

ESTABLISHING RESIDENCE AND MAXIMIZING RETROACTIVITY OF OLD AGE SECURITY BENEFITS

Rita Chrolavicius, Staff Lawyer

Retroactivity of Benefits

It is important that individuals apply for pension benefits in a timely manner in order to ensure that they receive all Old Age Security (OAS) pension benefits to which they are entitled. An application for pension benefits should be submitted approximately three months before the eligibility date, even if the applicant does not have all of the supporting evidence or documentation to establish entitlement to the pension.

The maximum retroactivity for pension benefits under the *Old Age Security Act*, R.S.C., 1985, c. 0-9 is the month that the application was received by Service Canada and the previous eleven months. This applies to the OAS pension benefit, the spousal allowance, and the Guaranteed Income Supplement (GIS).

A greater retroactivity of OAS benefits may be allowed if an application is made on behalf of a person who was incapable of forming or expressing an intention to make an application on their own behalf at the time that the pension became eligible. Evidence must be provided to satisfy the Minister of Employment and Social Development of the person's incapability.

Evidence of Legal Status

Persons applying for benefits under the *Old Age Security Act* must demonstrate when they became legally resident in Canada. Persons born in Canada must produce their birth certificates. Persons born outside of Canada must also provide their permanent resident documentation.

If applicants have lost their permanent resident documents, they can complete an Application

for a Verification of Status (VOS) or Replacement of an Immigration Document (IMM 5545 and IMM 5009) and mail the form to:

Verification of Status (VOS) or Replacement
of an Immigration Document
Operations Support Centre (OSC)
Immigration, Refugees and
Citizenship Canada
Ottawa, Ontario K1A 1L1

Copies of certain identification documents must be submitted. The fee can be waived if the applicant is on social assistance and provides a letter from the social assistance office confirming that they are receiving benefits.

An alternative is for applicants to sign a Consent to Exchange Information with Citizenship and Immigration Canada (Form SC ISP-3210) so that Service Canada can request this information themselves.

Evidence of Residence in Canada

Section 21 of the *Old Age Security Act* regulations define residency as follows:

- (a) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada; and,
- (b) a person is present in Canada when he is physically present in any part of Canada.



Although Service Canada provides you with a list of documents to prove residency, here are some others you can use.

Passports, Travel Documents

It is a good idea to keep a written history of all travel into, and out of, Canada. Keep all passports, airplane, bus or train tickets, boarding passes or other travel documents.

Travel History Reports

Individuals can write to the Canada Border Services Agency to request their travel history report. The report documents entries into Canada from August 1, 2000. The request can be submitted online. Written requests may be sent to:

Canada Border Services Agency
Access to Information and Privacy
Coordinator
333 North River Road
14th Floor, Tower A
Vanier, Ontario K1A 0L8

OHIP Records

Individuals make a request that the Ontario Health Insurance Plan (OHIP) provide a personal claim history report for the past seven years. Use of OHIP insured services on a particular date is good evidence that the person was in Canada on that date. Requests can be sent to:

Ministry of Health and Long Term Care
Personal Health Information Office
49 Place d'Armes, 4th Floor
Kingston, Ontario K7L 5J3

Credit Card Statements and Bank Records

Individuals who use credit cards frequently can produce credit card statements that prove that a particular credit card was used in a particular location on a certain date.

Similarly, bank records may show that withdrawals were made at ATM machines in a particular location on a certain date.

Witnesses

Service Canada may ask for the name of two individuals, unrelated by blood or marriage, who can provide information about an applicant's residence and physical presence in Canada. Where appropriate, more witnesses' names can be provided.

Tax Records

It is advisable to file income tax returns each year for persons resident in Canada, even if there is no income tax payable. First, persons may be entitled to certain benefits. Second, it establishes a good historical record for OAS purposes. Tax records may be obtained by making a *Privacy Act*, R.S.C. 1985, c. P-21, request to the Canada Revenue Agency.

Census Search

A census search may reveal information about a person's stated age during the time that the census was completed, as well as confirmation of the person's address. Form 8-9600-21 is accessible online. Inquiries can be directed to the Census Pension Searches program at (613) 951-9483.

Other Evidence

Leases, utility bills, driver's licenses, insurance policies, cable and internet contracts, memberships to clubs or organizations are types of documentary evidence that may be useful as evidence confirming that an individual was physically present in, and resided in, Canada.

Waiving Entitlement

If, for example, an individual claims legal residence in Canada of 15 years, but can only prove residency in Canada for 11 years, the individual is free to accept an OAS benefit based on 11 years' residency, and waive any further OAS benefit. This may be especially useful for individuals who plan to continue living in Canada, as the Guaranteed Income Supplement may make up, to some extent, for

the loss of entitlement of some additional OAS benefits.

Difficult Cases

There have been cases where it may take years for individuals to establish eligibility for OAS benefits. Generally, low-income seniors can apply for social assistance in the interim. Individuals will have to sign a document agreeing that the social assistance benefits received will be reimbursed from the retroactive OAS benefits eventually received by the applicant. It is important to continue to correspond with the Service Canada offices, to answer any questions they have, and to notify them of any difficulties the applicant is having in establishing entitlement to OAS benefits. In worst case scenarios, individuals may need to re-establish their entitlement to benefits by waiting for 10 years. During the 10 years, they can build up a solid evidentiary base to prove their continued legal residency in Canada.

Requests for Reconsideration and Appeals

If a benefit is denied, Service Canada usually advises the applicant, in writing, that the applicant can request a reconsideration within 90 days of the date of the denial letter. The applicant is further advised of how they can appeal to the Social Security Tribunal of Canada. Any additional documentation or evidence obtained during this time can be submitted both to Service Canada and the appeal tribunal.