

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

CIVIL JURISDICTION

2019-HC-DEM-CIV-FDA-224



BETWEEN:

ISMAY LAKE

Applicant

-and-

1. GENERAL MANAGER
2. NATIONAL INSURANCE BOARD

Respondents

BEFORE: Hon. Madam Justice Damone F. J. Younge

APPEARANCES: Mr. D. Wade for the Applicant

Ms. R. Rowe for the Respondents

DATE: 31st July, 2019

DECISION:

1) This is an application for judicial review of certain decisions made by the Respondents relative to a claim submitted by the Applicant for benefits. In this Fixed Date Application, the Applicant seeks certain Administrative Orders including:

- a. an Order of Certiorari to quash the decisions of the National Insurance Board General Manager and the National Insurance Appeal Tribunal ("The Tribunal") disallowing the Applicant's claim; and
- b. an Order of Mandamus compelling the National Insurance Board to pay survivor's benefit to the Applicant from six months prior to her application and onwards.

The Applicant also seeks a declaration that the decisions of the Respondents were unreasonable, interest and costs.

2) The Applicant avers that her deceased husband, Vibert Lake, at the time of his death on the 14th July, 1990 had satisfied the contribution requirement for the award of survivor's benefit to the Applicant. She contends that her claim for survivor's benefit submitted on the 15th November, 2016, some twenty six years after the death of her husband, was disallowed by the No. 1 Respondent on account of the lateness of the submission of the claim.

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Thereafter, the Applicant appealed the decision to the Tribunal which disallowed her appeal. The Applicant asserts that she was unaware of the procedures of the National Insurance Scheme and only became aware of her entitlement to survivor's benefit in November 2016.

- 3) In their Affidavit of Defence, the Respondents rely on the limitation period set out in the Regulations to the National Insurance and Social Security Act, Cap.36:01, in particular Regulation 14(1)(c) of the National Insurance and Social Security (Claims and Payments) Regulations ("the C & P Regulations"), which stipulates that an application for survivor's benefit must be made within a three months from the date on which the claimant becomes entitled. And also that the Applicant was disqualified from receiving the benefit, having failed to make the claim within the specified period pursuant to Regulation 14(2)(c)(i) of the C & P Regulations. The Respondents argue that their decisions were reasonable and grounded in law because the application was made out of time and therefore the Applicant was disqualified from receiving it by operation of the law.
- 4) The parties agreed that the essential facts of this case are not in conflict and filed written submissions in support of their respective cases.
- 5) Whilst this Court did not have the benefit of written evidence of the No.1 Respondent's decision, the No. 1 Respondent, in paragraph 13 of the Affidavit of Defence, admitted that she refused the Applicant's claim on the ground of late submission. The decision of the No. 2 Respondent, however, has been placed before this Court for examination, and it is not disputed that the No. 2 Respondent also disallowed payment to the Applicant on the ground of the lateness of the claim. This is evident from **Exhibit D** attached to the Affidavit of Defence.
- 6) The only issue for determination in this Application is whether the Respondents' decision to disallow the Applicant's claim for survivor's benefit on the ground of late submission was unreasonable. But critical to the determination of that question is whether the Applicant was even entitled to the benefit in the first place.
- 7) The tenor of the Respondents' Affidavit of Defence, in particular paragraph 14 thereof, seems to suggest that the Applicant would be entitled to survivor's benefit, but for the lateness of her submission. Nowhere in their Affidavit of Defence did the Respondents expressly state that the Applicant is not entitled to the benefit. They have instead placed much emphasis on the Applicant's delay in filing the claim. The Applicant, on the other hand, is expectedly operating from a position that she is so entitled.
- 8) In this regard, the facts are not disputed. There is acceptance that the Applicant was married to an insured person, who is now deceased, and who would have made contributions to the scheme thereby entitling his dependents to claim for survival benefits.

In addition, at the time of the deceased's death, he and the Applicant had a child under the age of 16 years who was in the care of the Applicant.

- 9) This Court, having perused Regulation 14 of the National Insurance and Social Security (Benefit) Regulations ("the Benefit Regulations"), finds that the Applicant is entitled to survival benefit through the contributions of her late husband. The Respondents admit that the late Vibert Lake had made more than 1000 contributions, a number far in excess of what is required to satisfy Regulation 7(1)(c) of the Benefit Regulations to entitle him to invalidity pension, and as such entitling his dependents, on his death, to survivor's benefit pursuant to Regulation 14(1)(c) of those Regulations.
- 10) Further, this Court also finds that the Applicant was not disqualified as a 'dependent' under Regulation 14(3)(b), since at the time of her husband's death, she was his widow with the care of a child of their marriage under sixteen years of age – two facts which are undisputed. The Regulation clearly contemplates the age of the child *at the time of the deceased's death*, rather than at the time of submission or consideration of the claim. That being so, the Applicant falls within the exception set out in Regulation 14(3)(b)(iii) of the Benefit Regulations.
- 11) This brings us to the issue of whether the decision not to pay the Applicant the survivor's benefit on the sole ground of late submission was unreasonable and should be quashed. In this regard, counsel for the Applicant contends that the Respondents acted unreasonably in disallowing her claim because they failed to consider that she may have a good cause for the delay in submitting same. He relied on the cases of Adams v. Commissioner of Police and Associated Provincial Picture Houses v. Wednesbury Corporation in support of his submission that the decision made by the respondents in one no other reasonable authority would make when faced with similar circumstances.
- 12) For the purposes of determining this FDA, it is imperative that Regulation 14 of the C& P Regulations be looked at. Regulation 14, so far as relevant to this case, reads as follows:
 - (1) The prescribed time for claiming benefit shall be –
 - (a)...
 - (b)...
 - (c) in the case of invalidity benefit, survivor's benefit, disablement benefit and death benefit, within the period of *three months* from the date on which, apart from satisfying the condition of making a claim, the claimant becomes entitled thereto;
 - (d)..
 - (2) A person failing to make a claim for benefit within the prescribed time shall be disqualified from receiving –
 - (a)...
 - (b)...

(c) in the case of in the case of invalidity benefit, survivor's benefit, disablement benefit and death benefit –

(i) where such benefits consist of a pension, benefit in respect of any period more than three months before the date on which the claim is made;

(ii) where such benefits consist of a single payment, the single payment;

(d)...

Provided that, if in any case the claimant proves –

(i) that on the date earlier than the date on which the claim was made, apart from satisfying the condition of making a claim, he was entitled to the benefit; and

(ii) that throughout the period between the earlier date and the date on which the claim was made there was good cause for delay in making such claim,

he shall not be disqualified under this paragraph from receiving any benefit to which he would have been entitled if the claim had been made on the earlier date...

13) Having regard to the express provisions of the quoted Regulation, it is immediately apparent that the decision maker has a fairly wide discretion to consider submissions beyond the stated limitation period on good cause being shown for the delay.

14) Based on the evidence before this Court in the matter now under consideration, it is pellucid that neither of the Respondents, in coming to a decision to disallow the Applicant's claim, gave any consideration to the reason/s proffered by the Applicant for her delay in submitting her claim. It is equally evident that the decisions were taken based solely on the timing of the submission, which all can agree was far outside the prescribed period. In the circumstances, this Court finds it difficult to disagree with counsel for the Applicant's argument that the Respondents failed to exercise the discretion conferred on them by the proviso to Regulation 14 of the C & P Regulations.

15) There can be absolutely no doubt that the No. 2 Respondent did not address its collective mind to whether the Applicant had given a good reason for the delay in submitting her claim. The note of the proceedings before the Tribunal (See: Exhibit D of the Affidavit of Defence) in its entirety reads,

Appellant appeared in person. Survivor's Benefit was not paid. The Benefit was disallowed for late submission. The insured person died on the 14th July, 1990 and the claim was submitted on the 15th November, 2016. This period of 26 years is inordinately late and therefore this claim cannot be granted or allowed. This appeal is therefore disallowed.

Nowhere in this decision is there any reference to the reasons for the delay, even though, from the Summary of Facts (Exhibit C to the Affidavit of Defence) reasons were provided. It seems clear too, from the evidence presented, that the No. 1 Respondent similarly did not address her mind to any reasons given for the delay, dismissing the claim on the basis that it was submitted outside the prescribed time.

16) In the unreported Virgin Island case of Robert Hirst v. The Director of the Social Security Board, The Social Security Appeal Tribunal, BVIHCV 2013/0209, a case also dealing in part with delay on submitting a claim for survivor's benefit, the Court in a Judgment by Ellis, J., found that the Social Security Appeal Tribunal ought to have taken into account whether the reasons given by the Appellant amounted to a good cause for his delay in submitting his claim. Coincidentally, as in the instant case, the Appellant in the Huist case had explained that he did not submit his claim within the time prescribed by the Social Security (Benefits) Regulations, as amended, because he was unaware that there was survivor benefit at the time of his wife's death.

17) After considering ~~of~~ the circumstances of this matter, this Court finds that both Respondents were obliged to give consideration to whether or not the Applicant's was an appropriate case for the exercise ^{of} their discretion under the proviso to Regulation 14(2) of the C & P Regulations. This Court also finds that the failure or omission by the Respondents to exercise the power given to them by the C & P Regulations, rendered the determination of the Applicant's claim unfair. This Court also holds that the failure of the Respondents to consider the reasons proffered by the Applicant for the delay in submitting her claim, as well as refusing the Applicant's claim solely on the ground of lateness, also rendered the decision to disallow her claim unfair and unreasonable.

18) It must be pointed out that the role of this Court is not to become the decision maker, but to ensure that the decision maker acts properly, fairly and within the ambit of their powers. It is not for this Court to look at the merits of the case and determine if a different decision ought to have been made, but to ensure that the authority follows due process and acts fairly.

19) Having regard to the findings of this Court, the following Orders are made:-

- a. A declaration that the Applicant is entitled to survivor's benefit consequent on the contributions of her husband, Vibert Lake, deceased, pursuant to Regulation 14(1) of the National Insurance and Social Security (Benefit) Regulations.
- b. A declaration that the Applicant was not disqualified as a dependent of her deceased husband, Vibert Lake, deceased, since at the time of his death she was a widow captured by Regulation 14 (3)(b)(iii) of the National Insurance and Social Security (Benefit) Regulations.
- c. An Order of Certiorari quashing the decisions of the No. 1 Respondent made on the 17th January, 2017 and of the No. 2 Respondent made on the 22nd May, 2018 disallowing the Applicant's claim and appeal, respectively.
- d. An Order remitting the Applicant's matter to the No. 1 Respondent for reconsideration of the Applicant's claim and a determination of whether the reasons

proffered by the Applicant for the delay in filing her claim, together with the specific circumstances of her case amounted to good cause being shown for the delay.

- e. An Order that the reconsideration and determination of the Applicant's claim be completed within three (3) months from the date of this Order.
- f. Costs to the Applicant in the sum of \$75,000.00, to be paid within 21 days of the date of this Order.

Young
.....
Damone Young

**Hon. Madam Justice
Damone F. J. Young
Puisne Judge**