

Federal Court



Cour fédérale

Date: 20101221

Docket: T-48-10

Citation: 2010 FC 1307

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, December 21, 2010

PRESENT: The Honourable Mr. Justice Pinard

BETWEEN:

ALPHA SAKÉ BARRY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Minister of Human Resources and Skills Development Canada (the Minister) made under section 18.1 of the *Federal Courts Act*, R.S., 1985, c. F-7, by Alpha Saké Barry (the applicant). The Minister determined that no administrative error had been committed when an overpayment of Old Age Security benefits and the Guaranteed Income Supplement (GIS) was claimed from the applicant.

[2] The applicant was born on February 12, 1937. He applied for an Old Age Security pension and the GIS, and corresponding payments started on or about February 12, 2002. When he applied for these benefits, the applicant described his then marital status as being divorced.

[3] On June 20, 2003, the applicant took up residence with his new common-law partner, Lise Mercier. In his annual income tax returns and statements of benefits to the Canada Revenue Agency (CRA), the applicant described his status as common-law partner and reported his common-law partner's earnings.

[4] The respondent submits that a notice is sent to beneficiaries automatically every year (see paragraph 9 of Marjolaine Lebel's affidavit). This notice indicates the marital status recorded in the Minister's file and advises that the Minister must be informed of any change in that status. The applicant, who did not complete the GIS application forms for 2003 to 2008, denies having received such notices between 2002 and 2008.

[5] Around July 16, 2009, the applicant, finding himself in a difficult financial position, requested his GIS for that month. On July 21, 2009, the Minister asked the CRA for the applicant's current marital status, since he did not have the applicant's GIS application forms. When the Minister learned that the applicant was a common-law partner, he asked the applicant to complete a Statutory Declaration of Common-law Union as well as the GIS application forms for 2003 to 2008, which the applicant did on August 5, 2009.

[6] The Minister then determined that, since the applicant had received benefits as if he were divorced between 2003 and 2008, he had received an overpayment of \$24,457.95 during that period. In a letter to the applicant dated September 1, 2009, an officer of the Minister asked him to return the overpayment.

[7] The applicant requested a reconsideration of the decision. In a letter sent to the applicant on December 10, 2009, the Minister confirmed his decision and informed him that his benefits would be reduced by about \$200 a month, from \$400 a month, until the overpayment had been collected, hence this application for judicial review.

[8] On November 1, 2009, the applicant and his common-law partner separated.

* * * * *

[9] In his reconsideration, the Minister noted that the applicant had been in a common-law union since June 20, 2003, but that he had only informed the Department of that status on August 5, 2009. The Minister relies on subsection 15(9) of the *Old Age Security Act*, R.S., 1985, c. O-9 (the Act), which stipulates that every applicant shall inform the Minister without delay if they had a common-law partner at the beginning of the month, not having had a common-law partner at the beginning of the previous month.

[10] The Minister also pointed out that claimants are notified in July of each year that their new benefit amount has been established on the basis of their last income tax return and their current marital status. They are also advised to inform the Minister of any changes to their marital status.

[11] Under the GIS regime, the applicant was considered to have been in a common-law union since July 2004. The Minister therefore recalculated the GIS benefit rate for the July 2004 to June 2009 period and found that an overpayment of \$24,457.95 had been made.

[12] The Minister noted that the applicant's subsequent separation from his common-law partner had no impact on the amount to be collected.

* * * * *

[13] The relevant sections of the *Old Age Security Act* are as follows:

Information required with application for supplement

15. (1) Every person by whom an application for a supplement in respect of a payment period is made shall, in the application, state whether the person has or had a spouse or common-law partner at any time during the payment period or in the month before the first month of the payment period, and, if so, the name and address of the spouse or common-law partner and whether, to the person's knowledge, the spouse or common-law partner is a pensioner.

Renseignements à joindre à la demande de supplément

15. (1) Le demandeur doit, dans sa demande de supplément pour une période de paiement, déclarer s'il a un époux ou conjoint de fait ou s'il en avait un au cours de la période de paiement ou du mois précédant le premier mois de la période de paiement et, s'il y a lieu, doit également indiquer les nom et adresse de son époux ou conjoint de fait et déclarer si, à sa connaissance, celui-ci est un pensionné.

Notification of change

15. (9) Every applicant shall inform the Minister without delay if they separate from, or cease to have, a spouse or common-law partner, or if they had a spouse or common-law partner at the beginning of a month, not having had a spouse or common-law partner at the beginning of the previous month.

Request for reconsideration by Minister

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

...

Decision of Minister

27.1 (2) The Minister shall, without delay after receiving a request referred to in subsection (1), reconsider the decision or determination, as the case may be, and may confirm or vary it and may approve payment of a benefit, determine the amount of a benefit or determine that no benefit is payable, and shall without delay notify, in writing, the person who made the request of the Minister's decision and of the reasons for the decision.

Avis de changement

15. (9) Le demandeur qui devient l'époux ou conjoint de fait d'une autre personne, cesse d'avoir un époux ou conjoint de fait ou s'en sépare est tenu d'en informer le ministre sans délai.

Demande de révision par le ministre

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

[...]

Décision du ministre

27.1 (2) Le ministre étudie les demandes dès leur réception; il peut confirmer ou modifier sa décision soit en agréant le versement de la prestation ou en la liquidant, soit en décidant qu'il n'y a pas lieu de verser la prestation. Sans délai, il notifie sa décision et ses motifs.

Return of benefit where recipient not entitled

37. (1) A person who has received or obtained by cheque or otherwise a benefit payment to which the person is not entitled, or a benefit payment in excess of the amount of the benefit payment to which the person is entitled, shall forthwith return the cheque or the amount of the benefit payment, or the excess amount, as the case may be.

Remission of amount owing

37. (4) Notwithstanding subsections (1), (2) and (3), where a person has received or obtained a benefit payment to which that person is not entitled or a benefit payment in excess of the amount of the benefit payment to which that person is entitled and the Minister is satisfied that

- (a) the amount or excess of the benefit payment cannot be collected within the reasonably foreseeable future,
- (b) the administrative costs of collecting the amount or excess of the benefit payment are likely to equal or exceed the amount to be collected,
- (c) repayment of the amount or excess of the benefit payment would cause undue hardship to the debtor, or
- (d) the amount or excess of the benefit payment is the result of erroneous advice or administrative error in the administration of this Act,

the Minister may, unless that person has been convicted of an offence under any provision of this Act or of the *Criminal Code* in connection with the obtaining of the benefit payment, remit all or any

Obligation de restitution

37. (1) Le trop-perçu — qu'il s'agisse d'un excédent ou d'une prestation à laquelle on n'a pas droit — doit être immédiatement restitué, soit par remboursement, soit par retour du chèque.

Remise

37. (4) Malgré les paragraphes (1), (2) et (3), le ministre peut, sauf dans les cas où le débiteur a été condamné, aux termes d'une disposition de la présente loi ou du *Code criminel*, pour avoir obtenu la prestation illégalement, faire remise de tout ou partie des montants versés indûment ou en excédent, s'il est convaincu :

- a) soit que la créance ne pourra être recouvrée dans un avenir suffisamment rapproché;
- b) soit que les frais de recouvrement risquent d'être au moins aussi élevés que le montant de la créance;
- c) soit que le remboursement causera un préjudice injustifié au débiteur;
- d) soit que la créance résulte d'un avis erroné ou d'une erreur administrative survenus dans le cadre de l'application de la présente loi.

portion of the amount or excess of the benefit payment.

[14] Subsection 39(1) of the *Canada Revenue Agency Act*, S.C. 1999, c. 17, is also relevant:

Commissioner to keep departments informed

39. (1) Subject to any confidentiality provisions in the program legislation or in the *Privacy Act*, the Commissioner must provide a federal department or agency on whose behalf the Agency administers a program or carries out an activity with the information necessary to evaluate the program or activity and formulate policies related to it.

Obligation de renseigner les organismes fédéraux

39. (1) Sous réserve des dispositions de la législation fiscale et de la *Loi sur la protection des renseignements personnels* relatives à la confidentialité, le commissaire est tenu de fournir, aux ministères et organismes fédéraux pour le compte desquels l'Agence applique un programme ou exerce une activité, l'information nécessaire à l'évaluation du programme ou de l'activité et à l'élaboration des orientations correspondantes.

* * * * *

[15] The parties agree that the standard of review applicable in this case is reasonableness (*Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190).

[16] The applicant submits that he has diligently fulfilled his obligations since 2003, in accordance with subsection 15(9) of the Act. Relying on paragraph 37(4)(d) of the Act, he argues that the Minister made an administrative error, since he did not verify the applicant's marital status, which the applicant had already reported to the CRA. The applicant also relies on subsection 39(1) of the *Canada Revenue Agency Act* in an attempt to demonstrate that the CRA was required to provide the Minister with the information he required. In his opinion, therefore,

it was the Minister who erred and not he, so that, as a matter of law, the Minister should have exercised his discretion and ordered to remit the overpayment. (At the hearing before me, counsel for the applicant softened her position on the application of subsection 39(1), above, of the *Canada Revenue Agency Act*.)

[17] For his part, the respondent argues, first, that subsection 39(1) of the *Canada Revenue Agency Act* is simply not relevant to this proceeding. He points out that, in this case, the CRA was not administering a program or carrying out an activity related to the Old Age Security program on behalf of the respondent; the CRA simply provided the respondent with the information he requested. I agree. The language of subsection 39(1) clearly states that the subsection applies only then when the information is “necessary to evaluate the program or activity and formulate policies related to it”, which was not the case here.

[18] Second, the respondent insists that, under subsection 15(9) of the Act, it was up to the applicant to report his marital status not only to the CRA but also to the Minister. He argues that the applicant is trying to shift the onus of this provision by requiring the Minister to obtain the information from the CRA. He notes that this requirement of the applicant existed even without the annual notice from the Minister, whom the applicant had to provide with the information, the notice simply being a reminder and not a precondition to the application of subsection 15(9). Here too, I agree with the respondent.

[19] In my opinion, it was reasonable for the Minister to determine that no administrative error had been made even though no one had enquired about the marital status the applicant reported

to the CRA. The law is clear: under subsection 15(9) of the Act, the applicant himself was required to inform the Minister of his marital status and particularly, “without delay” of any change in status, which he failed to do. In the circumstances, it was reasonable, then, for the Minister to deny the applicant the remission of the overpayment.

[20] For the above-mentioned reasons, the application for judicial review is dismissed. There is no order as to costs, as the respondent did not request any.

JUDGMENT

The application for judicial review of the decision by the Minister of Human Resources and Skills Development Canada that no administrative error was made when an overpayment of Old Age Security pension benefits and the GIS was claimed from the applicant is dismissed. There is no order as to costs.

“Yvon Pinard”

Judge

Certified true translation
Johanna Kratz

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-48-10

STYLE OF CAUSE: ALPHA SAKÉ BARRY v. ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: November 24, 2010

REASONS FOR JUDGMENT AND JUDGMENT BY: PINARD J.

DATED: December 21, 2010

APPEARANCES:

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