

Federal Court



Cour fédérale

Date: 20200211

Docket: T-1263-19

Citation: 2020 FC 235

Ottawa, Ontario, February 11, 2020

PRESENT: The Honourable Madam Justice McVeigh

BETWEEN:

SHUFEN FU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is a judicial review by the Applicant Ms. Shufen Fu [Ms. Fu] challenging the July 8, 2019 decision of the Appeal Division of the Social Security Tribunal (“the Appeal Division”).

II. Facts

A. *Background*

[2] Ms. Fu throughout this process has represented herself and did so again at this hearing. The court appreciated the comprehensive materials filed by Ms. Fu. The Court also valued the professionalism of the Respondent's counsel.

[3] This is not the first time I have had the pleasure of presiding over a hearing of Ms. Fu. Almost a year ago I granted her application in *Fu v Canada (Attorney General)*, 2019 FC 527. The matter was re-determined and this is a review of that decision. A full history of the events is set out in this Court's earlier decision but it may be helpful to provide a summary.

[4] Ms. Fu is a retired physics professor who worked in China, Italy, and the USA. Ms. Fu has been married to Honglie Fang since 1962. Ms. Fu immigrated to Canada in 2002 but continued to travel to Italy. Her husband, Mr. Fang, began receiving Old Age Security payments in Canada in 2005. Meanwhile, Ms. Fu received payments from the Italian government from 2003 until November 2012.

[5] On May 7, 2013, Ms. Fu was approved for a Guaranteed Income Supplement ("GIS") for the period of April 2012 to June 2013. The GIS is a monthly benefit provided under the *Old Age Security Act*, R.S.C., 1985, c. O-9, using a formula that takes into account the person's income from various sources. The formula was applied to Ms. Fu's circumstances taking into account

her 2010 and 2011 income levels. In July 2013, her benefits were renewed for the period of July 2013 to June 2014 in reliance on her 2012 income.

[6] However, Ms. Fu disagreed on the calculation of GIS for each of these two periods (combined, the periods where she disputed the amount was April 2012 to June 2014, which together rely on her 2010-2012 income levels). She disputed the amounts because the April 2012 to June 2014 amounts were based on an assumption that her 2010-2012 social assistance payments from Italy* were “income” for the relevant periods for GIS purposes (*see below for an explanation of these payments). She says her income was actually lower because the Italian funds are not a pension but rather foreign social assistance payments and should not be considered income. For example, in 2012 she received 6,711 euros from the Italian government and if these funds were excluded from her income for GIS purposes, she would have been entitled to more money from the Canadian government. The exact amounts were procured from the Italian government which took a long time to obtain.

[7] After she requested a redetermination, on December 19, 2013, the Minister’s reconsideration decision indicated her Italian funds were to be counted as income. She appealed this finding to the General Division of the Social Security Tribunal.

[8] The General Division then referred the matter to the Tax Court of Canada, asking how the Italian funds should be treated which is what the General Division is obliged to do whenever there is a question about whether certain amounts are “income” under the *Old Age Security Act* (see Annex A for the relevant parts of the legislation).

(1) Ms. Fu's Tax Court decision: April 24, 2017

[9] On April 24, 2017, Justice Boyle rendered a short decision finding the Italian payments to be part of her income for GIS purposes. Justice Boyle relied on the detailed reasons in a 2016 Tax Court decision by Justice Miller in Ms. Fu's husband's case, which determined her Italian income was a social assistance payment. Justice Miller had found that the couple's combined income had to include the Italian funds. Justice Miller admitted that the forms had been confusing and that Ms. Fu made an honest presumption, but ultimately there was no exemption for foreign social assistance from income, which meant the Italian funds had to be considered in the couple's GIS calculation.

(2) General Division decision: September 25, 2017

[10] A few months later, on September 25, 2017, the General Division dismissed Ms. Fu's appeal but in doing so noted that its decision was limited to the July 2013 to June 2014 period (i.e. the period based upon her more recent renewal application).

(3) Appeal Division Decision #1: March 16, 2018

[11] Ms. Fu's appeal to the Appeal Division was dismissed on March 16, 2018. She applied for judicial review of this decision to the Federal Court.

(4) Federal Court Decision: April 25, 2019

[12] On April 25, 2019, in the decision mentioned above (*Fu v Canada*, 2019 FC 527) this Court granted the application for judicial review and sent it back for redetermination. The decision was sent back to the Appeal Division because there were several indications that Ms. Fu was seeking to have the GIS amount for the whole period of April 2012 to June 2014 reviewed and not just the July 2013 to June 2014 period.

(5) Appeal Division Decision #2: July 8, 2019

[13] The reconsideration decision was released on July 8, 2019. The Appeal Division took note of this Court's reasons in 2019 FC 527 and agreed that the General Division had erred by restricting itself to the 2013-2014 GIS payment year and excluding the April 2012 to June 2013 period from its earlier analysis.

[14] Then, the Appeal Division moved to the second issue of what remedy the Appeal Division should give for this error. The Appeal Division noted that it could refer the matter back to the General Division for reconsideration or the Appeal Division can decide any question of law or fact themselves to dispose of an appeal (*Department of Employment and Social Development Act*, SC 2005 c 34, sections 59(1) and 64). Given that the facts were undisputed and the case has been going on since 2013, the Appeal Division decided to give the decision on the merits that the General Division should have given.

[15] Next, the Appeal Division turned to the legislative framework and the procedural history of the case. The Appeal Division cited the decisions of Justice Miller and Justice Boyle which both found the Italian income Ms. Fu had collected was to be included in her income for the purposes of determining her GIS entitlement. The Appeal Division provided excerpts of each decision showing the Tax Court's reasoning, which interpreted the *Old Age Security Act* and found foreign social assistance was not part of the exception and therefore had to be counted in Ms. Fu's income amount. The Appeal Division explained:

The *Old Age Security Act* is clear. If, on an appeal to the Tribunal, the Minister's decision as to income from a particular source is a ground of appeal, the matter must be referred to the TCC, and the TTC's decision is final and binding for all purposes of the appeal to the Tribunal. The TCC specifically considered the Claimant's income from her Italian social assistance payments. It decided that this is income for the purpose of calculating the amount of GIS payment. It decided that the total family income for 2012 was \$15,950.29 and that no change should be made to the calculation for the 2010 and 2011 tax years. This decision is binding on the Tribunal. The Claimant's GIS benefit payable to the Claimant must be calculated on this basis.

[16] The Appeal Division found that its hands were tied by the Tax Court's conclusion on how to treat her Italian social assistance as income. This meant her appeal from the General Decision's September 25, 2017 dismissal of the Minister's decision was dismissed.

[17] Ms. Fu confirmed at the hearing that she or her husband never appealed the Tax Court decisions and in fact she is very emphatic that the Tax Court decisions are correct and that is what she bases her arguments on so there would be no reason to dispute the Tax Court decisions.

[18] Of note is that what makes the matter more complex is a letter dated December 19, 2013 from a Service Canada officer in Edmonton, sent to Ms. Fu, that had several inaccuracies in it that continue to haunt Ms. Fu's arguments. Those inaccuracies were articulated by Respondent's counsel at the hearing. The inaccuracies are (1) that the Italian amount was viewed as a foreign "pension" which was a mistaken assumption, (2) the officer said there was no tax treaty between Canada and Italy which was false, (3) the wrong section of the *Old Age Security Act* (section 13) is cited, (4) the explanation was based on the wrong amount of Italian funds and (5) the letter suggested she might be able to make an estimated income explanation since the officer thought it was a pension. There was a further error at one point where the amount of the funds received from the Italian government for 2012 had been incorrectly identified as 8053.20 euros when the figure was 6711.00 euros. That error was corrected in the Tax Court decision dated July 16, 2016 of Justice Miller where he stated it was 6711.00 euros or \$8,623 CAD and in any matter since the proper amount is being used.

[19] Over the course of all of the litigation the above noted errors have been corrected. The Tax Court decision correctly noted the foreign funds were not a pension and explained that there was in fact a tax treaty between Canada and Italy. The Social Security Tribunal properly noted the estimated income approach was inapplicable because it is not pension income. The Tax Court when it corrected the amount of funds that Ms. Fu received as Italian income at para 15 of Justice Miller's decision, reducing the amount to 6711.00 euros found that these funds were still "income". Justice Miller relied on the correct section of the *Old Age Security Act* section 2 in its analysis at para 10 though a typo misses the full citation. However, Ms. Fu continues to argue that the Italian funds should not be considered income.

III. Issue

[20] The issue is whether the Appeal Division’s July 8, 2019 decision was reasonable.

IV. Standard of Review

[21] In similar judicial review applications where the Social Security Tribunal applies the law to the facts and denies a requested benefit, the Federal Court of Appeal has found the standard of review to be reasonableness (*Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 1; *Stojanovic v Canada (Attorney General)*, 2020 FCA 6 at para 34). This Court is to consider whether the Appeal Division’s decision to dismiss Ms. Fu’s appeal was reasonable in both outcome and process (*Canada (MCI) v Vavilov*, 2019 SCC 65 at para 83).

V. Arguments

[22] Ms. Fu continues to argue that Italian social allowance payments should not be included as income in the calculation of her GIS payments. The main argument by Ms. Fu is that:

(the General Division) referred my appeal to the Tax Court of Canada (the TCC). Incomprehensibly, **instead of** seeking for the TCC’s ruling on “the issue of whether Italian social allowance payment should be considered as pension income and be included *in the income for the purposes of determining the amount of supplement that may be paid to a pensioner*” that had been disputing between the Respondent (the Minister) and the Appellant (me), the purposes of the reference of the General Division was “*seeking the Tax Court of Canada’s ruling on the amount of income*” that the appellant “**must include in the determination of his eligibility to the Guaranteed Income supplement “GIS”** (as indicated in the TCC’s decision...)

[Emphasis in original]

[23] She supports her argument with the instruction sheet of how to fill out a GIS application. She relies on section D of the form which lists items not to include in the statement of income for the GIS amount, including “Assistance payments from a municipal, provincial or Canadian federal government” as well as “Old Age Security Pension (Canadian), Guaranteed Income Supplement, Allowance or Allowance for the Survivor.” It does not say that the allowance must be from Canada so she claims that her Italian social assistance (allowance) should be deducted as that is what the instruction sheet says. This is the heart of the problem she argued as this error has been perpetuated by the Appeal Decision by saying that they are bound by the Tax Court and applied the same principles to all the time periods. She is also saying the Tax Court said it was to be added for “entitlement” purposes only and did not make a ruling it was to be included in the calculation of her GIS supplement.

[24] She supports that argument by pointing out that the instruction sheet at block 2: Other Pension Income separates out Canadian and Foreign income:

Canadian: Report your income and specify the source from pensions, Registered Retirement Income Funds (RRIF's), Life Income Funds (LIF's), superannuation, retirement plan payments, taxable annuities or other payments as reported to the Canada Revenue Agency.

Foreign: **Foreign pension income must be reported** whether it is paid in Canada or abroad. You must report total benefits if they are income for Canadian income tax purposes, even if the income is exempt from taxation under an income tax treaty. These payments would include all employment pensions, social security benefits and war service pensions. Please include all back payments, and report the amounts in Canadian dollars. If the amount is given in foreign currency please specify.

[25] Based on this distinction in block 2 of the instruction sheet, she says the sheet would have also separated the treatment of Canadian and foreign allowances if they wished them to be treated differently. As shown at section D she says it just any “allowance” that can be deducted.

She indicated at para 27 of her argument that:

I reported my husband’s Italian pension (employment pension even it is exempt from taxation under tax treaty between Canada and Italy) in “Block 2 other pension income” (from line 115 of his tax return), I did not report my Italian allowance in Block 2 because it is not income for Canadian income tax purposes and it was reported in line 145 of Tax Return.

[26] She further submits that section 14 of the *Old Age Security Regulations* defines what is pension income for section 14 of the *Old Age Security Act*’s definition of the “statement or estimate of income” to be included in GIS applications. She puts forward that this does not include foreign social allowances as it is not included in the definition of “pension income.”

[27] She indicates that the Minister had her payment summary dated November 2, 2012 from the Italian government and the government ignored that this was clearly social allowance and added the amount into “other pension income” for her 2012 GIS calculation and then calculated the GIS payment using that modified income in its letter on December 19, 2013.

[28] She says the Minister’s finding that the Italian funds were income is contradictory to the Minister’s August 22, 2017 view that she could not submit a statement of “Estimated Income” in her case because it must be pension income to submit an estimated income form. She says this was a contradiction in finding her income to be pension income for one purpose, but not for another.

[29] Additionally, she says the Minister misstated in a February 2, 2018 letter to the Tribunal that the Tax Court had decided section 2 of the *Old Age Security Act* definition of income did not include foreign social assistance payments. She puts forward that the Tax Court “never determined this in its decision” (para 31). Next, she argues that:

To my understanding, section 2 of OAS Act is definitions used “*In this Act*” only, as explained at the beginning of this section, not for “Statement or Estimate of Income” for the purposes of GIS application. This can be seen clearly from other definitions in this section, for example, the definition of pension.....

Therefore, all definitions in section 2 of the OAS Act, could not **be for** the purposes of “Statement or Estimate of Income “ in GIS application....

[30] She point out that subsection 56(1)(u) of the *Income Tax Act*, RSC, 1985, c. 1 (5th Supp.) notes that whether social assistance payment is paid inside or outside Canada, it must be included in the income for GIS eligibility. But, she says section 14 of *Income Tax Regulations*, CRC, c. 945, says social assistance payments are not pension income and so should not be included in income for the GIS payable amount. It is for this reason she believes that it is distinguishable between income for purposes of determining GIS eligibility versus for determining the GIS amount (para 34). Her view is that she properly included the Italian allowance in line 145 of her tax return each year and so it was included in total income for determining eligibility, but she says the question of amount of supplement is a different question which the Tax Court has not ruled on (paras 35-39).

[31] She as well at the hearing made arguments concerning the applicability of section 13 of the *Old Age Security Act* to support her arguments that her assistance income should be deducted. But as noted by the Respondent at the hearing, that section only applies to payments to

be made to a person for a month before July 1, 1999 which in this situation is not applicable as all of the payments are after July 1, 1999.

[32] Ms. Fu says the Court should order her GIS application to be recalculated based on the income information from her income tax returns but *excluding* the Italian funds.

VI. Analysis

[33] Under sections 27.1(1) and 28(1) of the *Old Age Security Act*, a person who is dissatisfied with the “amount of a benefit” can request a reconsideration and then appeal that reconsideration decision to the Social Security Tribunal (see Annex A for full text). Section 28(2) indicates that if the appeal includes as a ground of appeal “the decision made by the Minister as to the income or income from a particular source or sources” that ground of appeal must be referred to the Tax Court of Canada. Section 28(2) further says a Tax Court decision is then “final and binding for all purposes of the appeal to the Social Security Tribunal except in accordance with the *Federal Courts Act*” [emphasis added].

[34] This mandatory statutory framework means Ms. Fu’s arguments about misinterpretation of her income could not be addressed by the Appeal Division. Instead, the Appeal Division was held to the interpretation of the Tax Court which is “final and binding.”

[35] Justice Miller at para 10 of the Tax Court decision was very specific that the deduction for social assistance would only be for Canadian or provincial social assistance as set out in the

section (c)(iii) deduction available under section 2 of the *Old Age Security Act*:

the amount of any social assistance payment made on the basis of a means, a needs or an income test by a registered charity as defined in subsection 248(1) of the Income Tax Act or under a program provided for by an Act of Parliament or a provincial legislature that is neither a program prescribed under the Income Tax Act nor a program under which the amounts referred to in subparagraph (i) are paid

[36] The decision refers to section (c)(iii) which the full cite is subsection (c)(iii) of section 2 of the *Old Age Security Act*. After reaching this conclusion, Justice Miller found the amount of total combined income for the 2010, 2011, and 2012 tax years are inserted into a formula found in subsection 12(5) of the *Old Age Security Act* to determine the actual amount to be paid. In its decision the Tax Court definitely determined that **the exception included in section (c)(iii) does not include foreign social assistance**. This figure is used to calculate the monthly GIS amount. There is no distinction in the Tax court reasons that it is only for entitlement and not for calculating the amount. This ruling must be followed by the Appeal Division.

[37] The Appeal Division followed the Tax Court and made its decision-making process clear and easy to follow. At para 3 (the facts section) the Appeal Division noted that the matter was initially sent to the Tax Court because “it is only the Tax Court of Canada (TCC) that can decide what is income under the *Old Age Security Act*.” Paras 13-15 of the Appeal Division decision show the Member going through both the Tax Court decisions, referencing the relevant *Old Age Security Act* provisions, and then observing that “This decision is binding on the Tribunal. The Claimant’s GIS benefit payable to the Claimant must be calculated on this basis.” At para 17 the Member confirms “The Tribunal must also follow decisions of the TCC. The TCC decided that the Claimant’s Italian social assistance is income for GIS purposes.”

[38] Ms. Fu's only argument on this point is that the Tax Court determined a different question. She says the Tax Court decided the Italian funds were included for determining GIS "eligibility" but not for determining the GIS supplement "amount." She essentially says the Tax Court did not answer the question that the Appeal Division thinks it answered.

[39] I do not agree with Ms. Fu that the ruling of the Tax Court that social assistance payments are only income for the purposes of determining eligibility only and that the social assistance is deducted for the purposes of calculating the amount of GIS she receives.

[40] A close look at the two relevant Tax Court decisions shows they were not answering the wrong question as Ms. Fu suggests they were. In Justice Miller's 2016 decision, the question was "whether or not Mr. Fang's wife, Ms. Fu, must include her social assistance payments from Italy in income for the determination of Mr. Fang's GIS entitlement" (para 4). Justice Miller reviewed the legislation and found income for GIS purposes is calculated with reference to the *Income Tax Act* which does provide certain exemptions from income but there is no exemption for foreign social assistance. Therefore the Italian funds are income. Justice Boyle's 2017 decision several months later endorses Justice Miller's decision and finds that Ms. Fu's Italian funds should be included in her income "for purposes of determining the Appellant's GIS eligibility."

[41] Since it is clear the Tax Court properly oriented itself to the question of whether her Italian funds were relevant for determining the GIS amount, and since the Tax Court found those Italian funds are "income" for GIS purposes, Ms. Fu's argument cannot succeed. It is clear from

these two decisions that the Tax Court thought the Italian funds should be part of her income when calculating the GIS *amount*.

[42] This is particularly clear because Justice Miller refers to “the **determination** of Mr. Fang’s GIS entitlement” which suggests he has a calculation of the amount in mind and not just whether Mr. Fang and Ms. Fu were *eligible*. Ms. Fu fixates on the language of “eligible” in the Tax Court’s decisions but it is clear that the Tax Court was referring to the calculation of the GIS amount. For example, even though Justice Miller refers at para 9 to “GIS eligibility,” at paras 4 and 13 he refers to determining the GIS “entitlement” which confirms he was focusing on the amount of benefit that Ms. Fu was entitled to given that she was already entitled to the benefit.

[43] Finally, when I consider the instruction sheet that Ms. Fu relies on to say her allowances should be deducted, I find that this instruction sheet is not the law nor even a guideline. She says it makes sense to include the funds in total income before deductions as section 56 of the *Income Tax Act* says assistance provided in or out of Canada must be included as income, but then for the calculations you go through the instructions and it says to deduct it. However, the instruction sheet does not even mention the correlation between every the line in an income tax form to cover every circumstance that arises as it is a general instruction sheet.

[44] Furthermore as the Respondent argued it is just a general sheet meant to be a helpful tool it does not take precedent over the *Old Age Security Act* and *Regulations* and the Minister would not have anticipated someone receiving foreign social assistance as that is something exceptional and you would have to refer to the legislation and regulations to figure out how those funds are

treated for calculating the GIS amount. The Appeal Division looked to the Tax Court, which had already determined this question, and came to a reasonable decision by following the Tax Court.

[45] For the other issues raised by Ms. Fu such as a fraudulent foreign internet posting, I either have no jurisdiction to deal with the issues, or the matters are *res judicata* or unrelated to the decision at hand.

[46] The application is dismissed.

[47] The Respondent did not seek costs.

JUDGMENT in T-1263-19

THIS COURT'S JUDGMENT is that:

1. The application is dismissed; and
2. No costs are awarded.

"Glennys L. McVeigh"

Judge

Annex A – Relevant legislation

Old Age Security Act RSC 1985, c O9

Definitions

2... income of a person for a calendar year means the person's income for the year, computed in accordance with the Income Tax Act, except that...

(c) there shall be deducted from the person's income for the year, to the extent that those amounts have been included in computing that income,

...(iii) the amount of any social assistance payment made on the basis of a means, a needs or an income test by a registered charity as defined in subsection 248(1) of the Income Tax Act or under a program provided for by an Act of Parliament or a provincial legislature that is neither a program prescribed under the Income Tax Act nor a program under which the amounts referred to in subparagraph (i) are paid,

Loi sur la sécurité de la Vieillesse LRC (1985), ch O-9

Définitions

2... revenu Le revenu d'une personne pour une année civile, calculé en conformité avec la Loi de l'impôt sur le revenu, sous réserve de ce qui suit :

c) les montants suivants sont déduits du revenu de la personne pour l'année, dans la mesure où ils ont été inclus dans le calcul de ce revenu :

(iii) les prestations d'aide sociale versées, compte tenu des ressources, des besoins ou des revenus, par un organisme de bienfaisance enregistré, au sens du paragraphe 248(1) de la Loi de l'impôt sur le revenu, ou dans le cadre d'un programme prévu par une loi fédérale ou provinciale, exception faite des programmes visés par règlement pris en application de la Loi de l'impôt sur le revenu et de ceux aux termes desquels les montants visés au sous-alinéa (i) sont versés;

Amount of Supplement

12(5) Despite subsection (2), the amount of the supplement that may be paid to a pensioner for any month after December 1997 is the amount determined by the formula

$$[(A - B) \times C] - D/2$$

where

A is the aggregate of

(a) the maximum amount of the supplement that, but for this subsection, might have been paid to the pensioner for that month, and

(b) the amount of the full monthly pension;

B is the pensioner's monthly pension;

C is the pensioner's special qualifying factor for the month; and

D is the pensioner's monthly base income rounded, where it is not a multiple of two dollars, to the next lower multiple of two dollars.

Calculation of Income

13 For the purposes of determining the amount of supplement that may be paid to a pensioner for a month before July 1, 1999, the income for a calendar year of a person or an applicant is the income of that person or applicant for that year computed in accordance with the Income Tax Act, except that... [exceptions omitted]

Montant du supplément

12(5) Malgré le paragraphe (2), le montant du supplément qui peut être payé à un pensionné pour un mois commençant après décembre 1997 correspond au résultat du calcul suivant :

$$[(A - B) \times C] - D/2$$

où :

A représente la somme des éléments suivants :

a) le montant maximal du supplément qui, en l'absence du présent paragraphe, aurait pu être versé au pensionné pour le mois,

b) le montant de la pleine pension mensuelle;

B la pension mensuelle du pensionné;

C le facteur d'admissibilité applicable au pensionné pour le mois;

D le revenu mensuel de base du pensionné, arrondi au multiple de deux inférieur.

Calcul du revenu

13 Pour calculer le montant du supplément payable à un pensionné pour un mois antérieur à juillet 1999, le revenu d'une année civile est celui qui est déterminé aux termes de la Loi de l'impôt sur le revenu, sous réserve de ce qui suit...

Statement or Estimate of Income

Statement of income to be made

14 (1) Every person by whom an application for a supplement in respect of a current payment period is made shall, in the application, make a statement of the person's income for the base calendar year.

Waiver — statement of income

14(1.01) The Minister may waive the requirement to make a statement of income under subsection (1) if that information has been made available to the Minister under this Act and, in that case, the statement is deemed to have been made for the purposes of this Part.

Minister may estimate income

14(1.1) If the requirement for an application for payment of a supplement for any month has been waived under subsection 11(3.1) or (4), the Minister may, on the basis of the information available to him or her,

(a) estimate the applicant's income for the base calendar year; and

(b) in the case of an applicant who is a person described in subsection 15(2), estimate the income of the applicant's spouse or common-law partner for the base calendar year.

Statement of income where income estimated

14(1.2) Where a person's income for a base calendar year has been estimated under subsection (1.1), the Minister may require that the person make a statement to the Minister of their income for any month in that year...

Déclaration ou estimation du revenu

Déclaration

14(1) La demande de supplément doit comporter une déclaration de revenu pour l'année de référence.

Dispense — déclaration de revenu

14(1.01) Le ministre peut dispenser le demandeur de l'obligation de déclarer son revenu si ces renseignements lui ont été rendus accessibles en vertu de la présente loi. Le cas échéant, le demandeur est réputé avoir produit la déclaration pour l'application de la présente partie.

Estimation du revenu du demandeur

14(1.1) Dans les cas où il accorde la dispense prévue aux paragraphes 11(3.1) ou (4), le ministre peut, d'après les renseignements dont il dispose, procéder à l'estimation :

a) du revenu du demandeur pour l'année de référence;

b) du revenu de l'époux ou conjoint de fait du demandeur pour la même année, si ce dernier est une personne visée au paragraphe 15(2).

Déclaration du revenu

14(1.2) Le ministre peut exiger que la personne dont il a estimé le revenu conformément au paragraphe (1.1) lui soumette une déclaration de son revenu pour l'un ou l'autre des mois compris dans l'année de référence en question.

Request for reconsideration by Minister

27.1 (1) A person who is dissatisfied with a decision or determination made under this Act that no benefit may be paid to the person, or respecting the amount of a benefit that may be paid to the person, may, within ninety days after the day on which the person is notified in writing of the decision or determination, or within any longer period that the Minister may, either before or after the expiration of those ninety days, allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or determination.

Demande de révision par le ministre

27.1 (1) La personne qui se croit lésée par une décision de refus ou de liquidation de la prestation prise en application de la présente loi peut, dans les quatre-vingt-dix jours suivant la notification par écrit de la décision, ou dans le délai plus long que le ministre peut accorder avant ou après l'expiration du délai de quatre-vingt-dix jours, demander au ministre, selon les modalités réglementaires, de réviser sa décision.

Appeal — benefits

28 (1) A person who is dissatisfied with a decision of the Minister made under section 27.1, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the Department of Employment and Social Development Act.

Reference as to income

28(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.

Old Age Security Regulations CRC c 1246

Definition of Pension Income

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;

Appels en matière de prestation

28 (1) La personne qui se croit lésée par une décision du ministre rendue en application de l'article 27.1, notamment une décision relative au délai supplémentaire, ou, sous réserve des règlements, quiconque pour son compte, peut interjeter appel de la décision devant le Tribunal de la sécurité sociale, constitué par l'article 44 de la Loi sur le ministère de l'Emploi et du Développement social.

Renvoi en ce qui concerne le revenu

28(2) Lorsque l'appelant prétend que la décision du ministre touchant son revenu ou celui de son époux ou conjoint de fait, ou le revenu tiré d'une ou de plusieurs sources particulières, est mal fondée, l'appel est, conformément aux règlements, renvoyé pour décision devant la Cour canadienne de l'impôt. La décision de la Cour est, sous la seule réserve des modifications que celle-ci pourrait y apporter pour l'harmoniser avec une autre décision rendue aux termes de la Loi sur la Cour canadienne de l'impôt sur un appel pertinent à celui interjeté aux termes de la présente loi devant le Tribunal de la sécurité sociale, définitive et obligatoire et ne peut faire l'objet que d'un recours prévu par la Loi sur les Cours fédérales.

Règlement sur la sécurité de la vieillesse CRC, ch 1246

Définition de revenu provenant d'un régime de pensions

14 Pour l'application de l'article 14 de la Loi, le revenu provenant d'un régime de pension est le total des montants perçus au titre :

- a) de rentes;
- b) de prestations alimentaires et de soutien;

(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.

c) de prestations d'assurance-emploi;

d) de prestations d'invalidité provenant d'un régime d'assurance privé;

e) de prestations, autres que des prestations de décès, versées aux termes du Régime de pensions du Canada ou d'un régime provincial de pensions, tel que défini dans le Régime de pensions du Canada;

f) de pensions ou de pensions de retraite, autres que les prestations reçues aux termes de la Loi et tout versement semblable reçu en vertu d'une loi provinciale;

g) d'une indemnité versée aux termes d'une loi fédérale ou provinciale sur l'indemnisation des victimes d'accidents du travail, en raison d'une blessure, d'une invalidité ou d'un décès;

h) d'allocations de complément de ressources versées aux termes d'un accord visé au paragraphe 33(1) de la Loi sur le ministère du Développement des ressources humaines, en raison d'une réduction définitive du personnel visée à ce paragraphe;

i) d'allocations de complément de ressources versées au titre du Programme d'adaptation des travailleurs d'usine, du Programme de retraite anticipée des pêches ou du Programme d'adaptation et de redressement de la pêche de la morue du Nord, en raison d'une réduction définitive du personnel.

Income Tax Act RSC 1985, c 1 (5th Supp)

Other Sources of Income

Amounts to be included in income for year

56 (1) Without restricting the generality of section 3, there shall be included in computing the income of a taxpayer for a taxation year...

(u) a social assistance payment made on the basis of a means, needs or income test and received in the year by

(i) the taxpayer, other than a married taxpayer or a taxpayer who is in a common-law partnership who resided with the taxpayer's spouse or common-law partner at the time the payment was received and whose income for the year is less than the spouse's or common-law partner's income for the year, or

(ii) the taxpayer's spouse or common-law partner, if the taxpayer resided with the spouse or common-law partner at the time the payment was received and if the spouse's or common-law partners income for the year is less than the taxpayer's income for the year,

except to the extent that the payment is otherwise required to be included in computing the income for a taxation year of the taxpayer or the taxpayer's spouse or common-law partner;

Loi de l'impôt sur le revenu SRC 1985 ch 1 (5^e suppl.)

Autres sources de revenu

Sommes à inclure dans le revenu de l'année

56 (1) Sans préjudice de la portée générale de l'article 3, sont à inclure dans le calcul du revenu d'un contribuable pour une année d'imposition ...

u) la prestation d'assistance sociale payée après examen des ressources, des besoins et du revenu et reçue au cours de l'année par une des personnes suivantes, sauf dans la mesure où elle est à inclure par ailleurs dans le calcul du revenu de ces personnes pour une année d'imposition :

(i) le contribuable, à l'exclusion d'un contribuable marié ou vivant en union de fait qui habite avec son époux ou conjoint de fait au moment de la réception du paiement et dont le revenu pour l'année est inférieur à celui de son époux ou conjoint de fait pour l'année,

(ii) l'époux ou conjoint de fait du contribuable avec qui celui-ci habite au moment de la réception du paiement, si le revenu de l'époux ou conjoint de fait pour l'année est inférieur à celui du contribuable pour l'année;

*Department of Employment and Social
Development Act SC 2005, c 34*

Decisions

59 (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

Powers of tribunal

64 (1) The Tribunal may decide any question of law or fact that is necessary for the disposition of any application made under this Act.

*Loi sur le ministère de l'Emploi et du
Développement social LC 2005 ch 34*

Décisions

59 (1) La division d'appel peut rejeter l'appel, rendre la décision que la division générale aurait dû rendre, renvoyer l'affaire à la division générale pour réexamen conformément aux directives qu'elle juge indiquées, ou confirmer, infirmer ou modifier totalement ou partiellement la décision de la division générale.

Pouvoir du Tribunal

64 (1) Le Tribunal peut trancher toute question de droit ou de fait pour statuer sur une demande présentée sous le régime de la présente loi.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1263-19

STYLE OF CAUSE: SHUFEN FU v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 4, 2020

JUDGMENT AND REASONS: MCVEIGH J.

DATED: FEBRUARY 11, 2020

APPEARANCES:

Shufen Fu

FOR THE APPLICANT,
ON HER OWN BEHALF

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FOR THE RESPONDENT

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