

Docket: 2005-3391(OAS)

BETWEEN:

LENA MATTINA,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES DEVELOPMENT CANADA,

Respondent.

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Appeal heard on February 17, 2006, at Hamilton, Ontario.

Before: The Honourable Justice François Angers

Appearances:

Agent for the Appellant: Anna Consalvo

Counsel for the Respondent: Marie-Claude Landry

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**JUDGMENT**

The appeal from the decision of the Minister of Human Resources Development dated October 4, 2002, reducing the appellant's guaranteed income supplement under the *Old Age Security Act* is allowed.

Signed at Edmundston, New Brunswick, this 18th day of July 2006 .

“François Angers”

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Angers, J.

Citation: 2006TCC324  
Date: 20060720  
Docket: 2005-3391(OAS)

BETWEEN:

LENA MATTINA,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES DEVELOPMENT CANADA,

Respondent.

### **REASONS FOR JUDGMENT**

Angers, J.

[1] This matter came before this Court by notice of referral from the Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security pursuant to subsection 28(2) of the *Old Age Security Act* (the "Act"). The appellant is appealing a decision of the Minister of Human Resources Development (the "Minister") dated June 14, 2005, refusing the appellant's request that her income for the purpose of determining her entitlement to the guaranteed income supplement ("GIS") for the period from July 2005 to June 2006 (the "period in question") be based on estimated income for calendar year 2005 rather than on her actual income for the 2004 taxation year.

[2] The appellant is relying on subsections 14(4) and (6) of the *Act* to have her GIS entitlement on an estimate of her income for 2005. The facts giving rise to this appeal are not in dispute, as the assumptions of fact on which the Minister relied are admitted by the appellant.

The facts

[3] On April 1, 2005, the appellant made an application for renewal of the GIS for the period in question. The appellant had three sources of income in 2004; Canada Pension Plan benefits of \$5,069.52, other pension income of \$5,404.40, paid to her by the Ontario Municipal Employees Retirement System (OMERS), and interest income of \$77.00. The OMERS pension payment included a lump sum of \$3,175.88, the remainder being made up of the appellant's ongoing monthly benefit payments.

[4] The lump sum payment by OMERS to the appellant was due to a miscalculation by OMERS on account of which it had failed to pay the appellant, as the surviving spouse, the proper annual inflation protection increases from the time of her husband's death in 1991 to April 2004. The increases should have been calculated on the basis of her spouse's disability waiver date rather than the pension commencement date. As a result, her entitlement to inflation protection increases was not fully reflected in her pension payments and the appellant received the one-time lump sum retroactive pension payment of \$3,175.88.

[5] The Minister received the appellant's statement of estimated income form on April 5, 2005. The form was sent by the appellant in order to have her GIS for the period in question calculated on the basis of an estimate of her income for the 2005 calendar year rather than on the basis of her actual income for the 2004 taxation year. The Minister refused to consider the estimated income form submitted by the appellant as there was no retirement nor was there any reduction in, or cessation of, the appellant's income, and the lump sum payment received by the appellant was not made in order to replace a weekly, semi-monthly or monthly payment. The appellant, in the Minister's opinion, is thus not eligible to exercise the option provided for under the *Act*.

[6] The relevant provisions of the *Act* are subsections 14(4) and (6). They read as follows:

- 14(4) Where in a current payment period a person who is an applicant, or who is an applicant's spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), suffers a loss of income due to termination or reduction of pension income, the person may, not later than the end of the payment period immediately 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 loss is suffered, other than pension income received by that person in that part of that calendar year that is before the month in which the loss is suffered, in which case the person's income for the base calendar year shall be calculated as the total of

- (a) the person's income for that calendar year, calculated as though the person had no pension income for that calendar year, and
- (b) any pension income received by the person in that part of that calendar year that is after the month immediately before the month in which the loss is suffered, divided by the number of months in that part of that calendar year and multiplied by 12.

14(6) Where, in the circumstances described in paragraphs (a) and (b), a person who is an applicant, or who is an applicant's spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), suffers a loss of income due to termination or reduction of pension income, the person may, not later than the end of 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,

- (a) where the loss is suffered 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, in which case the person's income for that calendar year is deemed to be the person's income for the base calendar year; and
- (b) where the loss is suffered in a month that is before the payment period and after 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 showing also the amount of pension income actually received by the person in that part of that calendar year that is before the month in which the loss is suffered, in which case the person's income for the base calendar year shall be calculated as the total of
  - (i) the person's income for that calendar year, calculated as though the person had no pension income for that calendar year, and
  - (ii) any pension income received by the person in that part of that calendar year that is after the month immediately before the month in which the loss is suffered, divided by

the number of months in that part of that calendar year and multiplied by 12.

[7] Section 14 of the *Old Age Security Regulations* (“Regulations”) made under the *Act* defines “pension income” 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.

[8] The issue is whether the Minister was justified in refusing to allow the option under subsections 14(4) and (6) of the *Act* to be exercised by the appellant for the period in question.

[9] The option is available if a person, among other things, suffers a reduction of pension income in a current payment period. There is no doubt that such would be the case in the fact situation here if the lump sum the appellant received constituted pension income. In my opinion, the amount received by the appellant from OMERS does qualify as pension income as defined in the Regulations. As such, it should entitle the appellant to exercise the option, as she sought to do.

[10] She received the lump sum as a result of a mistake made by OMERS in calculating the annual inflation protection increases to which she was entitled. Had

these inflation increases been properly calculated, the appellant's pension income would have reflected that change and the amount of the increase would have been treated as pension income. In my opinion, the lump sum received by the appellant in this case constitutes pension income added to her other pension payments and accordingly is pension income within the meaning of paragraph 14(f) of the Regulations. The appellant would suffer a reduction of that pension income in the following year, which would allow her to file a statement of her estimated income for the calendar year in which the pension is reduced. The receipt by the appellant of a retroactive pension income payment in the preceding year will obviously mean a reduction of her pension income in the current year. A retroactive payment of pension income in the form of a lump sum retains its identity as pension income even though it is paid in a lump sum. The Minister is therefore not justified in refusing to allow the option to be exercised by the appellant. The appeal is allowed.

Signed at Edmundston, New Brunswick, this 20th day of July 2006.

“François Angers”

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Angers, J.

CITATION: 2006TCC324  
COURT FILE NO.: 2005-3391(OAS)  
STYLE OF CAUSE: Lena Mattina and the Minister of Human Resources Development Canada  
PLACE OF HEARING: Hamilton, Ontario  
DATE OF HEARING: February 17, 2006  
REASONS FOR JUDGMENT BY: The Honourable Justice François Angers  
DATE OF JUDGMENT: July 20, 2006

APPEARANCES:

Agent for the Appellant:	Anna Consalvo
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