

Federal Court



Cour fédérale

Date: 20231120

Docket: T-246-23

Citation: 2023 FC 1534

Ottawa, Ontario, November 20, 2023

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JAVERIA REHMAN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of four decisions dated January 9, 2023 made by E. Thistle, Manager, Canada Emergency Benefits Validation [Officer] of the Canada Revenue Agency [CRA] determining that the Applicant was not eligible for the following benefits: the Canada Emergency Response Benefit [CERB], the Canada Recovery Benefit [CRB], the Canada Recovery Sickness Benefit [CRSB], and the Canada Recovery Caregiving Benefit [CRCB]. The

Applicant was deemed ineligible for these benefits because she had not demonstrated employment income or net self-employment income of at least \$5,000 in specific periods prior to her application for the benefits, as required by the relevant legislation.

[2] For the reasons that follow, I am dismissing the application. I am satisfied that the Officer's decisions are reasonable. The Officer considered all documentation submitted by the Applicant and determined it insufficient to support the Applicant's eligibility for the benefits. In essence, the Applicant disagrees with the Officer's assessment of her supporting documentation. It is not, however, the Court's role to reweigh and reassess the evidence on judicial review: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [Vavilov].

II. Background

A. *Applications for benefits*

[3] The CERB, CRB, CRSB, and CRCB are federal government measures that were introduced as a response to the COVID-19 pandemic to offer financial support to employed and self-employed Canadians.

[4] The Applicant applied for the following benefits covering the period of August 2, 2020 to July 3, 2021:

- CERB for the two-week periods from August 2, 2020 to September 26, 2020;
- CRCB for the two-week periods from September 27, 2020 to November 14, 2020;

- CRB for the two week periods from January 31, 2021 to April 24, 2021, and from May 9, 2021 to July 3, 2021; and
- CRSB for the two-week periods from April 25, 2021 to May 1, 2021.

[5] A simple attestation process was used to enable Canadians to access these benefits as quickly as possible. The CRA is responsible for substantiating all benefits issued and therefore seeks to validate payments where eligibility is in question.

[6] As part of its validation process, the CRA sent a letter dated July 25, 2022 to the Applicant requesting documentation to support her eligibility for the benefits she received. In response, the Applicant submitted a letter advising that as a result of an accident, she had been in receipt of “Employment insurance (regular) income replacement benefits” from TD Insurance in the amount of \$752.50 biweekly from 2017 until late July 2020. In support, the Applicant submitted two letters from TD Insurance confirming her eligibility for the income replacement benefit, as well as bank statements showing a biweekly deposit of \$752.50.

[7] In addition, the Applicant stated that she had reported a total income of \$7,476 in 2020 and submitted her 2020 income tax Notice of Assessment as support.

[8] Following receipt of this information, a CRA officer attempted to contact the Applicant three times, to inquire whether she had other income to declare or if she was employed prior to receiving these benefits. The officer was unable to reach her or leave a voicemail. In their Case

Specific Notes, the officer noted that the documents submitted by the Applicant did not support the requisite minimum income of \$5,000 in 2019, 2020, or 2021.

[9] By letters dated October 14, 2022, the officer informed the Applicant that she was not eligible for the benefits as she had not earned at least \$5,000 (before taxes) of employment or self-employment income in 2019, 2020, 2021, or in the 12 months prior to the date of her first application. The Applicant was advised that she could seek a review of the decision by another CRA officer.

B. *Second review*

[10] The Applicant requested a second review of her applications. She submitted supplementary documentation to prove that she earned over \$5,000 in self-employment income as the sole proprietor of Horizon International Services. According to the Master Business Licence issued by the Province of Ontario on September 30, 2020, Horizon International Services provides marketing and Amazon delivery services. In support, the Applicant submitted bank statements for her business for the period of December 14, 2020 to May 14, 2021, showing three payments from Amazon in January and February 2021.

[11] After reviewing all the documents submitted by the Applicant, as well as her 2019, 2020 and 2021 income tax returns on file, the second review officer determined that the Applicant did not have sufficient income to be eligible for the benefits. However, the officer created an Action Plan to inquire further about the Applicant's eligibility because the documentation submitted was

insufficient. The officer attempted to call the Applicant four times between November 22, 2022 and January 4, 2023, but received no response or option to leave a voicemail.

[12] After considering all the available information, the Officer issued four letters dated January 9, 2023, concluding that the Applicant was ineligible for the four benefits. The Officer determined that the Applicant was ineligible for the CERB as she had not earned at least \$5,000 (before taxes) of employment or self-employment income in 2019, or in the 12 months before the date of her first application. Further, she was ineligible for the CRB, CRSB, and CRCB because she did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months prior to her first application.

III. Issue and Standard of Review

[13] The issue for determination is whether the Officer erred in concluding that the Applicant was not eligible for the benefits.

[14] The applicable standard of review is that of reasonableness: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15. A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker”: *Vavilov* at para 85. It is thus incumbent on the Applicant to establish that the Officer’s decisions are unreasonable: *Vavilov* at paras 75, 100.

IV. Analysis

A. *Preliminary issues*

[15] The Applicant seeks judicial review of four decisions by way of a single Notice of Application. Pursuant to Rule 302 of the *Federal Courts Rules*, SOR/98-106 [*Rules*], an application for judicial review must be limited to a single decision or order, unless the Court orders otherwise. I appreciate that the Applicant is self-represented and would not have been aware of this rule. In addition, the Respondent did not object to the Applicant seeking review of the four decisions in the same application.

[16] This Court has recognized that closely linked decisions, arising under the same statute and reached by the same decision-maker, may be treated as a single decision: *Cob Roller Farms Ltd. v 9072-3636 Québec Inc (Écocert Canada)*, 2022 FC 1487 at para 14; *Burlacu v Canada (Attorney General)*, 2019 FC 1215 at para 21; *Council of the Innu of Ekuanitshit v Canada (Fisheries and Oceans)*, 2015 FC 1298 at para 49; *Whitehead v Pelican Lake First Nation*, 2009 FC 1270 at paras 51-52.

[17] In this case, given that the four decisions were made by the same decision-maker, on the basis of the same record, under two related statutes, and on the same legal basis, I am satisfied that the decisions are appropriately considered together as part of this application. In accordance with Rule 3 of the *Rules*, this is the most just, expeditious, and least expensive manner in which to proceed. I therefore grant the Applicant leave to bring this application against the four decisions.

[18] Counsel for the Attorney General of Canada raised the issue of the proper Respondent, noting that the Applicant had named the Canada Revenue Agency. I agree that, in accordance with Rule 303(2) of the *Rules*, the proper Respondent is the Attorney General of Canada. The Applicant did not object to the change to the Respondent. As a result, I ordered that the style of cause be amended to name the Attorney General of Canada as the Respondent.

B. *Decisions are not unreasonable*

[19] The Applicant alleges that the Officer erred in failing to consider all the relevant circumstances and documentation in finding that she was ineligible for the benefits. More specifically, the Applicant argues that the Officer failed to consider: (i) the income replacement benefits she received until July 2020 as a result of her accident; (ii) the self-employment income from her business in 2021; and (iii) the birth of her child in April 2020.

[20] In addition, the Applicant argues that the CRA News Release of February 9, 2021 [CRA News Release] did not mention that CRB applicants must have earned at least \$5,000 in net self-employment income.

(1) Legislative requirements

[21] To qualify for the CERB, in accordance with the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act], a person must have had a total income of at least \$5,000 from employment, self-employment, benefits under the *Employment Insurance Act*, or provincial allowances or benefits paid in respect of pregnancy or new-born care, for 2019 or the 12-month period before they applied for the benefits: *CERB Act*, s 2.

[22] The *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*] provides for the other benefits at issue: the CRB, CRSB, and CRCB. Similar to the CERB, an applicant must have had a total income of at least \$5,000 from employment, self-employment, benefits under the *Employment Insurance Act*, allowances, money, or other benefits paid to under a provincial plan because of pregnancy or care of new-born children or children placed with them for the purpose of adoption, and any other source of income that is prescribed by regulation: *CRB Act*, ss 3(1)(d), 10(1)(d), 17(1)(d).

[23] In addition, the *CRB Act* stipulates that income from self-employment is net income for the purposes of the CRB, CRSB, and CRCB. More particularly, it provides that “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”: *CRB Act*, ss 3(2), 10(2), 17(2).

(2) Insufficient evidence to demonstrate eligibility for benefits

[24] I do not agree with the Applicant that the Officer failed to consider relevant documentation in rendering their decisions. Rather, the Officer determined that there was insufficient evidence to demonstrate that the Applicant had the required employment or self-employment income during the relevant time periods.

(a) *Employment income*

[25] In support of her claim that she received more than \$5,000 in employment income in 2019 and until July 2020, the Applicant stated that she received income replacement benefits as a result of an accident. She submitted bank statements showing deposits of \$752.50 biweekly and

letters from TD Insurance stating she was eligible for these income replacement benefits because she was unable to return to her pre-accident employment. The second review officer noted, however, that these benefits were not declared as employment income on her 2019 and 2020 income tax returns. Indeed, the Applicant's income tax return reported income of \$1 in 2019 and a loss from self-employment income of \$25 in 2020.

[26] The Applicant claims that these benefits were tax-free and that is why they were not declared on her income tax returns. However, other than bank statements and letters from TD Insurance, the Applicant did not submit any other supporting documents to the CRA, either at the initial review or second review stage. There was therefore no documentation to support that these benefits would qualify as "employment income" in accordance with the *CERB Act*.

[27] Further, despite numerous calls made to request further information from the Applicant, the CRA officers were never able to reach her nor able to leave voicemails. Ultimately, the Officer determined that the documents submitted were insufficient to demonstrate that the Applicant had earned more than \$5,000 in employment income as required by the legislation. Without evidence that the income replacement benefits qualify as income in accordance with section 3 of the *CRB Act*, it was reasonable for the Officer not to treat these benefits as income.

[28] Significantly, in the Second Review Report, the second review officer noted that the Applicant's documents only related to "disability insurance payments received in 2018-2020 with no indication of eligible employment or self-employment earnings". The *CERB Act* and *CRB Act* both specify the benefits that qualify towards an individual's eligibility for the CERB, CRB, CRSB, and CRCB: *CERB Act*, s 2; *CRB Act*, ss 3(1)(d), 10(1)(d), 17(1)(d). Further, the

Applicant was advised by letter dated July 25, 2022 that disability benefits were not considered employment or self-employment income.

[29] In light of the limited information provided by the Applicant to support that she had earned \$5,000 in employment income as required by legislation, I cannot find the Officer's decisions unreasonable. In addition, it was reasonable for the Officer to rely on the fact that the Applicant had not reported any employment income in her 2019 or 2020 income tax returns to determine that she was ineligible: *Hayat v Canada (Attorney General)*, 2022 FC 131 at para 20; *Mathelier-Jeanty v Canada (Attorney General)*, 2022 FC 1188 at para 24.

[30] In her letter to the CRA after the first review, the Applicant stated that she reported a total income of \$7,476 in 2020 and she submitted her 2020 income tax Notice of Assessment in support. This Court has determined that while tax assessments can provide income information to the CRA about an applicant's eligibility, they neither prove that the applicant actually earned the income reported in their income tax return nor prove that their income was earned from an eligible source: *Hussain v Canada (Revenue Agency)*, 2023 FC 1382 at para 21; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 25.

[31] As already noted, the Applicant did not report any employment income in her 2020 income tax return, only a net loss from self-employment income. On judicial review, the Respondent pointed out that the Applicant did report "other income" of \$7,500 on her 2020 tax return, but that amount corresponds to the CERB and CRCB benefits received in 2020 and would not be eligible as employment income under the legislation: Respondent's Memorandum of Fact and Law at para 41. This was not, however, a reason advanced by the Officer for determining

that the Applicant was ineligible for the benefits and, therefore, was not considered by the Court: *Beddows v Canada (Attorney General)*, 2023 FC 919 at para 128.

[32] Finally, the Applicant raises a new issue before this Court, namely that she had a total reported income of \$8,501 in the 2021 taxation year: Applicant's Memorandum of Fact and Law at para 12. The Applicant attached her 2021 income tax Notice of Assessment to her Memorandum of Fact and Law as support. This Notice of Assessment does not appear in the Certified Tribunal Record, nor is it listed in the CRA notes as part of the documents received from the Applicant. The 2021 Notice of Assessment is, therefore, inadmissible before this Court as it was not before the Officer when they made their decision: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*].

(b) *Self-employment income*

[33] Similarly, with respect to self-employment income, the Applicant failed to substantiate that she earned \$5,000 in net self-employment income during the relevant time periods, as required by the *CRB Act*.

[34] In support of her claim of self-employment income, the Applicant submitted bank documents for a business account under her name, showing three payments from Amazon in January and February 2021. In addition, the Applicant submitted a Master Business Licence for Horizon International Services, a sole proprietorship listed in the Applicant's name, classifying the business activity as "marketing and Amazon delivery services".

[35] As the second review officer noted, the Applicant did not provide “invoices or receipts to substantiate these amounts and to verify they are related to self-employment”. In addition, the Applicant did not declare any self-employment income in her income tax return for the 2021 year. As set out above, despite making numerous efforts, CRA officers were unable to contact the Applicant for further information.

[36] Based on the information submitted by the Applicant and the non-reporting of any self-employment income in her 2021 tax return, it was reasonable for the Officer to conclude that there was insufficient information available to validate the Applicant’s eligibility for CRB, CRSB, and CERB.

(3) CRCB eligibility

[37] The Officer’s determination that the Applicant failed to meet the income eligibility threshold was sufficient to conclude that she was ineligible for the CRCB. However, I note that the Applicant states that she was also eligible for the CRCB because she had given birth to a child in April 2020: Applicant’s Memorandum of Fact and Law at para 8. This issue was not, however, raised before the Officer and cannot now be raised before this Court: *Access Copyright* at para 19.

[38] This said, the legislation makes clear that the CRCB was not payable upon the birth of a child. Rather, it was available to individuals who were required to stay home to care for a child who could not attend school or another facility for COVID-related reasons, or because the person

who usually cared for the child was unavailable due to COVID-19 related reasons: *CRB Act*, s 17(1)(f).

(4) CRA News Release

[39] The Applicant further argues that the CRA News Release “clearly defined the terms and conditions to access the Canada Recovery Benefit” and that it made no mention that self-employed individuals were required to have earned \$5,000 in net self-employment income to qualify for the CRB: Applicant’s Memorandum of Fact and Law at paras 14-17.

[40] However, the main purpose of the CRA News Release was to announce that “self-employed individuals who applied for the CERB and would have qualified based on their gross income would not be required to repay the benefit, provided they also met all other eligibility requirements”. The CRA News Release did not address the eligibility requirements for the CRB, CRSB, or the CRCB.

[41] Furthermore, as set out in paragraph 23 above, the legislation makes clear that self-employment income is net income for the purposes of eligibility for the CRB, CRSB, and CRCB. As previously determined by the Court, the eligibility criteria are statutory and non-discretionary, and officers are therefore bound to apply them: *Flock v Canada (Attorney General)*, 2022 FC 305 at paras 21, 23 [*Flock*]; *Davis v Canada (Attorney General)*, 2022 FC 1247 at paras 24, 29.

V. Conclusion

[42] Based on the foregoing, I am unable to find that the Officer made any reviewable error. It was for the Officer to assess the sufficiency of the evidence as part of their “fact-finding mission”: *Sjogren v Canada (Attorney General)*, 2023 FC 24 at para 43. Absent a fundamental misapprehension of the evidence, a reviewing court cannot intervene: *Vavilov* at para 126. Here, the Officer did not misapprehend the evidence, but rather found the evidence was insufficient to meet the legislative requirements.

[43] The Respondent seeks costs if successful on this application. However, having regard to all the circumstances, I decline to exercise my jurisdiction under Rule 400 of the *Rules* to award costs against the Applicant.

JUDGMENT in T-246-23

THIS COURT'S JUDGMENT is that:

1. The Applicant is granted leave to bring this application against the four decisions.
2. The style of cause is amended to name the Attorney General of Canada as the Respondent.
3. The application for judicial review is dismissed without costs.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-246-23

STYLE OF CAUSE: JAVERIA REHMAN v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: FREDERICTON, NEW BRUNSWICK

DATE OF HEARING: NOVEMBER 14, 2023

**JUDGMENT AND REASONS
FOR JUDGMENT:** TURLEY J.

DATED: NOVEMBER 20, 2023

APPEARANCES:

Javeria Rehman

FOR THE APPLICANT
ON HER OWN BEHALF

Caitlin Ward

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Halifax, Nova Scotia

FOR THE RESPONDENT