

Docket: 2013-1442(OAS)

BETWEEN:

GAIL BRIGHTON,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES AND SKILLS DEVELOPMENT,

Respondent.

Appeal heard on July 18, 2013, at Nanaimo, British Columbia

Before: The Honourable Justice B. Paris

Appearances:

For the Appellant: The Appellant herself
Counsel for the Respondent: Adam Gotfried

JUDGMENT

The appeal from the respondent's calculation of the appellant's income for the 2011 base calendar year 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 15th day of October 2013.

“B.Paris”

Paris J.

Citation: 2013TCC323
Date: 20131015
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GAIL BRIGHTON,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES
AND SKILLS DEVELOPMENT,

Respondent.

REASONS FOR JUDGMENT

Paris J.

[1] Ms. Brighton has appealed the decision of the Minister of Human Resources and Skills Development (“the Minister”) that she was not entitled to any amount of the Guaranteed Income Supplement (GIS) under the *Old Age Security Act (OAS)* for the period from July 1, 2012 to June 30, 2013.

[2] In most cases, the GIS benefit for a payment period, running from July 1 each year to June 30 of the following year, is based on an applicant’s income for the calendar year preceding the start of the payment period. The preceding calendar year is referred to as the “base calendar year”. An applicant is required to provide a statement of his or her income for the base calendar year in relation to each payment period.

[3] A GIS applicant is also permitted by subsections 14(2) to 14(6) of the *OAS* to file an additional statement of estimated income for the year following the base calendar year if he or she ceases to hold office or employment or ceases to carry on

business or suffers a reduction in, or loss of, pension income in the year. These provisions allow the Minister to take into account that the applicant's current income from those sources will be less than during the base calendar year. However, an estimate of income still takes into account the amount of income received by the applicant from all other sources in the base calendar year.

[4] According to section 2 of the *OAS*, a person's income for a calendar year is, with some exceptions that are not applicable in this case, his or her income as determined in accordance with the *Income Tax Act*.

[5] In this case, Ms. Brighton ceased carrying on a business on December 31, 2011. Therefore, she was entitled to file a statement of estimated income for 2012 as provided for in paragraph 14(5)(a) of the *OAS*. Under subparagraphs 14(5)(a)(i) and (ii) of that provision, she was entitled to estimate her employment, business and pension income for 2012. However, subparagraph 14(5)(a)(iii) still required that her income from all other sources during the base calendar year (2011) be included in her 2012 estimated income.

[6] The relevant parts of paragraph 14(5)(a) read as follows:

(5) If, in the circumstances described in paragraphs (a) and (b), a person who is an applicant... ceases to hold an office or employment or ceases to carry on a business, the person may...

(a) if the person ceases to hold that office or employment or to carry on that business in 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 calendar year,

(ii) 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

(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;

[7] Ms. Brighton's total income for 2011, the base calendar year in this case consisted of the following amounts:

CPP retirement income	7,017
Dividends and capital gain	284
Net rental loss	(9,168)
Net business loss	(22,246)
RRSP income	<u>42,508</u>
Total	\$18,395

[8] On her statement of estimated income for 2012, filed under paragraph 14(5)(a), Ms. Brighton listed only CPP retirement income of \$7,213.44 and rental income of \$1,500. The Minister determined that Ms. Brighton was also required by subparagraph 14(5)(a)(iii) to include her dividends and capital gains as well as her net rental loss and her RRSP income for 2011 in her estimate of income. After taking these amounts into account, her estimated income pursuant to paragraph 14(5)(a) was \$40,837.44.

[9] By the Minister's calculations, Ms. Brighton's income for the base calendar year income as well as her income estimated in accordance with paragraph 14(5)(a) both exceeded the income threshold for payment of GIS benefits, which was \$16,512 for the 2012-2013 benefit payment period.

[10] Ms. Brighton disputes the Minister's calculation of her estimated income for 2012. In particular, she disputes the inclusion by the Minister of her 2011 RRSP income under subparagraph 14(5)(a)(iii) of the *OAS*. She takes the position that it should be excluded from the calculation of her 2011 base calendar year income because it was pension income. Subparagraph 14(5)(a)(iii) requires that the applicant's income for the base calendar year be calculated on the assumption that he or she did not have any pension income or income from employment or a business.

[11] In her testimony, Ms. Brighton explained that she was the beneficiary of an RRSP belonging to her ex-spouse, who died on March 1, 2009. After his death, one of her late ex-spouse's relations challenged the designation of Ms. Brighton as the beneficiary of the RRSP. The matter was resolved in Ms. Brighton's favour and the proceeds of the RRSP were paid to her in April, 2011. She admitted that she reported the amount in her 2011 income tax return.

[12] The question of whether payments out of an RRSP are pension income, as that term is defined for the purposes of the *OAS*, has arisen in at least two other cases

decided by this Court: *Drake v Minister H.R.D.C.*, 2005 TCC 498, and *Gonder v Minister H.R.S.D.C.*, 2011 TCC 505. In each case the Court held payments received out of an RRSP are not pension income as that term is defined in the *OAS*. That definition is found in section 14 of the *OAS Regulations*. It reads as follows:

14. For the purposes of section 14 of the Act, “*pension income*” means the aggregate of amounts received as

- (a) annuity payments;
- (b) alimony and maintenance payments;
- (c) employment insurance benefits;
- (d) disability benefits deriving from a private insurance plan;
- (e) any benefit, other than a death benefit, under the *Canada Pension Plan* or a provincial pension plan as defined in the *Canada Pension Plan*;
- (f) superannuation or pension payments, other than a benefit received pursuant to the Act or any similar payment received pursuant to a law of a provincial legislature;
- (g) compensation under a federal or provincial employee’s or worker’s compensation law in respect of an injury, disability or death;
- (h) income assistance benefits under an agreement referred to in subsection 33(1) of the *Department of Human Resources Development Act* by reason of a permanent reduction in the work force as described in that subsection; and
- (i) income assistance benefits under the Plant Workers’ Adjustment Program, the Fisheries Early Retirement Program or the Northern Cod Adjustment and Recovery Program by reason of a permanent reduction in the work force.

[13] In *Drake*, Justice Bowie stated that “[e]ven the most generous reading of this definition cannot include the withdrawal of funds from a registered plan prior to its maturity. Specifically, it is not an annuity payment, because it is not paid on a periodic basis. Nor could it possibly fall into any of the other clauses of section 14.”

[14] I agree with this conclusion and find that the Minister did not err by including the RRSP payment in the estimate of 2012 income pursuant to paragraph 14(5)(a). It is not material that the RRSP payment was a one-time event, as contended by the appellant.

[15] Ms. Brighton also suggested that the way in which the funds from her late ex-spouse's RRSP were transferred to her could have been amended in some way by the financial institution that held the RRSP so that it would not have affected her income in 2011. However, I cannot take into account what could have been done, only what in fact was done. It is clear that Ms. Brighton received the payment in 2011 and was required to include it in her income pursuant to subsection 146(8) and paragraph 56(1)(h) of the *Income Tax Act* and that it was part of her 2011 base calendar year income for the purposes of the *OAS*.

[16] The difficulty in this case, it appears, is that Ms. Brighton was not aware that the RRSP payment would affect her GIS entitlement. The resulting loss of the GIS benefit to her in the 2012-2013 payment period has caused her great hardship. She states that she is on the verge of losing her home because she has been unable to make the mortgage payments on it. This is extremely unfortunate and I regret that I am unable to allow her appeal, but the law is clear that the RRSP payment must be taken into account. Parliament has chosen not to include RRSP withdrawals in the definition of "pension income" under the *OAS Regulations* and this Court must apply the law as it has been enacted by Parliament.

[17] The appeal is therefore dismissed.

Signed at Ottawa, Canada, this 15th day of October 2013.

"B.Paris"

Paris J.

CITATION: 2013TCC323
COURT FILE NO.: 2013-1442(OAS)
STYLE OF CAUSE: GAIL BRIGHTON AND M.H.R.S.D.C.
PLACE OF HEARING: Nanaimo, British Columbia
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APPEARANCES:

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Counsel for the Respondent: Adam Gotfried

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