

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. AP-11-26

TDW 11/17/11 ✓ 11-2012

LELAND B. COURTOIS

STATE OF MAINE
Cumberland County Clerk's Office

Petitioner,

AP-11-26

v.

RECEIVED

ORDER

MAINE PUBLIC EMPLOYEES
RETIREMENT SYSTEM, et al,

Respondents.

Before the court is a motion by respondents to dismiss the newly-added claim by plaintiff Leland Courtois that MainePERS's discontinuation of his disability benefits violated section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. Also before the court is a motion by Courtois for the taking of additional evidence pursuant to Rule 80C(e).

This case arises from a ruling by MainePERS that Courtois, who has been receiving disability retirement benefits since 1998, exceeded the income limitations for disability retirement in 2009, resulting in the discontinuation of his disability retirement benefits. In Count I of his complaint Courtois seeks review of that decision pursuant to Rule 80C.

The court has previously granted respondents' motion to dismiss Courtois's section 1983 claim. See order dated November 22, 2011. While that motion was pending, Courtois amended his petition to add a claim that respondents' actions violated section 504 of the Rehabilitation Act.

Motion to Dismiss

For purposes of a motion to dismiss, the material allegations of the petition must be taken as admitted. The petition must be read in the light most favorable to the petitioner to determine if it sets forth elements of a cause of action or alleges facts that would entitle petitioner to relief pursuant to some legal theory. In re Wage Payment Litigation, 2000 ME 162 ¶ 3, 759 A.2d 217, 220.

On a motion to dismiss, however, the court is not obliged to accept conclusory allegations and legal conclusions that are bereft of any supporting factual allegations. In this case Courtois's amended petition merely recites the provisions of 29 U.S.C. § 794 and that states that by "their above-described actions, Respondents have unlawfully excluded Petitioner from participation in, denied Petitioner the benefits of, or subjected Petitioner to discrimination under a program or activity receiving federal financial assistance." Amended Petition ¶¶ 40-41.

Reviewing respondents' "above-described actions" as set forth in the petition, however, the court fails to discern any allegation that Courtois was an "otherwise qualified" individual who was denied benefits "solely by reason of his . . . disability" or that MainePERS receives federal financial assistance. See 29 U.S.C. § 794(a). These are the essential elements of a cause of action under section 504.

To the extent that Courtois is arguing merely that the decision to discontinue his disability benefits discriminated against him on the basis of his disability – and overlooking the absence of any allegation that MainePERS receives federal financial assistance – Courtois does not state a claim under section 504. This is true for several reasons. First, section 504's requirement that a person claiming the protection of that section be an "otherwise qualified" individual means that – without his disability – he would qualify for the benefit he is being denied. E.g., Grzan v. Charter Hospital, 104

F.3d 116, 120-21 (7th Cir. 1997). In this case Courtois would not have received any disability retirement benefits absent a disability.

Second, Courtois is not alleging that he was denied benefits “solely by reason of his disability.” He is alleging that he was wrongfully denied benefits because MainePERS wrongfully calculated his outside income. See Amended Petition ¶¶ 17-18. Whether or not that MainePERS decision was correct, it was not based on Courtois’s disability.

Finally, the court is aware of no authority that section 504 or any other statute prohibiting discrimination on the basis of disability forbids a state from determining that disability benefits may be limited if a recipient earns too much outside income.

Motion for Taking of Additional Evidence

To the extent that Courtois’s motion for the taking of additional evidence is based on the section 1983 claims and Section 504 claims that have been dismissed, that motion must be denied.

There are two issues which may present a basis for the taking of additional evidence. First, in the proceedings before the agency, Courtois raised an equitable argument that MainePERS had violated certain trust obligations by failing to inform him that excess income could result in the discontinuation of benefits. MainePERS determined that that issue was outside the scope of the appeal. See R. 25.8. On this issue Courtois seeks to have the court consider a document distributed by MainePERS and attached as Exhibit 2 to his amended petition. Once the court has ruled on Courtois’s Rule 80C appeal, it will determine whether it needs to consider Courtois’s equitable argument and whether, in connection with that argument, it should consider Exhibit 2 and any other relevant evidence.

Second. Courtois argues that he was requested to submit a document during the administrative proceeding but that document (Exhibit 1 to the amended petition) is not included in the record. MainePERS denies that Courtois was ever asked to submit the document in question. If it is necessary to resolve the appeal, the court will consider whether additional evidence should be taken on the limited issue of whether Courtois was in fact requested to submit the document in question.

On all the other issues set forth in Courtois's motion for taking of additional evidence and the accompanying offer of proof, the court concludes that the remaining evidence that Courtois seeks to add is either (1) already contained in the administrative record, (2) not material, (3) could have been presented during the administrative proceeding,¹ or (4) constitutes an attempt to undertake an inquiry into the mental processes of an agency decision-maker without having made any prima facie showing of misconduct or bias. See Carl L. Cutler Co. v. State Purchasing Agent, 472 A.2d 913, 918 (Me. 1984).

The entry shall be:

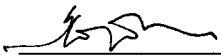
Respondents' motion to dismiss plaintiff's claim under section 504 of the Rehabilitation Act is granted.

Plaintiff's motion for the taking of additional evidence is denied except as to Exhibits 1 and 2 to the petition, as to which the court reserves decision until it has considered petitioner's appeal on the record.

Petitioner shall file his brief within 40 days of the date of this order. Respondents shall file their brief within 30 days after service of petitioner's brief. Petitioner shall have 14 days thereafter in which to file a reply brief.

The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: January 17, 2012



Thomas D. Warren
Justice, Superior Court

¹ See 5 M.R.S. § 11006(1)(B) (requiring that a party proposing to offer additional evidence show that the evidence in question "could not have been presented . . . before the agency").

Date Filed 07-13-11 Cumberland County Docket No. AP-11-26

Action 80C Appeal

LELAND B. COURTOIS

MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM
SANDRA J. MATHESON
THE BOARD OF TRUSTEES OF MAINE PUBLIC
EMPLOYEES RETIREMENT SYSTEM

vs.

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Date of
Entry