

Federal Court



Cour fédérale

Date: 20231129

Docket: T-165-23

Citation: 2023 FC 1589

Ottawa, Ontario, November 29, 2023

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

IAIN PATERSON

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND JUDGMENT

[1] Mr. Iain Paterson (the “Applicant”) seeks judicial review, pursuant to subsection 18.1(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, as amended, of the decision made by an employee of the Canada Revenue Agency (the “CRA”) on January 10, 2023, denying his application for benefits pursuant to the *Canada Recovery Benefits Act*, S.C. 2020, c. 12 (the “Act”). He now seeks the following relief:

1. Refer the decision to Federal Court for Federal Review, as outlined in the CRA guidelines.
2. Cost [*sic*] of the Application.

[2] In his Notice of Application, the Applicant named the Minister of National Revenue as the respondent. Pursuant to Rule 303(2) of the *Federal Courts Rules*, SOR/98-106 (the “Rules”), the correct responding party is the Attorney General of Canada (the “Respondent”) and the style of cause will be amended accordingly, with immediate effect.

[3] The following facts and details are taken from affidavits filed by the parties.

[4] The Applicant submitted his affidavit sworn on January 30, 2023. The Respondent submitted the affidavit of Ms. Holly Horvath, a benefits validation officer employed in the Sudbury Tax Centre and Tax Services Office of the CRA.

[5] In his affidavit, the Applicant set out the basis for his dissatisfaction with the decision of the CRA. His affidavit appears below:

1. Canada Revenue Agency (CRA) decision for the Applicants Canada Recovery Application. CRA case number C004497717-001-45, C0048297608-001-45, and C0054048035-001-45. (documents 1. And document 2.)
2. All decisions say that I did not earn at least \$5000 in employment income or net self-employment in 2019. No explanation given as to why this income received by the applicant in 2019 is not considered income.
3. My total income for the year 2019 was \$12899, (document 3). Of that less than \$500 was investment income (document 4).
4. My tax return was filed 1st week of February 2020. The return was assessed by Revenue Canada and income tax paid for 2019 was 597.30. (document 3).
5. Of note the pandemic shutdowns did not occur until the end of March 2020, and CRB policy not until April 2020, well after my 2019 return had been reviewed and processed.

6. A reasonable expectation that the CRB application would be checked and verified for eligibility after submission.

[6] In her affidavit, Ms. Horvath generally described the program under the Act and the steps undertaken by employees of the CRA in validating claims. The validation process includes reviewing documents submitted by a claimant, as well as reviewing income tax information that is otherwise available to the CRA.

[7] The Applicant applied for benefits on October 12, 2020. He received benefits, in the amount of \$1,000.00, for four two-week periods from September 27, 2020 up to November 21, 2020, and for ten two-week periods from June 6, 2021 to October 23, 2021. His file was subsequently selected for validation of his eligibility.

[8] Following a review, an officer of the CRA determined that the Applicant was not eligible for the benefits because he did not meet the \$5,000.00 income requirement pursuant to the Act. The Applicant was advised of this decision by a letter dated March 28, 2022. He was also advised that if dissatisfied with the decision, he could ask for a second review which would be done by an officer who was not involved in the initial review and decision.

[9] By letter dated March 30, 2002 [*sic*], the Applicant wrote that he was “disputing” the decision of March 28, 2022.

[10] Another officer was assigned to review the Applicant’s eligibility. This officer made three attempts to contact the Applicant by telephone but was unsuccessful in making contact.

This officer reviewed the available documents and determined that the Applicant did not meet the requirements. By letter dated July 28, 2022, the CRA advised the Applicant of this decision.

[11] The Applicant then filed an application for judicial review of the July 2022 decision, in cause number T-1657-22. That litigation was discontinued after the July 2022 decision was set aside and the Applicant's file was referred for redetermination of the eligibility finding. This redetermination was conducted by Ms. Horvath, an officer who had not been previously involved with the Applicant's file.

[12] In her affidavit, Ms. Horvath described the work that she did in conducting a third review of the Applicant's eligibility. This work included the review of the notes made by the officers who initially assessed the Applicant's eligibility, as well as the review of information that was available from records of the CRA relative to his income tax history.

[13] Ms. Horvath deposed in her affidavit that she spoke with the Applicant by telephone on four occasions. After the first two telephone conversations, the Applicant provided more information to support his claim. This information included a description of the work he did during the previous year.

[14] Ms. Horvath made notes about the material that she reviewed. In his Memorandum of Fact and Law, the Respondent refers to the observations of Ms. Horvath, with reference to her affidavit, as follows:

13. From her interactions with the Applicant and in her review of the evidentiary record, the Third Reviewer noted the following:

(a) In filing his income tax return for the 2019 taxation year, the Applicant reported \$10,139 in “other income.” The Applicant claimed that this income came from three sources: casino income, Airbnb rental income, and income from working as a personal assistant for a friend. Although the Applicant provided bank statements that show various amounts being deposited into his account, no documentation was provided to substantiate the source or context of these deposits.

(b) Regarding the casino income, aside from a Casino Niagara timesheet showing the Applicant’s live play time in 2019, the Applicant did not provide any paystubs, invoices, or contracts to show what amount (if any) of his reported income was from employment or self-employment, as opposed to personal winnings.

(c) With regard to the deposits from 2019, the Third Reviewer noted: “Without documents such as invoices, reports, logs, receipts, or other information detailing what each deposit is, I cannot reasonably determine the deposits are employment or [self-employment] in nature. Instead they could be anything from a gift, to money given to them for an accident, to money transferred from one account to another.”

(d) In filing his income tax return for the 2020 taxation year, the Applicant did not report any employment or self-employment income.

(e) In filing his income tax return for the 2021 taxation year, the Applicant reported T4 earnings of \$1,763, and “other employment income” of \$7,400. The Applicant claimed that the other employment income was from the assistant work completed for his friend; however, there was no documentation provided (such as invoices, pay stubs, receipts, schedules, logs, inventory lists, or letters) to support this income. Considering the Applicant’s statements that he was frequently compensated in food and hotel rooms, did not have consistent hours or a contract, and did not keep track of any income received, the Third Reviewer concluded that the Applicant had not demonstrated that any income from this source could reasonably be considered self-employment income.

[15] In paragraph 34 of her affidavit, Ms. Horvath deposed that following her review of the Applicant’s file and relevant materials, she concluded that he was not eligible for the benefits:

34. After my review, I concluded that the Applicant was not eligible to receive the CRB for the Relevant Periods because

a) the Applicant did not earn at least \$5,000 (before taxes) of employment income or net self-employment income in 2019, 2020, or in the 12 months before the date of the Applicant's first application; and

b) the Applicant did not have a 50% reduction in his average weekly income compared to the previous year due to COVID-19.

[16] Although Ms. Horvath reviewed the Applicant's file, the decision letter was sent in the name of S. Constantin, a Canada Emergency Benefits Validation Manager employed by the CRA. The letter is dated January 10, 2023, and that decision is the subject of the within application for judicial review.

[17] The Applicant argues that he provided sufficient evidence to show that he met the income threshold for the benefits, including his notice of reassessment for 2019. He contends that he filed his tax return for 2019 before the plan under the Act was introduced and that following a reassessment by the Commissioner of Revenue, he paid the extra taxes that were requested. He submits that nothing in the decision letter explains why his declared and taxed income for 2019 did not qualify him to receive the benefits.

[18] The Applicant submits that he made efforts to contact Ms. Horvath about his benefits eligibility before the decision was made and received no response. In oral argument he submitted that the purpose of these efforts was to provide further documentary evidence.

[19] The Respondent argues that the evidence provided by the Applicant did not support the minimum income for 2019 or show a loss of income for the previous year due to COVID-19. He submits that according to the decision in *Aryan v. Canada (Attorney General)*, 2022 FC 139, tax assessments are not “proof” that self-reported income was actually earned.

[20] The Respondent argues that the key element of procedural fairness is the right to know “the case to be met”. He submits that the Applicant was made aware of the nature of information and documents required by the CRA in order to assess his eligibility for benefits.

[21] The decision of the CRA is fact-driven, within the framework of the Act. Paragraphs 3(1)(a) to (c) of the Act provide as follows:

Eligibility

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

- (a)** they have a valid social insurance number;
- (b)** they were at least 15 years of age on the first day of the two-week period;
- (c)** they were resident and present in Canada during the two-week period;

Admissibilité

3 (1) Est admissible à la prestation canadienne de relance économique, à l’égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes:

- a)** elle détient un numéro d’assurance sociale valide;
- b)** elle était âgée d’au moins quinze ans le premier jour de la période de deux semaines;

c) elle résidait et était présente au Canada au

cours de la période de deux semaines;

...

[...]

[22] Sections 4 and 7 are also relevant and provide as follows:

Application

4 (1) A person may, in the form and manner established by the Minister, apply for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020, and ending on October 23, 2021.

4(2) Limitation No application is permitted to be made on any day that is more than 60 days after the end of the two-week period to which the benefit relates.

...

Payment of benefit

7 The Minister must pay a Canada recovery benefit to a person who makes an application under section 4 and who is eligible for the benefit.

Demande

4 (1) Toute personne peut, selon les modalités — notamment de forme — fixées par le ministre, demander une prestation canadienne de relance économique à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021.

4(2) Restriction Aucune demande ne peut être présentée plus de soixante jours après la fin de la période de deux semaines à laquelle la prestation se rapporte.

[...]

Versement de la prestation

7 Le ministre verse la prestation canadienne de relance économique à la personne qui présente une demande en vertu de l'article 4 et qui y est admissible.

[23] The effect of these provisions is to identify who may apply for the benefits under the Act and the two-week periods “to which the benefit relates”.

[24] Paragraph 3(1)(d) identifies the sources of income that will be recognized as eligible sources of income and provides as follows:

Eligibility

3 (1) A person is eligible for a Canada recovery benefit for any two-week period falling within the period beginning on September 27, 2020 and ending on October 23, 2021 if

...

(d) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, 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 the following sources:

(i) employment,

(ii) self-employment,

...

Admissibilité

3 (1) Est admissible à la prestation canadienne de relance économique, à l'égard de toute période de deux semaines comprise dans la période commençant le 27 septembre 2020 et se terminant le 23 octobre 2021, la personne qui remplit les conditions suivantes:

[...]

d) dans le cas d'une demande présentée en vertu de l'article 4 à l'égard d'une période de deux semaines qui débute en 2020, ses revenus provenant des sources ci-après, pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente sa demande, s'élevaient à au moins cinq mille dollars:

(i) un emploi,

(ii) un travail qu'elle exécute pour son compte,

[...]

[25] Any issue of procedural fairness is reviewable on the standard of correctness; see the decision in *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339 (S.C.C.).

[26] Following the decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019] 4 S.C.R. 653 (S.C.C.) (“*Vavilov*”), the decision is reviewable on the standard of reasonableness.

[27] In considering reasonableness, the Court is to ask if the decision under review “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”; see *Vavilov, supra* at paragraph 99.

[28] The Applicant implicitly raised an argument about a lack of procedural fairness.

[29] According to the decision in *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 (S.C.C.), a critical element of any argument about a lack of procedural fairness turns on whether an interested person knows the “case to be met”.

[30] In *Canadian Pacific Railway Company v. Canada (Attorney General)*, [2019] 1 F.C.R. 121 at paragraph 56, the Federal Court of Appeal said the following about the basic requirements of the duty of procedural fairness:

No matter how much deference is accorded administrative tribunals in the exercise of their discretion to make procedural choices, the ultimate question remains whether the applicant knew the case to meet and had a full and fair chance to respond. ...

[31] The Applicant had the opportunity to present information and documents in support of his claim for eligibility. He knew the case he had to meet. I am satisfied that there was no breach of procedural fairness.

[32] I acknowledge that it is not the role of a Court upon judicial review to assess the evidence presented to the decision maker. Each case will turn on its own facts. The ultimate decision and reasons must reflect the consideration of the evidence submitted in order to meet the requirements of justification and transparency.

[33] The principal argument of the Applicant is that the reasons for the decision do not explain why the evidence of his income, as assessed for tax purposes, is insufficient for the purpose of a positive determination of his eligibility for benefits under the Act.

[34] The notes made by Ms. Horvath, as recorded in the Case-specific Notepad Entries, are found in Exhibit N to her affidavit. These notes provide details about the Applicant's employment and earnings over the years 2019 to 2021.

[35] The officer was concerned about the lack of documentation to support the Applicant's claim for receipt of income by way of cash. In my opinion, based on the information and documentary evidence, including information available about the Applicant's tax history that was considered by the officer, the decision maker reasonably found that the Applicant was not eligible for benefits under the Act because he did not meet the income threshold.

[36] In the result, this application for judicial review is dismissed.

[37] The Respondent seeks costs. In the exercise of my discretion, pursuant to Rule 400 of the Rules, I make no order as to costs.

JUDGMENT in T-165-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed. In the exercise of my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106, there is no order as to costs.
2. The style of cause is amended with immediate effect to name the Attorney General of Canada as the correct responding party.

"E. Heneghan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-165-23

STYLE OF CAUSE: IAIN PATERSON v. THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 1, 2023

JUDGMENT AND REASONS: HENEGHAN J.

DATED: NOVEMBER 29, 2023

APPEARANCES:

Iain Paterson

FOR THE APPLICANT
(ON HIS OWN BEHALF)

D'ette Bouchier

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT