

Federal Court



Cour fédérale

Date: 20240104

**Dockets: T-2476-22
(T-2478-22)**

Citation: 2024 FC 17

[ENGLISH TRANSLATION]

Ottawa, Ontario, January 4, 2024

PRESENT: Madam Justice Walker

BETWEEN:

SAMIA MILAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Samia Milan, was a self-employed real estate agent in Montréal. She explained that, with the emergence of the COVID-19 pandemic in 2019, she was no longer able to perform her client representation and solicitation activities owing to the impossibility of

visiting homes and, after the easing of public health measures, the increase in prices and interest rates. The applicant pointed out that she lost a lot of money from 2020 to 2022 despite her diligent efforts, and that her work in the real estate sector remains paralyzed.

[2] The applicant therefore applied for the following benefits:

- The Canada Recovery Benefit (CRB) for 27 periods (the maximum number) of two weeks (September 27, 2020, to October 9, 2021); and
- The Canada Worker Lockdown Benefit (CWLB) for periods 1 to 3 and 14 to 16, for a total of six periods (between October 24, 2021, and February 12, 2022).

[3] Before the Court, the applicant also appears to be requesting the CRB payment for a 28th period, but the maximum number of two-week periods for which the CRB can be paid to a taxpayer is 27 (section 2 of the *Canada Recovery Benefits Regulations*, SOR/2021-35).

[4] The CRB and the CWLB are part of the arsenal of measures introduced by the federal government starting in 2020 to alleviate the economic impact caused by the COVID-19 pandemic. These were targeted monetary payments designed to provide financial support to workers who suffered a loss of income as a result of the pandemic and who could not benefit from the protection offered by the usual Employment Insurance plan. The Canada Revenue Agency (CRA) is the federal agency responsible for administering the CRB and CWLB.

[5] The CRA paid the applicant the CRB for 27 periods on the basis of her applications. However, at the time of their creation, the CRA put the applicant's applications for CWLB benefits on hold on submission, pending a review of the applicant's eligibility for both CRB and CWLB benefits. No CWLB benefits were paid to the applicant.

[6] Subsequently, the CRA undertook an initial verification of the applicant's eligibility for the benefits she had applied for. On May 4, 2022, the CRA issued two first review decisions concluding that the applicant was ineligible for the CRB and the CWLB because she did not meet the eligibility criteria requiring her to have earned at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, and 2021, or in the 12 months before the date of her first application. In addition, for the CWLB, the first refusal letter indicates that the region where she lived, worked or provided a service was not designated as a COVID-19 lockdown region.

[7] On the same day, May 4, 2022, the applicant sent the CRA a request for a second review of her CRB and CWLB files.

[8] The second review of the benefit applications was carried out by a second CRA validation agent (the Officer). As part of her review, the Officer recorded her notes in the CRA systems and prepared a Second Review Report for both benefits applied for. The Report forms part of the reasons for the Officer's decisions (*Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22 (*Aryan*)).

[9] On November 4, 2022, the CRA confirmed the denial of the applicant's benefits applications (the Decisions) on the basis that she had not earned at least \$5,000 (before taxes) in employment income or net self-employment income in 2019, 2020, and 2021, or in the 12 months before the date of her first application, and on the grounds that

- A. In the case of the CRB, (1) her reasons for not working were unrelated to COVID-19; and (2) she had not had a 50% reduction in her average weekly income compared with the previous year for reasons related to COVID-19.
- B. In the case of the CWLB, her reasons for not working were not considered reasonable or related to a COVID-19 lockdown.

[10] The applicant now seeks judicial review of the Decisions.

[11] On February 8, 2023, the Court consolidated the applicant's two applications for judicial review (T-2476-22, T-2478-22), and Docket No T-2476-22 was designated as the lead case. The reasons and judgment deal with both applications.

[12] For the reasons that follow, these applications for judicial review will be dismissed.

II. Analysis – reasonableness of the Decisions

[13] The determinative issue in this case is whether the Officer's conclusion that the applicant is not eligible to receive the benefits she applied for because she does not meet the minimum income requirement is reasonable. This conclusion is the Officer's key conclusion, and the parties' arguments revolve around the "net" income requirement, not the gross self-employment income of at least \$5,000 (subsection 3(2) of the *Canada Recovery Benefits Act*, SC 2020, c 12 (the *CRBA*); subsection 4(2) of the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26 (the *CWLBA*)).

[14] As correctly argued by the respondent, the standard of review applicable to the merits of the Officer's Decisions is reasonableness (*Canada (Minister of Citizenship and Immigration) v*

Vavilov, 2019 SCC 65 at paras 10, 23–25 (*Vavilov*); *Sid Seghir v Canada (Attorney General)*, 2022 FC 466 at para 6; *Aryan* at paras 15–16).

[15] When the applicable standard is reasonableness, the role of the Court is to examine the reasons the administrative decision maker provided and determine whether the decision is based “on an internally coherent and rational chain of analysis” and is “justified in relation to the facts and law that constrain the decision maker” (*Vavilov* at para 85). I must therefore ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility” (*Vavilov* at para 99).

[16] The applicant argues that the Decisions were wrong because, when she applied for the CRB and CWLB benefits, there was no indication that the requirement for eligible self-employment income of at least \$5,000 referred to net income rather than gross income. She says that she consulted the CRA questionnaires to determine her eligibility for benefits. She states that the questionnaires did not mention net self-employment income. The applicant also suggests that a CRA officer informed her that she was eligible for the benefits she applied for.

[17] Subsection 3(1) of the *CRBA* establishes the eligibility criteria for the CRB. The income criterion is set out in paragraph 3(1)(d). Subparagraph 3(1)(d)(ii) provides that a person is eligible for the CRB if “they had, for 2019 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from . . . self-employment”. Subsection 3(2) requires that “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”.

[18] In turn, subparagraph 4(1)(d)(ii) and paragraph 4(1)(e) of the *CWLBA* provide that a person is eligible for the CWLB in the case of an application made in respect of a week beginning in 2021 or in 2022 if they had, for 2020 or for 2021 or in the 12-month period preceding the day on which they make the application, a total income of at least \$5,000 from self-employment, and subsection 4(2) provides that “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”.

[19] The eligibility criteria set out in subsection 3(2) of the *CRBA* and in subsection 4(2) of the *CWLBA* are statutory. Contrary to the applicant’s submission, as of their respective coming-into-force dates, both subsections clearly require that relevant income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue, which constitutes net income. The *CRBA* came into force on October 2, 2020, and the *CWLBA*, on December 17, 2021.

[20] The applicant reported the following business income:

Year	2018	2019	2020	2021
Gross income	\$9,240	\$10,294	\$7,912	\$12,024
Net income	\$1,324	\$907	(\$5,595)	(\$4,319)

[21] The applicant’s evidence shows that her net income is below the \$5,000 minimum threshold for the relevant periods. Her net business income in 2019 is \$907 and she reports a net loss for the 2020 and 2021 taxation years (-\$5,595 and -\$4,319, respectively). In addition, her other reported income is not eligible for the \$5,000 calculation. For example, for the 2020 taxation year, she reports having received \$1,500 in employment insurance benefits, \$4,015 in

social assistance benefits and \$20,000 in other income (Canadian Emergency Response Benefit and CRB payments).

[22] For the purposes of the definitions in subsection 3(2) of the *CRBA* and subsection 4(2) of the *CWLBA*, the applicant's net income from self-employment in the qualifying time periods was below the minimum threshold or negative. Accordingly, she did not meet the criteria set out in subparagraph 3(1)(d)(ii) of the *CRBA* and subparagraph 4(1)(d)(ii) of the *CWLBA*.

[23] This Court has already rejected the applicant's principal argument that the online questionnaires take precedence over the legislation and that the questionnaires did not mention "net income". In *Flock v Canada (Attorney General)*, 2022 FC 305 (*Flock*) (aff'd *Flock v Canada (Attorney General)*, 2022 FCA 187), the Court notes that "[t]he eligibility criteria established by s 3(2) of the *CRBA* are statutory and non-discretionary. The Officer had no choice but to apply them" (*Flock* at para 23; see also *Davis v Canada (Attorney General)*, 2022 FC 1247 at paras 24–26 (*Davis*)). Even if the applicant may have reasonably believed she would be eligible for the CRB and the CWLB, I agree with the respondent. The eligibility criteria established by the *CRBA* and the *CWLBA* supersede the information available online. The Officer had no choice but to apply the statutory criteria.

[24] The applicant has not persuaded me that the Decisions are wrong with respect to the net income eligibility criterion. Fundamentally, the applicant is asking the Court to ignore subsection 3(2) of the *CRBA* and subsection 4(2) of the *CWLBA*. However, the CRB and the CWLB are benefits that were created by statute and the Court cannot ignore the law. I therefore

conclude that it was not unreasonable for the Officer to determine that the applicant was not eligible for either the CRB or the CWLB as she did not meet the minimum income criterion. This finding is justified in relation to the facts and relevant provisions of the *CRBA* and the *CWLBA* that constrain the CRA (*Vavilov* at para 85).

[25] The applicant had to meet all the criteria to be eligible to receive the CRB and/or the CWLB (*Lalonde v Canada (Revenue Agency)*, 2023 FC 41 at para 47; *Davis* at para 26).

Therefore, failure to meet one single criterion results in the loss of benefits. I acknowledge the applicant's arguments regarding the negative effects of the pandemic on her work in the real estate sector, but it is not necessary for me to address these arguments. However, in light of my finding that the applicant does not meet the eligibility criterion of a minimum income, I will not examine the other criteria considered in the Decisions, namely, that the applicant was not working for reasons other than COVID-19, and she did not have a 50% reduction in her average weekly income compared to the previous year for reasons related to COVID-19. With the exception of the CRA's online documents regarding eligibility for the CRB (including the online CRB questionnaire) and for the same reason, I will not consider certain evidence filed by the applicant with the Court, which had not been filed with the CRA at the time of the second review.

[26] I must emphasize that my finding that the Officer did not err in concluding that the applicant does not meet the minimum income criterion should not be taken to imply dishonesty on the part of the applicant. The evidence on the record and the applicant's written and oral arguments demonstrate that she honestly believes in her eligibility for the CRB and the CWLB.

III. Conclusion

[27] The applicant's applications for judicial review are dismissed.

[28] The respondent is seeking costs, but in light of all the circumstances, I am exercising my discretion not to award costs.

JUDGMENT IN T-2476-22 AND T-2478-22

THE COURT’S JUDGMENT is as follows:

1. The applicant’s applications for judicial review are dismissed.
2. No costs are awarded.
3. A copy of this judgment and the reasons will be placed in each of the following Court files: T-2476-22 and T-2478-22.

“Elizabeth Walker”

Judge

Certified true translation
Daniela Guglietta

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: T-2476-22, T-2478-22

STYLE OF CAUSE: SAMIA MILAN V ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: NOVEMBER 7, 2023

JUDGMENT AND REASONS: WALKER J.

DATED: JANUARY 4, 2024

APPEARANCES:

Samia Milan FOR THE APPLICANT

Helen Felemegos FOR THE RESPONDENT
Olivier Charbonneau-Saulnier

SOLICITORS OF RECORD:

Attorney General of Canada FOR THE RESPONDENT
Montréal, Quebec