

Federal Court



Cour fédérale

Date: 20240702

Docket: T-1988-23

Citation: 2024 FC 1039

Vancouver, British Columbia, July 2, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

JAE CHUN LEE

Applicant

and

Canada Revenue Agency

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Jae Chun Lee, seeks judicial review of second reviews (confirming the first reviews) by the Canada Revenue Agency [CRA] that find him ineligible for Canada Emergency Response Benefit [CERB] and Canada Recovery Benefit [CRB] payments that he received during the Covid-19 pandemic.

[2] With the assistance of an interpreter who was affirmed at the outset of the hearing, Mr. Lee (who speaks Korean) argued that he meets the entitlement threshold to the CERB and CRB payments. While I am sympathetic to Mr. Lee's plight, facing as he does the prospect of having to repay these benefits, the Court generally has limited discretion on judicial review to provide most of the specific relief Mr. Lee seeks, namely, to be reconsidered and qualified for CERB and CRB, to not have to return the payments and to avoid legal action.

[3] Instead, the Court can consider, as Mr. Lee also has requested, whether to set aside the determinations and return the matter to the CRA for another review. In rare cases, the Court can order a directed redetermination but I find that this is not one of those cases. Mr. Lee has not persuaded me that the second reviews were unreasonable or procedurally unfair.

[4] This judicial review thus will be dismissed. My reasons follow.

II. Analysis

A. *The second reviews were not unreasonable*

[5] I am not persuaded that the CRA second reviewer made any reviewable error.

[6] Mr. Lee asserts that he contracted with a company called New Pioneer Construction [New Pioneer] in 2019 for an interior paint job. He received an initial payment of \$4,657.01 in May and was told this meant his gross pay was about \$6,000, which he later declared as income on his tax return for 2019 on the advice of his accountant.

[7] New Pioneer's owner disappeared after the first payment; the project was abandoned and Mr. Lee did not receive any other payments. While he looked for other work, before and during the pandemic, he did not find anything.

[8] Mr. Lee applied for and received CERB payments for about 6 months in 2020 followed by CRB payments for just under 1 year from 2020 to 2021. He argues that using a "reverse calculation" based on his asserted net payment of \$4,657.01, he meets the minimum eligibility threshold of \$5,000 gross pay for the CERB and CRB payments.

[9] The second review reports acknowledge that Mr. Lee received a payment of \$4,657.01 but indicate that "[n]o T4 was sent out." The reports also note that because the contract Mr. Lee signed was for contract work, there would no need for deductions for employment insurance or pension; thus, without any documentation establishing the gross income, the reviewer could not accept the attested amount as net pay.

[10] Further, Mr. Lee lost his contract job in May 2019 and did not have any luck finding other employment prior to his first CERB payment in 2020. In other words, his loss of employment was not as a result of the pandemic, which requirement was relevant to the CERB payments.

[11] Noting that the second review reports contain the reasons for the CRA's denial of Mr. Lee's entitlement to the CERB and CRB payments, I find that Mr. Lee has not met his onus of showing that the second reviews are unreasonable: *Canada (Minister of Citizenship and*

Immigration) v Vavilov, 2019 SCC 65 [*Vavilov*] at para 100. In my view, they provide coherent and rational reasons that are justified having regard to the record that was before the reviewer and the applicable program requirements: *Vavilov*, above at para 104.

[12] See Annex “A” for relevant legislative provisions under the *Canada Emergency Response Benefit Act*, SC 2020, c 5 and the *Canada Recovery Benefits Act*, SC 2020, c 12, including the eligibility requirements.

B. *The second reviews were not procedurally unfair*

[13] I find that Mr. Lee was informed of the required elements of CERB and CRB claims, and he had the opportunity to make submissions responding to the initial refusals: *Xin v Canada (Attorney General)*, 2023 FC 595 at para 64.

[14] Mr. Lee and his son-in-law (who provided translation assistance) spoke to the second reviewer on the telephone twice, during which calls the reviewer requested documents showing gross income. He had about three months between the first and second review decision letters in which to provide additional documentation.

[15] Mr. Lee’s judicial review submissions express disagreement with the conclusions the reviewer drew from the documents provided, rather than argue that he did not have the opportunity to provide the documents. Nor did Mr. Lee indicate the need for additional time during the review to furnish other documentation or information; indeed, according to the reviewer’s notes, Mr. Lee stated that he “sent in everything they had.”

III. Conclusion

[16] Noting that the onus was on Mr. Lee to provide sufficient evidence to the CRA to establish he met the statutory requirements, I am unable to conclude that the second review decisions were unreasonable or that the review processes were unfair in his case.

[17] I understand that this result will be disappointing to Mr. Lee. The Court, however, cannot interfere with administrative decisions that are not shown to be unreasonable or unfair, on a balance of probabilities.

[18] The Respondent did not request any costs and, therefore, no costs will be awarded in the circumstances.

JUDGMENT in T-1988-23

THIS COURT'S JUDGMENT is that:

1. The Applicant's application for judicial review is dismissed.
2. No costs are awarded.

"Janet M. Fuhrer"

Judge

Annex “A”: Relevant Provisions

Canada Emergency Response Benefit Act, SC 2020, c 5, s 8.
Loi sur la prestation canadienne d’urgence, LC 2020, ch 5, art 8.

<p>Definitions</p> <p>2 The following definitions apply in this Act.</p> <p>...</p> <p>worker means a person who is at least 15 years of age, who is resident in Canada and who, for 2019 or in the 12-month period preceding the day on which they make an application under section 5, has a total income of at least \$5,000 — or, if another amount is fixed by regulation, of at least that amount — from the following sources:</p> <p>(a) employment;</p> <p>(b) self-employment;</p> <p>(c) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the <i>Employment Insurance Act</i>; and</p> <p>(d) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption. (<i>travailleur</i>)</p> <p>...</p>	<p>Définitions</p> <p>2 Les définitions qui suivent s’appliquent à la présente loi.</p> <p>...</p> <p>travailleur Personne âgée d’au moins quinze ans qui réside au Canada et dont les revenus — pour l’année 2019 ou au cours des douze mois précédant la date à laquelle elle présente une demande en vertu de l’article 5 — provenant des sources ci-après s’élèvent à au moins cinq mille dollars ou, si un autre montant est fixé par règlement, ce montant :</p> <p>a) un emploi;</p> <p>b) un travail qu’elle exécute pour son compte;</p> <p>c) des prestations qui lui sont payées au titre de l’un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la <i>Loi sur l’assurance-emploi</i>;</p> <p>d) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d’un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption. (<i>worker</i>)</p> <p>...</p>
<p>Eligibility</p> <p>6 (1) A worker is eligible for an income support payment if</p> <p>(a) the worker, whether employed or self employed, ceases working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which they apply for the payment; and</p>	<p>Admissibilité</p> <p>6 (1) Est admissible à l’allocation de soutien du revenu le travailleur qui remplit les conditions suivantes :</p> <p>a) il cesse d’exercer son emploi — ou d’exécuter un travail pour son compte — pour des raisons liées à la COVID-19 pendant au moins quatorze jours consécutifs compris dans la période de</p>

(b) they do not receive, in respect of the consecutive days on which they have ceased working,

(i) subject to the regulations, income from employment or self-employment,

(ii) benefits, as defined in subsection 2(1) of the *Employment Insurance Act*, or an employment insurance emergency response benefit referred to in section 153.7 of that Act,

(iii) allowances, money or other benefits paid to the worker under a provincial plan because of pregnancy or in respect of the care by the worker of one or more of their new-born children or one or more children placed with them for the purpose of adoption, or

(iv) any other income that is prescribed by regulation.

Exclusion

(2) An employed worker does not cease work for the purpose of paragraph (1)(a) if they quit their employment voluntarily.

quatre semaines pour laquelle il demande l'allocation;

b) il ne reçoit pas, pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte :

(i) sous réserve des règlements, de revenus provenant d'un emploi ou d'un travail qu'il exécute pour son compte,

(ii) de prestations, au sens du paragraphe 2(1) de la *Loi sur l'assurance-emploi*, ou la prestation d'assurance-emploi d'urgence visée à l'article 153.7 de cette loi,

(iii) d'allocations, de prestations ou d'autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par lui à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez lui en vue de leur adoption,

(iv) tout autre revenu prévu par règlement.

Exclusion

(2) Pour l'application de l'alinéa (1)a), un travailleur ne cesse pas d'exercer son emploi s'il le quitte volontairement.

Canada Recovery Benefits Act, SC 2020, c 12, s 2.

Loi sur les prestations canadiennes de relance économique, LC 2020, ch 12, art 2.

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

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 ciaprès, pour

which they make the application, a total income of at least \$5,000 from the following sources:

- (i) employment,
- (ii) self-employment,

(iii) benefits paid to the person under any of subsections 22(1), 23(1), 152.04(1) and 152.05(1) of the Employment Insurance Act,

(iv) allowances, money or other benefits paid to the person under a provincial plan because of pregnancy or in respect of the care by the person of one or more of their new-born children or one or more children placed with them for the purpose of adoption, and

(v) any other source of income that is prescribed by regulation;

(e) in the case of an application made under section 4 by a person other than a person referred to in paragraph (e.1) in respect of a two-week period beginning in 2021, they had, for 2019 or for 2020 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 sources referred to in subparagraphs (d)(i) to (v);

...

(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 fixed by regulation, that percentage, in their average weekly employment income or self-employment income for the two-week period relative to

(i) in the case of an application made under section 4 in respect of a two-week period beginning in 2020, their total

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,

(iii) des prestations qui lui sont payées au titre de l'un des paragraphes 22(1), 23(1), 152.04(1) et 152.05(1) de la Loi sur l'assurance-emploi,

(iv) des allocations, prestations ou autres sommes qui lui sont payées, en vertu d'un régime provincial, en cas de grossesse ou de soins à donner par elle à son ou ses nouveau-nés ou à un ou plusieurs enfants placés chez elle en vue de leur adoption,

(v) une autre source de revenu prévue par règlement;

e) dans le cas d'une demande présentée en vertu de l'article 4, par une personne qui n'est pas visée à l'alinéa e.1), à l'égard d'une période de deux semaines qui débute en 2021, ses revenus provenant des sources mentionnées aux sous-alinéas d)(i) à (v) pour l'année 2019 ou 2020 ou au cours des douze mois précédant la date à laquelle elle présente sa demande s'élevaient à au moins cinq mille dollars;

...

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 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) tous ses revenus hebdomadaires moyens d'emploi ou de travail à son compte pour l'année 2019 ou au cours des

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

(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;

...

(l) if they have previously received any benefits under this Part, they have not,

(i) on or after the first day of the first two-week period for which any benefits were paid to them under this Part, quit their employment or voluntarily ceased to work, unless it was reasonable to do so, and

...

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) 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;

...

l) si elle a déjà reçu une prestation au titre de la présente partie, elle n'a pas :

(i) d'une part, depuis le premier jour de la première période de deux semaines à l'égard de laquelle elle a reçu une prestation au titre de la présente partie, quitté son emploi ou cessé de travailler volontairement, sauf s'il était raisonnable de le faire,

...

FEDERAL COURT
SOLICITORS OF RECORD

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APPEARANCES:

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FOR THE APPLICANT
(ON THEIR OWN BEHALF)

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