

Federal Court



Cour fédérale

Date: 20120523

Docket: T-1019-11

Citation: 2012 FC 622

Ottawa, Ontario, May 23, 2012

PRESENT: The Honourable Mr. Justice Near

BETWEEN:

**ESTATE VIOLET STEVENS AND
JUNE TAYLOR, EXECUTOR**

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This application for judicial review is in respect of a decision by the Review Tribunal dismissing an appeal of the refusal to award additional retroactive *Old Age Security Act*, RSC 1985, c O-9 (the *Act*) pension benefits.

[2] For the reasons set out below, the application is dismissed.

I. Background

[3] Violet Stevens died at the age of 86 on March 18, 2007. During her lifetime, she did not apply for an Old Age Security (OAS) pension. Her daughter, June Taylor, acting as the Executrix of the Estate, did, however, make an application for these benefits following Ms. Stevens' death on April 26, 2007.

[4] The application was approved and payment made to the Estate for a one year maximum allowable retroactive OAS pension from April 2006 to the date of Ms. Stevens' death in March 2007.

[5] On August 6, 2007, Ms. Taylor requested additional retroactive benefits for the Estate from the date her mother turned 65 in August 1985.

[6] In a letter dated September 28, 2007, Human Resources Development Canada responded to this further request stating: "As your mother reached the age of 65 before her death, we paid the legislated 11 months retroactive benefits for the period April 2006 March 2007. Unfortunately, there is no more entitlement."

[7] On October 31, 2007, Ms. Taylor requested that this determination be reconsidered pleading:

My Mother was never "diagnosed" with physical or mental incapacity. Mental incapacity of lack of knowledge of how O.A.S. would benefit her is probably the only explanation of why she never filed. [...]

I feel my Mother did not know that Old Age Security existed and this would have been why she did not file. I feel my Mother was ashamed that she did not know the first thing about filing income tax or the benefits that the government provided for people, by means of Old Age Security. [...]

[8] In a letter dated January 2, 2008, Human Resources Development Canada upheld its previous decision and confirmed that retroactive entitlement to benefits was only from the period of April 2006 to March 2007. While there is a provision for incapacity, Ms. Stevens was never diagnosed with mental incapacity. It also noted that “[s]ince documentation is required when applying the diagnosed mental incapacity, it is unlikely that this provision could be considered.”

[9] Ms. Taylor, on behalf of the Estate, appealed this decision to the Office of the Commissioner of Review Tribunals (OCRT). Initially, she was refused a hearing before the Review Tribunal. On judicial review with this Court, Justice Leonard Mandamin found “the Commissioner breached procedural fairness in closing the appeal without affording the Applicant’s right to be heard by a Review Tribunal” (*Stevens Estate v Canada (Attorney General)*, 2011 FC 103, [2011] FCJ no 1295). As a consequence, a hearing was ultimately held before the Review Tribunal on April 6, 2011.

II. Decision Under Review

[10] The Review Tribunal dismissed her appeal, noting that it was constrained in granting relief for retroactive benefits on the principle in fairness. Its conclusion was based on the holding of this Court in *Canada (Minister of Human Resources and Social Development Canada) v Esler*,

2004 FC 1567, 2004 FCJ no 1920 at paras 33-34 that the Review Tribunal does not have “equitable jurisdiction which would allow it to ignore the clear legislative provision” and grant retroactive pension benefits in excess of the statutory limit.

[11] The Review Tribunal also addressed the argument that there was an administrative error within the meaning of section 32 of the *Act* allowing a grant of relief by the Minister. Relying on previous jurisprudence, the Review Tribunal nonetheless found it did “not have jurisdiction to hear any appeal with respect to a decision made by the Minister in exercising his powers under section 32.”

III. Issues

[12] This application raises the following issues:

- (a) Did the Review Tribunal err in finding that the Applicant was not entitled to additional retroactive OAS benefits?
- (b) Did the Review Tribunal err by concluding that it did not have jurisdiction to hear an appeal on the basis of an administrative error of a Ministerial decision under section 32 of the *Act*?

IV. Standard of Review

[13] Based on previous jurisprudence, these issues are to be reviewed based on correctness (see *Esler*, above at paras 19-20; *Canada (Minister of Human Resources Development) v Myrheim*, 2004 FC 884, [2004] FCJ no 1079 at para 20). This reflects their relationship to the Review Tribunal's jurisdiction (see *Canada (Minister of Citizenship and Immigration) v Khosa*, 2009 SCC 12, [2009] 1 SCR 339 at para 42).

V. Analysis

A. *Entitlement to Retroactive OAS Benefits*

[14] The Applicant insists that the Estate is entitled to additional retroactive OAS benefits seemingly as a matter of fairness.

[15] While it is possible under section 29 for the Estate to apply within one year of a person's death for these benefits, retroactive entitlement is circumscribed by other provisions of the *Act*. For persons already over the age of sixty-five on the day the application is received (deemed to be the date of death in the case of Estate), the request for benefits will be effective from "a day one year before the day on which the application was received" based on subsection 8(2). This limitation is also reflected in subsection 5(2) of the *Old Age Security Regulations*, CRC, c 1246.

[16] As noted in the decision currently under review, this Court was confronted with the issue of whether a Review Tribunal could grant benefits retroactive to the sixty-fifth birthday and beyond the one-year statutory limitation in *Esler*, above on the principle of fairness. Justice John O'Keefe stressed:

[33] The Review Tribunal is a pure creature of statute and as such, has no inherent equitable jurisdiction which would allow it to ignore the clear legislative provision contained in subsection 8(2) of the Act and use the principle of fairness to grant retroactive benefits in excess of the statutory limit.

[34] I am of the view that the Review Tribunal acted beyond its statutory jurisdiction in granting retroactive pension benefits in excess of the statutory limit contained in subsection 8(2) of the Act.

[17] Based on the statutory constraints and this holding, the Review Tribunal was correct in finding that it could not grant additional retroactive OAS benefits to the Applicant.

B. *Administrative Error Under Section 32*

[18] As for the Applicant's suggestion that there is an administrative error based on section 32 of the *Act*, that provision is of no assistance in this case.

[19] While there is a reference to an error by Canada Revenue Agency in the Notice of Application, the Applicant has not elaborated on the nature of this alleged error in the context of OAS pension benefits. Moreover, there was no remedial action taken by the Minister in light of an administrative error under section 32. In this instance, the Applicant appealed a reconsideration decision made under section 27.1 to the Review Tribunal.

[20] As was correctly noted in the decision under review, the Review Tribunal does not even have jurisdiction to address decisions made on the basis of section 32 and administrative errors (see *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278, [2003] FCJ no 998 at paras 11-12).

[21] Justice Eleanor Dawson confirmed this principle in *Canada (Minister of Human Resources Development) v Mitchell*, 2004 FC 437, [2004] FCJ no 578 at paras 6-12, stating “the decision of the Review Tribunal should be set aside on the basis that it had no jurisdiction to grant relief based upon Section 32 of the Act.” She continued “[t]he proper remedy to a person denied relief under Section 32 of the Act is to apply directly to this Court for judicial review.” Similarly, Justice Carolyn Layden-Stevenson found the determination in *Tucker*, above dispositive in a case involving a decision under section 32 (*Myrheim*, above at paras 21-22).

[22] As a result, the Review Tribunal did not commit a jurisdictional error in this case by declining to address any alleged administrative error under section 32 of the *Act*. Indeed, quite the opposite is true. The decision of the Review Tribunal to do so in the past has warranted this Court’s intervention.

VI. Conclusion

[23] The Review Tribunal did not err in finding that the Applicant was unable to receive OAS benefits retroactive beyond one year after the date of death. The administrative error provision

under section 32 was also inapplicable in this case. Accordingly, I am dismissing the application for judicial review.

JUDGMENT

THIS COURT'S JUDGMENT is that this application for judicial review is dismissed.

“ D. G. Near ”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1019-11

STYLE OF CAUSE: ESTATE VIOLET STEVENS AND JUNE TAYLOR,
EXECUTOR v AGC

PLACE OF HEARING: OTTAWA

DATE OF HEARING: APRIL 23, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT BY:** NEAR J.

DATED: MAY 23, 2012

APPEARANCES:

June Taylor SELF-REPRESENTED
Michael Stevenson FOR THE RESPONDENT

SOLICITORS OF RECORD:

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