

Federal Court



Cour fédérale

Date: 20180927

Docket: T-461-18

Citation: 2018 FC 959

Ottawa, Ontario, September 27, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

THERESA C NANKA

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Theresa Nanka began receiving a Guaranteed Income Supplement in 2012. Service Canada originally calculated her GIS on the basis that she was single. On her tax returns for 2012, 2013, and 2014, she disclosed to the Canada Revenue Agency that she was in a common-law relationship. She assumed, based on information on the Service Canada website, that the CRA would inform Service Canada of her change of status.

[2] In fact, Service Canada did not find out about the change until 2015. It reviewed Ms Nanka's circumstances and determined that she had been in a common-law relationship since July 2012 and had received a GIS overpayment of \$13,189.02.

[3] After Service Canada notified Ms Nanka of the overpayment, she requested a reconsideration. Service Canada maintained its original decision.

[4] Ms Nanka then appealed to the General Division of the Social Security Tribunal. The General Division summarily dismissed her appeal on the basis that it lacked jurisdiction. It found that it could entertain appeals only in respect of decisions to deny or limit benefits, not decisions to forgive or reduce an overpayment of benefits. Only the Minister of Employment and Social Development can forgive or reduce an overpayment, and the Minister's decision cannot be appealed to the Tribunal.

[5] Ms Nanka appealed again to the Appeal Division, which upheld the General Division's decision.

[6] Ms Nanka now seeks judicial review of the Appeal Division's decision. She argues that the overpayment she received was entirely the product of an error by Service Canada, that she is completely blameless for it, and that a requirement to repay the surplus would cause her financial hardship.

[7] While I agree that Ms Nanka reasonably believed that Service Canada would be notified of her change of marital status through her income tax returns, I cannot conclude that the Appeal Division committed any reviewable error when it found that neither the General Division nor the Appeal Division had jurisdiction to deal with Ms Nanka's appeal. It reasonably dismissed the appeal summarily. I must, therefore, dismiss this application for judicial review.

[8] The sole issue is whether the Appeal Division reasonably found that the Tribunal lacked jurisdiction and that Ms Nanka's appeal should be dismissed summarily.

II. The Statutory Framework

[9] If a person disputes the Minister's decision to deny a benefit, or the Minister's decision about the amount of a benefit, he or she can ask the Minister to reconsider (*Old Age Security Act*, RSC 1985, c O-9, s 27.1 [OASA]; see Annex for all provisions cited). If the reconsideration is denied, the person can appeal to the Social Security Tribunal (OASA, s 28(1)). The General Division of the SST must summarily dismiss the appeal if it has no reasonable chance of success (*Department of Employment and Social Development Act*, SC 2005, c 34, s 53(1) [DESDA]). A summary dismissal can be appealed, without leave, to the Appeal Division of the SST (DESDA, ss 53(3), 56(2)). The grounds for appeal include a breach of natural justice, an error of law, and serious errors of fact (DESDA, s 58(1)).

[10] If a person has received an overpayment of a benefit, the surplus is recoverable as a debt to the Crown (OASA, s 37(2)). However, the Minister may forgive all or any portion of an overpayment if it resulted from an administrative error, or if repayment would cause the person

undue hardship (OASA, s 37(4)(c),(d)). The Minister's decision can be judicially reviewed in this Court (*Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278 at paras 11, 14).

III. Was the Appeal Division's Decision Unreasonable?

[11] Ms Nanka argues that it would be unfair to require her to repay the GIS overpayment because she relied on Service Canada to calculate her benefit based on the information she disclosed to the CRA. According to Service Canada's website, it reviews claimants' income tax information to calculate the amount of GIS to which they are entitled.

[12] It is clear that Ms Nanka is blameless for the overpayment.

[13] However, the question before me is whether the Appeal Division erred in dismissing Ms Nanka's appeal. I find that the Appeal Division's decision was not unreasonable in the circumstances.

[14] As mentioned, a person can seek a reconsideration of a decision to deny or limit the amount of a benefit. From there, the person can appeal to the General Division and then the Appeal Division of the SST. But Ms Nanka was not contesting a denial of benefits or the amount she was awarded. Her concern related to the requirement to repay the amount she was overpaid. Her only remedy in respect of that issue was to ask the Minister to forgive all or part of the overpayment.

[15] It follows that there was nothing unreasonable about the Appeal Division's conclusion that neither the General Division nor the Appeal Division had jurisdiction to deal with Ms Nanka's appeal and that her appeal should be summarily dismissed. Its decision was the product of a reasonable interpretation of the applicable legislation.

[16] I note that the Minister can forgive an overpayment even without a specific request from the person who received it. It appears that in Ms Nanka's case, a decision on whether the Minister will reduce or erase the overpayment remains outstanding.

IV. Conclusion and Disposition

[17] The Appeal Division's conclusion that the Tribunal had no jurisdiction in the circumstances, and that Ms Nanka's appeal should be summarily dismissed, was not unreasonable in light of the applicable legislation. I must, therefore, dismiss the application for judicial review. There is no order as to costs.

JUDGMENT IN T-461-18

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
without costs.

"James W. O'Reilly"

Judge

ANNEX

*Old Age Security Act, RSC
1985, c O-9*

*Loi sur la sécurité de la
Vieillesse, LRC (1985), ch O-9*

**Request for reconsideration by
Minister**

**Demande de révision par le
ministre**

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.

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.

Appeal — benefits

**Appels en matière de
prestation**

28 (1) A person who is dissatisfied with a decision of the Minister made under section 27.1, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

28 (1) La personne qui se croit lésée par une décision du ministre rendue en application de l'article 27.1, notamment une décision relative au délai supplémentaire, ou, sous réserve des règlements, quiconque pour son compte, peut interjeter appel de la décision devant le Tribunal de la sécurité sociale, constitué par l'article 44 de la *Loi sur le ministère de l'Emploi et du Développement social*.

...

Recovery of amount of payment

37 (2) If a person has received or obtained 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, the amount of the benefit payment or the excess amount, as the case may be, constitutes a debt due to Her Majesty and is recoverable at any time in the Federal Court or any other court of competent jurisdiction or in any other manner provided by this Act.

...

Remission of amount owing

(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:

...

(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

[...]

Recouvrement du trop-perçu

37 (2) Le trop-perçu constitue une créance de Sa Majesté dont le recouvrement peut être poursuivi en tout temps à ce titre devant la Cour fédérale ou tout autre tribunal compétent, ou de toute autre façon prévue par la présente loi.

[...]

Remise

(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 :

[...]

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

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 portion of the amount or excess of the benefit payment.

dans le cadre de l'application de la présente loi.

Department of Employment and Social Development Act, SC 2005, c 34

Loi sur le ministère de l'Emploi et du Développement social, LC 2005, ch 34

Dismissal

Rejet

53 (1) The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

53 (1) La division générale rejette de façon sommaire l'appel si elle est convaincue qu'il n'a aucune chance raisonnable de succès.

...

[...]

Appeal

Appel à la division d'appel

(3) The appellant may appeal the decision to the Appeal Division.

(3) L'appelant peut en appeler à la division d'appel de cette décision.

...

[...]

Exception

Exception

56 (2) Despite subsection (1), no leave is necessary in the case of an appeal brought under subsection 53(3).

56 (2) Toutefois, il n'est pas nécessaire d'obtenir une permission dans le cas d'un appel interjeté au titre du paragraphe 53(3).

Grounds of appeal

Moyens d'appel

58 (1) The only grounds of appeal are that

58 (1) Les seuls moyens d'appel sont les suivants :

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-461-18

STYLE OF CAUSE: THERESA C NANKA v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: SEPTEMBER 10, 2018

JUDGMENT AND REASONS: O'REILLY J.

DATED: SEPTEMBER 27, 2018

APPEARANCES:

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