

Federal Court



Cour fédérale

Date: 20240705

Docket: T-1433-22

Citation: 2024 FC 1050

[ENGLISH TRANSLATION]

Ottawa, Ontario, July 5, 2024

PRESENT: Mr. Justice Pentney

BETWEEN:

MARINA PAQUET

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] In 2019, prior to the COVID-19 pandemic, Marina Paquet (the applicant) was working on a part-time basis for the Fondation pour le développement des régions (the Foundation) and for Croix Dorée services aux aînés, which provides transportation and home services to seniors. She had to stop providing her services in February 2020, when services were suspended as a result of the pandemic.

[2] Ms. Paquet applied for and received the Canada Emergency Response Benefit (CERB) for four two-week periods, beginning March 15, 2020, and ending July 4, 2020. In the context of an audit, a Canada Revenue Agency (CRA) officer determined that she was not eligible for the CERB, as she did not meet the criteria. In particular, the officer found that Ms. Paquet had not demonstrated that she had earned at least \$5,000 in net self-employment income in 2019, 2020 or the 12 months preceding the date of her first application.

[3] Following that decision, and after the Foundation provided more information on her pay, Ms. Paquet requested a second review of her CERB applications. On March 11, 2022, the officer rendered her decision that the applicant was not eligible for the CERB as a result of her failure to meet one specific criterion: having earned at least \$5,000 in net income in 2019 or in the 12 months prior to the day of her application.

[4] The applicant is seeking judicial review of that decision. In her view, the decision was unreasonable, given the evidence she had adduced.

I. Facts

[5] The applicant worked on a part-time basis for the Fondation pour le développement des régions in 2019 and 2020. The Foundation is a non-profit organization that provides transportation and home services to the elderly. The applicant did not receive a salary for her services, but the Foundation purchased a car, furniture, appliances and food in excess of \$5,000 for her in 2019. The applicant has also been receiving social assistance since 2008.

[6] During the pandemic, the applicant received the CERB for four two-week periods beginning March 15, 2020, and ending July 4, 2020.

[7] The CERB was part of the arsenal of measures introduced by the federal government starting in 2020 to alleviate the economic impacts caused by the COVID-19 pandemic. The CERB was a targeted monetary payment aimed at providing financial support to workers who suffered a loss of income due to the pandemic and who were not eligible for benefits under the Employment Insurance program.

[8] On October 9, 2020, the CRA determined that the applicant was not eligible for the CERB during any of the periods, as she failed to meet two criteria: (1) having earned at least \$5,000 in net self-employment income in 2019, 2020 or in 12 months preceding the date of her first application; and (2) not having stopped working or seen her work hours reduced because of COVID-19 (first review).

[9] Ms. Paquet stated that she has been receiving social assistance since 2008. Prior to the review of her CERB eligibility, the last employment income she had declared on her T4 were earnings of \$160. She did not declare any employment income on her initial tax return for 2019. In July 2020, during the review of her CERB eligibility, the Foundation issued a T4 indicating an amount of \$5,000, and Ms. Paquet adjusted her tax return, adding that amount to her income for the 2019 taxation year.

[10] On August 20, 2021, the Foundation sent an explanatory letter to the CRA, clarifying that Ms. Paquet's remuneration for her transportation and home assistance services for seniors from June 2019 to February 2020 had consisted of (i) the purchase of a car for the sum of \$3,500;

(ii) the payment of taxes on the car; (iii) repairs to the car; and (iv) the purchase of furniture and appliances valued at \$1,570.

[11] The applicant requested a second review. On March 11, 2022, the officer rendered her decision that the applicant was not eligible for the CERB because she failed to meet one specific criterion: having earned at least \$5,000 in net income in 2019 or the 12 months preceding the date of her first application. The judicial review application concerns this decision.

[12] The ineligibility decision was based on one key reason: the applicant had no employment income; she had only received benefits related to an exchange of service agreement with the Foundation. The officer noted that the Foundation had compensated the applicant in the form of furniture, a used car, appliances, etc., for a total value in excess of \$5,000. Ms. Paquet included as evidence:

- An invoice for \$3,500 for the purchase of a used car in the name of a third party;
- An invoice for \$1,570 for the purchase of appliances and furniture in her name; and
- Two letters from Sonia Gagnon of the Foundation indicating that the applicant had been paid in this way and that the applicant provided her services to the Foundation in exchange for furnishings in lieu of employment income.

[13] The officer found that all of that evidence showed that the applicant had no salary in 2019, only an agreement for the exchange of services. In addition, the invoice for the purchase of the used car is in the name of Sonia Gagnon (the Foundation's director), not in the applicant's name.

[14] The officer further added (in a section entitled [TRANSLATION] “Additional Comments or Concerns”) that the applicant had not declared any income for the years preceding the pandemic and had made an adjustment to her T4, adding income of \$5,000. In addition, she had no recent history of employment income prior to the adjustment, and her last reported employment income had been \$160 and dated back to 2008.

[15] For all of those reasons, the officer found that the applicant was not eligible for the CERB.

[16] The applicant is seeking judicial review of that decision.

II. Issues and standard of review

[17] The only issue in this case is whether the decision resulting from the second review was reasonable. The central issue in this case is whether the definition of “employment” in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8, includes work remunerated by goods and not solely by salary.

[18] There is also a preliminary issue: are the new explanations that the applicant has included in her memorandum admissible?

[19] The applicable standard of review is that of reasonableness, as prescribed in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], and recently confirmed in *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21.

[20] A decision will be considered unreasonable if the Court is satisfied that there are sufficiently serious shortcomings in the decision “such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov* at para 100). Under the principle of justification, when the decision has a particularly harsh impact on an individual’s rights and interests, the reasons provided must proportionately reflect the stakes (*Vavilov* at para 133).

III. Analysis

A. *Preliminary issue – new explanations*

[21] In her memorandum of fact and law, the applicant provided explanations with regard to her employment history, including grocery bills valued at \$2,400 paid by her employer for 2019. She declared that she had no recent employment income history because she did not know that she was required to report benefits to the CRA; and she provided reasons as to why the purchase of the vehicle was not in her name.

[22] The respondent argues that these arguments are new and were not before the decision maker at the time of the decision. According to the respondent, the Court may only consider evidence that was before the decision maker at the time of the decision and may not consider new evidence.

[23] The applicant argues that she would have sent this information to an officer assigned to her case, but given that she did not have the name of an officer, she did not know whom to contact to provide those additional details.

[24] Despite my sympathy for the explanation given by the applicant, I cannot consider the additional information she has provided. It is well established that, on judicial review, the Court generally cannot consider evidence that was not before the administrative decision maker (*Tseil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19.)

[25] Although this rule may seem technical, it serves an important purpose. In determining whether or not a decision is reasonable, the Court can only consider the information that was provided to the initial decision maker. The fact that other information could have been provided, but was not, does not make the initial decision unreasonable. A decision maker cannot be reproached for not having considered information which was never provided.

[26] With respect to the applicant's argument that she did not know the name of the officer to contact regarding her case, the record shows that an officer communicated with her, asking her to submit any additional information she wished to provide. Under the circumstances, this is all the CRA had to do to fulfill its obligations.

[27] In the circumstances of this case, I will review the decision solely on the basis of the evidence and information submitted to the CRA.

B. *Issue No. 2: was the decision reasonable?*

[28] The officer found that the applicant was ineligible for the CERB because she was not receiving a salary. The officer reviewed the evidence adduced by the applicant, including the

Foundation's explanations, invoices and other documents. The substance of the decision reads as follows:

[TRANSLATION]

The [applicant] did not receive a salary for the services she provided, but the company bought her a car, furniture, appliances and food, for a total, according to the [applicant], exceeding \$5,000 in 2019. To demonstrate her employment income, the [applicant] submitted an invoice for the purchase of a used car, and an invoice for the purchase of appliances and furniture. The invoice for the purchase of the car, in the amount of \$3,500, is in the name of Sonia Gagnon. The [applicant's] name is not on the invoice, so this amount cannot be considered employment income. With respect to the invoice for the purchase of appliances and furniture, although the [applicant's] name appears on the invoice, and a letter from the employer attests [that she] was paid in this way, this amount of \$1,570 cannot be considered as salary. This is an agreement for the exchange of services. In view of the documents submitted, the \$5,000 criterion cannot be considered to have been met.

[29] The applicant argued that the decision was unreasonable because the officer failed to consider the evidence she had submitted.

[30] I have already explained why I cannot take into account the additional information provided by the applicant. As the excerpt from the decision above shows, the decision maker referred to the information provided, but found that it did not show that the applicant had a contract of employment with the Foundation. I find no error in that analysis.

[31] The officer found that the invoice for the purchase of appliances and furniture in the amount of \$1,570 arose from an exchange of services agreement whereby the applicant supplied services to the Foundation to take care of its clients.

[32] I agree that the decision was reasonable. It was based on an internally coherent and rational chain of analysis, and it was justified in relation to the facts and law that constrain the decision maker (*Vavilov* at para 85). In *Vavilov*, the Supreme Court wrote that “absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from ‘reweighing and reassessing the evidence considered by the decision maker’” (at para 125). In this case, there are no exceptional circumstances that would warrant reweighing the evidence.

[33] While I have great sympathy for the situation in which the applicant finds herself today, I see no reason to call the CRA’s decision into question. The applicant has expressed frustration at not having had a single point of contact at the CRA to deal with her case, but the evidence in the record shows that she discussed her case with officers and was asked to provide additional information in support of her application.

[34] As the respondent indicated at the hearing, the parties may discuss the next steps toward an eventual recovery of the payments that were issued. The recovery terms are beyond the scope of this application.

[35] For all these reasons, the judicial review application must be dismissed. There is no award as to costs.

[36] I note, by way of postscript, that Ms. Paquet represented herself, but had the assistance of Sonia Gagnon in making her submissions to the Court. The Court wishes to express its appreciation to Ms. Gagnon and thank her for the assistance she provided during the hearing.

JUDGMENT in T-1433-22

THIS COURT'S JUDGMENT is as follows:

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

“William F. Pentney”

Judge

Certified true translation
Sebastian Desbarats

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1433-22

STYLE OF CAUSE: MARINA PAQUET v THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: QUÉBEC, QUEBEC

DATE OF HEARING: DECEMBER 7, 2023

**JUDGMENT AND
REASONS:** PENTNEY J

DATED: JULY 5, 2024

APPEARANCES:

Marina Paquet	ON HER OWN BEHALF
Simon Dufour	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montreal, Quebec	FOR THE RESPONDENT
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