Recoupment Cases

2013

A Success Story

- Facts:

  - Client receives a pension from the Boilermaker-Blacksmith National Pension Trust
  - He started his pension at age 72 and has received for 20 years; client is now age 92
  - Due to calculation error, he should have been receiving $300/mo instead of $348/mo
  - Fund wanted to recoup the $10,744 overpayment by stopping his pension until 8/2015

Appeal Arguments

1. Equitable – *Kapp v. Sedgwick CMS, AT&T Benefit Umbrella Plan 1,* 2013 WL 26051, 3 (S.D. Ohio, Jan. 2, 2013)

2. Breach of Fiduciary Duty

3. Conclusion – Unconscionable and Inconceivable

Kapp v. Sedgwick
6-Part Test

1. Amount of time that has passed since the overpayment started
2. The effect the recoupment would have on the beneficiary's income
3. The nature of the mistake by the administrator
4. The amount of the overpayment
5. The beneficiary's total income
6. The beneficiary's use of the money at issue

1. Amount of Time of Overpayment

Kapp – 8 years

My Client - 20 years

2. Effect of Recoupment on Income

Kapp - Plaintiff relied on the correctness of his payments, making innumerable financial decisions including: home improvements; kids' college choices and financial aid; charitable contributions; care for elderly parents.

Impact would likely be far more severe than that on the Trust.

My Client – Has relied on this payment for living expenses for 20 years. Income does not meet expenses. Client and wife cannot work. Far greater financial burden to Client than to Pension Fund.

3. Nature of Mistake by Administrator

Kapp – Oversight by administrator where pension was not offset by SSDI, despite notice by pensioner more than once.

My Client – Incorrect date and pension upward adjustment (for post-70.5 start) used by Administrator in complex calculation. Client would not be able to ascertain or comprehend this error.

4. Amount being Recouped

Kapp – Court held that a large accumulation of payments over time weighs against recovery and that the accumulation of eight years of overpayments would place a nearly unbearable financial burden.

My Client – Discontinuance of pension for a 20-year accumulation of overpayment would create an unbearable financial burden where Client already cannot meet his monthly expenses.

5. Total Income & 6. Use of Money at Issue

Kapp – Pensioner had made numerous financial decisions based on supposed correctness and repayment would have severe impact.

My Client – Also a severe impact. Client cannot meet his monthly basic living expenses – health insurance premiums, medications, utilities, insurance, and groceries.

Judgment Calls

- Did not use details of financial hardship
  - Client has money in the bank that he is using to meet his monthly expenses
  - Client's house and car are in disrepair
- Did not have Client's daughter phone into the board hearing

A Contrasting Case

Facts:

- Client began receiving his pension 12/1/01, at the incorrect amount of $699/mo.
- Correct amount $567/mo.
- Overpayment $17,028 – Due to clerical error
- Client was notified of the overpayment and Pension Fund was requesting full payment plus interest
- Interest being charged through the appeal that client started by requesting information
- Client cannot repay lump sum, but will not have a monthly financial hardship

Pension Fund Proposal

- Reduce Client's pension by $172/mo.
- Fund will be repaid at his life expectancy of 11.9166 years.
- Reduction will continue for remainder of Client's life to offset Plan's risk of death before 11.9166 years.
- In-house Counsel states this is standard procedure under the plan.