5,003.00)</u>
<b>Mr. Parrotta's income for 2008</b>	<b>\$4,864.00</b>
Mrs. Parrotta's income in 2008	<u>\$3,081.00</u>
<b>Total combined income for 2008:</b>	<b><u>\$7,945.00</u></b>

Recalculation of their combined income for 2009 without business loss:

Canada Pension Plan income for 2009	\$8,777.04
Income for the 2008 base calendar year (other than pension, business, office or employment income)	
Rental income	<u>\$1,305.00</u>
<b>Mr. Parrotta's total income recalculated</b>	<b>\$10,082.04</b>
Mrs. Parrotta's income for 2008	<u>\$3,081.00</u>
<b>Total combined income for 2008</b>	<b><u>\$13,163.04</u></b>

Mr. and Mrs. Parrotta's combined income for 2009 base calendar year:

Canada Pension Plan income	\$8,777.04
Dividends / Capital gains	\$5,373.00
Rental income	\$5,581.00
Business (self-employment)	<u>(\$5,888.00)</u>
<b>Mr. Parrotta's total income for 2009</b>	<b>\$13,843.04</b>
Mrs. Parrotta's income for 2009	<u>\$12,774.00</u>
<b>Total combined income for 2009</b>	<b><u>\$26,617.04</u></b>

Recalculation of their combined income without business loss:

Canada Pension Plan income for 2010	\$8,812.20
Income for the 2009 base calendar year (other than pension, business, office or employment income)	
Dividends / Capital gains	\$5,373.00
Rental income	<u>\$5,581.00</u>
<b>Mr. Parrotta's recalculated total income</b>	<b>\$19,776.20</b>
Mrs. Parrotta's income for 2009	<u>\$12,774.00</u>
<b>Total combined recalculated income</b>	<b><u>\$35,540.20</u></b>

[11] Mr. Parrotta admitted that the amounts used by the Minister in these calculations were correct, but he disagreed with the inclusion of rental income in the recalculation of income for 2010. He felt that since he and his spouse no longer had any rental income in 2010, it should not be included in the recalculation.

[12] However, it is clear that the Minister was required to include the rental income according to paragraph 14(2)(c) of the OASA, because this was the rental income earned in the 2009 base calendar year, up to the time the property was disposed of.

[13] At one point Mr. Parrotta claimed that he and his spouse did not have a capital gain from the disposition of the rental property in 2009, because they transferred the property to their children. However, he admitted that they had reported the gain from the disposition in their 2009 tax returns and had not challenged the income tax assessments that included the gain in their income for the 2009 taxation year. Furthermore, no evidence was provided to the Court to prove that the gain was incorrectly reported. Therefore, they have not shown that the determination of their combined income for the 2008 and 2009 base calendar years was incorrect and the appeals are therefore dismissed.

Signed at Ottawa, Canada, this 18th day of May 2012.

“B. Paris”

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Paris J.

CITATION: 2012TCC172

COURT FILE NOS.: 2011-2012(OAS), 2011-2007(OAS)

STYLE OF CAUSE: RACHELE PARROTTA, DOMENICO  
PARROTTA AND M.H.R.S.D.C.

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 21, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice B. Paris

DATE OF JUDGMENT: May 18, 2012

APPEARANCES:

For the Appellants:	The Appellants themselves
Counsel for the Respondent:	Stéphanie Côté

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan  
Deputy Attorney General of Canada  
Ottawa, Canada