

Federal Court



Cour fédérale

Date: 20240620

Docket: T-2699-23

Citation: 2024 FC 960

Ottawa, Ontario, June 20, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

SWARSATTIE WILLIAMS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a decision made by a benefits compliance officer [Officer] of the Canada Revenue Agency [CRA] dated December 1, 2023. The decision was a reconsideration of the Applicant's eligibility for the Canada Recovery Caregiving Benefit [CRCB], established under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act]. The Officer determined that the Applicant was eligible for one period of the weekly CRCB but not for the other periods in 2021 and 2022, for which the Applicant applied and received payments, as her scheduled

workweek was not reduced by at least 50% because she was caring for a family member for reasons related to COVID-19.

[2] The Applicant asserts that the decision is unreasonable because she meets the eligibility criteria for the CRCB and that she was denied procedural fairness.

[3] For the reasons that follow, I am not satisfied that the Applicant has established any basis for the Court's intervention. Accordingly, the application for judicial review shall be dismissed.

I. The CRCB Regime

[4] The CRCB was a benefit program established by Parliament under the *Act* in response to the COVID-19 pandemic to give financial support to employed and self-employed Canadians unable to work because they must care for their child under 12 years old or a family member who needed supervised care. The CRCB was available to eligible persons and provided \$500 for any week falling between September 27, 2020, and May 7, 2022.

[5] In order to establish their eligibility for the CRCB, a person must satisfy the requirements set out in section 17 of the *Act*. A person must, among other things, demonstrate that: (i) they earned \$5,000 in a designated 12-month period from an eligible source, such as employment or self-employment income; and (ii) they were unable to work at least 50% of the time they would have otherwise worked in that week because they were caring for a child under 12 years of age, or a family member requiring supervised care, for specified reasons related to COVID-19.

[6] Section 20 of the *Act* stipulates that an applicant must provide the Minister with any information that the Minister may require in respect of the application.

II. Background

[7] The Applicant is a dressmaker and fashion designer who applied for 23 CRCB periods: (a) periods 57–78 (October 21, 2021–March 26, 2022); and (b) period 81 (April 10, 2022–April 16, 2022). However, the Applicant subsequently requested that her application for periods 76–78 and 81 be cancelled.

[8] The CRA's notes indicate that on May 24, 2022, the CRA conducted a review of the Applicant's CRCB eligibility. In doing so, the CRA reviewed the Applicant's tax slips on file and her income tax returns for 2019 (net business income of -\$182), 2020 (net business income of -\$146 plus employment insurance and other benefits amounting to \$13,500) and 2021 (net business income of -\$116 and total income of \$26,184). That same month, the CRA spoke with the Applicant, who informed the CRA that she did not earn \$5,000 of net employment or self-employment income in 2019, 2020 or 2021, (but did receive over \$5,000 in employment insurance in 2020) and that she had not worked since 2007 as she was taking care of her children.

[9] In a decision dated June 9, 2022, the CRA advised the Applicant that she was not eligible for CRCB for all periods for which she applied because: (a) 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 before the date of her first application; and (b) she was not employed or self-employed on the day before her first application period.

[10] On August 29, 2022, the Applicant requested a second review of her CRCB applications. The Applicant submitted additional documents for the second review, including an invoice dated May 20, 2020, for dresses totalling \$5,750 and a Notice of Reassessment showing a change of net self-employment income for 2020 from -\$146 to \$5,750.

[11] On October 13, 2022, the CRA reviewed the Applicant's documentation and spoke to her by phone. During this call, the CRA's notes state the Applicant shared that she had been making dresses for a long time, but became sick and that the invoice she provided was a one-off project, after which she again became sick due to a chronic illness. The Applicant also stated she was paid in cash and did not deposit the income in her bank account.

[12] In its second review decision dated November 14, 2022, the CRA again advised the Applicant that based on their review she was ineligible for the CRCB payments she received. In addition to the two reasons provided in their letter dated June 9, 2022, the CRA also stated that the Applicant's scheduled workweek was not reduced by at least 50% because she was caring for a family member for reasons related to COVID-19.

[13] On November 25, 2022, the Applicant requested another review of her CRCB eligibility.

[14] On July 6, 2023, the CRA spoke to the Applicant by phone and reviewed the additional documents she provided, which included a statement by the Applicant that she primarily deals in cash, photos and testimonials from previous customers and photos of the Applicant's workshop and materials.

[15] In a decision dated September 14, 2023, the CRA denied the Applicant's eligibility for CRCB for all periods in which the Applicant applied. Specifically, the CRA stated that the Applicant did not earn at least at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months before the date of her first application.

[16] The Applicant sought judicial review of the CRA's September 14, 2023 decision. However, the Minister agreed to reconsider the matter and the Applicant discontinued her judicial review application.

[17] In November of 2023, a new CRA officer conducted a fresh review of the Applicant's CRCB eligibility.

[18] According to the CRA's notes, during a call on November 2, 2023, the Applicant stated, among other things, that: (a) her self-employment income was impacted by COVID-19 as she was unable to make dresses since weddings and social events had stopped and clients were not able to enter the Applicant's home for her to take measurements; (b) she did not complete any self-employment work in 2020 or 2021 and the \$5,750 in self-employment income reported in her 2020 taxes was from work she completed in 2019, but for which she did not receive payment until 2020; and (c) the negative amounts claimed on her 2019 and 2021 tax returns for net self-employment income were correct and that the invoice submitted is the only one she has.

[19] According to CRA's notes, during a call on November 23, 2023, the Applicant stated she would send screenshots of chats with clients to support that she was looking for work during the

CRCB application periods. That same day, the Applicant submitted additional screenshots showing her interactions with clients on Facebook.

[20] In a decision dated December 1, 2023 (which is the decision under review), the Officer denied the Applicant's eligibility for periods 57–61 and 63–75, but found the Applicant eligible for period 62. The letter stated that the Applicant was ineligible for periods 57–61 and 63–75 because her scheduled workweek was not reduced by at least 50% because she was caring for a family member for reasons related to COVID-19.

[21] The Officer's reasons for decision are further particularized in their notes. These notes detail the documents the Officer reviewed and the statements made by the Applicant during numerous phone calls with the CRA regarding her eligibility for the CRCB. The final paragraph of the Officer's notes states:

Had another conversation with applicant on 2023-11-14, the applicant stated that they were unable to dedicate 50% of their time to their self-employment during their CRCB applications periods as they were caring for their children and did not have any clientele to create dresses for. During conversation with the applicant on 2023-11-21, the applicant agreed that they did not have any work planned during their CRCB (Periods 57-61, 63-75) applications, therefore having their children at home due to COVID-19 did not affect their self-employment during these periods. The applicant stated that they were not actively seeking clients during these application periods. The applicant stated that if the COVID-19 restrictions were lifted, social events were occurring and a client was interested in their services, they would complete the work (but this did not happen due to COVID-19).

III. Preliminary Issue

[22] The Respondent asserts that a portion of Exhibit B and all of Exhibits C and E to the Applicant's affidavit are inadmissible, as the documents were not before the Officer when they rendered their decision. Exhibit B consists of 18 pages of social media posts/messages (of which only one message was before the Officer). Exhibit C is a letter from a physician confirming that one of the Applicant's children has special needs. Exhibit E consists of three pages of social media posts.

[23] As a general rule, materials that were not before the decision-maker are not admissible on judicial review [see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19]. There are certain recognized exceptions to this general rule, such as where the new evidence: (i) provides general background that might assist the Court in understanding the issues relevant to the judicial review; (ii) is necessary to bring procedural defects to the Court's attention; or (iii) highlights the complete absence of evidence before the administrative decision-maker when it made a particular finding [see *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98; *Maltais v Canada (Attorney General)*, 2022 FC 817 at para 21 [*Maltais*]]. However, I find that none of these exceptions apply to the disputed documents here and accordingly, I have not considered them in reaching my decision.

IV. Issues and Standard of Review

[24] The remaining issues for determination are as follows: (a) whether the Officer’s decision was unreasonable; and (b) whether the Applicant was denied procedural fairness.

[25] With respect to the first issue, when the Court reviews the merits of an administrative decision, the presumptive standard of review is reasonableness. No exceptions to that presumption have been raised nor apply [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 23, 25].

[26] In *Canada Post Corp v Canadian Union of Postal Workers*, 2019 SCC 67, Justice Rowe explained what is required for a reasonable decision and what is required of a Court reviewing on the reasonableness standard. He stated:

[31] 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). Accordingly, when conducting reasonableness review “[a] reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with ‘respectful attention’ and seeking to understand the reasoning process followed by the decision maker to arrive at [the] conclusion” (*Vavilov*, at para. 84, quoting *Dunsmuir*, at para. 48). The reasons should be read holistically and contextually in order to understand “the basis on which a decision was made” (*Vavilov*, at para. 97, citing *Newfoundland Nurses*).

[32] A reviewing court should consider whether the decision as a whole is reasonable: “...what is reasonable in a given situation will always depend on the constraints imposed by the legal and factual context of the particular decision under review” (*Vavilov*, at para. 90). The reviewing court must ask “whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision” (*Vavilov*, at

para. 99, citing *Dunsmuir*, at paras. 47 and 74, and *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5, at para. 13).

[33] Under reasonableness review, “[t]he burden is on the party challenging the decision to show that it is unreasonable” (*Vavilov*, at para. 100). The challenging party must satisfy the court “that any shortcomings or flaws relied on ... are sufficiently central or significant to render the decision unreasonable” (*Vavilov*, at para. 100).

[27] With respect to the second issue, the standard of review for issues relating to procedural fairness is best reflected by the correctness standard even though, strictly speaking, no standard of review is being applied [see *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 34-35, 54-55 [*Canadian Pacific*]]. The Court must ask whether the procedure was fair having regard to all the circumstances, and the ultimate question is “whether the applicant knew the case to meet and had a full and fair chance to respond” [see *Canadian Pacific, supra* at paras 54, 56; *Maltais, supra* at para 19].

V. Analysis

A. *The Officer’s decision was reasonable*

[28] The Applicant submits that the Officer’s decision was unreasonable because she was told by the CRA that she should apply for the CRCB and that she was eligible.

[29] Based on the record before the Officer, I find that it was reasonable for the Officer to conclude that the Applicant had not established that she, as a self-employed person, had been unable to work for at least 50% of the time she would have otherwise worked in the week at issue

because she was caring for a child or family member for reasons related to COVID-19, as set out in subsection 17(1) of the *Act*.

[30] The Applicant herself told the CRA that: (i) she did not earn self-employment income in 2020 (with the exception of the payment for work completed in 2019) or 2021 because her clients did not want dresses since there were no social events during the pandemic; (ii) she did not have work planned during periods 57-61 and 63-75 of her CRCB applications, nor was she actively looking for work (and therefore, she did not have a reduction by 50% of the hours she “would have otherwise worked in that week,” as per the *Act*); and (iii) having her children home with her did not affect her self-employment income because there was no need for her services. I note that the Applicant does not deny making these statements to the CRA.

[31] Based on these statements, it was reasonable for the Officer to conclude that the Applicant’s lack of self-employment income was the result of the reduced demand for her services during the pandemic, rather than the result of caring for a child or family member as required by subsection 17(1) of the *Act*. Further, it was reasonable for the Officer to conclude that the Applicant did not provide evidence of a reduction of self-employment income because she admitted that she did not have work planned during periods 57-61 and 63-75 of her CRCB applications.

B. *The Applicant was not denied procedural fairness*

[32] The Applicant asserts that the decision was made in a procedurally unfair manner. She argues that no one at the CRA properly explained to her the specific evidence she needed to provide

until close to the end of the review process and, after that, she had insufficient opportunity to gather and present evidence in support of her case.

[33] Procedural fairness requires that an individual impacted by a decision be given the opportunity to know the case against them and present their case fairly and fully [see *Santaguida v Canada (Attorney General)*, 2022 FC 523 at para 24 [*Santaguida*], citing *Vavilov, supra* at para 127]. The onus of demonstrating a breach of procedural fairness lies with the Applicant [see *Santaguida, supra* at para 24].

[34] The evidence in the record demonstrates that the Applicant had the benefit of four reviews of her eligibility over a period of 18 months and that the CRA contacted the Applicant numerous times by telephone to explain the problems with her CRCB eligibility, including six phone calls in November of 2023, during which the CRA expressly addressed whether the Applicant was unable to work at least 50% of her scheduled work week because she was caring for her children. The Applicant was given numerous opportunities over that 18-month period to submit documents and information to remedy the issues identified with her applications, which documents and information the Officer considered [see *Flock v Canada (Attorney General)*, 2022 FC 305 at paras 25-26].

[35] Having reviewed the record, I am satisfied that the Applicant was aware of the case to meet and given a full and fair opportunity to respond. Therefore, I am not persuaded that her right to procedural fairness was breached.

VI. Conclusion

[36] Having found that the Applicant has failed to demonstrate that the Officer's decision was unreasonable or that she was denied procedural fairness, the application for judicial review shall be dismissed.

[37] With respect to the costs of the application, the Respondent has not sought their costs and accordingly, no costs will be awarded.

JUDGMENT in T-2699-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There shall be no award of costs.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2699-23

STYLE OF CAUSE: SWARSATTIE WILLIAMS v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: VIDEO-CONFERENCE

DATE OF HEARING: JUNE 17, 2024

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

DATED: JUNE 20, 2024

APPEARANCES:

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