

Federal Court



Cour fédérale

Date: 20240513

Docket: T-2051-23

Citation: 2024 FC 730

Ottawa, Ontario, May 13, 2024

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

PATRICK JAMES

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS FOR JUDGMENT

I. Overview

[1] The Applicant seeks judicial review of three decisions dated August 30, 2023 made by a Canada Revenue Agency [CRA] officer [Officer] determining that the Applicant was not eligible for the following benefits: the Canada Recovery Benefit [CRB], the Canada Recovery Sickness Benefit [CRSB], and the Canada Worker Lockdown Benefit [CWLB].

[2] For the reasons that follow, I am dismissing the application. The Officer reasonably concluded that the Applicant was ineligible for these benefits because he did not earn at least \$5,000 of net self-employment income in 2019, 2020, or 2021, as required by the relevant legislation. Further, I am unable to find any procedural unfairness in the Officer's decision-making process. The onus was on the Applicant to ensure that he met the eligibility requirements, and he was given ample opportunity to provide supporting documentation to establish his eligibility.

II. Background

A. Applications for benefits

[3] The Applicant, a self-represented litigant, applied for the following benefits:

- The CRB for the period from September 27, 2020 to October 9, 2021;
- The CRSB for the periods from October 24, 2021 to October 30, 2021, from November 14, 2021 to December 25, 2021, and from January 2, 2022 to January 8, 2022; and
- The CWLB for the period from December 26, 2021 to March 5, 2022.

[4] On March 25, 2022, the CRA sent the Applicant three letters informing him that he was ineligible for all three benefits because he did not meet the \$5,000 minimum income requirement. In addition, the CRA concluded that he was not eligible for the CRB as he was not working for reasons unrelated to COVID-19. The CRA also concluded that the Applicant was ineligible for the CRSB because he did not experience a reduction by at least 50% of his scheduled work week due to self-isolating for COVID-19-related reasons. Lastly, the CRA found that the Applicant was not eligible for the CWLB because he was not working for reasons considered to be unreasonable or unrelated to COVID-19.

[5] In November 2022, the Applicant requested a second review of the March 2022 decisions. The Applicant supported this request with a letter from his medical physician attesting to the Applicant's eligibility for the CRSB for the period of November 14, 2021 to December 25, 2021. The letter advised that the Applicant was instructed to remain home and not work due to his higher risk of contracting COVID-19 based on his underlying health conditions.

[6] In letters dated April 11, 2023, the CRA determined that the Applicant was not eligible for any of the three benefits because he did not meet the minimum income requirement, and that he was also not eligible for the CRSB because his scheduled work week was not reduced by at least 50% as a result of self-isolating for COVID-19-related reasons.

[7] According to the CRA notes, the CRA had several calls with the Applicant and/or his wife, before the Officer issued three letters dated August 30, 2023 upholding the CRA's April 11, 2023 second level review determinations.

B. *Application for judicial review*

[8] The Applicant filed a Notice of Application seeking judicial review of the Officer's three August 30, 2023 decisions determining that he did not meet the eligibility criteria for the CRB, the CRSB, and the CWLB.

[9] The Applicant seeks an order from the Court setting aside the decisions and directing the CRA to find that the Applicant did earn at least \$5,000 in income in 2019 or the 12 months prior to his first date of application. In the alternative, the Applicant requests an order referring the

matter back to a different CRA agent for reconsideration: Notice of Application dated September 29, 2023 [Notice of Application].

[10] Prior to the hearing that was scheduled to be heard virtually on May 2, 2024, the Applicant advised the Court that his wife would be assisting him during the hearing due to health issues. The Registry Office was subsequently advised that the Applicant's wife intended to make submissions on his behalf at the hearing. The Court issued a Direction informing the Applicant that Rule 119(1) of the *Federal Courts Rules*, SOR/98-106 [*Rules*] requires that an individual either represent themselves or be represented by a solicitor. The Court advised that while the Applicant's wife could not represent him, she could provide any necessary moral and technological support at the hearing. As an alternative, the Court informed the Applicant that the Court could adjudicate the application based on the written submissions and evidence as filed by the parties, rather than hold an oral hearing on May 2, 2024, if the Applicant preferred that approach: Direction dated April 30, 2024.

[11] At the hearing, the Applicant decided that he preferred to have the matter determined based on the written submissions. The Applicant indicated that his written submissions covered all his arguments and that he had nothing to add. Aside from one question of clarification asked about the Applicant's procedural fairness argument, the Court did not hear any submissions from the parties. The application was thus adjudicated based on the parties' written materials.

III. Issues and Standard of Review

[12] The Applicant makes two main arguments in support of his judicial review application. First, the Applicant argues that the Officer's decisions that he did not meet the eligibility criteria for the benefits and must now repay the amounts that he received are not justified. Second, the Applicant alleges that the CRA breached procedural fairness in issuing him the COVID-19 benefits and finding him ineligible twenty-two months after issuing the benefits: Applicant's Memorandum of Fact and Law at p 3.

[13] The standard of review applicable to determinations of eligibility for the benefits administered by the CRA is reasonableness: *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15. 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": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59-61.

[14] Where breaches of procedural fairness are alleged, no standard of review is applied but the Court's reviewing exercise is "best reflected on a correctness standard": *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [CPR]. When

assessing whether procedural fairness was met, a reviewing court asks whether the “procedure was fair having regard to all of the circumstances”: *CPR* at para 54.

IV. Analysis

A. *Preliminary issues*

(1) Judicial review of multiple decisions in one application

[15] The Applicant seeks judicial review of the Officer’s three decisions by way of a single Notice of Application. Pursuant to Rule 302 of the *Rules*, an application for judicial review must be limited to a single decision or order, unless the Court orders otherwise. I appreciate that the Applicant is self-represented and would not have been aware of this rule. Notably, the Respondent took the position that the judicial reviews of the three decisions should be heard at the same time: Respondent’s Memorandum of Fact and Law at para 24.

[16] As this Court’s jurisprudence holds, closely linked decisions, arising under the same statute and reached by the same decision-maker, may be treated as a single decision: *Cob Roller Farms Ltd v 9072-3636 Québec Inc (Écocert Canada)*, 2022 FC 1487 at para 14; *Burlacu v Canada (Attorney General)*, 2019 FC 1215 at para 21; *Council of the Innu of Ekuanitshit v Canada (Fisheries and Oceans)*, 2015 FC 1298 at para 49; *Whitehead v Pelican Lake First Nation*, 2009 FC 1270 at paras 51-52.

[17] In this matter, given that the three decisions were made by the same decision-maker, on the basis of the same record, under two related statutes, and on the same legal basis, I am satisfied

that the decisions are appropriately considered together as part of this application: *Rehman v Canada (Attorney General)*, 2023 FC 1534 at para 17. Pursuant to Rule 3 of the *Rules*, this is the most just, expeditious, and least expensive manner in which to proceed. I therefore exercise my discretion to allow the Applicant to bring this application in respect of the three decisions.

(2) Admissibility of the Applicant's evidence

[18] In support of his argument before this Court that flooding prevented him from working throughout 2022, the Applicant relies on an article displaying pictures of floods in Kenora, Ontario. The Respondent objects to the admissibility of this article on the basis that it was not before the CRA during its review of the Applicant's applications.

[19] I agree. After reviewing the record, the Applicant did not advance this argument during the CRA review process. It is well established that arguments and evidence that were not before the decision-maker when they made their decision are not admissible before this Court: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19; *Datta v Canada (Attorney General)*, 2022 FC 973 at paras 29-30; *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 2. The Applicant's evidence related to the flooding was therefore not considered by this Court on this application.

B. *The Officer's decisions are reasonable*

[20] While I have considerable sympathy for the Applicant, I find that the Officer's decisions are reasonable. The Officer was required to assess the Applicant's entitlement for the benefits

based on the statutory eligibility criteria: *Flock v Canada (Attorney General)*, 2022 FCA 187 at paras 4, 7 [*Flock*]; *Xin v Canada (Attorney General)*, 2023 FC 595 at para 83 [*Xin*]. Applying the relevant legislation and assessing the Applicant's evidence, the Officer reasonably determined that the Applicant was ineligible for the benefits because his net self-employment income did not meet or exceed \$5,000.

[21] As held by the Federal Court of Appeal in *Flock*, the Officer was required to apply the \$5,000 minimum income threshold:

[7] . . . This is not a basis for relief by way of judicial review because the CRA official had no choice but to assess Mr. Flock's entitlement to the CRB based on the eligibility criteria set out in the legislation. This was a policy decision that Parliament was entitled to make, and the official had no ability to provide relief on grounds of fairness only.

[Emphasis added]

(1) The legislative scheme

[22] The CRB, the CRSB, and the CWLB are federal government measures that were introduced in response to the COVID-19 pandemic to offer financial support to employed and self-employed Canadians. The enabling legislation for the CRB and the CRSB is the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [*CRB Act*]. The enabling legislation for the CWLB is the *Canada Worker Lockdown Benefit Act*, SC 2021, c 26, s 5 [*CWLB Act*].

[23] To be eligible for these benefits, an applicant must have had a total income of at least \$5,000: *CRB Act*, ss 3(1)(d), 10(1)(d); *CWLB Act*, s 4(1)(d). Additionally, the legislation expressly provides that income from self-employment is net income for the purposes of the CRB, the CRSB,

and the CWLB and in particular states that “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”: *CRB Act*, ss 3(2), 10(2); *CWLB Act*, s 4(2).

[24] To enable Canadians to access these benefits as quickly as possible, applicants first simply attested that they met the eligibility requirements: *Showers v Canada (Attorney General)*, 2022 FC 1183 at para 15. The CRA was thereafter responsible for substantiating all benefits issued and sought to validate payments where eligibility was in question. Section 6 of the *CRB Act* and section 7 of the *CWLB Act* state that “an applicant must provide the Minister with any information that the Minister may require in respect of the application.”

(2) The Applicant failed to satisfy the minimum income requirement

[25] The Officer reasonably concluded that the Applicant was not eligible for the three benefits because he failed to meet the minimum income requirement during the relevant time periods. Rather than disregard or overlook any of the documents submitted by the Applicant, the CRA reviewed them and determined that they did not show that the Applicant had made \$5,000 of qualifying income: *Grandmont v Canada (Attorney General)*, 2023 FC 1765 at para 41.

[26] Based on the Applicant’s documentation, the CRA determined that he had earned gross self-employment income in the amount of \$12,779.73 in 2019. However, the Applicant also had expenses that year totalling \$25,119.82. As a result, the CRA determined that the Applicant’s net self-employment income was actually a loss of \$12,340.09 (gross income less expenses incurred

to earn the revenue). In addition, the Applicant reported negative net self-employment income in his 2019, 2020, and 2021 tax returns.

[27] In essence, the Applicant disagrees with the requirement that eligibility for the benefits was based on net income, as opposed to gross income. However, the Officer did not have any discretion to depart from applying the eligibility criteria: *Ibrahim v Canada (Attorney General)*, 2023 FC 1357 at para 29 [*Ibrahim*]; *Davis v Canada (Attorney General)*, 2022 FC 1247 at para 24; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 23. Based on the evidentiary record, the Officer's decisions that the Applicant did not meet the requirement of \$5,000 in net income to qualify for the benefits are reasonable.

[28] At the hearing and in his written submissions, the Applicant reiterated that his applications for benefits were made in good faith and that he was not deceitful or misleading in any way: Applicant's Memorandum of Fact and Law at p 2. As I said at the hearing, the Applicant's good faith and honesty is not questioned. The sole basis for the CRA seeking repayment of the benefits is that the Applicant did not meet the minimum net income requirement set out in the legislation. The Court sitting in review of the Officer's decisions can only intervene if the decisions fail to meet the reasonableness standard of review.

C. *The Officer's decisions are procedurally fair*

[29] The Applicant confirmed at the hearing that his main argument concerning procedural fairness is that when he was applying for the benefits, he was never advised that \$5,000 of net

income, as opposed to gross income, was required to qualify. The Applicant argues that had he been told about his possible ineligibility, he would not have applied.

[30] While I am sympathetic to the Applicant's circumstances, this Court has held that it is an applicant's responsibility to ensure that they meet the eligibility criteria: *Joodaki v Canada (Attorney General)*, 2024 FC 260 at para 25; *Ibrahim* at para 33; *Awid v Canada (Attorney General)*, 2022 FC 1654 at para 20. As set out in paragraph 24 above, applicants were required to attest to the fact that they met the eligibility conditions when applying for the benefits. It is unfortunate that the CRA did not validate the Applicant's eligibility before March 2022, 18 months after he first applied for the benefits. However, the Officer had no choice but to assess the Applicant's entitlement based on the legislated eligibility criteria.

[31] In addition, on judicial review, any procedural fairness concerns must relate to the underlying decision-making process, and whether that process was fair in all the circumstances. In his Notice of Application, the Applicant alleged that the Officer's decisions were procedurally unfair because the CRA failed to explain why he did not meet the \$5,000 income eligibility requirement and "denied him the opportunity to know and meet the case against him": Notice of Application at para 26.

[32] As detailed by the record of the phone conversations in the second review report, the CRA officer advised the Applicant to provide more information related to his self-employment income. The CRA provided the Applicant an opportunity to submit documentation showing any additional income earned in the 2019 taxation year: Respondent's Record at pp 53, 55, 56, 58. When asked

for additional time to provide this information, the CRA granted the Applicant an extension of time.

[33] The second review report also demonstrates that the Applicant was aware of the type of information he needed to provide to meet the minimum income requirement, since the CRA officer explained in multiple telephone calls that the CRA considers net self-employment, rather than gross self-employment income, in assessing whether the Applicant meets the minimum income requirement: *Xin* at para 69; *Santaguida v Canada (Attorney General)*, 2022 FC 523 at para 20. The Officer therefore made their decisions based on the evidence provided by the Applicant, after providing him an opportunity to respond to and resolve any questions about his eligibility: Respondent's Record at p 24.

[34] For these reasons, I find that the process was fair and did not breach any of the Applicant's procedural fairness rights.

V. Conclusion

[35] Based on the foregoing, this application for judicial review is dismissed without costs. The Officer's decisions finding that the Applicant did not meet the income eligibility criteria for the CRB, the CRSB, and the CWLB are reasonable and procedurally fair.

JUDGMENT in T-2051-23

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed,
without costs.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2051-23

STYLE OF CAUSE: PATRICK JAMES v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: MAY 2, 2024

JUDGMENT AND REASONS FOR JUDGMENT: TURLEY J.

DATED: MAY 13, 2024

APPEARANCES:

Patrick James

FOR THE APPLICANT
ON HIS OWN BEHALF

Erin Wolfe

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Winnipeg, Manitoba

FOR THE RESPONDENT