

Faits et procédure

1. Selon l'arrêt attaqué (Lyon, 14 avril 2020), à la suite d'un contrôle diligenté le 23 novembre 2015, la caisse d'allocations familiaales de la Loire (la caisse) a notifié le 30 mai 2016 à M. (M) (l'allocataire) un indu de prestations sociales, notamment au titre de l'allocation de logement à caractère social pour la période du 1er juin 2014 au 30 avril 2016.

2. L'allocataire a saisi d'un recours une juridiction de sécurité sociale.

Examen du moyen

Sur le moyen, pris en ses deuxième et troisième branches, ci-après annexé

3. En application de l'article 1014, alinéa 2, du code de procédure civile, il n'y a pas lieu de statuer par une décision spécialement motivée sur ces griefs qui ne sont manifestement pas de nature à entraîner la cassation.

Mais sur le moyen, pris en sa première branche

Énoncé du moyen

4. L'allocataire fait grief à l'arrêt de rejeter son recours, alors « que l'organisme ayant usé du droit de communication en application de l'article L. 114-19 de code de la sécurité sociale est tenu d'informer la personne physique ou morale à l'encontre de laquelle est prise la décision de supprimer le service d'une prestation ou de mettre des sommes en recouvrement, de la teneur et de l'origine des informations et documents obtenus auprès de tiers sur lesquels il s'est fondé pour prendre cette décision ; que cette obligation d'information doit être spontanément exécutée par l'organisme concerné ; qu'en se bornant à retenir, pour dire que l'allocataire aurait été informé de la teneur et de l'origine des informations et documents obtenus auprès de tiers sur lesquels la caisse d'allocations familiaales s'est fondée pour prendre sa décision, qu'il ressortait du rapport d'enquête que l'allocataire aurait reçu une information orale préalable à l'exercice du droit de communication, puis une autre information, toujours orale, postérieurement à la réception, par le contrôleur, des informations demandées aux divers organismes sollicités, sans rechercher, notamment dans les courriers en date des 30 mai 2016 et 20 septembre 2016, si la caisse d'allocations familiaales établissait avoir exécuté l'obligation de communication qui pesait sur elle, la cour d'appel a violé les articles L. 114-19 et L. 114-21 du code de la sécurité sociale. »

Réponse de la Cour

Vu les articles L. 114-19 et L. 114-21 du code de la sécurité sociale :

5. Selon le second de ces textes, l'organisme ayant usé du droit de communication en application du premier est tenu d'informer la personne physique ou morale à l'encontre de laquelle est prise la décision de supprimer le service d'une prestation ou de mettre des sommes en recouvrement, de la teneur et de l'origine des informations et documents obtenus auprès de tiers sur lesquels il s'est fondé pour prendre cette décision.

6. Cette obligation d'information constitue une formalité substantielle dont le non respect entraîne la nullité de la procédure de contrôle. Il doit y être satisfait avec une précision suffisante pour mettre la personne contrôlée en mesure de disposer d'un accès effectif, avant la mise en recouvrement de l'indu, à ces informations et documents.

7. Pour rejeter la demande de l'allocataire tendant à l'annulation de la procédure de contrôle, l'arrêt énonce qu'il ressort du rapport d'enquête établi par l'agent chargé du contrôle que l'allocataire a été informé, lors d'un premier entretien à son domicile, que le contrôleur aurait recouru au droit de communication auprès des banques pour obtenir les relevés bancaires qu'il refusait de lui fournir, que lors d'un entretien téléphonique ultérieur, il a été informé qu'il ne pouvait être considéré comme locataire au regard de divers éléments (absence de mouvements bancaires permettant de confirmer le versement d'un loyer, virements réguliers sur le compte du propriétaire ne correspondant pas au montant du loyer mais permettant de retenir une situation de vie commune, existence de divers virements provenant d'un compte en Suisse sur le compte de l'allocataire à la banque postale), et qu'enfin, il a été informé plus globalement de la faculté pour la caisse de mettre en œuvre le droit de communication prévu aux articles L. 114-9 et suivants du code de la sécurité sociale et de son droit à obtenir la communication des documents obtenus des tiers, et ce oralement lors d'un entretien, il constate que l'allocataire n'a sollicité la communication d'aucun document obtenu des tiers et retient que celui-ci a été informé de la teneur et de l'origine des informations et documents obtenus auprès des tiers sur lesquels la caisse s'est fondée pour prendre sa décision.

8. En statuant ainsi, la cour d'appel, qui n'a pas tiré les conséquences légales de ses constatations, a violé les textes susvisés.

PAR CES MOTIFS, la Cour :

CASSE ET ANNULE, en toutes ses dispositions, l'arrêt rendu le 14 avril 2020, entre les parties, par la cour d'appel de Lyon ;

Remet l'affaire et les parties dans l'état où elles se trouvaient avant cet arrêt et les renvoie devant la cour d'appel de Lyon, autrement composée.

Condamne la caisse d'allocations familiaales de la Loire aux dépens ;

En application de l'article 700 du code de procédure civile, rejette la demande formée par la caisse d'allocations familiaales de la Loire et la condamne à payer à la SCP Dellamaria et Jéhannin la somme de 3 000 euros ;

Sous-partie
= Énoncé
du moyen =

Chef de dispositif attaqué

Droit Au But 2nd Ed Cass

Tao Wei



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