

**CHALLENGING A DECISION  
ABOUT YOUR CANADA  
PENSION PLAN OR OLD  
AGE SECURITY BENEFITS:**

**RECONSIDERATION AND THE SOCIAL SECURITY  
TRIBUNAL**

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## **WARNING AND WAIVER**

### **What this guide covers**

This guide explains how to challenge a decision about your Canada Pension Plan (CPP) or Old Age Security (OAS) claim. The process for appealing other types of decisions, including decisions about other federal benefits, is different. This guide is not designed to assist employers or anyone other than people claiming CPP or OAS benefits.

### **Getting legal advice**

Users of this guide should not rely on the guide for legal advice or as a substitute for legal advice. If you have a legal problem, you should consult a lawyer even if you plan to represent yourself. Getting legal advice is important because:

- This guide is produced for educational purposes.
- This guide cannot and does not cover all possible situations. It covers common situations, and your situation might be different.
- Certain decisions cannot be appealed using the process described in this guide.
- The law, including statutes, regulations, and the rules about practice and procedure can change without warning and those changes may not be reflected in this guide.

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# 1 WHO SHOULD USE THIS GUIDE?

This guide is for people who have already applied for Canada Pension Plan (“CPP”) or Old Age Security (“OAS”) benefits, but disagree with a decision about their claim. If you have not yet applied for CPP or OAS, and want some help doing so, you can find information from the government here:

<http://www.servicecanada.gc.ca/eng/services/pensions/cpp/index.shtml>

If you are applying for CPP Disability Benefits, you should also read the “CPP-D Application Guide” put out by the Disability Alliance BC. You can find the CPP-D Application Guide here:

<http://www.disabilityalliancebc.org/money.htm>

After you send in your application, you will get a letter confirming that it was received. If more than a month goes by and you still have not gotten a letter confirming that your application was received, you should call the Service Canada CPP and OAS phone line to follow up. The number is 1-800-277-9914. Remember that it will probably take a few months before any decision is made about your application.

# 2 THE FIRST DECISION ABOUT YOUR CLAIM

If you are reading this guide, you have probably received a decision about your CPP or OAS claim that you disagree with. This guide will outline how you can challenge that decision.

## A. Who Makes Decisions about my CPP or OAS Claim?

Most decisions about CPP and OAS are made by staff at Employment and Social Development Canada (“ESDC”), which is the government department that runs CPP and OAS. You might hear people talk about decisions being made by “the Minister”. This just means the person in government who is in charge of ESDC.

The government is always changing around the names of the various ministers and departments, so do not worry if you see different names being used. For example, “Human Resources and Skills Development Canada” is an old name for ESDC that you might see used from time to time, but for our purposes it means the same thing.

To make matters even more complicated, the government uses a centralized agency called Service Canada to administer a number of different federal government programs, including CPP and OAS. So although we will talk about ESDC making decisions about your claim, you will likely find yourself dealing with Service Canada.

## B. Decisions that Cannot be Challenged Using this Guide

Sometimes, the Canada Revenue Agency (or the Minister of National Revenue, who is in charge of the Canada Revenue Agency) will make important decisions that impact your CPP or OAS claim. For example, the Canada Revenue Agency might make decisions about:

- Whether your employment (or former employment) is covered by the CPP program;
- When your employment started and ended;
- How much money you earned; and
- Whether CPP contribution should have been paid on those earnings.

There is a whole separate appeal process for challenging decisions by the Canada Revenue Agency that is not covered by this guide. You cannot challenge these decisions using the process set out in this guide. There will hopefully be some information in the letter from the Canada Revenue Agency about how to challenge the decision.

If you find yourself on the tail-end of decisions against you by both ESDC and the Canada Revenue Agency, make sure you challenge all of them to preserve all your appeal rights. You should try to get legal advice if possible because these situations are complicated.

# 3 APPLYING FOR RECONSIDERATION

The first step when challenging a decision about your CPP or OAS claim is to ask ESDC to reconsider its decision.

## A. How to Request a Reconsideration

There is no specific form you have to fill out to request a reconsideration. However, you must apply in writing and your letter must include:

- Your name, address, and telephone number;
- Your Social Insurance Number;
- A very brief description of the facts that led to the decision and why you disagree with the decision (you do not need to go into great detail now, you can send more information later);  
and
- Your signature and the date.

You can mail in your request for reconsideration (the address will be on the decision letter you are challenging) or you can drop it off in person at a Service Canada office. If you are sending your request for reconsideration by regular mail, you need to make sure that you allow enough time for it to get there before the deadline. You should include any documents or other information that you think will help your case. You should keep a copy of everything that you send in.

When deciding what documents and information to send in with your request for reconsideration, it is important to think about why ESDC made the decision against you. When ESDC makes a decision, they will send out a letter explaining why the decision was made. Start by reading this letter and then think about how you can deal with the problems ESDC identified. For example, if you applied for CPP disability benefits and ESDC decided that your disability was not severe, you may need to get a new letter from your doctor setting out why your disabilities stop you from working on a regular basis.

Keep in mind that if there are other people involved in your case, those people may be able to request a reconsideration of the decision, even if you choose not to request a reconsideration. For example, if ESDC made a decision in your favour about how CPP contributions should be split between you and your former partner after a divorce or separation, your former partner may be able to request a reconsideration if she or he disagrees with the decision. If this happens, you will be notified and given an opportunity to explain why the decision should not be changed.

## **B. The Deadline to Request a Reconsideration**

The deadline to request a reconsideration is 90 days from when you first found out about the decision. Keep in mind that ESDC must actually receive your request for reconsideration before the 90 day deadline, otherwise it will be considered late. If you are mailing in your request for reconsideration, remember it could take several days to arrive.

### **i. Counting your deadline**

When you are counting your 90 day deadline, day 1 is the first day after you found out about the decision. For example, if you got the decision on November 2nd, start counting with November 3rd as day 1. Then include every single day after that, even weekends and holidays, until you get to day 90. Your request for reconsideration must be filed by this date.

If your deadline ends on a weekend or a holiday when Service Canada offices are closed, you can file your appeal on the next day that Service Canada offices are open. For example, if your deadline ends on Labour Day Monday, which is a statutory holiday, you can file your appeal on Tuesday. Keep in mind that some holidays are different in each province, and there have been some cases where the government has argued that Saturday is not a legal holiday in some provinces. If you are not in British Columbia, you should double check the situation in your province. However, the easiest way to avoid problems is to get your request for reconsideration to the Service Canada office well ahead of your deadline.

## ii. Extensions of time

If you miss the deadline, you can ask for an extension of time. You will need to explain:

- How there is a reasonable explanation for why you did not appeal in time;
- How you really did mean to appeal the whole time; and
- Any other information that you think is important to why you should get an extension of time.

If your appeal is very late (more than a year has passed since you found out about the decision), or you have reapplied for the same benefits or already asked ESDC to change the decision, you will also need to explain:

- How there is some reason to believe your case could win if you get to appeal; and
- How allowing you to appeal late will not prejudice (make life difficult for) the other people involved in the appeal. For example, there may be prejudice to someone else involved in your appeal if you are appealing very late and that person is now so sick that she or he cannot deal with the appeal.

ESDC will consider all these factors before making a decision. Even if some of the factors are not in your favour, ESDC can still give you an extension of time based on the other factors that are in your favour, so do not get discouraged. If ESDC refuses to give you an extension of time, you can appeal that decision to the Social Security Tribunal just like any other decision. Appeals to the Social Security Tribunal are discussed in chapter 4 of this guide.

## C. Requesting a Copy of Your File

You can request a copy of your CPP or OAS file under the *Privacy Act*. To make sure that you have all the information about your CPP or OAS claim, you should request your file right away because it can take up to 30 days, and often even longer, to get your file.

You can request your file here: <<http://www.tbs-sct.gc.ca/tbsf-fsct/350-58-eng.asp>>

- If you want to make your request electronically over the internet, follow the link called “Make an On-line Request”.

- If you want to mail in your request, follow the link at the bottom of the page to download and print a “Personal Information Request Form”. You can then mail the completed form to:

Employment and Social Development Canada  
Access to Information and Privacy Coordinator  
Phase IV, Level 12, Mail Stop 1203  
140 Promenade du Portage  
Gatineau, Quebec K1A 0J9

(Keep in mind that contact information is subject to change, so you should double check).

List ESDC as the federal institution you are directing your request to.

#### **D. How ESDC Makes the Reconsideration Decision**

There is no formal hearing. ESDC will investigate your claim and review the decision to see if it should be changed. The person at ESDC who makes the reconsideration decision will not be the same person who made the first decision about your claim. The person making the reconsideration decision may phone you to ask questions. You should review your file and make sure that ESDC has all the information and documents that are helpful to your case. If you feel that you need to add more detail to what you wrote in the letter you sent to request a reconsideration, you can also send in a brief written submission or statement setting out why you should win. Again, you want to focus on the reasons why ESDC denied your claim and avoid long, rambling submissions that are off topic. For example, if ESDC refused your application for OAS because you had not been living in Canada for long enough to qualify, then you want to look at the time periods that ESDC says you were not in Canada and write out where you were living, working, volunteering, or doing other things that show you were actually living in Canada. Where possible, backup what you are saying with evidence. Did you get mail sent to your house? Do you have pay stubs from work?

Once ESDC has made a decision, it will be mailed out to you in a letter. There is no specific time line for when ESDC must make their decision, but generally it takes at least a few months. If more than three months go by without a decision, you might want to follow up and see what is going on.

# 4 THE SOCIAL SECURITY TRIBUNAL GENERAL DIVISION

If ESDC refuses to change its decision after you request a reconsideration, you can appeal to the Social Security Tribunal (the “SST”). The SST was created by the federal government to deal with appeals about several different social benefits, namely Employment Insurance, CPP, and OAS. The SST has two different divisions, or levels of appeal:

- The first level of appeal is the **SST General Division**.
- If you still disagree with the General Division’s decision, you can ask for leave (permission) to appeal to the **SST Appeal Division**.

We will start by looking at the General Division. The General Division has a specific section, called the Income Security Section, that deals with CPP and OAS appeals. This guide only deals with the rules and time limits that apply to the Income Security Section. There are different rules that apply to Employment Insurance appeals.

Keep in mind that if there are other people involved in your case (for example, your former spouse in a case about splitting up CPP credits), those people may also be able to file an appeal, even if you choose not to appeal. If this happens, you will be notified and given an opportunity to participate in the appeal.

## A. The Deadline to Appeal

The deadline to appeal to the SST General Division is 90 days from when you first found out about ESDC’s reconsideration decision. For help counting your time limit, read the section called “Counting your Deadline” on page 7 of this guide.

If you miss the deadline to appeal, you can ask for an extension of time. You will need to explain:

- How here is a reasonable explanation for why you did not appeal in time;

- How you really did mean to appeal the whole time;
- How there is some reason to believe your case could win if you get to appeal;
- How allowing you to appeal late will not prejudice (make life difficult for) the other people involved in the appeal; and
- Any other information that you think is important to why you should get an extension of time.

There is a section on the Notice of Appeal form (discussed below) that you can fill out to request an extension of time. If the General Division does not give you an extension of time, you can ask for leave (permission) to appeal that decision to the Appeal Division. Appeals to the Appeal Division are discussed later on in chapter 5 of this guide. Keep in mind that the SST cannot extend the deadline to appeal beyond one year from the date you first found out about ESDC's reconsideration decision. If more than one year has passed since you first found out about the decision, you cannot appeal.

## **B. The Notice of Appeal**

**CPP:** To appeal a CPP decision, fill out a Notice of Appeal to the SST General Division (CPP), which is available on the SST's website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-NOA-GD-IS-CPP.pdf>

**OAS:** To appeal an OAS decision, fill out a Notice of Appeal to the SST General Division (OAS), which is also available on the SST's website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-NOA-GD-IS-OAS.pdf>

It is important to make sure that you fill out all the boxes on the form because your appeal will not be accepted if it is missing information. *You must also send in a copy of the reconsideration decision you are appealing with the Notice of Appeal or your appeal will not be accepted.* If your Notice of Appeal is missing any required information, the SST will send you a letter with a deadline to send in the missing information (generally you will get 30 days). You must get the missing information to the SST before this deadline. If the missing information arrives after this deadline, your appeal will be considered late. It is very important that you list the day you first found out about the decision on your Notice of Appeal in section 2A. If you fail to do this, the SST may treat your appeal as late even though it is not. If your appeal is late, you should fill out section 2B called "Reasons for Late Appeal". The factors the SST will

consider when deciding whether or not to give you an extension of time are discussed in the previous section called “The Deadline to Appeal”. If your appeal is not late, leave this section blank.

Section 2C of the Notice of Appeal asks you to state your reasons for appeal. Briefly explain why the reconsideration decision is wrong and why your appeal should win. You do not need to write out each and every detail of your case in the Notice of Appeal; however, you do need to provide enough information so that the SST can understand what your appeal is all about and why you have a chance of winning.

You can list any new documents that you want to include in section 2D. You must also attach copies of these documents to your Notice of Appeal. If you come across other documents later on, you will still have a chance to send them in, but it is best to send the documents you do have right away.

Remember to attach a copy of the reconsideration decision you are appealing. There is no need to resend documents that you sent to ESDC during the reconsideration process. You can send your completed Notice of Appeal and any documents that you have attached to the SST by mail or fax. The address and fax number for the SST are listed on the Notice of Appeal. It is a good idea to keep a copy of your Notice of Appeal and any documents you send in.

After you send in your Notice of Appeal, the SST will send you a letter confirming that it was received. If more than a month goes by and you have not received a letter confirming that your appeal was filed, you should follow up with the SST.

### **C. Representatives**

If you have someone representing you, you should list them in section 3 of your Notice of Appeal. This could be a lawyer, a union representative, a legal advocate, or even a friend or family member. You will also need to send in an “Authorization to Disclose” form giving the SST permission to share information with your representative. The Authorization to Disclose form is available on the SST’s website.

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATD.pdf>

The SST will sometimes check to make sure that your representative is actually allowed to represent people in legal cases. Each province has rules to make sure that only qualified lawyers, paralegals, or

advocates are providing legal services. There are links to each province's rules on the SST's website: <http://www1.canada.ca/en/sst/hta/cppgdiv.html>

If you have made an agreement with someone to represent you, make sure that person is authorized to be your representative.

Also keep in mind that if you are represented by someone, the SST will generally direct all communications (letters, phone calls, emails etc.) to that person, and not to you. The only documents that will be sent to both you and your representative are the letter confirming your appeal was received, the notice of your hearing, and the reasons for the SST's decision.

#### **D. Your File**

The SST will automatically obtain a copy of your file from ESDC and send it to you. However, if you would like a copy of your file sooner, you can request it directly from ESDC at any time. Follow the instructions under the heading "Requesting a Copy of Your File" on page 8 of this guide.

#### **E. Communicating with the SST**

The SST is working hard to improve their phone information system. If you phone the SST, your call will now be answered by someone who has access to your file. This will hopefully mean that the person you speak with can answer your questions and provide information right away. However, if you are told that someone will have to call you back, ask for the call back to be at a time of day that you know you will be available to answer the phone. If you have a cell phone, leave that number and make sure that you have the cell phone charged and on you at all times. Make your questions as specific as possible so that the person calling you back can find the information you need. It is a good idea to write down the name of the person you spoke to and the date and time of the call.

If you have a general question that does not involve sensitive personal information, you can email the SST at [infor.sst-tss@canada.gc.ca](mailto:infor.sst-tss@canada.gc.ca). The SST asks that you not discuss sensitive personal information by email.

If the SST communicates with you in writing, be aware that there are rules that deem you to have received documents, even if you did not actually find out about the documents right away:

- If the SST sends something to you by regular mail, you are deemed to have received it 10 days after it was put in the mail.
- If the SST sends something to you by registered mail or a courier, you are deemed to have received it the day someone signs for it, or the day it is successfully delivered to your last known address.
- If the SST sends something to you by fax or email, you are deemed to have received it on the next business day after it was sent.

What can you do to protect yourself?

- If your contact information changes, you must tell the SST right away. It is a good idea to do this in writing and keep a copy of the letter.
- Check your mail every day. Do not go away without making sure that there is someone you trust checking your mail.
- If you miss a delivery and there is a notice on your door that you need to pick up a letter at a post office, do it right away.
- If you live with other people, make sure that they know to tell you right away if something comes for you.
- Check your email every day, including your junkmail folder.

#### **F. Submissions and New Evidence**

After your appeal is filed, you can send in new evidence to support your appeal. For example, if your appeal is about CPP disability benefits, the evidence you send in might include medical records or a doctor's report. You can also send a written submission (a written statement) about why you should win your appeal.

**i. The deadline for submissions and new evidence**

On December 1, 2015, the SST changed their rules about the deadlines for sending in new evidence and submissions, so different rules now apply depending on whether your appeal was filed before or after this date.

- **The deadline if your appeal was filed on or after December 1, 2015**

If your appeal was filed on or after December 1, 2015, you must send all your documents and submissions to the SST within 365 days after filing your appeal. The other people involved in your appeal, including ESDC, must also send in their evidence and submissions within 365 days of your appeal being filed. The SST will send you a letter confirming the exact date of your 365 day deadline.

If you or someone else involved in the appeal sends in documents or submissions less than 30 days before the deadline expires, everyone else will get an extra 30 days after the deadline to respond. For example, if your 365 day deadline falls on March 1<sup>st</sup>, and you send in new documents or submissions on February 2<sup>nd</sup>, then ESDC and anyone else involved in your appeal will have an extra 30 days (until March 31<sup>st</sup>) to respond to your new documents or submissions.

If you are absolutely sure that you have sent in all the documents and submissions that you intend to submit ahead of the 365 day deadline, you can send in a Notice of Readiness to let the SST know that you have nothing more to add to the file and that you are ready to move ahead with your appeal before the 365 day deadline is up. The Notice of Readiness can be found on the SST's website. If everyone else participating in your appeal (usually it is just ESDC, but there could be others) also sends in a Notice of Readiness, then the SST can move your appeal forward without waiting for the 365 day deadline to pass.

Think very carefully before you send in a Notice of Readiness because after you send it in, you may not be able to file any additional documents or submissions. Furthermore, the Notice of Readiness will not speed up your case unless all the other people involved in the appeal also file a Notice of Readiness. Before filing a Notice of Readiness, it is probably a good idea to call the representative for ESDC and anyone else involved in the appeal to make sure that everyone is willing to file a Notice of Readiness if

you do. There is no point in you filing a Notice of Readiness if someone else plans to wait out the full 365 day deadline.

If someone else, such as ESDC, files documents or makes submissions after you have filed a Notice of Readiness, you will be given time to respond (usually 30 days). You can include new evidence in your response if the new evidence is necessary to respond to something sent in by the other party. Your response must only deal with the documents and submissions sent in by the other party. You cannot just send in unrelated documents or information to support your appeal.

- **The deadline if your appeal was filed before December 1, 2015,**

If your appeal was filed before December 1, 2015, then the 365 day deadline discussed above does **NOT** apply to you. Instead, the SST will send you a notice or letter setting a specific deadline for any final evidence or submissions. It will also set a deadline for you to respond to the evidence and submissions sent in by ESDC and anyone else involved in the appeal.

- **Late documents and submissions**

At first it may seem like you have lots of time to gather up new evidence for your appeal, but it will probably take longer than you think. This is particularly true if you are trying to get new medical evidence from doctors. It is therefore very important that you start putting your evidence together as soon as you file your appeal.

Sometimes it may not be possible to get all the evidence you need before your deadline. Other times, you may discover important document after your deadline has passed (or for appeals filed after December 1, 2015, after you send in a Notice of Readiness). If you send documents or submissions after your deadline, the Member deciding your appeal will decide whether or not to accept them (the people at the SST who make decisions about appeals are called “Members”). You will need to provide an explanation for why you could not file the documents on time. For example, if you requested a medical opinion from a doctor right after you filed your appeal and reminded the doctor about your deadline, but still did not get the report on time, the Member may allow you to file the doctor’s report late.

## **ii. Reviewing your file**

When deciding what documents and submissions to send in, it is critical that you start by reviewing the decisions and documents that are already in your file. You should re-read the reconsideration decision carefully to make sure that you understand the reasons for ESDC's decision. The reconsideration decision may not have a lot of detail, but do your best to figure out why ESDC decided against you.

When you review the documents in your file, make a note of the evidence in the file that helps you and the evidence that works against you. If there is anything missing from the file that helps your appeal, you should send it to the SST.

## **iii. Researching the law**

It is important to know what laws and legal tests the SST will use to decide the issues in your case. It is impossible for this guide to review the law on all the different types of decisions that can be appealed. If possible, you should try to get legal help. If you have to research the law yourself, here are a few places you can start looking.

- **Statutes and regulations**

Statutes and regulations are the laws made by the government. The SST's website has links to the laws that apply to CPP and OAS. <http://www.canada.ca/en/sst/rdl/index.html>

The rules about CPP are set out in the *Canada Pension Plan* and the *Canada Pension Plan Regulations*. The rules about OAS are set out in the *Old Age Security Act* and the *Old Age Security Regulations*.

If you cannot get legal advice and are having trouble figuring out what sections apply to your case, the SST's website has a list of some important sections that apply to different issues. Keep in mind that this is not intended to be a complete or comprehensive list, but it may serve as a useful starting point.

<http://www.canada.ca/en/sst/ad/index.html>

Some libraries (particularly courthouse and law school libraries) will also have books that help explain the law. For example, the “Annotated Canada Pension Plan and Old Age Security Act” explains what each section of the law means and talks about other cases that have dealt with that section.

- **Information Published by the Government**

Service Canada’s website has pages dedicated to both CPP and OAS that provide a general overview of the requirements to qualify for each program. [www.servicecanada.gc.ca](http://www.servicecanada.gc.ca)

- **Court Decisions**

It is sometimes useful to read about other cases that are similar to yours. Most of the very important CPP and OAS decisions are made by the Federal Court and the Federal Court of Appeal. You can search these decisions using a free service called Canlii. [www.canlii.org](http://www.canlii.org)

- **SST Decisions**

The SST is working hard to make more decisions available to the public. The decisions that are available to the public can be accessed on Canlii <[www.canlii.org](http://www.canlii.org)> or through the SST’s website <<http://www.canada.ca/en/sst/ad/index.html>>. Canlii allows you to search by keyword.

- **Old Pension Appeals Board Decisions**

Before the SST was created in 2013, CPP appeals were decided by the Pension Appeals Board (the “PAB”). These decisions can still provide some helpful explanation about the law, but keep in mind that many of these decisions may now be outdated. PAB decisions are still available through the SST’s website, but you can no longer search by keyword. This unfortunately makes it difficult to find helpful cases unless you know the exact case you are looking for. To make things easier, you can use a textbook like the “Annotated Canada Pension Plan and Old Age Security Act” to find the file number for cases that you want to look at, then you can search for those cases on the SST’s website using the file number. The database of old PAB cases is here: <http://www.canada.ca/en/sst/pab/index.html>.

#### **iv. Sending in new evidence**

Once you have reviewed your file and the law that applies to your case, think about what new evidence you can send in to help your appeal. It is very important that you send in all the evidence that you want the General Division to look at. As we will discuss later, if you lose your appeal to the General Division, you will likely not be able to submit new evidence or call witnesses if you try to appeal to the Appeal Division.

You should also think about what evidence in the file works against you and try to find new evidence to counter it. Once you have gathered up your new evidence, mail or fax it to the SST. Contact information for the SST is listed on their website. Include your name, address, telephone number, and appeal number so that the SST knows what file to put the documents in. If you are sending evidence by mail, remember that it can take several days to arrive. It is good idea to keep a copy of everything you send to the SST. There is no need to resend the evidence that is already in your file from the reconsideration process.

#### **v. Preparing a written submission**

A written submission is simply a written description or outline of your appeal. A written submission usually goes into more detail than the description you wrote on your Notice of Appeal, but you should still avoid a very long or rambling submission. You are not necessarily required to send in a written submission, but it can be very helpful. Keep in mind that there is no guarantee that you will get a hearing where you can talk to the Member deciding your case, so your written submissions may be your only chance to state your case.

Here is one way you could organize your submission, but do not worry too much about following this exactly. The most important thing is to get everything down in a way that makes sense to you.

- **Overview:** Give a very brief (just a few sentences) overview of the decision you are appealing and the most important points about your appeal.

- **Orders you are seeking:** Say what you are asking the SST to do. For example:  
*Allow my appeal and find that I am entitled to OAS benefits.*  
*Allow my appeal and find that I am entitled to CPP disability benefits.*
- **Facts:** Give your account of what happened. It is often best to write this as a timeline or chronology. List the date and what happened, where it happened, who was involved etc. If there is evidence in the file that backs up your side of the story, you should refer to it. Try to be “matter of fact”. Avoid using angry or disrespectful language.
- **Issues:** List the issues the SST has to decide. For example:  
*Was I resident in Canada in 2012 and 2013?*  
*Am I incapable of regularly pursuing any substantially gainful employment?*
- **Law:** List any sections of the *Canada Pension Plan / Old Age Security Act or Regulations* that apply to your case, and any previous decisions that are relevant to your appeal.
- **Argument:** Explain why you should win your appeal given the facts and the law you have outlined.
- **Conclusions:** A few sentences that wrap-up your most important points.

You can send your written submission to the SST by mail or by fax. Again, include your name, address, telephone number, and appeal number so that the SST knows what file to put your submissions in. If possible, try to send your written submissions and new evidence to the SST as one single package. You should keep a copy of everything that you send to the SST.

After you send in your new evidence and submissions, a representative for ESDC will likely respond to what you have said by providing a written submission (and possibly new evidence) about why the General Division should not change the reconsideration decision. Sometimes people get confused and think that this is the actual decision about their case, but it is not. This is just ESDC’s submission about what should happen. The General Division will make the final decision later on after considering all the submissions, including yours. If you feel that you need to respond to what ESDC has to say, you can

send in another written submission. But, keep in mind that you do not want to just repeat what you have already said. When responding to ESDC's submissions, you only want to address new issues that were not covered in your first submission.

### **G. Summary Dismissal**

If the General Division reviews the documents in your file and determines that your appeal has no reasonable chance of success, your appeal will be denied without any kind of a hearing. This is called summary dismissal. Before the General Division dismisses your appeal, they will send you a letter and give you a chance to explain why your appeal should not be dismissed. The letter will have a deadline for you to respond and it is important that you do so. Remember that if you are mailing in your response, it may take several days to arrive. You should explain why your appeal has a chance of winning and respond to any specific questions or concerns that appear in the letter.

### **H. How Your Appeal Will Be Decided**

If your appeal is not summarily dismissed, the Member will determine what process to use to make a decision about your appeal. The General Division is not required to hold a hearing. If the Member deciding your appeal feels that the file has all the necessary information, and the appeal does not involve complicated issues or issues of credibility (who to believe or not believe), she or he may simply make a decision based on the information already in your file. This is often called a "decision based on the written record".

If the Member does decide to hold a hearing, there are a number of different ways it could happen:

- **In person hearings:** Everyone gets together in the same place, usually at a Service Canada centre.
- **Videoconference hearings:** You go to a Service Canada centre, where you and anyone else participating in the hearing are connected with the Member by video (you do not use your own computer).
- **Teleconference hearings:** You are given a conference call phone number and you call into the hearing using your own phone.

- **Written Questions and Answers:** The Member deciding your appeal sends you questions in writing. You write out your answers and send them back. Although this does not seem like a “hearing” because no one actually talks to each other, the rules say that this is considered a hearing.

Usually the Member will just pick one way for the hearing to happen. However, the Member can choose to combine more than one different method for holding the hearing. For example, the Member could decide to have you answer written questions before holding an in person hearing.

#### **i. The Hearing Information Form**

The SST will send a Hearing Information Form to get your feedback about setting up a hearing. The Hearing Information Form will ask when you are available for a hearing, how many witnesses you plan to bring, whether you will have someone representing you, and whether you need an interpreter. The SST will provide a professional interpreter at no charge. You will probably not be allowed to use a friend or family member to interpret and your hearing may have to be postponed if you do not request an interpreter in advance. Be very specific about what language and dialect you speak.

While the SST will pay for an interpreter at the hearing, the SST will not pay to translate written documents. You are responsible for having the document translated and the person who translates it must identify them self and swear an oath or solemn affirmation that the translation is accurate. You must send in a copy of both the translated and the original document.

The Hearing Information Form also asks if there are any types of hearings in which you could not participate. For example, if you do not have access to a private phone, you cannot participate in a teleconference.

#### **ii. Requesting a particular type of hearing**

Even if you are able to participate in a number of different types of hearings, you may feel that one specific type of hearing is best for your case. There is no specific space on the Hearing Information Form to request a particular type of hearing (the form only asks what types of hearings you cannot do), but you can always attach extra pages explaining your reasons. You can also send in a separate

submission at another time. The Member deciding your case has the final say about what type of hearing to hold and she or he may not agree with your request.

Many people (though not everyone) prefer to have an in person hearing where they can meet the Member and explain their side of the story. If you would like an in person hearing, you should explain why an in person hearing is needed to ensure your appeal is decided fairly. Below is a list of factors that may support an in person hearing, but there could be others, so you need to think about your specific case:

- Credibility is a big issue in your appeal (credibility means deciding who to believe and not believe).
- There are going to be several people at the hearing (for example, witnesses or an interpreter).
- The issues in your appeal are very complicated or complex.
- You have a disability that will make it difficult for you to follow what is happening at the hearing unless you are there in person.
- You do not have access to a private telephone (although a videoconference might also be a possibility in these circumstances).

Other people would rather not attend an in person hearing, or even a hearing by videoconference. Some people find the idea of a face-to-face hearing too intimidating, and are more comfortable doing the hearing over the phone from their own home. Others like how telephone hearings take up less time because there is no travel involved. If you do not want to attend an in person hearing, you should also let the SST know.

### **iii. Other hearing arrangements**

There are a few other issues not on the Hearing Information Form that you may want to address if they apply to your case. Again, you can attach extra pages to the Hearing Information Form or simply send a separate letter later on.

- **Length of Hearing:** Hearings are usually scheduled to last one and a half hours. For most appeals, this is more than enough time. However, if you think that you will need

more time, you should let the SST know in advance. For example, if there are going to be a lot of witnesses at the hearing, or you are using an interpreter, you may need to ask for more time. Before asking for more time, ask yourself whether all your witnesses are really needed. You should also remember that spending time on matters that are not important will only distract from the key points you want to make.

- **Accommodating disabilities:** If you have a disability that will require some unique accommodation or set-up at the hearing, you should let the SST know in advance.
- **Private Hearings:** Hearings are not necessarily closed to the public. If your appeal involves very sensitive personal information, you can specifically ask the General Division to order that the hearing be held in private. The Member deciding your appeal will review your request and make a decision. Even if your hearing is closed to the public, keep in mind that there may be other people involved in your appeal, such as a representative from ESDC, who have a right to be there.
- **Expedited (Urgent) Hearings:** If there are compelling reasons why your hearing needs to happen right away, you can request an expedited hearing. Keep in mind that almost everybody is going to face some hardship while they wait for their hearing, so you should only ask to jump the line for very serious reasons. For example, if you learn that you have an illness that could lead to death before a hearing is scheduled, you can request that your hearing be held on an urgent or expedited basis.
- **Witnesses:** If you plan to have witnesses speak at your hearing and any of them cannot come to the hearing with you, you will have to get special permission from the Member in advance to have them connect by telephone.

## I. The Notice of Hearing

If the General Division decides to hold a hearing, it will send you a Notice of Hearing explaining how and when your hearing will happen. If the hearing is in person or by videoconference, the Notice of Hearing will also say where you have to go.

- **In person hearings:** The Notice of Hearing will state when and where the hearing will take place. You are responsible for ensuring that you and any witness are at the hearing on time.
- **Videoconference hearings:** The Notice of Hearing will state when the hearing will take place and where you need to go for the video conference. You and any witnesses must go to the location on the Notice of Hearing. You cannot try to connect from your own computer.
- **Teleconference hearings:** The Notice of Hearing will state when the hearing will take place and how you call into the teleconference. You must ensure that you are at a working phone and call in on time. Try to use a landline to avoid problems with reception and dead batteries. If you must use a cell phone, plan ahead to make sure that you are in a quiet place where you know that you will have good reception. Make sure that your cell phone is fully charged, or even better, plugged in. If you plan to have witnesses, each witness must call in on a separate line.
- **Written Questions and Answers:** The Notice of Hearing will contain or enclose questions that you must answer and the deadline for sending in your response. When you respond, you should list the question number beside each of your answers so that the Member can figure out which question you are answering. If the Member has questions for someone else participating in the appeal, you will also be given a deadline to respond to that person's answers.

If the Member decides not to hold a hearing, she or he will simply send a letter setting out your deadline for submitting new evidence or submissions. If you disagree with the type of hearing that the Member plans to hold (or their decision to not hold a hearing at all), you should write to the SST right away and explain why you disagree. Even if you already sent in submissions addressing what type of hearing you would like, you should still send a letter letting the Member know that you disagree with the decision.

The SST may also send a new copy of your file with the Notice of Hearing that includes any new material that was sent in after your appeal was filed.

## **J. Rescheduling or Adjourning (Postponing) a Hearing**

If the Notice of Hearing says that your hearing will take place on a day that you are not available, you can try to have it moved to another day. The Notice of Hearing will set a deadline (usually two business days) for you to ask to have the hearing date rescheduled without having to make a formal request for an adjournment. You can call or fax the SST and ask them to move the hearing to a new date. If you call, make a note of who you spoke to and the date and time of the call.

If you try to have the hearing date moved after the deadline on the Notice of Hearing, you will need to ask for a formal adjournment. There is no specific form you need to use, but your request must be in writing. You must also explain your reasons for making the request. The Member deciding your appeal will then decide whether to adjourn the hearing to a new date. Never assume that the date of your hearing has changed until you get confirmation from the SST. Until you get confirmation that the date has been changed, you should prepare as though the hearing is going ahead as scheduled.

If the Member does adjourn the hearing and you do not show up on the new date even though you were notified, the hearing will go ahead without you. Once the Member has granted you an adjournment, you will only get a second adjournment if there are exceptional circumstances.

To avoid problems, it is a good idea to let the SST know in advance about any dates that you are not available.

## **K. Preparing for your Hearing**

Here are some steps you should take to ensure that you are ready for your hearing.

### **i. Review the file again**

Make sure you are familiar with all the information in the file. It is a good idea to use tabs or “sticky notes” to mark important documents so you can find them quickly. If you review the file and discover that anything is missing, you should send it to the SST right away.

You should re-read your submissions and the submissions from ESDC. You should also re-read both the first decision and the reconsideration decision from ESDC. Identify the key points you want to make at the hearing. Remember to focus on what is actually at issue (what are the key points of disagreement) so that you do not get off topic.

**ii. Prepare to give your testimony (the evidence you say at the hearing)**

The testimony you give at the hearing can be just as important as the evidence in your file. If you have a representative, you will likely give your testimony at the hearing by answering their questions. If you are representing yourself, you will just give your testimony to the Member directly. Either way, the Member will likely stop you quite often to ask questions or to clarify what you said.

Make a list ahead of time of what you want to say at the hearing. Do not just read the list or sound scripted, but writing things out ahead of time can help organize your thoughts and make sure that you say everything you want to say. You also want to think about the problems with your case and prepare to answer the questions the Member will likely ask. Do not just ignore the difficulties with your case and pretend they do not exist. It is far better to prepare in advance to answer tough questions.

**iii. Prepare your witnesses (if any)**

You do not want any surprises. If you plan to call witnesses, you should know what they plan to say ahead of time. Make a list of the questions you plan to ask your witnesses at the hearing and review the questions with each witness. You do not want your witnesses to sound scripted, but your witnesses should not be surprised by your questions, and you should not be surprised by their answers. Your questions should be open-ended, meaning you should not suggest the answer to the witness. For example, if you want your witness to confirm where you were living, you would ask “Do you know where I was living?”, and not “I was living in Vancouver at Sam’s house, wasn’t I?” You should also let your witnesses know that other people may have questions for them, most notably the Member.

#### **iv. Prepare for other witnesses**

If there is somebody else participating in your appeal that plans to call witnesses, you should prepare a list of question you want to ask. If someone else asks the witness to be at the hearing, you are free to ask leading questions. Leading questions are questions that suggest the answer you want to hear. For example, if someone else asked the witness to come to the hearing, it would be okay to say “I was living in Vancouver at Sam’s house, wasn’t I?” However, you do not want to be overly aggressive or disrespectful.

#### **L. At the Hearing**

Arrive where you need to be, or call into the teleconference, well before the hearing’s start time. Do not be late. If your hearing is in person or by videoconference, you and your witnesses will likely be asked to show identification before the hearing starts.

The hearing will likely follow the process set out below; however keep in mind that the Member deciding your appeal will determine exactly how the hearing happens, so you have to be flexible.

- **Introduction:** The Member will introduce herself or himself and then ask everyone else at the hearing to introduce them self. The Member will review some basic information about the SST and how the hearing will happen. The Member will likely tell you that the hearing is being recorded. Do not be nervous, this is a good thing because there will be no confusion about what was said at the hearing in case you need to appeal again. The Member will also make sure that everybody has a copy of all the documents being used in the appeal. You should speak up immediately if there is something that you do not have.
- **Opening Statement:** If you are the one who filed the appeal, you will present your case first. You should start by giving a very short opening statement about your appeal. You should explain very briefly what you are asking the Member to do and give the Member a very brief outline of what you think the evidence at the hearing will show.

- **Your Evidence:** You will have a chance to present your evidence and testimony. You will be asked to affirm that you will tell only the truth. If you would rather swear to tell the truth using a religious book, you must bring a copy with you. Your evidence should stay on topic and address what really matters in your appeal. It is easy to get sidetracked, particularly when you are angry, frustrated, or nervous, but it is important to stay calm and collected.

The Member will likely stop you every now and then to ask questions or clarify what you said. If there are other people participating in the hearing, they will also be given a chance to ask you questions once you are done presenting your evidence. You want your answers to be complete and accurate, but also as short and to the point as possible. If you do not understand what the person is asking, ask for clarification.

If you brought witnesses with you, they can also give evidence. Witnesses may be asked to wait outside the room until it is time for them to give their evidence. Witnesses will also be asked to affirm or swear that they will tell only the truth. You can guide your witnesses by asking them questions, but again remember that your questions should be open ended and should not suggest the answer you want to hear.

- **Other Parties' Evidence:** ESDC usually does not send a representative to General Division hearings. However, if there is someone else participating in the hearing, she or he will have a chance to present evidence just like you did. You should be given a chance to question any witnesses. It is best not to interrupt someone else when they are giving their evidence. You should write down your questions and when the person is finished, you can ask the Member for a chance to ask your questions. When you are questioning someone you did not ask to be at the hearing, you are free to ask leading questions that suggest the answer you want to hear. However, you should not be overly aggressive or disrespectful.
- **Closing Statement:** After all the evidence, each party will be given a chance to sum up their most important points and evidence.

If something happens at the hearing that you think is unfair, you should politely speak up so that there is a record of the problem.

The Member deciding your case will usually not make a decision on the spot. The Member will likely take some time to review everything before writing up her or his decision. The decision will be mailed to you once it is ready. There is no specific deadline for when the Member must make a decision about your case, but the General Division tries to make sure that most CPP or OAS decisions are sent out no more than 5 months after the 365 day deadline for submitting new evidence has passed or everyone has submitted a Notice of Readiness.

### **M. Expenses**

Ordinarily, you are responsible for all the expenses related to your appeal, such as photocopying, postage, or parking. However, if you are required to attend a hearing, the Chairperson of the SST can order that you be paid back for some of your costs, including travel expenses, living expenses, or lost wages if there are special reasons for doing so. At this point, the SST has not provided any guidance on what it will consider to be “special reasons” or how to make a request. Until the SST provides more detail, it is probably best to make your request in writing and explain why your circumstances are special. You will likely also need to include copies of receipts for the expenses.

# 5 THE SOCIAL SECURITY TRIBUNAL APPEAL DIVISION

If you are unhappy with the decision made by the SST General Division, you can apply for leave (permission) to appeal to the SST Appeal Division. You do not automatically get to appeal to the Appeal Division. You will only be given permission to appeal if you convince the Appeal Division that your appeal has some reasonable chance of succeeding. ESDC, or anyone else who was a party to the appeal at the General Division, can also ask for leave to appeal if they disagree with the General Division's decision.

When applying for leave to appeal, it is important to understand that the Appeal Division cannot just make a brand new decision from scratch about your case. Rather, the Appeal Division's role is to check and see if the General Division made certain specific types of mistakes that are discussed later on in this chapter.

If your case was summarily dismissed by the General Division, there is an exception that allows you to appeal automatically, without getting permission from the General Division.

## **A. The Deadline to Appeal**

The deadline is 90 days from the date you first found out about the General Division's decision, regardless of whether you are applying for leave to appeal or appealing a summary dismissal. Please see the "Counting your Deadline" section on page 7 of this guide for help counting the days, but the best solution is to file your application well ahead of your deadline. Remember that there are rules that deem you to have received the General Division's decision 10 days after it is mailed out, even if you actually received it on a later date.

If you miss the deadline, you can ask for an extension of time. There is a space in the application form that you can fill in to ask for an extension of time. The factors the Appeal Division will consider when deciding whether or not to grant you an extension of time are discussed on page 10 of this guide. Like

the General Division, the Appeal Division cannot extend the deadline to appeal beyond one year from the date you first found out about the decision.

## **B. The Application**

The Application Requesting Leave to Appeal to the Appeal Division is available on the SST's website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ARLTATTAD.pdf>

If your case was summarily dismissed by the General Division, you can appeal automatically by filling out an Application to Appeal to the Appeal Division, which is also available on the SST's website.

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATATTAD.pdf>

The forms are very similar, so make sure that you have the right one. It is important that you fill in all mandatory sections because your application will not be accepted if it is missing any necessary information. *You must also attach a copy of the General Division decision you are trying to appeal.* If your application is missing something, the SST will send you a letter with a deadline to send in the missing information (generally you will get 30 days). If you do not send in the missing information before this deadline, your appeal will be considered late.

It is very important that you write the date you first found out about the General Division's decision in section 3A of your application. If you fail to do this, the Appeal Division may treat your application as late even though it is not. If your appeal is late, you can fill out section 3B called "Reasons for Late Appeal". If your appeal is not late, you can leave this section blank.

### **i. Reasons for appeal**

You must state your reasons for appealing in your application (section 3D on the Application for Leave to Appeal; section 3C on the Application to Appeal a summary dismissal). When filling out this section, it is important to remember that the Appeal Division works much differently than the General Division. You will not get permission to appeal if you are simply trying to reargue your appeal all over again from scratch. The law says that the Appeal Division can only allow your appeal if the General Division made certain types of mistakes, which are listed in subsection 58(1) of the *Department of Employment and*

*Social Development Act*. You must focus on showing that the General Division made at least one of these mistakes. Unfortunately, the government used very complicated legal language to describe these mistakes, so we will go over each of them.

- ***The General Division failed to observe a principle of natural justice***

The “principles of natural justice” simply mean that the General Division must use a fair process to decide your appeal and must ensure that your appeal is decided by a person who appears to be unbiased. To ensure the process is fair, the General Division must let you know the case against you, including what evidence it will be considering, and then give you a fair chance to present your side of the story. For example, if the General Division based its decision on medical reports sent in by ESDC that you never had a chance to see or respond to, that might be contrary to natural justice because you did not know the evidence against you. As another example, if the General Division Member decided that you were not telling the truth without hearing directly from you at some type of hearing where you could properly explain yourself, that might be contrary to natural justice because you did not get a proper chance to present your side of the story.

Allegations that the Member who made the decision against you was biased should not be made lightly. Just because the Member disagrees with you or asks tough questions at the hearing does not mean that she or he was biased against you. Bias might include situations where the Member makes nasty personal remarks about you or situations where the Member had a close personal or business relationship with someone else involved in your appeal.

These are just examples. It is impossible to cover all the different ways that the appeal process can be unfair, so you will need to think about your own case and what made the process unfair. Keep in mind that we are talking about unfairness in the process that the General Division used, not unfairness in the ultimate decision that the General Division made. You may think that the General Division’s decision is totally unfair and full of mistakes, but that does not necessarily mean that the process the General Division used was unfair and contrary to natural justice. There are other grounds for appeal that allow you to challenge the substance of General Division’s decision, which we will discuss next.

- **The General Division acted beyond its jurisdiction or refused to exercise its jurisdiction**

This is just a fancy way of saying that the General Division did something that it did not have the legal power to do, or refused to do something it had a legal obligation to do. For example, the *Old Age Security Act* says that any dispute about how much income a person has must be sent to the Tax Court. The SST does not have the jurisdiction or power to deal with a dispute about the person's income. So if the General Division made a decision finding that your income was actually higher than you reported, you could appeal that decision to the Appeal Division because the General Division has no power to do that.

- **The General Division erred in law in making its decision, whether or not the error appears on the face of the record.**

This simply means that the General Division misinterpreted the law relating to your case. Often this will mean that the General Division applied the wrong legal test when deciding your appeal. For example, if the General Division stated that a person could only get CPP disability benefits if they absolutely cannot do any work whatsoever, this might be an error of law because the proper legal test is whether the person is incapable regularly of pursuing any substantially gainful occupation.

Do not worry too much about the words "whether or not the error appears on the face of the record". This simply means the Appeal Division can look beyond your file when deciding whether there has been an error of law.

- **The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.**

Findings of fact are the General Division's conclusions about what happened (i.e. who did what, when, where and how). Findings of fact could also include findings about the nature of a person's disabilities. The Appeal Division will only interfere with the General Division's findings of fact if there is no evidence in your file that can reasonably support the General Division's account of what happened. The Appeal Division is not going to make a brand new decision about what happened in your case.

For an example of how this works, suppose that a claimant named Amed appealed a decision denying him OAS benefits to the General Division. The General Division determined as a matter of fact that Amed had not returned to live in Canada until January of 2014. If the stamp in Amed's passport says that he returned to Canada in January of 2012, and all the other evidence confirms that he had been living in Canada since 2012, that might be a perverse or capricious finding of fact made without regard for the material in the file. However, if there is some evidence that shows Amed was living in Canada, and some evidence that shows he was not, the Appeal Division will likely not second guess how the General Division dealt with all the competing evidence or second guess the General Division's decision about who to believe and not believe. Even if the Appeal Division might have come to a different conclusion if it were up to them, they will not interfere with the General Divisions findings of fact so long as there is some evidence that can reasonably support the decision.

## **ii. Reason for leave to appeal**

If you are filling out an Application for Leave to Appeal, you must also explain in section 3C why your appeal has a reasonable chance of success. This is the test the Appeal Division will use to decide whether or not to give you leave to appeal (the Application to Appeal a summary dismissal does not have this section because you get to appeal automatically).

This section can be a little confusing and repetitive because whether or not your appeal has a reasonable chance of success will likely come down to whether or not your reasons for appeal have some merit. However, it may be worth pointing out that the question at this point is not whether you should win or lose, but only whether there is a reasonable chance you might win. In other words, you want to highlight or explain how your reasons for appeal will have some chance of succeeding if you are allowed to fully present your appeal. The Appeal Division does not have to agree that all your reasons for appeal have some merit. As long as at least one of your reasons could ultimately succeed, you should get leave. However, the Appeal Division may only let you pursue the reasons for appeal that have a reasonable chance of succeeding.

### **iii. New evidence**

Generally you are not allowed to send in new evidence to the Appeal Division that the General Division never had a chance to consider. However, there are exceptions. If you are saying that the General Division acted unfairly and did not follow the rules of natural justice, you will generally be allowed to submit new evidence to show what was unfair. For example, if you missed your hearing because you were in a serious car crash and the General Division went ahead without you, you would likely be allowed to give evidence about the car crash and what happened afterwards.

For matters not relating to natural justice, the Appeal Division still has the ability to let you send in new evidence if it would be in the interests of justice to do so. But keep in mind that there is a separate process through which the General Division can reconsider its decision if you have new evidence (see chapter 6 of this guide). Generally, this is the proper way to deal with new evidence. However, if you have started an appeal and you discover new evidence that is really important to your case, you can always send it in with an explanation of why you did not send it to the General Division.

### **C. The Decision About Leave to Appeal**

A Member will review your Application Requesting Leave to Appeal and make a decision. Generally, the Appeal Division does not hold any kind of hearing before deciding whether or not to give you leave to appeal, although it may ask for further information in writing from you or give the other parties (most commonly ESDC), a chance to respond. If the Member finds that your appeal has no reasonable chance of success, you will not get leave to appeal and that will end your case (subject to a process called judicial review, which is not covered in this guide). If the Member finds that your appeal has a reasonable chance of success, you will be given leave to appeal. In either case, the Member will send you written reasons for its decision. If you are appealing a summary dismissal, there will be no decision about leave to appeal because you can appeal automatically and do not need permission.

## **D. The Appeal Process**

If you are given leave to appeal, there is no need to fill out a separate Notice of Appeal to confirm that you want to appeal. The Appeal Division will automatically move on and start the process for deciding your appeal. Remember that getting leave to appeal does not mean that you win. It just means that your case has a reasonable chance of winning, so the Appeal Division will give you an opportunity to fully present your case.

Once the Appeal Division makes its decision to let you appeal, you will have 45 days to file written submissions arguing why your appeal should win. Note that this deadline starts running from the date the Appeal Division makes its leave decision, not the date you first found out about it. If you are appealing a summary dismissal, your written submissions are due 45 days after you file your Application to Appeal a summary dismissal.

Your submissions to the Appeal Division will likely look a little different than your submissions to the General Division. You need to focus on the mistakes in the General Division's decision and/or why the process the General Division used was unfair. Avoid long or rambling submissions, but make sure you say all that you have to say. The Appeal Division is not required to hold a hearing, so your written submissions may be your last chance to state your case.

If the Member deciding your appeal chooses to hold a hearing, you will get a Notice of Hearing setting out the time and place of the hearing, or instructions on how to connect by telephone. Keep in mind that the same rules about rescheduling or adjourning a hearing also apply in the Appeal Division. The different types of hearings and the process for rescheduling or adjourning a hearing are discussed in more detail beginning at page 21 of this guide.

If the Member does schedule a hearing, it will be much different than your hearing at the General Division. You will likely not be presenting your evidence all over again or calling witnesses because new evidence is generally not allowed at the Appeal Division. Rather, you need to focus on explaining the mistakes in the General Division's decision or why the process the General Division used was unfair.

## **E. The Appeal Decision**

After considering all the evidence and submissions, the Member will make her or his decision. If the Member decides that your appeal should win, there are several things that could happen. The Member may decide to take charge and make the final decision about your case. However, often the Member will send your case back to the General Division so it can make a new decision without repeating the same mistakes. This can be frustrating because it means that your case is not necessarily over even though you won at the Appeal Division. If the Member denies your appeal, that will end your case (subject to judicial review, which is not covered in this guide). If you are considering judicial review, you should talk to a lawyer.

Again, there is no specific deadline for when the Member must make the decision, but generally you will get a decision no more than 7 months after the Appeal Division gave you leave to appeal.

# 6 RESCINDING OR AMENDING (REOPENING) A DECISION

Sometimes you discover new evidence that helps your case after the SST (either the General Division or the Appeal Division) has already made a decision. In these cases, you can apply to rescind or amend the decision. Often this is referred to as “reopening” the decision. If the General Division made the decision you want to reopen, you direct your application to the General Division. If the Appeal Division made the decision you want to reopen, you direct your application to the Appeal Division.

## A. The Deadline to Apply

You must apply to reopen a decision within one year of the day the decision was communicated to you. You may only apply to reopen a particular decision once. Also keep in mind that applying to reopen a decision does not stop the deadline for filing an appeal. For example, if you apply to reopen a General Division decision based on new facts and your application is denied, you will be out of time to appeal that same decision if more than 90 days have passed since it was communicated to you. In some cases, it may be possible to file an appeal with the Appeal Division and an application to reopen with the General Division at the same time. These cases get very complicated, so if you are unsure what to do, you should try to get legal advice.

## B. The Application to Reopen

You can apply to reopen a decision by filling out the Application to Rescind or Amend (Reopen on New Facts) form, which is available on the SST’s website:

<http://www.servicecanada.gc.ca/eng/common/sst-tss/forms-formulaires/SST-ATROA.pdf>

As with all forms, you must make sure that all the required information is filled out or it will not be accepted. *You must attach a copy of the decision you are trying to reopen.* Once you have completed the form, you can mail or fax it to the SST. Contact information for the SST is listed on the form. As always it is a good idea to keep a copy of your application.

### **C. When Will the SST Agree to Reopen a Decision about CPP or OAS?**

The SST can reopen a decision about CPP or OAS if you have new facts that you could not have discovered at the time of your hearing with reasonable diligence. “Reasonable diligence” means that you must have taken all reasonable steps to gather up and send in your evidence before your hearing. The SST will not reopen a decision just because you missed something. However, if there are new facts that you genuinely could not have found before the hearing, the SST may take another look at the decision.

### **D. The Process**

The SST will send your application to the other people who were involved in your appeal (most commonly ESDC) to give them a chance to make submissions by a certain deadline. After the SST gets everyone’s submissions or the deadline passes, the SST will decide whether or not to hold a hearing. There is no obligation for the SST to hold a hearing for an application to reopen.

- If the SST decides not to hold a hearing, a Member will simply make a decision about your application and mail the decision to you.
- If the SST does decide to hold a hearing, a Notice of Hearing will be sent to everyone involved. The Notice of Hearing will set out what type of hearing will be held. The different types of hearings and the process for rescheduling or adjourning a hearing are discussed in more detail beginning at pages 21 of this guide. A Member will then make a decision and send it to you.