Federal Court  Cour fédérale

Date: 20191030

Docket: T-1225-18

Citation: 2019 FC 1362

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Montréal, Quebec, October 30, 2019

PRESENT: The Honourable Mr. Justice Martineau

BETWEEN:

RICHARD AKOUN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Service Canada [Department] delivers the programs and services of Employment and Social Development Canada for the Government of Canada. In October 2011, the applicant, Richard Akoun, turned 65. On January 27, 2016, he was informed by the Department that he was never entitled to the Guaranteed Income Supplement [GIS or supplement] benefits, which were paid to him in addition to his pension under the *Old Age Security Act*, RSC 1985, c O-9 [OASA],

from November 2011 to February 2015. This constitutes an overpayment of $17,251.70 [the overpayment].

[2] If there has been no conviction, subsection 37(4) of the OASA authorizes the Minister of Employment and Social Development [Minister] to remit to a pension debtor all or any portion of the benefit payment to which the debtor is not entitled or any excess of the payment if the Minister is satisfied that the amount or excess of the payment (the debt) is the result of erroneous advice or administrative error in the administration of the Act. The Minister's power to remit is discretionary. The reasonableness standard of review applies (*Tomar v Canada (Attorney General)*, 2008 FC 292 at paras 46–47; *Barry v Canada (Attorney General)*, 2010 FC 1307).

[3] Today, the applicant is seeking to have the Minister's decision dated May 25, 2018, refusing to remit the overpayment, set aside. In this case, the Minister considers that the applicant's numerous contradictory declarations regarding his marital status and the timing of his separation and/or common-law relationship with his former spouse ultimately caused the overpayment. Therefore, it did not result from an administrative error attributable to the Department. Thus, the Minister rejected the applicant's argument that the temporary misplacement of one of the applicant's numerous contradictory declarations justified remitting the debt.

[4] The applicant did not satisfy me that the Minister has made a reviewable error. The Minister's decision is based on the evidence on the record and is a possible acceptable outcome

based on the applicable law and the evidence on the record. I do not see where the Minister committed an administrative error. From the outset, the error alleged against the Department in the GIS calculations has been fully attributable to the applicant.

[5] The applicant and Anna Ventura [former spouse] married in 1983. On November 1, 2010, their marriage was dissolved by a judgment of divorce. However, the two former spouses continued to live together after their divorce. Contrary to subsection 15(1) of the OASA, the applicant did not state in his supplement application, received on September 23, 2011, by the Department, that he had a common-law partner. Yet, his former spouse earned an income, which should have been reported to the Department. GIS benefits therefore began to be paid to the applicant in January 2012, retroactive to November 2011, as if the applicant had lived alone after his divorce. The Act is clear on this point: the overpayment, be it a payment in excess or one that the person is not entitled to, must be returned forthwith either by repaying the amount or by returning the cheque (subsection 37(1) of the OASA).

[6] Today, the applicant is claiming that the Department has made an administrative error because in his pension application, received by the Department on November 23, 2011, he did in fact indicate that he had a common-law partner. It should have been apparent to the Department at that time that the applicant was not entitled to the supplement. This is a fallacious argument. The Department receives and processes thousands of pension applications. It was rather incumbent on the applicant to return his first supplement cheque in January 2012 instead of cashing it. As we will later see, he continued to mislead the Department about his real marital

status, going so far as to deny in April and November 2015 that he lived with his former spouse in a common-law relationship after the Department had stopped paying him a supplement in February 2015.

[7] In July 2012, an annual notice of supplement renewal for the period from July 2012 to June 2013 was sent automatically. The notice specifies that the supplement benefits received by the applicant are based on his marital status of a person living alone. On August 22, 2012, the applicant spoke to an agent on the telephone and informed him that he [TRANSLATION] "[had] started living together with his former spouse (they were divorced) in July 2012" [Emphasis added]. Since the applicant stated in August 2012 that he had begun living with his former spouse in July 2012, this did not retroactively affect the payment of GIS benefits from November 2011 to June 2012. Where is the Department's administrative error?

[8] In addition, in August 2012, the analyst noted in the file that [TRANSLATION] "in due time" the applicant should be sent a Statutory Declaration of Common-law Union (form ISP3004) [common-law declaration]. The problem, as we now know, is that the applicant was not telling the whole truth about his marital status. The applicant, however, states that he then told the truth and clarified his real marital status in March 2013. Let us see what really happened.

[9] On March 26, 2013, the Department received a common-law declaration, dated March 26, 2013, from the applicant and his former spouse. They declared that they had lived together for 30 years, from December 10, 1983, to March 17, 2013, that they are parents to two

children, that they co-own a property and that they have joint accounts. I note that the March 2013 declaration was temporarily misplaced by the Department, and therefore the GIS benefits for the period from June 2013 to July 2014 were not stopped. Today, the applicant is claiming that this declaration, which was truthful, corrects and replaces the inaccurate and misleading information given to the Department in September 2011 and July 2012.

[10] I agree with the respondent that the applicant cannot rely on the March 2013 declaration today because he himself had repudiated its truthfulness with contradictory declarations made in 2014 and 2015. This is not an appeal. It is not unreasonable for the Minister to consider that the delay caused by the misplacement of the March 2013 declaration is not determinative. In fact, in their common-law declaration, dated August 11, 2014, the applicant and his former spouse declared that they had lived together in a common-law relationship since April 2014. What is even more curious, the couple declared at that time that they had no children. If the couple was really living in a common-law relationship since only April 2014, the temporary misplacement of the March 2013 declaration would have only benefited the applicant who was thus entitled to receive GIS benefits since November 2011.

[11] In March 2015, new GIS forms were sent to the applicant, who returned them on March 23, 2015. That time, against all expectations, the applicant declared that he was now divorced and living alone. A separation form (ISP1811) was therefore sent to the applicant so that he could provide written evidence of his new marital status. On April 22, 2015, the applicant stated in a hand-written letter that Ms. Ventura was no longer his common-law partner starting in

November 2014, which contradicts all of the previous declarations of the applicant and his former spouse. On November 9, 2015, the applicant and his former spouse produced the Statutory Declaration – Separation of Legal Spouses and Common-law Partners (ISP1811). This time the couple declared that they were separated, even though in reality they had been living together as friends, not spouses, since 2012.

[12] The story of the applicant and his former spouse is difficult to follow. The date when the applicant had a common-law partner, was separated, and started living together with his former spouse again has varied over the years. Where is the truth in all of this?

[13] Because of the confusion and the couple's contradictory declarations, and following the suspension of benefits in February 2015, an integrity investigation was launched in November 2015. The Department then obtained various documents relevant to the applicant's marital status, including income tax returns (which were also contradictory) on the marital status of the applicant and his former spouse. The couple lived together in the Notre-Dame-de-Grâce area of Montréal. Then, after their divorce, the couple bought a condominium in the same area, where they continued to live together.

[14] In January 2016, an officer of the Department [the investigator] met with the applicant at his home. Ms. Ventura was not present during the meeting because she was supposedly at work. On January 15, 2016, the investigator completed her interview report. In summary, the applicant admitted that he did not physically separate from his former spouse, even though the couple

divorced in 2010. Indeed, from a financial point of view, nothing changed after the divorce: the couple still had a joint account, a car, a life insurance policy that named the other spouse, a reciprocal will, etc. That said, the applicant claimed that he was not in [TRANSLATION] "a conjugal relationship", but shared only [TRANSLATION] "a friendship" with his former spouse. However, a number of their friends were unaware that they were divorced; only close family knew about it. In addition, they lived with their daughter, and the condominium had only two bedrooms.

[15] Following the investigator's recommendations, on January 27, 2016, the Department informed the applicant that he was never entitled to the GIS during the period from November 2011 to February 2015 because the total income of the applicant and his common-law partner was too high. Consequently, an overpayment of $17,251.70 had been made to the applicant. The applicant's monthly OAS benefits would therefore be reduced to $144.00, until the overpayment was at zero. But as we are now going to see, the applicant decided to go all in: the applicant is now denying that he has lived in a common-law relationship with his former spouse since their divorce on November 1, 2010. He was therefore entitled to GIS benefits as a person living alone between November 2011 and February 2015.

[16] After failing to have the January 27, 2016, decision administratively reviewed, on October 18, 2016, the applicant filed an appeal with the General Division of the Social Security Tribunal [Tribunal] to decide on his entitlement to GIS benefits, leading to the suspension of the enforcement of the January 27, 2016, decision reducing the monthly OAS benefits to $144.00. In parallel with his appeal, on July 3, 2017, the applicant also asked the Minister to fully remit the

debt on the basis that an administrative error was made by the Department. On May 22, 2018, the Tribunal dismissed the applicant's appeal and informed him at the same time that it lacked jurisdiction to decide whether the overpayment should be remitted following the Department's administrative error.

[17] To summarize his position before this Court, the applicant is alleging today that the Minister arbitrarily ignored relevant evidence, specifically, the delay in processing the March 2013 declaration, which was temporarily misplaced. In addition, the overpayment would never have become so high—now affecting the applicant's ability to repay the debt—if the benefits had been suspended a few months after the March 2013 declaration. In sum, if the declaration had been processed more quickly, he would not have made the other contradictory declarations in 2014 and 2015.

[18] At the risk of repeating myself, the applicant's allegations are unfounded. It is the applicant who must suffer the adverse financial consequences of the false, misleading or inaccurate statements that he has made in the file. The refusal to grant a remittal under paragraph 37(4)(d) of the OASA—because the Minister is not satisfied that the debt resulted from an administrative error—is not arbitrary or capricious. The reasons for the decision are transparent. The Minister's reasoning is logical and consistent.

[19] In conclusion, the Minister's refusal is an acceptable outcome given the evidence on the record and the applicable law. That said, if the applicant considers that repaying the overpayment

will cause him undue hardship, and although it is not for me to comment, he can always ask the Minister to remit all or a portion of the amounts to which he was not entitled (paragraph 37(4)(c) of the OASA).

[20] The respondent does not ask for costs to be awarded. The application for judicial review is therefore dismissed without costs.

JUDGMENT in Docket T-1225-18

THE COURT'S JUDGMENT IS that the application for judicial review is dismissed without costs.

"Luc Martineau"
Judge

Certified true translation
This 26th day of November, 2019.

Johanna Kratz, Reviser

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1225-18
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