

Docket: 2001-1205(OAS)

BETWEEN:

JOHN RYSDYK,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES DEVELOPMENT CANADA,

Respondent.

Appeal heard on April 8, 2002, at Calgary, Alberta,

Before: The Honourable Judge M.A. Mogan

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: David L. Besler

JUDGMENT

The appeal from the decisions of the Minister of Human Resources Development made under the *Old Age Security Act*, notices of which are dated December 2, 1999 and February 28, 2000, for the period April 1996 to February 2000 is dismissed.

Signed at Ottawa, Canada, this 11th day of March, 2003.

"M.A. Mogan"

J.T.C.C.

Citation: 2003TCC123
Date: 20030311
Docket: 2001-1205(OAS)

BETWEEN:

JOHN RYSDYK,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES DEVELOPMENT CANADA,

Respondent.

REASONS FOR JUDGMENT

Mogan J.

[1] This appeal arises under the provisions of the *Old Age Security Act*, R.S.C. 1985, chapter 0-9 as amended ("*OAS Act*"). At the hearing in Calgary, the Appellant attended in person and represented himself. The Appellant testified briefly, and many facts alleged in the Respondent's Reply were not challenged by the Appellant.

[2] The Appellant came to Canada from the Netherlands in 1986. He has resided and worked here ever since. He was born on August 9, 1926 and so reached his 65th birthday in August 1991. Upon turning 65, the Appellant applied for and was granted an Old Age Security ("*OAS*") pension effective September 1991. He also applied for and was granted a Guaranteed Income Supplement ("*GIS*") under sections 11-14 of the *OAS Act*. He concluded that he was entitled to some kind of "senior citizen" pension from the Government of the Netherlands. In 1994, he applied, apparently through Health & Welfare Canada, to the Netherlands Government for his pension as a long-time resident of that country. Sometime in 1994-1995, the Appellant started to receive from the Government of the Netherlands a monthly pension (referred to herein as the "Netherlands Pension").

[3] During 1999, Human Resources Development Canada ("HRDC"), which administers the income security programs, reviewed the Appellant's file because he was receiving the GIS. HRDC concluded that the Appellant had not included his Netherlands Pension in his statement of income when he applied for the GIS. By letter dated December 2, 1999, HRDC informed the Appellant that (i) they had recalculated his entitlement to the GIS; (ii) they had determined that the monthly GIS payment he had been receiving was greater than the amount he was entitled to; and (iii) he had received an "overpayment" of \$2,925 for the period April 1998 to June 1999.

[4] By letter dated February 28, 2000, HRDC informed the Appellant that they had done a further and more extensive review of his account. HRDC determined that the Appellant had received an "overpayment" in the aggregate amount of \$9,641 for the period April 1996 to February 2000. After allowing \$75 for an amount recovered (i.e. deducted) from an OAS pension payment, the net overpayment as at February 28, 2000 was \$9,566. By letter dated March 22, 2000 to HRDC, the Appellant objected to the claim for overpayment and asked that the matter be reconsidered. By letter dated September 22, 2000, HRDC confirmed their earlier decision of February 28, 2000 and stated that the Appellant could appeal to a Review Tribunal.

[5] On October 24, 2000, the Appellant's Notice of Appeal was received at the Office of the Commissioner of Review Tribunals. After subsequent correspondence attempting to clarify the Appellant's grounds for appeal, the Commissioner for Review Tribunals wrote to the Registrar of this Court on March 30, 2001 referring the appeal to this Court pursuant to subsection 28(2) of the *OAS Act* because the ground for appeal related to the determination of income under section 2 of the *OAS Act*. This Court forwarded a copy of the Appellant's Notice of Appeal to the Respondent in April 2001 and the Respondent's Reply was filed on October 15, 2001.

[6] The GIS is provided in Part II (sections 10 to 18) of the *OAS Act*. The amount of the GIS is determined under section 12, and the pensioner's "monthly base income" is an important factor in that determination. In subsection 12(6), "monthly base income" of a person is defined with respect to one-twelfth of the income of that person for the base calendar year. The amount of the GIS which any particular individual is entitled to depends, in part, directly or indirectly, upon that individual's income for a "base calendar year". Set out below are what I regard as the most relevant provisions of the *OAS Act*.

2 In this *Act*,

"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

(a) ...

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

(a) ...

28(2) Where, on an appeal to a Review 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 shall, 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 Review Tribunal, is final and binding for all purposes of the appeal to the Review Tribunal except in accordance with the *Federal Court Act*.

[7] The Appellant claims that, when he applied for the Netherlands Pension in 1994 – and made his application through Health & Welfare Canada – no person told him that his Netherlands Pension could or would reduce the amount of any GIS which he might otherwise be entitled to. HRDC denies that claim and states that the Appellant did not disclose the Netherlands Pension when he applied for the GIS. In my view, it is not relevant what the Appellant was told or not told when he applied for his Netherlands Pension. Also, he may not yet have applied for his Netherlands Pension when he applied for the GIS. As I understand this appeal, the only issue is whether the Netherlands Pension is required to be included in computing the Appellant's income (in accordance with the *Income Tax Act*) for the purpose of determining the amount of GIS payable to the Appellant.

[8] Counsel for the Respondent attached two schedules to his Reply showing, in Schedule "B", the amounts of GIS actually paid to the Appellant from April 1996 to February 2000 and, in Schedule "A", the amounts of GIS which would have been payable to the Appellant from April 1996 to February 2000 if his Netherlands Pension had been taken into account. According to those schedules, the aggregate

of amounts actually paid was \$14,207.20 and the aggregate of amounts that would have been payable (if the Netherlands Pension had been taken into account) is \$4,566.20. The difference is \$9,641.

[9] According to certain facts assumed by the Minister of Human Resources Development when determining the Appellant's entitlement to, and fixing the amount of, the GIS for the period April 1996 to February 2000 (see paragraph 12 of the Reply), the Appellant received at all relevant times after 1995 monthly payments from the Kingdom of the Netherlands, and such payments were made under the "General Old Age Pensions" laws of the Netherlands. Those payments are referred to herein as the Netherlands Pension. Section 56 of the *Income Tax Act* contains the following provision:

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

(a) any amount received by the taxpayer in the year as, on account or in lieu of payment of, or in satisfaction of,

(i) a superannuation or pension benefit including, without limiting the generality of the foregoing,

(A) ...

(C.1) the amount of any payment out of or under a foreign retirement arrangement established under the laws of a country, except to the extent that the amount would not, if the taxpayer were resident in the country, be subject to income taxation in the country,

In my opinion, the Netherlands Pension falls within the broad meaning of clause 56(1)(a)(i)(C.1) or subparagraph 56(1)(a)(i). There is no evidence that the Netherlands Pension would not be subject to income taxation in the Netherlands if received by a resident of that country.

[10] Under subsection 2(1) and section 3 of the *Income Tax Act*, the Appellant as a resident of Canada after 1986 is taxable on his world income; and for greater certainty, his income would include a superannuation or pension benefit under subparagraph 56(1)(a)(i). If the Netherlands Pension is not taxable in Canada because of a provision in the tax convention between Canada and the Netherlands, the Netherlands Pension would still be included in the Appellant's "income" under

section 56 of the *Income Tax Act*; but it would be deductible in computing "taxable income" under subparagraph 110(1)(f)(i). The inclusion of the Netherlands Pension in the Appellant's "income" under the *Income Tax Act* may very well affect the amount of the GIS which the Appellant is entitled to under the *OAS Act* even if the Netherlands Pension were later deductible in computing "taxable income". It appears, however, from Article 18, section 1 of the Canada-Netherlands Tax Convention (1986) plus amending protocols, that any pension arising in the Netherlands and paid to a resident of Canada may be taxed in Canada.

[11] I am satisfied that the Appellant's Netherlands Pension must be included in computing his income in accordance with the *Income Tax Act*. Accordingly, the Netherlands Pension is part of the Appellant's "income for a calendar year" within the meaning of section 13 of the *OAS Act*. The appeal is dismissed.

Signed at Ottawa, Canada, this 11th day of March, 2003.

"M.A. Mogan"

J.T.C.C.

CITATION: 2003TCC123

COURT FILE NO.: 2001-1205(OAS)

STYLE OF CAUSE: John Rysdyk and The Minister of Human
Resources Development Canada

PLACE OF HEARING: Calgary, Alberta

DATE OF HEARING: April 8, 2002

REASONS FOR JUDGMENT BY: The Honourable Judge M.A. Mogan

DATE OF JUDGMENT: March 11, 2003

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: David L. Besler

COUNSEL OF RECORD:

For the Appellant:

Name: N/A

Firm: N/A

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