

Docket: 2002-2413(OAS)

BETWEEN:

THE ESTATE OF CARL BENDER,

Appellant,

and

MINISTER OF HUMAN RESOURCES AND DEVELOPMENT,

Respondent.

Appeal heard on January 12, 2004 at Kitchener, Ontario

By: The Honourable Justice R. D. Bell

Appearances:

For the Appellant: Janet Maxwell

Counsel for the Respondent: Johanna Hill

JUDGMENT

The appeal is dismissed and the decision of the Minister is confirmed.

Signed at Ottawa, Canada this 22nd day of January, 2004.

"R. D. Bell"

Bell, J.

Citation: 2004TCC68
Date: 20040122
Docket: 2002-2413(OAS)

BETWEEN:

THE ESTATE OF CARL BENDER,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES AND DEVELOPMENT,

Respondent.

REASONS FOR JUDGMENT
**(delivered orally from the Bench at
Kitchener, Ontario on January 16, 2004)**

Bell, J.

[1] The Appellant is the Estate of Carl Bender represented by his daughter, Mrs. Janet Maxwell.

[2] The issue is whether the deceased Carl Bender was, for his 2000 taxation year, entitled to receive any amount as a Guaranteed Income Supplement within the meaning of certain provisions of the *Old Age Security Act*, as computed under section 12 thereof.

[3] The legislation respecting this supplement is so abstrusely written that comprehending it could well require the services of a lawyer whose fee for this formidable task would undoubtedly exceed the supplement amount.

[4] Mr. Bender, by virtue of his wife's action in 2000 for legal separation from him, was, according to a letter written by Mrs. Maxwell to the Minister of Human Resources, notified that her "father's OAS benefit will be decreased", apparently on the basis that his income for that year was higher than set out in his income tax

return. That letter stated that his wife wanted one-half of what Mr. Bender owned and that in order to achieve that:

... as our lawyers instructed us, we had to cash in several investments in my dad's name. This has caused us great hardship as now he is being penalized for income/capital gains for the year 2000.

[5] It appears from what has been presented that the amount, close to \$50,000, which was paid by Mr. Bender to his wife could have come from the sale proceeds of the home which amounted to a net \$72,092.48 and that no sale of other assets occasioning capital gain was necessary. However, they were sold.

[6] A letter from the Commissioner of Review Tribunals/CPP/OAS to Mr. Bender, c/o Mrs. Maxwell, dated March 25, 2002 stated that Mr. Bender's income for 2000 was \$13,228 and

exceeded the maximum limit at which Guaranteed Income Supplement may be payable. That ceiling as shown in the official Income Security Programs Table of Rates was \$12,455.99.

A number of documents forwarded to Mrs. Maxwell described under the heading:

Information provided by the Minister of Human Resources Development pursuant to section 5 of the Review Tribunal Rules of Procedure

disclose no information respecting computation of the supplement and no legal authority for same. A document bearing the title of Minutes of Settlement and headed "Ontario Superior Court of Justice", filed by the Appellant, includes a number of recitals and provides that the Respondent, Mr. Bender would pay the Applicant, Mrs. Bender "the sum of \$49,606.07." It also provides that

The parties agree that the signing of these Minutes of Settlement and the fulfilment of the said payment by the Respondent to the Applicant shall fully satisfy their respective rights and obligations under Part I of the *Family Law Act*.

No one presented that legislation to me. However, I procured it and find nothing therein that would assist the Appellant in this case.

[7] Accepting the information and the premises provided by the Commissioner, no evidence having been given in that regard and no authorities having been cited by either party for the computation of the supplement, I find myself, very unsatisfactorily, whether or not the Minister of Human Resources and Development's position is correct, obliged to dismiss this appeal. I add that, in my opinion, the information provided to the Appellant by the Minister, assuming I have seen all that was so provided, is *immensely wanting* in detail as to the computation of the supplement and as to the authority under which such computation was made. Although no statement as to the amount of the Guaranteed Income Supplement is made it appears that none was paid to the Appellant. That is an obvious hardship. One would logically have thought that, at worst, any excess of income over the apparent "maximum limit at which Guaranteed Income Supplement may be payable", in this case, some \$700, would simply have reduced the amount of supplement ordinarily payable. That appears, however, not to be the case. This case presents a photograph of how routinely, impersonally and without sensitivity of communication the Ministry of "Human Resources Development" and the "Office of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security" has treated a retired and ill senior Canadian citizen.

[8] It would be unreasonable in the circumstances to have expected a competent prosecution of this appeal. As above stated, I am, unfortunately, obliged to dismiss this appeal. May a case of this nature not again come before this Court.

[9] The appeal is, accordingly, dismissed.

Signed at Ottawa, Canada, this 22nd day of January, 2004.

"R.D. Bell"

Bell, J.

CITATION: 2004TCC68

COURT FILE NO.: 2002-2413(OAS))

STYLE OF CAUSE: The Estate of Carl Bender v. Minister
of Human Resources and Development

PLACE OF HEARING: Kitchener, Ontario

DATE OF HEARING: January 12, 2004

REASONS FOR JUDGMENT BY: The Honourable Justice R.D. Bell

DATE OF REASONS FOR
JUDGMENT: January 22, 2004

APPEARANCES:

For the Appellant: Janet Maxwell

Counsel for the Respondent: Joanna Hill

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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