

Federal Court



Cour fédérale

Date: 20240402

Docket: T-1560-23

Citation: 2024 FC 506

Toronto, Ontario, April 2, 2024

PRESENT: Madam Justice Go

BETWEEN:

DAVID PELLETIER

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Canadian Government established the Canada Recovery Benefit [CRB] to provide income support for individuals who lost their employment during the COVID-19 pandemic by enacting the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act].

[2] Under the *CRB Act*, individuals who had applied for and received Employment Insurance [EI] benefits were considered ineligible for CRB although the legislation as it currently stands provides an exception for individuals who had received parental and maternity benefits: subsection 3(1)(h), *CRB Act*.

[3] Mr. David Pelletier received regular EI benefits from March 1, 2020 to November 14, 2020. He applied for CRB on December 1, 2020 after he exhausted his EI benefits. The Canada Revenue Agency [CRA] issued Mr. Pelletier CRB payments for seven two-week periods from November 8, 2020 to February 13, 2021, giving him \$1,000 for each two-week period.

[4] In a decision dated June 30, 2023, after a second review of Mr. Pelletier's eligibility, an officer from the CRA [Officer] found Mr. Pelletier ineligible for CRB for the first two-week period of November 8, 2020 to November 21, 2020 [the Period] because he had received EI benefits from November 8, 2020 to November 14, 2020 [Decision]. CRA asked him to pay back the full \$1000 of CRB he received for that two-week period. In addition, due to the overpayment issue, the CRA also withheld releasing to Mr. Pelletier his eligible tax refunds and tax credits.

[5] Before this Court, Mr. Pelletier argues the Second Review Decision was both not procedurally fair and unreasonable.

[6] While I am sympathetic to Mr. Pelletier's plight, I find the Decision reasonable and no procedural fairness breach.

II. Issues

[7] The main issue before me is whether the Decision was reasonable.

[8] The officer's reasons about CRB eligibility is reviewable on a reasonableness standard per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. See also: *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15. For issues of procedural fairness, no deference is owed to the decision-maker: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54 and 56.

III. Analysis

[9] As a starting point, I want to acknowledge Mr. Pelletier's sentiment that the overpayment was caused by a "communication problem" between the EI program and the CRA. However, I do not agree with Mr. Pelletier that there was no double payment because his CRB benefits were deposited on December 4, 2020. The CRB scheme was set up such that each payment was made to cover the two weeks that had just passed under a pay period schedule that was pre-set by the government, as per subsection 4(1) of the *CRB Act*. Thus, while Mr. Pelletier may have received his first CRB payment on December 4, 2020, it does not mean that payment did not overlap with his last regular EI benefit payment.

[10] But I do appreciate Mr. Pelletier's frustration with having to pay back the full \$1000 for the two-week period when there was only one week of overlap between his EI and CRB payments.

[11] Indeed, the *CRB Act*, as it now stand, does contemplate situations like Mr. Pelletier's, where there is a partial overlap between EI and CRB payments.

[12] According to section 9.1 of the *CRB Act*, where an individual's EI payment ends on the first week of the two-week CRB period, "the Minister may pay a benefit of \$300 to the person for the two-week period."

[13] Prior to the hearing, I asked the parties to provide further written submissions on how section 9.1 may apply to Mr. Pelletier's case. I have received submissions from the parties.

[14] In their further submissions, the Respondent submits that the failure to consider section 9.1 of the *CRB Act* did not render the Decision unreasonable because section 9.1 was not in force during the Period. Section 9.1 was enacted on June 29, 2021. Parliament made the decision to make section 9.1 of the CRB retrospective, but only to June 19, 2021: *Budget Implementation Act, 2021*, SC 2021, c 23 [*BIA*], section 301.

[15] Having reviewed the relevant legislative amendment, I agree with the Respondent.

[16] Section 9.1 was an amendment under the *Regulations Amending the Canada Recovery Benefits Act and the Canada Recovery Benefits Regulations*, SOR/2021-204 and *BIA*, section 292.

[17] The rationale for the amendment was set out in Canada Gazette, Part II, Volume 155, Number 18, and the relevant part reads as follows:

BIA 2021 amended the CRB Act to allow certain persons who were paid benefits under the *Employment Insurance Act* (EI Act) since September 27, 2020, to also receive benefits under the CRB Act. In cases where a person exhausts EI benefits during the first week of a two-week CRB benefit period, the person may be entitled to a gap-week \$300 benefit payment (the gap-week payment), equivalent to one week of the CRB entitlement. The intention of the gap-week payment is to provide additional income support to individuals who would otherwise have been eligible to receive the CRB (had they not received EI benefits for part of the CRB claim period). The \$300 gap-week payment is being prescribed as income to ensure that individuals cannot receive the CRSB or the CRCB for the same week that they received the \$300 payment.

[18] Unfortunately for Mr. Pelletier, Parliament did not see fit to extend the \$300 benefit payment to all CRB recipients, but only those who received the CRB benefit prior to June 19, 2021. Mr. Pelletier argued that because the CRA requested the repayment on November 24, 2022, the current *CRB Act* should apply. Even so, it does not change the fact that section 9.1 does not apply to someone in his situation due to the timing of his CRB payments.

[19] Other than the possible application of section 9.1 to Mr. Pelletier's case, I find no basis to set aside the Decision. The Officer made no reviewable error in finding that Mr. Pelletier's EI benefits overlapped with his first two-week period of CRB benefits. Nor do I find any breach of procedural fairness as Mr. Pelletier was provided with sufficient opportunities to make his case and did so to the best of his ability. The fact that the CRA did not consider section 9.1 does not amount to a breach of procedural fairness since this section does not apply to Mr. Pelletier's case.

[20] The Respondent initially asked for costs, but in their further submissions, they submit no costs should be ordered. I agree.

[21] I also decline to issue the remaining remedy Mr. Pelletier seeks because it falls outside of the scope of this application.

[22] At the hearing, counsel for the Respondent advised the Court that the CRA has released \$300 in tax refunds to Mr. Pelletier in light of his financial situation. Counsel further advised that the CRA has transferred back the \$193 climate action incentive into Mr. Pelletier's account, which may be refunded should there be no further debt. In his post-hearing submission, Mr. Pelletier confirms receipt of the \$300 tax refund but contends that there are other miscalculations in his account. As an *obiter*, I would encourage the CRA to consider to work with Mr. Pelletier on how to recover the overpayment without further aggravating his financial woes.

IV. Conclusion

[23] The application for judicial review is dismissed.

[24] There is no order as to costs.

JUDGMENT in T-1560-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1560-23

STYLE OF CAUSE: DAVID PELLETIER v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: FEBRUARY 8, 2024

JUDGMENT AND REASONS: GO J.

DATED: APRIL 2, 2024

APPEARANCES:

David Pelletier

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Damon Park

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Calgary, Alberta

FOR THE RESPONDENT