

Federal Court



Cour fédérale

Date: 20230727

Docket: T-738-22

Citation: 2023 FC 1029

Toronto, Ontario, July 27, 2023

PRESENT: Justice Andrew D. Little

BETWEEN:

CHITRA RAMANATHAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant asks the Court to set aside a decision made by the Canada Revenue Agency (“CRA”) by letter dated March 9, 2022. The decision denied her application for benefits under the *Canada Recovery Benefits Act*, SC 2020, c. 12 (the “*CRB Act*”) because she did not meet the eligibility criteria.

[2] CRA concluded that the applicant did not earn at least \$5,000 of employment (before taxes) or net self-employment income in 2019, 2020 or in the 12 months before the date of her first application.

[3] The applicant's position is that CRA did not provide her with procedural fairness and that the decision was unreasonable under the principles in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[4] For the reasons below, I conclude that in the particular circumstances, CRA's decision must be set aside and the matter remitted back to CRA for redetermination.

I. Events Leading to this Application

[5] The applicant lives in Mississauga, Ontario. She is a self-represented litigant and characterized herself as a low income senior.

[6] Beginning in March 2020, the applicant applied for and received benefits under the *Canada Emergency Response Benefit Act*, SC 2020, c. 5 (the "*CERB Act*"). Those benefits continued until September 26, 2020. She then applied for payments under the *CRB Act*, which she received until February 13, 2021.

[7] On April 8, 2021, the applicant submitted documents in support of her CRB application.

[8] By letter dated July 16, 2021, CRA advised the applicant that she was not eligible for CRB payments because she did not meet the eligibility criteria. CRA advised the applicant that she did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020 or in the 12 months before the date of her first application.

[9] Following this decision, the applicant contacted CRA on several occasions.

[10] CRA's internal notes of communications with the applicant were recorded in CRA's T1 Case System.

[11] CRA's notes indicate that on October 7, 2021, the applicant called CRA because she had received a letter that she was ineligible for CRB payments. "Tp [taxpayer] stated that ... she had submitted all the necessary documents ... seem not to understand why she was denied." The CRA agent advised the applicant to follow the guidance in the letter if she disagreed with the decision. (The applicant was past 30 days to seek a second review but that was sorted out.)

[12] On October 8, 2021, the applicant called CRA and spoke to a CRA agent for assistance in applying for a second review. The agent advised the applicant to follow the directions provided at the bottom of the denial letter. The agent's entry stated that "tp [taxpayer] will follow the instructions and submit additional docs such as bank statements to prove the 5000\$ criteria has been met in 2019 – tp asked for badge ID # and was provided". The agent's entry also included a telephone number in the 905 area code, which was the applicant's home number. The entry noted that it was the "Best Number to Call" to reach her.

[13] By letter dated October 18, 2021, the applicant requested a review of CRA's decision. Her letter referred to CRA's first decision letter and to a "tele conversation" on October 8, 2021 with a CRA employee (whom she named and provided an ID number). The letter attached her Notice of Assessment for the 2019 tax year and a document she described as a "Bank statement for earnings remitted in her account: 'Statement of earnings in acc'".

[14] The applicant's 2019 Notice of Assessment showed total income in excess of \$5,000. It calculated her available RRSP contributions for 2020 based on 18% of her "earned income" in 2019, which exceeded \$5,000. The bank statement showed four credit entries in March and April 2019, from "Flex People Sol BUS", which totaled in excess of \$5,000.

[15] In an affidavit filed without objection on this application, the applicant advised that she had attached documents to her October 18, 2021, letter to CRA "as advised by a CRA agent" (as she also noted in her letter).

[16] The applicant telephoned CRA again on December 15, 2021. An agent's entry stated that she "called upset that she didn't understand why she stopped receiving benefit pay. Her 2019 tax slip indicates only \$999 yet her T4 she sees says \$5 999 she was asked to submit further docs" [sic]. The entry noted an internal inquiry and then stated: "if TP calls back she needs further docs to support 2019 income as stated above."

[17] The applicant telephoned CRA again on December 17, 2021 to inquire about the status of her file. The agent informed her that her file was in second review and was not assigned to a

reviewer yet. The agent could only see the first documents the applicant submitted before the first review. The applicant advised the agent that “there were also bank statements”. The agent “asked her to resubmit”. The agent could not find any notes stating that contact was made or attempted by a CRA reviewer. The entry confirmed that the telephone number on file was current and added her cell phone number.

[18] By letter dated December 17, 2021, the applicant resubmitted the contents of her letter dated October 18, 2021 and attached her 2019 Notice of Assessment and the bank statement, also as previously submitted. The applicant’s letter referred to her case number and stated:

Previously on Oct 8, 2021, I had been instructed in a tele conversation with Pam (ID: 38909) to upload a reply letter and documents under the reference number ... I had uploaded a letter and bank statement for the amounts in question.

I have now been advised to upload the same under the case #

I would like to dispute the following statement in your letter. All the available information has not been considered. Please reconsider the evaluation

[the applicant inserted an excerpt from CRA’s letter dated July 16, 2021]

I have earned more than \$5000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of your first application.

I attach the following documents as advised by Pam (ID: 38909) / Kirsten.

1. Notice of Assessment for taxes for 2019 submitted in 2020 ...
“23600 net income [amount listed in excess of \$5000]”
2. Bank statement for earnings remitted in account: “Statement of earnings in acc”

Please let me know if you require more information.

[19] As may be noted, this letter referred back to the applicant's conversation with an agent named Pam on October 8, 2021, and also referred to a conversation with another agent named Kirsten, both concerning the submission of back statements as documents to support her position on the second review.

[20] The applicant telephoned CRA on December 23, 2021, to follow-up again. The agent made a lengthy entry in the T1 Case System, which set out a discussion with the applicant, generally about how long the second review would take and what would happen.

[21] The agent advised the applicant that the second review had not been assigned to a reviewer yet and that "she will be contacted when their rwr [reviewer] looks into their information". The agent explained that CRA was working on a first in, first out basis and no timetable for the review could be provided. The applicant "expressed her frustration about the review of her 1st case, she said that her case was not reviewed properly and the [reviewer] did not call contact her at all and just provided denial letter without calling her first."

[22] The applicant asked the agent if she needed to contact CRA every day to make the process faster. The applicant recognized that it was not the agent's fault but was frustrated about the long wait. She requested to speak to a supervisor to express her frustration. The agent apologized for the inconvenience to the applicant and told her the agent would try their best to help her.

[23] The agent read the notes in the first review case and told the applicant the reason why her case had been denied previously (although the notes do not indicate what the agent told her).

[24] The applicant “insisted that she should have received a phone call from the rwr [reviewer] before the rwr made the decision”. The applicant insisted to speak to a supervisor. The agent advised the applicant that CRA “deals with these files on a FIFO [first in first out] basis”, and the “more supporting document she can provide the easier it would be for the assigned agent to process her case without having to request additional documents.” The applicant again insisted on speaking to a supervisor. The agent confirmed that the applicant could be reached at either her cell or home number.

[25] Later the same day, a CRA supervisor called the applicant. The supervisor called her cell phone first and left a voicemail, and then called her home number eight minutes later and reached the applicant. The supervisor confirmed the high volume of applications being considered by CRA and that the applicant “will receive a call when an officer is assigned the case”. The supervisor advised the applicant to “send supporting documents for business she had from self-employment bank statements, invoices, expenses if any”. The CRA entry noted that the applicant “stated she maybe out of the country advised to call before leaving the country” [*sic*].

[26] CRA assigned the applicant’s file to a second reviewer (the date was not disclosed in the affidavit filed by the respondent). The second reviewer reviewed the documents provided by the applicant and the T1 Case System notes.

[27] The second reviewer report dated March 7, 2022, revealed that the second reviewer attempted to reach the applicant on her cell phone on February 10, 2022, leaving a voicemail with contact information. The second reviewer called again on February 11, 2022, twice on her cell phone, approximately 3 hours apart, and did not reach the applicant.

[28] CRA then allowed to 21 days for the applicant to call back.

[29] I pause to note that it may be that the applicant was out of the country and did not receive the CRA agent's voice message in a timely way. The applicant's affidavit on this application was silent concerning her travel outside the country and about any voicemail from CRA during the second review. Although her written submissions indicated that she had no record of a phone call from CRA, I understood from her submissions during the hearing that she may have eventually received a voicemail message. However, as there is no evidence filed on this point, little can turn on it.

[30] There is no evidence to suggest that CRA left a substantive message about a need for additional information to support the applicant's bank statement, or provided a deadline to call back.

[31] After 21 days expired since leaving a voicemail, the second reviewer concluded that the applicant had not shown \$5,000 of net self-employment income, because she had not provided a T4 or pay stubs/invoices for the employment in 2019, and could not determine whether the deposits on the bank statements were valid self-employment income.

[32] The second reviewer's notes on March 7, 2021 stated that the applicant:

... submitted bank statements that only included their name and certain deposits from Flex people Sol which amount to over \$5000 from between the dates of 2019-03-04 to 2019-05-02. There is no matching T4 on file from "Flex people Sol" in 2019, and letter from TP does not state what this business/employment is. After 21 days of no contact or new documents from TP, they are ineligible.

[33] By letter dated March 9, 2022, CRA advised the applicant of the results of its second review of her application for CRB payments. CRA advised that she was not eligible, for the same reason stated in CRA's letter dated July 16, 2021.

[34] The applicant filed this application for judicial review of CRA's decision on the second review, which was memorialized in its letter to the applicant dated March 9, 2022.

II. Analysis

A. *The Parties' Positions*

[35] The applicant's position was that CRA's decision was unreasonable, because CRA did not explain why information in her bank statement showing income from Flex People Solutions was not considered employment income. The applicant argued that CRA's own records, namely her Notice of Assessment for 2019, confirmed that she had the necessary \$5,000 income to be eligible for the CRB. She noted that CRA had not disputed her reported income or sent her a Notice of Re-assessment.

[36] The applicant submitted that if she had received the information filed by the respondent during this application, she would have been able to understand CRA's position and provide more evidence to support her case. She told the CRA repeatedly that she did not understand the first decision rejecting her application for CRB benefits. She submitted that CRA's process was contrary to procedural fairness and natural justice and that she did not know the case to meet to prove her eligibility. She submitted that she had no record of receiving a telephone call from CRA to speak about her case and that she had to call CRA repeatedly about her second review.

[37] The respondent argued that the CRA complied with the low content requirements for procedural fairness owed to the applicant (citing *1680169 Ontario Limited v. Canada (Attorney General)*, 2019 FC 562; *Klopak Canada (Attorney General)*, 2019 FC 235; *Sherry v Canada (National Revenue)*, 2011 FC 1208; *Costabile v CCRA*, 2008 FC 943; and *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817).

[38] At the hearing in this Court, the respondent made submissions in response to a question concerning whether, in the applicant's specific circumstances, procedural fairness required that the applicant be given a further opportunity to be heard by actually contacting her and whether CRA did enough to discharge its procedural fairness obligations by attempting to call her cellular telephone as it did, leaving one voice message asking her to call back and then waiting 21 days before making its second review decision. The respondent referred to CRA's July 16, 2021 letter and the call notes to argue that the applicant had sufficient notice of the case to be met to prove her eligibility for CRB payments. The applicant was aware that there was a concern that she was not eligible and she had several chances to ask CRA agents for more guidance. The respondent

made specific representations about the factors in *Baker* and argued that the three attempts to contact the applicant met procedural fairness requirements. The respondent also noted that procedural fairness did not require a standard of perfection from CRA.

[39] The respondent also argued that the CRA decision was reasonable, including because it was reasonable for CRA not to accept solely a Notice of Assessment to prove sufficient income to support a claim for CRB payments (citing *Aryan v Canada (Attorney General)*, 2022 FC 139 and *Santaguida v Attorney General of Canada*, 2022 FC 523).

B. Was the Applicant deprived of Procedural Fairness?

[40] In my view, this application should be determined on the basis of whether CRA provided the applicant with procedural fairness.

[41] If a procedural fairness question arises on an application for judicial review, the Court determines whether the procedure used by the decision maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual(s) affected. While technically no standard of review applies, the Court's review exercise is akin to correctness: *Hussey v Bell Mobility Inc*, 2022 FCA 95, at para 24; *Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196, [2021] 1 FCR 271, at para 35; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 FCR 121, at paras 54-55; *Richardson v Canada (Attorney General)*, 2023 FC 548, at para 15; *Kotowiecki v Canada (Attorney General)*, 2022 FC 1314, at para 20; *Larocque v Canada (Attorney General)*, 2022 FC 613, at para 25.

[42] The determination of whether the duty of procedural fairness was met is context specific and must be assessed having regard to the circumstances of each case: *Baker*, at para 21; *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320, at para 30; see also *R. v Nahanee*, 2022 SCC 37, at para 53.

[43] These are unusual circumstances involving an initial refusal through a standard form decision letter, several detailed calls with CRA agents and a supervisor, information given to this applicant about the kind of information to file to show her eligibility upon which she expressly relied, and an express confirmation that CRA would call her before it made a second review decision.

[44] In my view, the narrow question raised by this application is whether, in the specific context of this case, procedural fairness required CRA to contact the applicant by telephone before it rendered a negative decision on its second review based on an absence of information to support or explain the deposits received from the single source as reflected in her bank statements, taken in the context of the earned income in her 2019 Notice of Assessment.

[45] I recognize that CRA published guidance about how to demonstrate eligibility and that CRA sent its July 16, 2021, correspondence to the applicant that referred to the kind of supporting documents she should file to support her position on the second review. I recognize that the notes of interactions with the applicant do refer to providing documents beyond bank statements. In addition, the evidence in this proceeding does not comprehensively answer all questions about the circumstances leading to this application.

[46] I agree with the respondent that the procedural fairness obligations on CRA are generally on the low end of the spectrum. The Court's recent decisions in *Richardson* and *Kotowiecki* confirm that the applicant had a right to be heard as a matter of procedural fairness (although those cases involved different factual circumstances than this case). None of the procedural fairness cases cited by the respondent captures the present circumstances.

[47] Referring to the fourth *Baker* factor, other decisions have assessed whether a taxpayer may have a legitimate expectation that CRA will follow a particular process when making a decision: see *Coscarelli v Canada (Attorney General)*, 2022 FC 1659, at paras 20-23, which refers to *Canada (Attorney General) v Mavi*, 2011 SCC 30, [2011] 2 SCR 504, at para 68, and *Agraira v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 SCR 559, at para 95; *Baker*, at para 26. It is clear that any such expectations arising from CRA's conduct may only affect the process and cannot give rise to any substantive rights: *Agraira*, at para 97; *Baker*, at para 26.

[48] In the present case, the applicant received the initial letter from CRA in July 2021 denying her benefits because she did not meet the minimum income required. The standard form letter did not state why her specific evidence was insufficient. The applicant was clear in her many calls with CRA that she could not understand why she did not meet the financial criteria and wanted to speak to the decision maker before a CRA reached its decision on the second review. In addition, CRA provided the applicant with a form of express advice or information concerning the filing of her bank statement to support her position, and she relied on that advice or information. When filing her 2019 Notice of Assessment and the bank statement as attached to

her October 2021 letter, the applicant referred CRA to the conversation with the agent on October 8, 2021 and she advised that she attached the documents “as advised by” the CRA agent. That conversation seems to have been reinforced in a later call with a second agent in December, as reflected in the applicant’s December 2021 letter (again, she attached the same documents “as advised by” the two CRA agents). In addition, through her calls on December 17 and 23, 2021, CRA was aware that the applicant expected a call from the second reviewer and CRA agreed to contact her during the second review.

[49] Based on the specific course of dealings and communications between the parties after the applicant received CRA’s first standard form letter denying her entitlement to benefits, and the reasons for the second reviewer’s decision after assessing the applicant’s evidence, I am persuaded that it was not sufficient for CRA only to call this applicant’s cell phone and leave a single call-back voicemail message, then wait 21 days for a response and render its second review decision without hearing from the applicant. Before CRA rendered a negative decision on the basis that it did, procedural fairness required CRA to communicate directly with this applicant about her second review request and the deposits shown in her bank statement and the income/earnings in her 2019 Notice of Assessment. CRA should have given her an opportunity actually to be heard before it rendered its second review decision on the basis that it did, but did not do so.

[50] Accordingly, I conclude that in the specific circumstances of this case, the CRA deprived the applicant of procedural fairness prior to making its second review decision.

[51] As a result of this conclusion, I do not need to consider whether CRA acted reasonably or unreasonably when it found that the applicant was ineligible based on the evidence in its possession.

[52] However, for clarity, I observe that this conclusion does not imply that everyone who seeks a second review of a denial of CRB benefits must be given an additional opportunity to be heard.

III. Remedy and Conclusion

[53] In her submissions, the applicant requested that CRA's decision be set aside and also asked for additional remedies. She requested that the Court find her eligible for the CRB payments she received and that she should not be assessed for an overpayment. She requested that the amount of CRB for the year 2020 which she paid back should be returned to her, and that she should be permitted to apply for and be granted additional CRB payments for the period after she was found ineligible.

[54] During the hearing, I also understood the applicant to say that she had already uploaded a "T4" for 2019 that confirmed her income. However, neither party attempted to file any such evidence on this application.

[55] The respondent opposed the additional remedies requested by the applicant.

[56] I agree with the applicant that the second review decision must be set aside. However, I agree with the respondent that the additional remedies should not be granted. It will be up to a reviewer at CRA on redetermination, rather than the Court on this application, to determine whether the applicant is eligible for benefit payments based on all the evidence.

[57] Exercising the Court's discretion under Rules 400 of the *Federal Courts Rules*, the respondent shall pay costs to the applicant, fixed at \$250.00 (inclusive of disbursements) under Rule 401(1).

[58] The respondent requested that the style of cause be amended to insert the Attorney General of Canada as the respondent. That will be ordered.

JUDGMENT in T-738-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed. The decision made by Canada Revenue Agency by letter dated March 9, 2021, is set aside.
2. The applicant's request for a second review is remitted back to Canada Revenue Agency for redetermination by a different officer, having regard to the procedural fairness findings leading to this Judgment.
3. The respondent shall pay to the applicant costs in the amount of \$250.00.
4. The style of cause is amended to insert the Attorney General of Canada as the respondent.

"Andrew D. Little"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-738-22

STYLE OF CAUSE: CHITRA RAMANATHAN v ATTORNEY GENERAL OF CANADA.

PLACE OF HEARING: OTTAWA, ONTARIO (VIDEOCONFERENCE)

DATE OF HEARING: MAY 29, 2023

REASONS FOR JUDGMENT AND JUDGMENT: A.D. LITTLE J.

DATED: JULY 27, 2023

APPEARANCES:

Chitra Ramanathan SELF REPRESENTED

Natasha Tso FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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