

Federal Court



Cour fédérale

Date: 20110214

Docket: T-1091-10

Citation: 2011 FC 176

Ottawa, Ontario, February 14, 2011

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

KIM MARIE BESSETTE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Overview

[1] Ms. Kim Marie Bessette has been receiving disability benefits under the Canada Pension Plan (CPP) since the early 1990s. During the years 1993 to 2000, she and her husband had five children. In 2009, Ms. Bessette inquired about receiving Disabled Contributor's Child Benefits (DCCB) for her children. She maintains that the official to whom she spoke assured her that she was

entitled to receive benefits retroactively to the dates of birth of her children. However, she has only received 11 months of retroactive benefits.

[2] Ms. Bessette complained to the Minister of Human Resources and Skills Development but in 2010, she was told, after a series of reviews and appeals, that she had received the maximum benefits to which she is entitled under the CPP. Ms. Bessette submits that the Minister made an unreasonable decision and treated her unfairly in arriving at it. She asks me to overturn the Minister's decision, and to order the Minister to pay her the full amount of benefits she feels she is owed.

[3] I have reviewed the record carefully and can find no basis for overturning the Minister's decision. In my view, the Minister treated Ms. Bessette fairly in reviewing her complaint and did not arrive at an unreasonable conclusion based on the facts and the law. Accordingly, I must dismiss this application for judicial review.

[4] There are two questions:

1. Did the Minister treat Ms. Bessette unfairly?
2. Did the Minister render an unreasonable decision?

II. Background

[5] Under the CPP, a DCCB is normally payable the month after the child's birth (s 74(2)(a)(ii)). However, in no case are benefits payable for a period earlier than 11 months before the application for benefits is received (s 74(2)).

[6] In circumstances where a person receives erroneous advice from the Minister and, as a result, is denied benefits to which he or she would otherwise have been entitled, the Minister must provide that person an appropriate remedy to restore the person to the position he or she would have been in had the wrong advice not been given (s 66(4)). The remedy is conditional on the Minister's being satisfied that an error was made that resulted in a loss of benefits: *Kissoon v Canada (Minister of Human Development Resources)*, 2004 FC 24, aff'd, 2004 FCA 384; *Jones v Canada (Attorney General)*, 2010 FC 740.

[7] Here, Ms. Bessette claimed that an official advised her that she was entitled to benefits retroactively to her children's birthdates, that the government was generous in respect of benefits owed to children and, therefore, that the usual 11-month period of retroactivity was not strictly applied. Ms. Bessette asserted that this advice was erroneous (given that the CPP stipulates that "in no case" will benefits be paid for a period earlier than 11 months before an application). In turn, she claims, she failed to receive the benefits to which she was entitled and the Minister must, therefore accord her an appropriate remedy. Ms. Bessette also suggests that the Minister failed to discharge the duty to inform her in a timely way of the benefits to which she was entitled, and did not follow a fair process in responding to her complaint.

[8] Ms. Bessette did, in fact, receive benefits retroactive to March 2008, 11 months prior to her February 2009 application.

III. The Minister's Decision

[9] A benefits officer, acting as the Minister's delegate, sent Ms. Bessette a written decision in a letter dated June 23, 2010. The officer explained that Ms. Bessette's file had been thoroughly reviewed. Still, he concluded that she had not been denied a benefit as a result of having received erroneous advice. In particular, he found that the agent to whom Ms. Bessette had originally spoken was aware of the 11-month limitation on retroactive benefits. Further, he noted that Ms. Bessette had been receiving newsletters since 2001 informing her of the availability of benefits for children. Finally, he pointed out that the onus falls on applicants to inform themselves about the benefits available to them.

(1) Did the Minister treat Ms. Bessette unfairly?

[10] While Ms. Bessette maintains that the Minister failed to observe the principles of natural justice, she does not point to any particular defect in the manner in which her complaint was handled by the Minister. Her main issue is with the outcome of the decision, not the procedures that led to it.

[11] In any case, from my review of the record, it appears that the Minister treated Ms. Bessette's compliant fairly. She was given an opportunity to request a reconsideration of her entitlement to additional retroactive benefits. After the original decision was upheld, she appealed to the Office of the Commissioner of the Review Tribunals which led to a reinvestigation of her claim. At that point, she was given an opportunity to provide additional information and, in fact, did so. A delegate of the Minister then reviewed the entire file and recommended the result that was ultimately relayed to Ms. Bessette in the letter dated June 23, 2010.

(2) Did the Minister render an unreasonable decision?

[12] I can overturn the Minister's decision only if I find that it was unreasonable based on the facts and the law.

[13] Ms. Bessette argues, in essence, that she had been entitled to DCCB going back to the 1990s when she started having children. The official to whom she spoke gave her the impression that the government would respond generously to her application and not hold firm to the 11-month retroactivity limit. There was no valid reason, in her view, not to provide her the benefits to which she was entitled. In addition, Ms. Bessette submits that the Minister's efforts to communicate her benefit entitlements were inadequate in the circumstances. The newsletters relied on by the Minister began publication in 2001, well after the time frame in which she became eligible for additional benefits. No government official ever contacted her to make her aware of her entitlement.

[14] I can find no legal support for Ms. Bessette's argument that the Minister bore the onus of informing her that she was entitled to the DCCB. The CPP puts the onus on applicants to claim benefits (s 60(1)).

[15] As for Ms. Bessette's submission that she was misinformed about retroactive benefits, I am obviously not in a position to make any findings of fact. I can only review the Minister's conclusion and determine whether it was reasonable. Here, the Minister's delegate reviewed Ms. Bessette's entire file and all of her submissions. He interviewed the official to whom Ms. Bessette had originally spoken. Based on those inquiries, the delegate concluded that no erroneous advice had been given to Ms. Bessette. In the circumstances, I cannot find that his conclusion was unreasonable.

[16] More importantly, however, even if there had been an error in the advice provided to Ms. Bessette, the limitation on her retroactive benefits was not caused by any error. The limitation is provided by statute. The cause of any loss of benefits was the failure to make a timely claim for them, not the conduct of the official to whom Ms. Bessette spoke. It would be completely different, of course, if Ms. Bessette had been told that she did not have to make a claim for benefits when her children were born because benefits can be assessed retroactively whenever she applied for them. In that case, Ms. Bessette would have suffered a loss attributable to bad advice. That is not the situation here. Even if the official had been mistaken about the retroactivity rule, the limit on Ms. Bessette's eligibility would solely be the product of the will of Parliament as expressed in the CPP, not the official's error.

[17] Accordingly, I cannot find the Minister's decision denying Ms. Bessette retroactive benefits beyond the 11-month limit to be unreasonable.

IV. Conclusion and Disposition

[18] The Minister's conclusion that Ms. Bessette had not received erroneous advice and, in any case, had not been denied any benefits as a result of wrong advice was reasonable in the sense that it fell within the range of possible outcomes based on the facts and the law. I must, therefore, dismiss this application for judicial review. There is no order as to costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

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

“James W. O’Reilly”

Judge

Annex "A"

Canada Pension Plan, RSC, 1985, c C-8**Régime de pensions du Canada, LR, 1985, ch C-8**

Application for benefit

Demande de prestation

60. (1) No benefit is payable to any person under this Act unless an application therefor has been made by him or on his behalf and payment of the benefit has been approved under this Act.

60. (1) Aucune prestation n'est payable à une personne sous le régime de la présente loi, sauf si demande en a été faite par elle ou en son nom et que le paiement en ait été approuvé selon la présente loi.

Where person denied benefit due to departmental error, etc.

Refus d'une prestation en raison d'une erreur administrative

66. (4) Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied

66. (4) Dans le cas où le ministre est convaincu qu'un avis erroné ou une erreur administrative survenue dans le cadre de l'application de la présente loi a eu pour résultat que soit refusé à cette personne, selon le cas :

- (a) a benefit, or portion thereof, to which that person would have been entitled under this Act,
- (b) a division of unadjusted pensionable earnings under section 55 or 55.1, or
- (c) an assignment of a retirement pension under section 65.1,

- a) en tout ou en partie, une prestation à laquelle elle aurait eu droit en vertu de la présente loi,
- b) le partage des gains non ajustés ouvrant droit à pension en application de l'article 55 ou 55.1,
- c) la cession d'une pension de retraite conformément à l'article 65.1,

the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

le ministre prend les mesures correctives qu'il estime indiquées pour placer la personne en question dans la situation où cette dernière se retrouverait sous l'autorité de la présente loi s'il n'y avait pas eu avis erroné ou erreur administrative.

Commencement of payment of benefit

Début du versement de la prestation

74. (2) Subject to section 62, where payment of a disabled contributor's child's benefit or orphan's benefit in respect of a contributor is approved, the benefit is payable for each month commencing with,

74. (2) Sous réserve de l'article 62, lorsque le paiement d'une prestation d'enfant de cotisant invalide ou d'une prestation d'orphelin est approuvé, relativement à un cotisant, la prestation est payable pour chaque mois à compter :

- (a) in the case of a disabled contributor's

- a) dans le cas d'une prestation d'enfant de cotisant invalide, du dernier en date des

child's benefit, the later of

...

(ii) the month next following the month in which the child was born or otherwise became a child of the contributor,

...

but in no case earlier than the twelfth month preceding the month following the month in which the application was received.

mois suivants :

[...]

(ii) le mois qui suit celui où l'enfant est né ou est devenu de quelque autre manière l'enfant du cotisant;

[...]

Toutefois, ce mois ne peut en aucun cas être antérieur au douzième précédant le mois suivant celui où la demande a été reçue.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1091-10

STYLE OF CAUSE: KIM MARIE BESSETTE v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: January 25, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: February 14, 2011

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