

Reasons for Decision:

Order # AP1516-0146

The appellant appealed that the appellant was required to apply for Canada Pension Plan Retirement Benefits at age 60, resulting in a reduction of the appellant's income assistance benefits.

As the appellant would be 60 years old as of <date removed> the Department sent the appellant a letter on <date removed> advising the appellant that the appellant is required to apply for CPP Retirement benefits prior to the appellant's 60th birthday. The appellant's letter advised the appellant to contact the Department once the appellant had made application and was notified by CPP the amount of the appellant's monthly CPP benefits. As the department had not heard anything from the appellant, the appellant was sent another letter dated <date removed>. The appellant's letter advised that if the Department did not receive confirmation of the appellant's CPP application by <date removed> the appellant's Employment and Income Assistance benefits would be suspended.

The appellant filed the appeal because the appellant objects to the requirement to apply for the CPP Retirement benefits. The appellant objects to the requirement because the earlier the appellant applies for the benefit, the lower the appellant's benefit will be, and the lowered amount will be the amount the appellant receives for the rest of the appellant's life.

The appellant argued that the requirement violated the appellant's rights, both the appellant's charter rights, and the appellant's Manitoba civil rights. The appellant felt that the wording of The Manitoba Assistance Act contained a contradiction. Section 2 of the Act states: "the Government of Manitoba may take measures to provide to residents of Manitoba those things and services that are essential to the health and well-being..." Section 2.1 one states " The minister must designate a person as Director of Assistance" and then in Section 5(1) the Act states, "the director shall provide income assistance..." The appellant stated that the contradiction does not make it clear whether or not the provision of income assistance is a right.

The appellant did state that the appellant believed that suspending or cancelling the appellant's income assistance benefits was a violation of, "the security of person and the right to life" provisions as guaranteed under the Charter. The appellant argued that income assistance is a right, not a privilege, and cannot be arbitrarily taken away.

The appellant also indicated that the appellant believed that the requirement to apply for the CPP benefit at age 60 or have the appellant's benefits cancelled is age discrimination. The appellant stated that a person who is 59 can continue to receive full

income assistance benefits, but not a 60 year old person. The appellant stated that the federal government has established a pension benefit, and allows a person to wait up to age 70 to apply for the benefit. By virtue of the appellant's age, the appellant's eligibility for income assistance benefits has been threatened. The requirement to apply for early pension applies to persons age 60 or greater who are on disability assistance until age 65, as well as to persons who are temporarily on assistance for a few months while they look for a job. The effect of the requirement is to permanently reduce a person's ability to survive for the rest of their life due to a temporary or situational need at age 60.

The appellant also felt that the requirement was in essence, disability discrimination. The government has a financial incentive for persons who earn income through employment, but do not allow a similar incentive for persons with a disability who have pension type income which they earned from previous employment when they were capable of working. The appellant stated that calling the pensions "unearned income" is an insult. The appellant stated that if persons on assistance are forced to access their pensions, they should at least receive an exemption incentive from these funds.

The appellant ended the presentation by indicating that the Charter guarantees the appellant right to life, but the staff of the Employment and Income Assistance Program make a decision that "chops you off and puts your life in danger". The appellant stated there should be a right to protection from administrative decisions that have a negative effect on you, freezing and starving, and lacking essential medication.

The appellant indicated that under duress, the appellant did apply for the CPP Retirement benefits to prevent cancellation of the appellant's income assistance benefits. The appellant stated the appellant had no other choice, but on the principle of it, the appellant is going to contact the federal government and cancel the appellant's application.

After carefully reviewing the appellant's written and verbal information, the Board has determined that the requirement to apply for CPP Retirement pension at age 60 is a legislated requirement. The Board also has determined that the appellant was appropriately provided with written notification of this requirement, and provided adequate time to comply with this requirement.

The Manitoba Assistance Regulation, Part 4, Section 12.1(2) states,

An applicant or recipient and the applicant's or recipient's spouse or common-law partner shall make all reasonable efforts on behalf of himself or herself and any dependants to obtain the maximum amount of compensation, benefits or contribution to support and maintenance that may be available under another Act or program, including an Act of Canada or a program provided by the Government of Canada.

The Board interprets that this section of the regulation is intended to include application for any federal benefits, including CPP Retirement benefits, at the earliest

date which they are accessible. CPP funds are a benefit which is available for support and maintenance and therefore the regulation requires anyone in receipt of income assistance to apply and receive these benefits.

The Manitoba Assistance Regulation, Part 4, Section 12.1(4) states: Where an obligation described in subsections (1) to (3) is not met, the director may deny, suspend or discontinue income assistance or general assistance or reduce any assistance to which the recipient later becomes entitled by an amount not exceeding the amount that would not otherwise have been paid.

The Board interprets this section of the regulation to mean that when a person who could access their CPP retirement benefits, but chooses not to, the director has the discretion to suspend benefits until such time as the provision of Section 12.1(2) has been met. The director may also choose to continue to provide benefits, but make a deduction from those benefits in the amount that could have been obtained from CPP Retirement benefits. At the hearing the appellant indicated the appellant would be cancelling the application for CPP benefits. It is the finding of the Board that the Director has the authority under this Section to continue to deduct the CPP Retirement benefit amount, whether or not the appellant is actually receiving it.

The appellant has indicated at the hearing that the appellant believes the Manitoba Assistance Regulation is in violation of the appellant's Canadian Charter of Rights and Freedoms. The Board has reviewed the appellant's appeal based on its enabling statutes, The Social Services Appeal Board Act, and The Manitoba Assistance Act.

Neither of those statutes provide the Board with the authority to determine that decisions are in violation of the Charter. In *Fernandes v. Manitoba (Director of Social Services, Winnipeg Central)*, [1992] M.J. No. 279, the Manitoba Court of Appeal stated that neither the Director of Social Services, nor the Social Services Advisory Committee had jurisdiction to consider Charter issues. The reasoning was based on the grounds that the Social Allowances Act did not expressly or impliedly give the Director or the Committee that power. Since that time, new legislation has been implemented, but the Board still holds that the new legislation also does not give the Social Services Appeal Board that power.

Finally, should the appellant believe that the decision discriminates against the appellant due to age, or on the basis of disability, the appellant may file a complaint with the Manitoba Human Rights Commission which has the expertise and authority to deal with complaints of discrimination.

Based on the above, the Board has confirmed the decision of the Director.

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