

Federal Court



Cour fédérale

Date: 20120625

Docket: T-421-12

Citation: 2012 FC 808

Toronto, Ontario, June 25, 2012

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

YI ZHANG

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is an application for judicial review of a decision of the Pensions Appeal Board (PAB Board) made by the Honourable Mr. Justice Douglas Rutherford, Vice-Chairman, dated the 29th of September, 2011. In that decision, the Applicant YI ZHANG was ordered to provide her consent as to the provision of certain medical information and submit to an independent medical examination

within 30 days, failing which her appeal respecting the dismissal of an appeal from a refusal to provide disability benefits to her under the Canada Pension Plan Act (CPPA).

[2] I accept and adopt as accurate the summary of the facts as set out in paragraphs 2 to 7 of Justice Rutherford's Reasons. In brief, the Applicant YI ZHANG applied for Canada Pension Plan (CPP) benefits on the basis that she had been treated for cancer, which left her with pain and limitations. The Decision of the Review Tribunal dated August 17, 2008, which forms part of the Record before me, at paragraphs 16 and 28, indicates that at least before mid 2003 the Applicant was receiving acupuncture and massage treatments and ingesting Chinese medicines, and that she was receiving some sort of psychological treatment. The Applicant refused to share her medical records in this regard.

[3] In early 2007, the Applicant signed and submitted a consent form authorizing various third parties, including medical persons and institutions, to disclose relevant information to the government. That consent expired, and in December 2009 the Applicant was asked to sign a further consent and to consent to an independent medical examination (IMC). She has refused or neglected to do so despite numerous reminder letters sent to her and her husband.

[4] It should be pointed out that the Applicant's husband represented her at earlier hearings and in the preparation of the written material filed with this Court. Her husband was at the Applicant's side during the hearing before me. The Applicant represented herself and spoke before me, largely reading from a prepared text. The Applicant seemed to be quite confused and had limited ability in

the English language. Her husband was better skilled in English, but was also confused as to legal matters.

[5] The Applicant's arguments can be summarized as follows:

- a. The consent that she signed in 2007 has exhausted the Minister's authority to require a new or further consent;
- b. She is now over 65 years of age and is no longer subject to CPP;
- c. The Minister's Counsel kept changing their position in the matter.

[6] As to the first point, subsections 68(1)(a) and 68(2) of the Canada Pension Plan Regulations, C.R.C., c. 385, clearly authorize the Minister to require that a person seeking CPP benefits provide medical information and submit to medical examination "from time to time".

68. (1) Where an applicant claims that he or some other person is disabled within the meaning of the Act, he shall supply the Minister with the following information in respect of the person whose disability is to be determined:

(a) a report of any physical or mental disability including

(i) the nature, extent and prognosis of the disability,

68. (1) Quand un requérant allègue que lui-même ou une autre personne est invalide au sens de la Loi, il doit fournir au ministre les renseignements suivants sur la personne dont l'invalidité est à déterminer :

a) un rapport sur toute invalidité physique ou mentale indiquant les éléments suivants

(i) la nature, l'étendue et le pronostic de l'invalidité,

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| <i>(ii) the findings upon which the diagnosis and prognosis were made,</i> | <i>(ii) les constatations sur lesquelles se fondent le diagnostic et le pronostic,</i> |
| <i>(iii) any limitation resulting from the disability, and</i> | <i>(iii) toute incapacité résultant de l'invalidité,</i> |
| <i>(iv) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant;</i> | <i>(iv) tout autre renseignement qui pourrait être approprié, y compris les recommandations concernant le traitement ou les examens additionnels;</i> |

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| <i>68. (2) In addition to the requirements of subsection (1), a person whose disability is to be or has been determined pursuant to the Act may be required from time to time by the Minister</i> | <i>68. (2) En plus des exigences du paragraphe (1), une personne dont l'invalidité reste à déterminer ou a été déterminée en vertu de la Loi, peut être requise à l'occasion par le ministre</i> |
| <i>(a) to supply a statement of his occupation and earnings for any period; and</i> | <i>a) de fournir une déclaration de ses emplois ou de ses gains pour n'importe quelle période; et</i> |
| <i>(b) to undergo such special examinations and to supply such reports as the Minister deems necessary for the purpose of determining the disability of that person.</i> | <i>b) de se soumettre à tout examen spécial et de fournir tout rapport que le ministre estimera nécessaire en vue de déterminer l'invalidité de cette personne.</i> |

[7] I agree with Justice Rutherford in his determination of this issue as set out at paragraphs 6, 7, and 8 of his Reasons. Having regard to any standard of review his decision was both correct and reasonable. It is entirely appropriate for the Minister to require further consent and an independent medical examination:

[6] *On April 1, 2011, the Minister's Medical Expertise Division wrote again to the Appellant and her husband/representative requesting the information and consents, again enclosing the requested documents and a stamped return envelope. When no response was received by July 22, 2011, counsel for the Minister filed this motion.*

[7] *Evidently the Appellant has had a change of mind and has reversed the position taken before the Board last March 3. Following the filing of this motion, the Appellant's husband/representative filed a 17 page response dated August 8, 2001. In it he reviewed in great detail the history of Yi Zhang's claim for benefits and the various levels of consideration. Boiled down to its essential point, Mr. Jinshu Xu contends that the Minister has already exercised the authority to obtain medical information about the Appellant. He refers to the documents she filled out and filed with her initial application and argues that the Minister determined her claim adversely to her and that is the end of the Minister's role. The subsequent determinations are by the Review Tribunal and by this Board and the Minister cannot now draw on the regulatory provisions requiring further information. In fact, Mr. Jinshu Xu goes so far as to characterize the ongoing attempts by the Minister's Medical Expertise Division to obtain information and consents from the Appellant as 'procedurally unfair, erroneous in law, deceptive and fraud'.*

[8] *I do not accept the arguments Mr. Jinshu Xu makes. I think the Minister has the authority to require the information and the independent medical examination being sought. The fact that similar information and consents were given previously at the initial stage of the claim does not mean that as the claim moves through the successive stages of review, more current information cannot be sought. The consents given originally were time limited on their face and have expired. The information furnished in earlier stages is necessarily dated, and the newer and current developments in the physical and mental health of a claimant for disability benefits may well shed light on whether the claimant was, at the relevant time when she met the minimum contributory criteria ['minimum qualifying period' or 'MQP' as it is usually referred to] suffering from a 'severe and prolonged' disability.*

[8] The Applicant's next submission made in oral argument is that she is now over 65 years of age and is no longer subject to CPP regulation. This argument overlooks the fact that the Applicant

is still seeking benefits under the CPP, at least for a period before she was 65 years of age. Before she reached 65 years of age, she should have provided a fresh consent and submitted to an independent medical examination. Even after age 65, if she wants the benefits that she is seeking, she must provide the consent. Release of medical records is appropriate and, even now, a medical examination may be appropriate.

[9] The third issue raised by the Applicant is that the Minister kept changing Counsel and its legal position in the matter. I find no evidence at all as to any inappropriate behaviour by the Minister or the Minister's Counsel in the Record.

[10] It is abundantly clear that the Applicant is quite confused as to the legal aspects of this matter and would have benefited greatly from proper legal advice, had that advice been followed.

[11] The Applicant in her written Memorandum made frequent allegations, highlighted in bold type, as to fraud allegedly committed by the Minister. No fraudulent activity appears in the Record before me, nor has the Applicant in any way been able to support such an allegation. Normally, serious cost consequences follow where a party has alleged fraud, then been unable to prove it. Here the Counsel for the Minister has graciously agreed that costs not exceed \$500.00.

[12] The Application will be dismissed, with costs to the Respondent, should the Crown seek to recover them, fixed at \$500.00.

JUDGMENT

FOR THE REASONS PROVIDED:

THIS COURT ADJUDGES that:

1. The Application is dismissed; and

2. The Respondent is entitled to costs, should they seek to recover them, fixed in the sum of \$500.00.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-421-12

STYLE OF CAUSE: YI ZHANG v. ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Niagara Falls, Ontario

DATE OF HEARING: June 22, 2012

**REASONS FOR JUDGMENT
AND JUDGMENT:** HUGHES J.

DATED: June 25, 2012

APPEARANCES:

Yi Zhang

FOR THE APPLICANT
(ON HER OWN BEHALF)

Amichai Wise
Carole Vary

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Self-represented

FOR THE APPLICANT

Myles J. Kirvan
Deputy Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT