

Federal Court



Cour fédérale

Date: 20220506

Docket: T-1705-21

Citation: 2022 FC 667

Ottawa, Ontario, May 6, 2022

PRESENT: Madam Justice McDonald

BETWEEN:

KAREN HENDERSON ROY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] On this application, Karen Roy challenges the legality of the deductions made by the Province of Alberta in relation to Canada Pension Plan (CPP) disability benefits she receives. She argues that the deductions have left her in serious financial peril, requiring her to live in her truck, and unable to afford the basic necessities of life.

[2] Ms. Roy, who represented herself on this application, seeks review of the Social Security Tribunal - Appeal Division decision denying her appeal on the grounds that her issues were with the provincial program, an area over which the Tribunal does not have jurisdiction.

[3] For the reasons that follow, although I acknowledge that Ms. Roy is clearly in difficult circumstances, the remedy she is looking for is not available through this Court process. Her judicial review is, therefore, dismissed and I am not awarding any costs against Ms. Roy.

I. Background

[4] In April 2019, Ms. Roy applied for benefits from the Province of Alberta's *Assured Income for the Severely Handicapped* (AISH) program. She was approved for income benefits in the amount of \$1,685 monthly.

[5] In June 2019, Ms. Roy also applied for CPP disability benefits. Although her CPP claim was initially denied, her CPP claim was reconsidered in February 2021 and approved effective the same month.

[6] As of February 2021, Ms. Roy was approved for CPP disability benefits in the amount of \$1,145 monthly. Ms. Roy received both CPP and AISH payments in February 2021. Pursuant to para 76(2)(b) of the *Canada Pension Plan Regulations*, CRC, c 385 and a Consent to Deduction and Payment signed by Ms. Roy, the sum of \$1,145.11 was reimbursed directly to AISH by CPP.

[7] After February 2021, CPP benefits have been paid to Ms. Roy in full. The AISH program has been deducting \$1,145 (being the amount she receives from CPP) from her monthly AISH benefits. This means that Ms. Roy's monthly payment from AISH is now \$540 – calculated by subtracting the monthly CPP benefit of \$1,145 from the AISH benefit amount of \$1,685.

[8] Ms. Roy argues that she is entitled to the full amount of the AISH payment (\$1,685) without any deductions for the CPP benefit she receives. She alleges that the deductions are unauthorized, that representatives from AISH will not respond to her requests, and that her personal circumstances have deteriorated.

[9] In an appeal to the Social Security Tribunal (SST) General Division (GD), Ms. Roy requested full payment of her CPP disability pension effective June 2019. Ms. Roy was partially successful before the GD as it agreed that she was eligible for a CPP disability pension as of an earlier date. However, the GD determined that it did not have authority to decide the issue of repayment to a provincial plan like AISH, and concluded that such a repayment scheme is not a decision that can be appealed to the SST pursuant to s 81 and 82 of the *Canada Pension Plan*, RSC 1985, C c-8.

[10] Ms. Roy sought leave to appeal the GD decision to the Appeal Division (AD), arguing that she only consented to the CPP deduction for February 2021, but that AISH has continued to deduct the CPP payments every month thereafter.

II. Decision of the Appeal Division

[11] On November 4, 2021, the AD refused leave to appeal.

[12] The AD considered s 58 of the *Department of Employment and Social Development Act*, SC 2005, c 34 (“*DESDA*”), which requires it to consider if the appeal has a “reasonable chance of success”.

[13] The AD concluded that Ms. Roy had “unfortunately brought her complaint to the wrong place”. The AD noted that the GD only hears appeals of decisions made by Service Canada, and does not consider decisions of AISH. Noting that there was nothing either the GD or AD could do regarding an AISH decision, the AD recommended that Ms. Roy contact AISH to determine whether an appeal was possible.

III. Issue

[14] On the judicial review of the AD decision, Ms. Roy argues that it is unfair that her CPP benefits are deducted from her AISH benefits.

IV. Standard of Review

[15] In considering the AD finding that Ms. Roy’s appeal had no reasonable chance of success, this Court applies a reasonableness standard of review (*Cameron v Canada (Attorney General)*, 2018 FCA 100 at para 3).

[16] When applying the reasonableness standard of review, this Court seeks to understand the AD's reasoning process and looks for justification, transparency and intelligibility, and asks if the AD's decision is justified in relation to the relevant facts and law (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99).

V. Analysis

[17] The Court starts its analysis by noting that there is no real dispute about the relevant facts and there is no dispute that Ms. Roy is disabled. Further, there is no dispute that Ms. Roy has been receiving the full CPP disability benefits for which she qualified. The only issue is the deduction in her Province of Alberta AISH payments because of her CPP payments.

[18] In considering her request to appeal, the AD has a restricted mandate. Under s 58(1) of *DESDA*, an appeal must fall under one of these three grounds: (1) the GD failed to observe a principle of natural justice or made a jurisdictional error; (2) the GD made an error of law; or (3) the GD based its decision on an erroneous finding of fact. In addition to having to meet one of the three grounds of appeal, an appeal will only be granted when the appeal has "some arguable ground upon which the proposed appeal might succeed" (*Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12).

[19] Overall, the AD found that Ms. Roy did not put forward any ground of appeal that was capable of succeeding under s 58(1) of the *DESDA* as the issue raised by Ms. Roy was outside the jurisdiction of the GD.

[20] The law is clear that a statutory tribunal, such as the SST, is only able to consider cases over which it has been granted jurisdiction (*Mudie v Canada (Attorney General)*, 2021 FCA 239 at para 22). As noted by the AD, the SST does not have jurisdiction over the AISH program, which is administered by the Province of Alberta. The AD properly noted that “[t]here is nothing that the General Division, or the Appeal Division, can do about a decision made by the AISH program.”

[21] Although Ms. Roy argues that the AD failed to properly consider her personal circumstances, unfortunately for Ms. Roy the AD can only act within its legislative mandate. None of Ms. Roy’s arguments fall within any of the grounds of appeal that were open to the AD to consider under the legislation (s 58(1) of the *DESDA*).

[22] Ms. Roy expresses frustration and challenges in navigating the AISH program. However, this program is administered by the Province of Alberta and not by the SST. Therefore, there is no remedy the AD, or this Court, can offer in response to Ms. Roy’s challenge to the deduction applied by the AISH program.

[23] In the circumstances, the AD undertook the proper analysis of the GD decision, and the AD decision is reasonable.

[24] This application for judicial review is dismissed.

[25] In the circumstances, I decline to award costs.

JUDGMENT IN T-1705-21

THIS COURT'S JUDGMENT is that this judicial review is dismissed without costs.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1705-21

STYLE OF CAUSE: KAREN HENDERSON ROY v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 4, 2022

JUDGMENT AND REASONS: MCDONALD J.

DATED: MAY 6, 2022

APPEARANCES:

Karen Henderson Roy

FOR THE APPLICANT
(ON HER OWN BEHALF)

Jordan Fine

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Gatineau, QC

FOR THE RESPONDENT