

Federal Court



Cour fédérale

Date: 20240527

Docket: T-2353-23

Citation: 2024 FC 803

Toronto, Ontario, May 27, 2024

PRESENT: Madam Justice Go

BETWEEN:

Jananie Vincent

Applicant

and

Attorney General of Canada

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms. Jananie Vincent, the Applicant, seeks a judicial review of three decisions pertaining to her eligibility for three COVID-19 recovery benefit schemes: Canada Emergency Response Benefit [CERB], Canada Recovery Caregiving Benefit [CRCB], and Canada Recovery Benefit [CRB].

[2] Ms. Vincent was on maternity leave between June 2019 and June 2020. Prior to her maternity leave, Ms. Vincent was employed at the Peel District School as a Casual Designated Early Childhood Educator on an on-call basis. According to Ms. Vincent, she did not return to work at the end of her maternity leave because there was one week left in the school year and she had to care for her children.

[3] Ms. Vincent applied for and received the following COVID-19 recovery benefit payments:

- a. CERB for four four-week periods from June 7, 2020 to September 26, 2020.
- b. CRCB for twenty-one one-week periods from September 27, 2020 to February 27, 2021 and for two one-week periods from December 19, 2021 to January 1, 2022.
- c. CRB for seventeen two-week periods from February 28, 2021 to October 23, 2021.

[4] Ms. Vincent's eligibility for CERB, CRCB, and CRB was reviewed three times. After the second review and refusal of her eligibility for the benefits, Ms. Vincent lodged an application for leave and for judicial review. The matter was settled and discontinued and the second set of decisions were set aside and sent back for a further review.

[5] An Assessment, Account, Benefits Processing Officer [Officer] of Canada Revenue Agency [CRA] conducted a third review and informed Ms. Vincent on October 10, 2023 that she was ineligible for CERB, CRCB, and CRB [Third Decisions].

[6] Ms. Vincent now seeks a judicial review of the Third Decisions. While I am sympathetic to Ms. Vincent's situation, I dismiss the application for the reasons set out below.

II. Preliminary Issues

[7] There are four preliminary issues.

[8] First, the appropriate respondent should be the Attorney General of Canada.

[9] Second, Ms. Vincent seeks to judicially review three decisions under one Notice of Application, contrary to the Court's general practice pursuant to Rule 302 of the *Federal Courts Rules* (SOR/98-106). Justice Turley very recently addressed this issue in *James v Canada (Attorney General)*, 2024 FC 730 [*James*]. After citing the case law holding that closely linked decisions arising under the same statute and reached by the same decision-maker may be treated as a single decision, Justice Turley exercised her discretion to allow a single judicial review for three different decisions on COVID-19 recovery benefit payments eligibility: *James* at paras 16-17. I draw the same conclusion in the case at hand.

[10] Third, the Respondent asks the Court to disregard certain documents Ms. Vincent submitted as part of her affidavit that were not before the Officer. As a general rule, the Court will not consider evidence that was not before the decision-maker at the time the decision was rendered, subject to certain exceptions which are not applicable in this case: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access*

Copyright), 2012 FCA 22 at paras 19-20. I will therefore not consider the new documents that Ms. Vincent submitted to the Court.

[11] Fourth, at the hearing, I asked the Respondent to assist in removing all references to Ms. Vincent's social insurance number and the CRA Payroll account number contained in the Applicant's Affidavit and Application Record. The Court wishes to thank the Respondent for their assistance in this regard.

III. Issues

[12] Ms. Vincent's arguments raise issues relating to whether the Third Decisions were procedurally fair and reasonable.

[13] For issues of procedural fairness, the Court must consider whether the process followed was fair and just, paying attention to the nature of the rights at stake and consequences for the affected individuals. No deference is owed to the decision-maker. This is functionally the same as applying a correctness standard: *Canadian Pacific Railway v Canada (Attorney General)*, 2018 FCA 69 at paras 54, 56; *Minister of Citizenship and Immigration v Khosa*, 2009 SCC 12 at para 43; and *Canadian Association for Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35.

[14] For issues concerning the merits of an administrative decision, the default standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

IV. Analysis

A. *Legislative Framework for CERB, CRCB, and CRB*

[15] CERB, CRCB, and CRB were payment benefits the federal government introduced during the COVID-19 pandemic to offer financial support to employed and self-employed Canadians directly impacted by the pandemic.

[16] CERB was administered under the *Canada Emergency Response Benefit Act*, (SC 2020, c 5, s 8) [*CERB Act*], and the enabling legislation for CRCB and CRB is the *Canada Recovery Benefits Act*, (SC 2020, c 12, s 12) [*CRB Act*].

[17] The payment benefit schemes included certain eligibility requirements. The ones relevant to this judicial review are summarized below:

CERB: an applicant must have stopped working for reasons related to the COVID-19 pandemic (*CERB Act*, section 6).

CRCB: an applicant must have been unable to work at least 50% of their scheduled work week because they were caring for a family member who is a child under 12-years-old or in need of supervised care (*CRB Act*, paragraph 17(1)(f)).

CRB: an applicant must have lost work or experienced a 50% reduction in their average weekly income due to COVID-19 and must have been looking for work (*CRB Act*, paragraphs 3(1)(f) and 3(1)(i)).

B. *Did the Officer breach the duty of procedural fairness?*

[18] Ms. Vincent submits she was unfairly treated. Even though she explained her situation to CRA, Ms. Vincent submits she was not heard and CRA kept adding new reasons and criteria every time her eligibility was put under review.

[19] Ms. Vincent also submits that CRA erred by saying she worked as a Teaching Assistant when in fact she was employed as a Designated Early Childhood Educator. Ms. Vincent argues CRA failed to understand the nature of her job and assumed that everyone's situation was the same. This, Ms. Vincent submits, showed that CRA officers were not listening to or trying to understand her. At the hearing, Ms. Vincent further added that when she was trying to explain why she opted for virtual schooling for her child during the pandemic, the CRA officer noted that their own child was going to school, which was indicative of bias.

[20] I do not accept Ms. Vincent's arguments. My review of the record, including the Officer's case notes, indicates that the Officer attempted to call Ms. Vincent on four occasions, and spoke to her twice, during which Ms. Vincent was able to make representations on her eligibility for the payment benefits.

[21] The record also indicates that Ms. Vincent knew the reasons underlying the denial of her eligibility for all three decisions and was provided an opportunity to respond through submissions and phone conversations. The Officer asked Ms. Vincent about the school closure in her district in order to determine whether it was Ms. Vincent's own choice to go with virtual

schooling. The Officer referred to their own child as an example of showing that some school districts kept schools open. Considering all these factors, I agree with the Respondent that there was no breach of procedural fairness.

C. Were the Decisions reasonable?

[22] After the end of her maternity leave in June 2020, Ms. Vincent submits that she did not return to work because there was one week left before the summer break and she did not want to leave her children behind, which is why she decided to apply for COVID-19 recovery benefit payments. Ms. Vincent submits that after the summer, in September 2020, there were no permanent or long-term positions posted and she could not work on an on-call basis because she had to care for her children and could not afford daycare.

[23] Ms. Vincent disputes the Officer's finding that she quit her job and argues that there was no position for her to go back to. She submits CRA did not understand the nature of her job and wrongly assumed that everyone did the same job.

[24] Throughout her submission, and in her conversations with the Officer, Ms. Vincent appealed to her situation, explaining that she could not risk infecting her household because her children had health issues.

[25] I appreciate the reason why Ms. Vincent did not return to work at the end of her maternity leave, why she chose not to take on-call supply duties, and why she chose virtual schooling for her child. She made all these decisions based on what she considered to be in the

best interests of her family and, in particular, her children. Having made these choices, however, I find the Officer's assessment that Ms. Vincent was not eligible for the benefits she sought was reasonable.

[26] There are many overlaps in the Officer's assessment of Ms. Vincent's eligibility for the three benefits schemes. My comment on one decision may also apply to another.

[27] Starting with the CERB, the Officer found Ms. Vincent ineligible for three reasons over the course of the four four-week periods: a) she opted not to return to work following the maternity leave; b) during the summer months, Ms. Vincent was typically on Employment Insurance [EI] benefits but since she had already claimed all her EI benefits, she applied for CERB thinking it was the same thing; and c) Ms. Vincent did not call her employer for work; and decided to stay home with her children in order to minimize the risks to them, and she and her husband, who worked as a custodian at McDonald's, could not afford to pay for daycare.

[28] I have reviewed the materials, including Ms. Vincent's letter stating that she did not have permanent positions to return to, and that doing supply work would not have been suitable for her due to her family's situation. I find the Officer's determination was based on Ms. Vincent's submission, and the Officer reasonably concluded that Ms. Vincent did not return to work after her maternity leave EI had ended because there was one week left of the school year. The Officer reasonably determined that Ms. Vincent did not actively seek employment during the CERB payment periods, and voluntarily stayed home to care for her children because of high daycare costs and COVID-19 related risks.

[29] With respect to the CRCB, Ms. Vincent provided a similar explanation for why she applied for the benefit, i.e., she could not get EI, she had to stay home to look after her children, and daycare would cost too much. The Officer also asked Ms. Vincent to provide information about the school closure, which Ms. Vincent did not do. Based on the information provided, the Officer reasonably found Ms. Vincent ineligible for CRCB.

[30] Finally, with respect to the CRB, Ms. Vincent advised the Officer that she applied for CRB because she tried to get whatever benefit available as she was not able to access EI as she has done in past years. Ms. Vincent confirmed that she was not looking for work but instead chose to stay home to care for her children.

[31] One of the main reasons why Ms. Vincent decided to stay home was due to her older child's health issues and her concern about exposing her children to COVID-19 should she continue to work as supply staff. While Ms. Vincent's decision was both sensible and understandable, she did not provide evidence to show that her situation fell under paragraph 17(1)(f) of the *CRB Act*, which makes a person eligible for CRCB if:

(f) they have, as an employee, been unable to work for at least 50% of the time they would have otherwise worked in that week — or they have, as a self-employed person, reduced the time devoted to their work as a self-employed person by at least 50% of the time they would have otherwise worked in that week — because

(i) they cared for a child who was under 12 years of age on the first day of the week because

(A) the school or other facility that the child normally attended was, for reasons related to COVID-19, closed, open only at certain times or open only for certain children,

(B) the child could not attend the school or other facility because

(I) the child contracted or might have contracted COVID-19,

(II) the child was in isolation on the advice of a medical practitioner, nurse practitioner, person in authority, government or public health authority for reasons related to COVID-19, or

(III) the child would, in the opinion of a medical practitioner or nurse practitioner, be at risk of having serious health complications if the child contracted COVID-19, or

(C) the person who usually cared for the child was not available for reasons related to COVID-19 [...]

[32] In this case, Ms. Vincent did not provide information about school closures, if any, nor did she submit any medical document to show that her child contracted, or might have contracted COVID-19, or a letter from a health professional indicating that her child was at risk of having serious health issues if her child contracts COVID-19.

[33] As the Respondent submits, the eligibility criteria established under the *CERB Act* and *CRB Act* are statutory and non-discretionary and CRA officers are bound to apply them: see for example *James* at para 24; *Davis v Canada (Attorney General)*, 2022 FC 1247 at para 24; and *Rehman v Canada (Attorney General)*, 2023 FC 1534 at para 41.

[34] I acknowledge Ms. Vincent's explanation to the Officer about the precarity of the pandemic and her inability to work on an on-call basis because of fears of infection. Ms. Vincent, unfortunately, did not present any evidence to demonstrate that she lost her employment or was unable to work for reasons related to COVID-19 or that she had to stay behind to care for her children because of reasons prescribed by the benefit schemes.

[35] Given the relevant statutory requirements noted above, and the evidence before them, the Officer's conclusion that Ms. Vincent did not meet the eligibility criteria for the COVID-19 recovery benefit payments she applied for and received, was reasonable.

[36] As an *obiter*, I acknowledge Ms. Vincent's difficult situation. At the hearing, Ms. Vincent expressed that she does not wish to have any further engagement with CRA over these benefits. However, Ms. Vincent may wish to discuss her situation with CRA with a view to mitigate the burden that may come with repaying all the benefits.

V. Conclusion

[37] The application for judicial review is dismissed.

[38] There is no order as to costs.

JUDGMENT in T-2353-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. The style of cause is amended to name the Attorney General of Canada as the Respondent.
3. The Respondent shall file redacted versions of the Applicant's original Affidavit and Record within 30 days from the date of this decision.
4. The Registrar shall replace the Applicant's original Affidavit and Record with the redacted versions within 7 days after they are filed by the Respondent. The Registrar shall then publish the decision.
5. There is no order as to costs.

"Avvy Yao-Yao Go"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2353-23

STYLE OF CAUSE: JANANIE VINCENT v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 23, 2024

JUDGMENT AND REASONS: GO J.

DATED: MAY 27, 2024

APPEARANCES:

Jananie Vincent

FOR THE APPLICANT
(ON THEIR OWN BEHALF)

Mira Amin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT