Federal Court  Cour fédérale

Date: 20240529

Docket: T-2741-23

Citation: 2024 FC 813

Ottawa, Ontario, May 29, 2024

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

VERONICA PINTO

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Veronica Pinto, seeks judicial review of a decision of the Canada Revenue Agency [CRA] dated November 23, 2023, finding her ineligible for the Canada Recovery Benefit [CRB].

[2] She submits that the decision is unreasonable because the Officer failed to review the relevant evidence establishing that she made the requisite minimum income of $5,000.

[3] The Applicant is a self-represented litigant and I have kept in mind the Canadian Judicial Council's *Statement of Principles on Self-represented Litigants and Accused Persons*, which the Supreme Court endorsed in *Pintea v Johns*, 2017 SCC 23 at paragraph 4, and my colleague, Justice Ahmed, recently referenced in a similar context in *Palmer v Canada (Attorney General)*, 2024 FC 518 at paragraph 3. At the outset of the hearing, I explained my jurisdiction to the Applicant on judicial review.

[4] The Officer based the decision on two "standalone" reasons: that the Applicant failed to meet the minimum income threshold of $5,000, and that she did not experience a 50% reduction in her average weekly income compared to the previous year due to COVID-19.

[5] I find that the latter element of the Officer's decision was reasonable, and must dismiss this application for judicial review.

I. Background

[6] The CRB was implemented through the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [the Act] to provide income support for eligible individuals who were adversely affected by the COVID-19 pandemic. Section 7 of the Act provides that the Minister of Employment and Social Development [the Minister] must pay the CRB to any person that makes an application and meets the eligibility requirements pursuant to sections 3 and 4 of the Act. The CRA administers the CRB on the Minister's behalf.

[7] The Applicant is a hairdresser. She applied for the CRB for the periods from September 27, 2020, to November 7, 2020, and November 22, 2020, to October 23, 2021. She received a total of $27,100.

[8] On March 5, 2023, pursuant to the CRA's request for information made under section 6 of the Act, the Applicant provided the following information to support that she met the eligibility requirements:

i. Copies of her 2019, 2020, and 2021 Income Tax and Benefit Returns;
ii. Invoices to Hanika Pinto and Sebastian Joseph, the Applicant's daughter and son-in-law, for childcare services rendered in 2020 ($4,400) and 2021 ($5,500);
iii. A letter from the Applicant to the CRA dated February 22, 2023, stating that she was diagnosed with bladder cancer; and
iv. An operative report dated November 15, 2021.

[9] On March 16, 2023, an officer of the CRA determined that the Applicant was ineligible for the CRB because she had not established that she had met the $5,000 minimum income from employment or self-employment in 2019, 2020, or in the 12 months preceding the date of her first application, pursuant to section 3 of the Act. It asked her to repay the $27,100 on March 23, 2023.

[10] The Applicant requested a review of this decision on April 15, 2023. She claimed that she was eligible for the CRB because her gross self-employment income exceeded $5,000 for the 2019, 2020, and 2021 taxation years. She also claimed that she was eligible for the CRB because

she was diagnosed with bladder cancer in 2020 and consequently did not continue working as a hairdresser.

[11] The CRA upheld its initial decision on June 14, 2023, to which the Applicant requested another review on July 3, 2023. She made related submissions on July 10, 2023; July 21, 2023; August 4, 2023; and October 24, 2023.

[12] In the decision under review, a different officer of the CRA confirmed the first review on November 23, 2023. The reasons for the decision include the second review report provided to the Applicant and the notepad entries made by CRA officers throughout the course of review: *Aryan v Canada (Attorney General)*, 2022 FC 139 [*Aryan*] at para 22.

[13] The Officer considered the Applicant's submissions, the CRA's guidelines for determining CRB eligibility, the other officers' entries on the Applicant's case, information gathered during his telephone calls with the Applicant, and the Applicant's relevant financial information including her income statements. He found that the Applicant did not earn at least the required $5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or the 12 months before the date of her first application. The Officer further found that the Applicant did not demonstrate that she had a 50% reduction in her average weekly income compared to the previous year due to the pandemic.

II. Issues

[14] The sole issue for determination is whether the decision is reasonable.

[15] There are three preliminary issues: (1) the identity of the responding party; (2) the admissibility of the Applicant's evidence, and (3) whether the Respondent's Record was filed outside the prescribed time period.

[16] First, the style of cause names the Respondent as the CRA. The Attorney General of Canada submits that it is the proper responding party as the CRA made the decision on the Minister's behalf. I agree, and will order an amendment to the style of cause with immediate effect.

[17] Second, the Applicant includes various materials in her record which she refers to as "exhibits" in her Memorandum of Fact and Law. They were not sworn or affirmed as part of her affidavit dated January 8, 2024. These include, among other things, a copy of her business card, invoices for childcare services rendered in 2020 and 2021, and documentation to show that she was present in Canada in 2020. The Respondent contests the admission of these materials because they do not comply with Rule 309(2)(d) of the *Federal Courts Rules*, SOR/98-106 [the Rules].

[18] It is trite law that judicial review of a decision should generally proceed only on the basis of the evidence that was before the administrative decision-maker: *Greeley v Canada (Attorney General)*, 2019 FC 1493 at paras 28–29, citing *Association of Universities and Colleges of*

Canada v Canadian Copyright Licensing Agency (Access Copyright), 2012 FCA 22 at para 20 and *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8. The necessary facts for the Court to consider are those contained in the record, which is attached to the affidavit of John Collins on behalf of the Respondent, affirmed February 5, 2024. I will therefore only consider those materials which were before the decision-maker, and disregard the other materials which the Respondent correctly characterizes as "fresh, unsworn evidence."

[19] Third, the Applicant raised for the first time at the hearing the submission that the Respondent's Record should be struck as being filed late. Notwithstanding the fact that I cannot entertain a submission that was not raised in her written materials, I agree with the Respondent that it filed its record within the prescribed time period. That period does not include holidays as defined under Rule 2 of the Rules.

III. Standard of Review

[20] The Applicant made no submissions on the applicable standard of review. The Respondent submits, and I agree, that the standard of review is reasonableness, as articulated by the Supreme Court in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]. Reasonableness has been applied by the Court in similar cases reviewing decisions that found the applicants are not eligible to receive the CRB: see, e.g., *Aryan* at para 16; *Lai v Canada (Attorney General)*, 2023 FC 367 at para 28.

[21] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12–13. Absent exceptional circumstances, reviewing courts must not interfere with the decision-maker's

factual findings and cannot reweigh and reassess evidence considered by the decision-maker: *Vavilov* at para 125. "A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection:" *Vavilov* at para 91.

[22] That being said, reasonableness review is not a mere "rubber-stamping" process: *Vavilov* at para 13. It is the reviewing court's task to assess whether the decision as a whole is reasonable; that is, it 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.

IV. Analysis

[23] The Applicant submits that the Officer failed to review relevant evidence establishing that she made the requisite minimum income of $5,000. In particular, she submits that she had a net income of $5,084 in 2020 through a combination of self-employment in hairdressing and childcare services. She claims that her accountant incorrectly entered her expenses in 2020, which led to the initial underreporting of her net income for that year. However, she claims that she resubmitted documentation to the CRA to account for this discrepancy.

[24] The Respondent acknowledges that the Applicant twice revised her 2020 income tax return to increase her net self-employment income to $5,084. The record therefore suggests that the Applicant's net self-employment income for the 2019, 2020, and 2021 taxation years was $1,737, $5,084, and $5,500, respectively. The Respondent submits, based on these figures, that

it was reasonable for the Officer to conclude that her average weekly income had not been reduced by 50% due to the pandemic when compared to previous years.

[25] I agree with the Respondent that the Officer's finding on that point was reasonable, as there is an internally coherent and rational chain of analysis that can be discerned from the reasons: *Vavilov* at para 85. The Applicant made no submissions to this regard.

[26] Paragraph 3(1)(f) of the Act requires that, during each CRB period requested, an applicant was not working or self-employed for reasons related to COVID-19, *or* that their average weekly income from employment or self-employment had declined by at least 50% compared to the previous year or 12-month period preceding:

Eligibility	**Admissibilité**
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	**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 :
…	[…]
(f) during the two-week period, for reasons related to COVID-19, other than for reasons referred to in subparagraph 17(1)(f)(i) and (ii), they were not employed or self-employed or they had a reduction of at least 50% or, if a lower percentage is	**f)** au cours de la période de deux semaines et pour des raisons liées à la COVID-19, à l'exclusion des raisons prévues aux sous-alinéas 17(1)f)(i) et (ii), soit elle n'a pas exercé d'emploi — ou exécuté un travail pour son compte —, soit elle a subi une réduction d'au

fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to	moins cinquante pour cent — ou, si un pourcentage moins élevé est fixé par règlement, ce pourcentage — de tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour la période de deux semaines par rapport à :
(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total average weekly employment income and self-employment income for 2019 or in the 12-month period preceding the day on which they make the application, and	**(i)** tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2020,
(ii) in the case of an application made under section 4 in respect of a two-week period beginning in 2021, their total average weekly employment income and self-employment income for 2019 or for 2020 or in the 12-month period preceding the day on which they make the application;	**(ii)** tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente une demande, dans le cas où la demande présentée en vertu de l'article 4 vise une période de deux semaines qui débute en 2021;

(emphasis added)

[27] In the notepad entries, the Officer made the following finding:

> […] due to the fact that the Taxpayer supplemented her Self Employment income from her haircare business by providing child care services for her daughter's child, her income throughout the CRB periods for which she applied was not reduced by more than 50% compared to the previous year.

[28] In other words, the Officer found that the Applicant, who submits that she was self-employed during the COVID-19 pandemic as a hairdresser and later provider of childcare services, failed to meet the eligibility requirement under paragraph 3(1)(f) of the Act. Based on the record before me, including the numbers reported by the Applicant demonstrating that her net self-employment income in fact *increased* since 2019, this was a reasonable conclusion for the Officer to reach.

[29] Therefore, even if the Officer's decision is unreasonable in relation to his conclusions on the minimum income requirement, a question I need not address, the decision is reasonable in relation to the lack of average weekly income reduction of at least 50%. That consideration, on its own, is sufficient to justify the Officer's decision and its reasonableness is dispositive of this application for judicial review.

[30] I note that the Applicant also raised for the first time the issue of her entitlement to the Canada Recovery Sickness Benefit in her Memorandum of Fact and Law. As this issue was not identified in her Notice of Application for Judicial Review, it is inappropriate for the Court to consider it here.

V. Conclusion

[31] For the reasons above, I must dismiss this application for judicial review.

[32] The Respondent does not seek its costs and none are awarded.

JUDGMENT in T-2741-23

THIS COURT'S JUDGMENT is that the style of cause is amended with immediate effect to amend the name of the Respondent to The Attorney General of Canada, and the application is dismissed without costs.

"Russel W. Zinn"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2741-23
STYLE OF CAUSE:	VERONICA PINTO v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 27, 2024
JUDGMENT AND REASONS:	ZINN J.
DATED:	MAY 29, 2024

APPEARANCES:

Veronica Pinto	FOR THE APPLICANT (ON HER OWN BEHALF)
Tiffany Santos	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT