

Federal Court



Cour fédérale

Date: 20240909

Docket: T-431-24

Citation: 2024 FC 1413

Toronto, Ontario, September 9, 2024

PRESENT: Madam Justice Go

BETWEEN:

KHALID ABDULLE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Khalid Abdulle [The Applicant] is a retired member of the Canadian Armed Forces.

[2] In 2017, the Applicant submitted an application for benefits under the Veterans Independence Program [VIP]. The Applicant was deemed eligible to receive benefits for two of the services offered by the VIP: grounds maintenance benefits and housekeeping benefits. The

Applicant sought increases to both of these benefits. While the Applicant receives the maximum grounds maintenance benefits and the regular annual adjustments to those benefits, the amount of housekeeping benefits the Applicant receives are unadjusted.

[3] The Applicant, who is self-represented, seeks to judicially review a February 23, 2024 decision of the National Second Level Appeals Unit [N2LA] of Veterans Affairs Canada [VAC], which affirmed previous decisions to deny the Applicant's request for an increase in his housekeeping benefits [Decision].

[4] I appreciate that from the Applicant's standpoint, it may be difficult to understand why the VAC only makes annual adjustments to the maximum amount of certain benefits, while the amount of housekeeping benefits is not subject to the same automatic increase. However, the Decision was reasonable because the N2LA properly applied the relevant legislation and the regulations. While the Applicant looks to the *Pension Act* (RSC 1985, c. P-6) [*Pension Act*] to support his argument, the *Pension Act* does not mandate VAC to adjust housekeeping benefits in the manner that the Applicant is seeking.

[5] I therefore dismiss the application.

II. Issues and Standard of Review

[6] The Applicant raises several arguments that can be summarized as follows:

- a. The Decision was unreasonable as the N2LA failed to apply section 2 and section 75(1) of the *Pension Act*; and

- b. The Decision failed to explain why VAC adjusts only the maximum rate of the VIP benefit, but does not adjust the maximum rate based on the Consumer Price Index [CPI] or public service wage rates.

[7] The Respondent submits that the presumptive standard of review for the Decision is reasonableness, per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. I agree.

[8] A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. The Applicant bears the onus of establishing the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100.

III. Analysis

[9] The relevant legislative and regulatory provisions can be found at Appendix A.

[10] The Applicant points to section 2 of the *Pension Act* that requires the provisions under the legislation be “liberally construed and interpreted” to provide compensation to members of the forces who have been disabled.

[11] The Applicant also cites section 75(1) of the *Pension Act*, arguing this section is applicable in this case. The Applicant submits section 75(1) does not limit annual adjustments of pension benefits to only the maximum rate of a benefit. The Applicant further references the Decision, which states that the maximum rates are adjusted annually based on the CPI or public

service wage rates, while pointing out that VAC only adjusts the maximum rate of certain VIP benefits without adjusting the housekeeping benefits based on the CPI, without any explanation.

[12] I reject the Applicant's submissions.

[13] Contrary to the Applicant's submissions, section 75(1) of the *Pension Act* does not apply to the adjustment of the benefits under the VIP. An automatic annual increase to VIP benefits only applies to the maximum rates payable. There is no statutory authority for VAC to adjust annual housekeeping benefits based on the CPI.

[14] The relevant law that applies to the VIP is the *Veterans Health Care Regulations* (SOR/90-594) [*Regulations*], enabled by the *Department of Veterans Affairs Act* (RSC, 1985, c. V-1). The criteria for the VIP is outlined in Part 2 of the *Regulations*.

[15] A variety of benefits are provided to veterans under the VIP to assist them to live independently. These benefits, among others, include the housekeeping and grounds maintenance benefits under the umbrella of homecare services.

[16] Section 20(1) of the *Regulations* outlines the maximum rates at which the costs of certain VIP services are payable. This includes the maximum amount payable per individual for grounds maintenance services.

[17] Of note, there are no individual maximums for housekeeping services under the *Regulations*. Instead, the total amount of financial support a veteran receives cannot exceed the maximum for all homecare services (i.e., the sum total of housekeeping and grounds maintenance, together with health and support services, access to nutrition services, and personal care services).

[18] Under subsection 20(2) of the *Regulations*, the maximum rates for VIP services as outlined in subsection 20(1) are adjusted in the same manner and on the same day as pensions are adjusted under Part V of the *Pension Act*.

[19] However, the *Pension Act* does not require that an individual's VIP benefits increase each time that the maximum rate increases. Rather, the benefit amounts received under the VIP are calculated based on need and information provided regarding each individual's circumstances, as stipulated in the relevant VIP policies.

[20] The Applicant relies heavily on section 75(1) of the *Pension Act* to support his position. This provision deals with the annual adjustment of the basic pension. It does not apply to VIP benefits. Neither VAC nor the Court can read into this provision to extend the annual CPI adjustment to all other benefits that veterans receive.

[21] In other words, in the Applicant's case, there is no authority to amend housekeeping benefits based on the CPI alone. The Applicant's argument is based on his own interpretation of

the *Pension Act*, whereas the VIP benefits are enabled by a different piece of legislation and governed by a different regulatory regime.

[22] However, I observe that VAC's own materials may have caused some confusion about this issue. The Applicant included a document entitled "Maximum Rates payable for the Veterans Independence Program and Long Term Care (Effective Date: January 1, 2022)" in the Applicant's Record. The document listed the various services a veteran is entitled to receive, and the maximum rate per year for each service. Housekeeping was listed under homecare services, with a maximum rate noted as "up to total amount." The bottom of the document stated: "Rates are adjusted annually based on the Consumer Price Index or based on wage rates for the Public Service in accordance with Section 75(1)(3) of the *Pension Act*."

[23] What the document omitted to mention is that, section 75(3) of the *Pension Act* specifically states that the adjustment to all amounts set out in Schedules I to III shall be done in the manner prescribed by regulation. Put in another way, whether an adjustment is made to a benefit and by how much, is prescribed in the relevant regulation, and not in the *Pension Act*.

[24] My role in a judicial review is not to assess whether a particular government policy is sound, nor whether there are better ways for the government to communicate to veterans about the various benefits schemes. My role is limited to reviewing the reasonableness of the Decision.

[25] *Vavilov* confirms that "the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority:" *Vavilov* at para 68.

[26] In this case, the N2LA officer [Officer] carefully considered the evidence and the applicable law and policy. Since the housekeeping benefit was not a maximum amount, and since the Applicant had not provided any evidence that there had been a change in his needs or circumstances to warrant an increase in his housekeeping benefit, the Officer did not have reason nor indeed the authority to grant an increase based on the CPI alone.

[27] Similarly, the enabling legislation does not support the Applicant's argument that he is entitled to an automatic annual increase. As such, the Officer reasonably concluded that the Applicant will continue to receive the current amount for which he is eligible, unless he experiences a change in costs, needs, or circumstances that would warrant an increase in the housekeeping benefits.

[28] As the Decision noted, the Applicant could seek an increase in the housekeeping benefits by requesting a reassessment due to a change in his personal circumstances, such as a change in health needs or costs of services. In this case, the Applicant never made any request for a reassessment. Further, as the Officer noted, at the time of the second-level review, the Applicant also provided no information to warrant a reassessment.

[29] For these reasons, I dismiss the application. The parties agree not to seek costs.

IV. Conclusion

[30] The application for judicial review is dismissed.

[31] There will be no costs.

JUDGMENT in T-431-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

APPENDIX A

Pension Act (R.S.C., 1985, c. P-6)
Loi sur les pensions (L.R.C. (1985), ch. P-6)

<p>Construction</p> <p>2 The provisions of this Act shall be liberally construed and interpreted to the end that the recognized obligation of the people and Government of Canada to provide compensation to those members of the forces who have been disabled or have died as a result of military service, and to their dependants, may be fulfilled.</p>	<p>Règle d'interprétation</p> <p>2 Les dispositions de la présente loi s'interprètent d'une façon libérale afin de donner effet à l'obligation reconnue du peuple canadien et du gouvernement du Canada d'indemniser les membres des forces qui sont devenus invalides ou sont décédés par suite de leur service militaire, ainsi que les personnes à leur charge.</p>
<p>Annual adjustment of basic pension</p> <p>75(1) The basic pension shall be adjusted annually in the manner prescribed by regulation of the Governor in Council, so that the basic pension payable for a month in the following calendar year is the greater of</p> <p>(a) an amount equal to the product obtained by multiplying</p> <p>(i) the basic pension that would have been payable for that month if no adjustment had been made under this Part with respect to that following year,</p> <p>by</p> <p>(ii) the ratio that the Consumer Price Index for the first adjustment year that relates to that following year bears to the Consumer Price Index for the second adjustment year that relates to that following year, and</p> <p>(b) an amount equal to one twelfth of the average annual gross composite wage, as of the thirty-first day of October of the year in which the adjustment is made, of categories of unskilled members of the federal public administration designated by the Minister, minus income tax for a single person calculated in the province with the lowest</p>	<p>Ajustement annuel de la pension de base</p> <p>75(1) La pension de base doit être ajustée chaque année, de la manière prescrite par règlement du gouverneur en conseil, de sorte que la pension de base payable à l'égard d'un mois de l'année civile ultérieure soit égale au plus élevé des montants suivants :</p> <p>a) le produit des facteurs ci-après :</p> <p>(i) le montant de la pension de base qui aurait été payable pour ce mois de l'année ultérieure en question si aucun ajustement n'avait été fait en vertu de la présente partie à l'égard de cette année ultérieure,</p> <p>(ii) la proportion que l'indice des prix à la consommation pour la première année de rajustement visant cette année ultérieure représente par rapport à celui pour la seconde année de rajustement;</p> <p>b) le montant que représente le douzième du traitement annuel moyen négocié brut, au 31 octobre de l'année où a lieu l'ajustement, établi en fonction de certaines catégories d'employés non spécialisés de l'administration publique fédérale désignées par le ministre, moins le montant de l'impôt sur le revenu d'une personne célibataire calculé dans la province où le</p>

<p>combined provincial and federal income tax rate. [...]</p> <p>Adjustment of other pensions and allowances</p> <p>(3) All amounts set out in Schedules I to III shall be adjusted, in the manner prescribed by regulation of the Governor in Council, at the same times and by the same percentage as the basic pension.</p>	<p>taux cumulatif de l'impôt sur le revenu tant fédéral que provincial est le plus bas. [...]</p> <p>Ajustement des autres pensions et allocations</p> <p>(3) Les montants prévus aux annexes I à III sont ajustés, de la manière prescrite par règlement du gouverneur en conseil, au même moment et en fonction du même pourcentage que celui qui est appliqué à la pension de base.</p>
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Veterans Health Care Regulations (SOR/90-594)
Règlement sur les soins de santé pour anciens combattants (DORS/90-594)

<p>Costs</p> <p>20(1) Subject to subsection (1.1) and section 34, the maximum rates at which the costs of veterans independence program services are payable are the following:</p> <p>(a) for home care, \$11,842.40 per client per year, which amount includes</p> <p>(i) a maximum amount of \$1,652.41 per year for maintenance of the grounds of the client's principal residence, and</p> <p>(ii) where the client is in receipt of an attendance allowance under subsection 38(1) of the <i>Pension Act</i>, an amount for personal care services referred to in subparagraph 19(a)(ii) that is in respect of not more than one week in any year plus 52 days in that year;</p> <p>(b) for ambulatory health care, \$1,377.02 per client per year;</p> <p>(c) for transportation, \$1,652.41 per client per year;</p> <p>(d) for home adaptations, \$6,775.43 per client per principal residence; and</p> <p>(e) for intermediate care, \$165.91 per client per day.</p>	<p>Coûts</p> <p>20(1) Sous réserve du paragraphe (1.1) et de l'article 34, les coûts des services offerts dans le cadre du programme pour l'autonomie des anciens combattants sont payés selon les taux maximaux suivants :</p> <p>a) pour les soins à domicile, 11 842,40 \$ par an et par client, ce qui inclut :</p> <p>(i) pour l'entretien du terrain de la résidence principale du client, au plus 1 652,41 \$ par année,</p> <p>(ii) lorsque le client reçoit une allocation pour soins aux termes du paragraphe 38(1) de la <i>Loi sur les pensions</i>, le coût des soins personnels visés au sous-alinéa 19a)(ii) pour au plus une semaine par année plus 52 jours dans cette année;</p> <p>b) pour les soins ambulatoires, 1 377,02 \$ par an et par client;</p> <p>c) pour les déplacements, 1 652,41 \$ par an et par client;</p> <p>d) pour les adaptations du domicile, 6 775,43 \$ par résidence principale et par client;</p> <p>e) pour les soins intermédiaires, 165,91 \$ par jour et par client.</p>
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<p>(1.1) Subject to section 34, the maximum rate at which the costs of veterans independence services referred to in section 16.1 are payable is \$3,198.80 per year, which amount includes the adjusted maximum amount referred to in subparagraph 20(1)(a)(i) per year for maintenance of the grounds of the client's principal residence.</p> <p>(2) The rates referred to in subsections (1) and (1.1) shall be adjusted in the same manner and on the same day as pensions are adjusted under Part V of the <i>Pension Act</i>.</p>	<p>(1.1) Sous réserve de l'article 34, les coûts des services visés à l'article 16.1, offerts dans le cadre du programme pour l'autonomie des anciens combattants, sont payés selon un taux maximal de 3 198,80 \$, qui comprend le taux maximal ajusté pour l'entretien du terrain de la résidence principale du client mentionné au sous-alinéa 20(1)a)(i).</p> <p>(2) Les taux visés aux paragraphes (1) et (1.1) sont ajustés de la même façon et à la même date que sont ajustées les pensions aux termes de la partie V de la <i>Loi sur les pensions</i>.</p>
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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-431-24

STYLE OF CAUSE: KHALID ABDULLE v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: AUGUST 27, 2024

JUDGMENT AND REASONS: GO J.

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APPEARANCES:

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(ON THEIR OWN BEHALF)

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