

Docket: 2019-356(OAS)

BETWEEN:

FRANK R. CASSIDY,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

---

Appeal heard on October 25, 2019, at Halifax, Nova Scotia

By: The Honourable Justice Ronald MacPhee

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Emmanuel Jilwan

---

**JUDGMENT**

The Appeal with respect to the decision of the Minister of Employment and Social Development's decision dated July 12, 2018, made under the *Old Age Security Act* for the Appellant's period from July 2018 to June 2019 is dismissed, without costs.

Signed at Ottawa, Canada, this 2nd day of January 2020.

"R. MacPhee"

---

MacPhee J.

Citation: 2020 TCC 1  
Date: 20200102  
Docket: 2019-356(OAS)

BETWEEN:

FRANK R. CASSIDY,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

### **REASONS FOR JUDGMENT**

MacPhee J.

[1] Frank Cassidy (“Mr. Cassidy”) has appealed the decision of the Minister of Employment and Social Development (the “Minister”) regarding the calculation of his Guaranteed Income Supplements benefits (“GIS”) under the *Old Age Security Act*, R.S. 1985, c.O-9 (the “OAS”) for the payment period of July 2018 to June 2019. Specifically at issue is what the Appellant’s income was for the purposes of his GIS entitlement for the July 2018 to June 2019 payment period<sup>1</sup>.

[2] The GIS benefits in question are determined based upon the Appellant’s income for the calendar year preceding the start of the payment period. At trial, there was some confusion on behalf of the Appellant concerning what his income amount was in 2017. Both parties were given several months to provide me with

---

<sup>1</sup> The calculation of income is the only matter that may be appealed to this Court concerning the Guaranteed Income Supplement, as set out in subsection 28(2) of the *Old Age Security Act*:

(2) If, on an appeal to the Social Security Tribunal, it is a ground of the appeal that the decision made by the Minister as to the income or income from a particular source or sources of an applicant or beneficiary or of the spouse or common-law partner of the applicant or beneficiary was incorrectly made, the appeal on that ground must, in accordance with the regulations, be referred for decision to the Tax Court of Canada, whose decision, subject only to variation by that Court in accordance with any decision on an appeal under the *Tax Court of Canada Act* relevant to the appeal to the Social Security Tribunal, is final and binding for all purposes of the appeal to the Social Security Tribunal except in accordance with the *Federal Courts Act*.

further evidence concerning the Appellant's income. The appellant has provided bank statements for the 2017 taxation year. Having reviewed these statements, for reasons detailed below, I do not find that they destroy the assumption the Minister made in the Reply concerning the appellant's income for 2017.

[3] Unfortunately for the Appellant, the facts of this case created a sort of perfect storm which lead to an absurd result. In the 2017 taxation year, the Appellant had been receiving Old Age Security benefits. These began in October 2016.

[4] In 2016, the Canadian Revenue Agency (the "CRA") had wrongly denied a medical expense claim made by the Appellant in his tax return. This resulted in the CRA assessing the Appellant's total income at an amount above the allowable income threshold for the July 2017 to June 2018 payment period<sup>2</sup> in order to be eligible for GIS payments. Eventually, the CRA reassessed the Appellant's 2016 tax return, reducing his total income for that year to zero.

[5] Unfortunately this decision came too late to benefit the Appellant regarding the receipt of GIS benefits. The wheels were already in motion. As a result of the loss of the GIS income, in order to have enough funds to survive on, the Appellant was forced to withdraw \$9,379 from his registered retirement savings plan ("RRSP") in 2017. The result of this withdrawal effected his payment period for the July 2018 to June 2019 period. The Appellant's base calendar year for the purpose of his GIS entitlement was calculated as follows:

Canada Pension Plan benefit	\$8,289.00
Private pension income	\$6,579.00
Other income	\$510.00
RRSP deduction	(\$3000.00)
RRSP income	\$9,379.00
2017 Base calendar year income	\$21,757.00

[6] The Appellant's income was above the allowable income threshold for the July 2018-June 2019 payment period, which was \$18,096. He was therefore denied the GIS entitlement.

---

<sup>2</sup> The Appellant's income was calculated as Canada Pension Plan benefits \$10,866 plus private pension income of \$3609 plus employment income of \$5,557 for a total of \$20,052.

[7] The Appellant comes to Court seeking an adjustment of some sort to the calculation of his income for the purposes of determining entitlement to the GIS under the *OAS* for the July 2018 to June 2019 payment period.

[8] The Appellant argues that the only reason he accessed his RRSP in the 2017 year was because of an error made by the CRA. Specifically the denial of a medical expense deduction he was entitled to. I accept this to be true.

[9] The appellant also argues that the Minister has incorrectly calculated his income in the 2017 year. At trial he testified that his private pension income was less than the amount used in the Minister's calculations. He has not provided sufficient evidence to support this position. Given the time period the Appellant had to gather this information, I would have expected he provide a T4A from his private pension provider, or in the alternative a document from the pension provider stating the total benefits he received in 2017. As noted above, what he has instead provided was statements from a bank account for the 2017 year.

[10] The base calendar year is the calendar year before the current payment period. In this case, it is the 2017 taxation year<sup>3</sup>. Income is computed in accordance to the *Income Tax Act* (the "*ITA*"), as per the definition of "Income" under section 2 of the *OAS*.

[11] The Appellant withdrew \$9,379 from his RRSP in 2017. The question of whether RRSP withdrawals should be included in the calculation of income under section 2 of the *OAS* has been considered by the Tax Court multiple times. In each instance it was determined that it should be included.<sup>4</sup> Furthermore, the Respondent correctly points out that pursuant to paragraph 56(1)(h) and subsection 146(8) of the *ITA*, benefits paid out of a registered retirement plan to a taxpayer are to be included in the calculation of a taxpayer's income.

[12] As I find that the computation of the Appellant's income was correctly done for the 2017 year, I therefore must deny the Appeal.

[13] I do not wish to conclude my Reasons for Judgment without expressing the hope that the Minister exercises his equitable remedy in the Appellant's Fairness

---

<sup>3</sup> Section 10 of the *Old Age Security Act*, definition of "base calendar year".

<sup>4</sup> See for instance *Drake v Minister H.R.D.C.*, 2005 TCC 498 and *Gonder v Minister H.R.S.D.*, 2011 TCC 505.

Application. In *Almadhoun v. Canada*<sup>5</sup>, the Federal Court of Appeal stated that, even if the Tax Court of Canada does not have the jurisdiction to grant equitable relief, a judge can still express his opinion on the matter in obiter.

[14] I wish to do so in this case. It was because of the Minister's incorrect assessment of the Appellant's 2016 taxation year that the Appellant had to withdraw funds from his RRSP to meet his urgent need for cash to live on. This caused two disadvantages for the Appellant. First, he was forced to deplete his RRSP at a time earlier than he otherwise would have. Secondly, he has been denied access to GIS benefits which he otherwise would have received. If the Minister has the ability to remedy the matter for the Appellant, this is a case that would deserve such a remedy.

[15] The Appeal is dismissed. There shall be no order as to costs.

Signed at Ottawa, Canada, this 2nd day of January 2020.

“R. MacPhee”

---

MacPhee J.

---

<sup>5</sup> 2018 FCA 112, para 33-36.

CITATION: 2020 TCC 1

COURT FILE NO.: 2019-356(OAS)

STYLE OF CAUSE: FRANK R. CASSIDY AND MINISTER  
OF EMPLOYMENT AND SOCIAL  
DEVELOPMENT

PLACE OF HEARING: Halifax, Nova Scotia

DATE OF HEARING: October 25, 2019

REASONS FOR JUDGMENT BY: The Honourable Justice Ronald MacPhee

DATE OF JUDGMENT: January 2, 2020

APPEARANCES:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Emmanuel Jilwan

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin  
Deputy Attorney General of Canada  
Ottawa, Canada