

Federal Court



Cour fédérale

Date: 20240712

**Dockets: T-2378-22
T-2379-22**

Citation: 2024 FC 1100

Ottawa, Ontario, July 12, 2024

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

SANDRA LANG

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant, Ms. Sandra Lang, seeks judicial review of two decisions of the Canada Revenue Agency [CRA] that found Ms. Lang ineligible for the Canada Emergency Response Benefit [CERB] (T-2379-22) and the Canada Recovery Benefit [CRB] (T- 2378-22).

[2] The Applications for judicial review were consolidated by Order dated April 4, 2024.

[3] Ms. Lang applied for and received CERB and CRB. The CRA subsequently reviewed her eligibility and determined that she was not eligible and was required to repay the benefits she had received. In brief, the CRA found that she was ineligible because she had not earned employment income of at least \$5,000 in 2019. Ms. Lang contends that she met all the eligibility criteria, including that her self-employment income as a housekeeper and nanny generated \$13,000 in 2019 and \$2,500 in the early part of 2020. She recounts that she provided documents, including receipts for cash payments, to the CRA to demonstrate her self-employment income.

[4] For the reasons that follow, the decisions are not reasonable; Ms. Lang's eligibility must be redetermined by a different CRA decision-maker.

I. **The CERB and CRB**

A. *Eligibility*

[5] CERB and CRB were intended to provide financial benefits for those affected by the pandemic due to their inability or lesser ability to work.

[6] The legislation governing the CERB and CRB programs set out their various eligibility requirements: section 6 of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act] and section 3 of *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act].

[7] To be eligible for CERB, among other criteria, applicants must have made a total of at least \$5,000 employment or net self-employment income in 2019 or in the 12-month period

preceding their application for CERB. Eligible individuals received \$2,000 for each four-week period of the CERB program, which ran from March 15, 2020, to September 26, 2020.

[8] To be eligible for CRB, among other criteria, applicants must have earned at least \$5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months prior to the initial date of their application. Eligible individuals received \$600-\$1,000 biweekly. The CRB program ran from September 27, 2020, to October 23, 2021.

[9] Some CERB and CRB applications were selected for review by CRA agents before or after payments were made to recipients.

[10] The CRA review process consisted of a first and second review, with several steps, including contact by a validation agent and discussions with the recipient regarding the CERB/CRB's eligibility requirements to attempt to determine if the recipient met the criteria; requests by the validation agent for additional documents if necessary; and, in the event of a finding of ineligibility, on request, a second review by a different agent with a report to the recipient and a final decision.

[11] The CRA established Guidelines "Confirming CERB, CRB, CRSB and CRCB Eligibility" [CRA Guidelines] to assist review agents in assessing eligibility. The CRA Guidelines are included in the Respondent's Record.

B. *The Review of Ms. Lang's CERB and CRB file*

[12] Ms. Lang recounts that she worked throughout 2019 as a housekeeper and nanny for two families. She states that around the end of March 2020, the two families temporarily stopped seeking her services because of the onset of the pandemic.

[13] Ms. Lang applied for and received CERB payments for periods 1-7 starting on March 15, 2020, ending on September 26, 2020. She subsequently applied for and received CRB payments for periods 1-27 starting on September 27, 2020, ending on October 9, 2021.

[14] Ms. Lang's file was subsequently selected for review by CRA.

[15] It is not in dispute that Ms. Lang filed tax returns for the taxation years 2018, 2019, and 2020. For 2018, she declared \$19,780 under "net self-employment income". However, for 2019, Ms. Lang declared \$13,000 as "other income" rather than as self-employment income.

[16] At the first review, the agent found that Ms. Lang was not eligible to receive CERB or CRB because she had not met the income eligibility requirements.

[17] Ms. Lang submits that she explained to the agent that she keeps handwritten, paper copies of receipts reflecting the cash paid to her by the two families (her employers). Ms. Lang noted that she had receipts from both employers for 2019 and 2020 and both employers had signed Ms. Lang's handwritten ledger acknowledging the amounts paid.

[18] Ms. Lang submits that she explained that she uses some of the cash received as needed and makes deposits periodically into a joint bank account shared with her husband (and previously with her husband's late mother). Ms. Lang also submits that the first agent did not want some of the documents Ms. Lang offered.

[19] Ms. Lang requested a second review.

II. **The Decision under Review**

[20] The decision of the CRA on the second review is the subject of this Application for Judicial Review.

[21] The second review Agent [the Agent] concluded that Ms. Lang was not eligible for CERB/CRB because she had not met the income eligibility requirements. The Agent found that they could not confirm whether Ms. Lang had earned more than \$5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months prior to her first CERB/CRB application.

[22] The Agent's notes provide the reasons for their conclusion:

- Ms. Lang did not file any self-employment income for the tax years 2019, 2020, and 2021;
- The handwritten receipts and bank statements could not be attributed to Ms. Lang because they did not contain her name or other identifying information, and the amounts on the receipts did not correspond with the amounts of the deposits indicated in the bank statements; and

- Ms. Lang shares a bank account with her spouse and his mother, making it difficult to attribute any income or deposits to Ms. Lang.

[23] The Agent's report for their decisions for both the CERB and CRB review processes are identical and state:

Eligibility criteria not met: TP DID NOT MEET \$5000 INCOME CRITERIA FOR 2019, 2020 AND 2021.

Explain your decision regarding each criteria the taxpayer did not meet: TP DID NOT MEET \$5000 INCOME CRITERIA FOR 2019, 2020 AND 2021. TP HAS ALSO MENTION [sic] THAT TP WAS SELF-EMPLOYED BUT NO SELF-EMPLOYMENT INCOME FILED FOR 2019, 2020 AND 2021. TP DUBMITTED [sic] DOCUMENTS BUT RECEIPTS AND BANK STATEMENTS DOES [sic] NOT MATCH.

III. Preliminary Issues

[24] The Respondent submits that Ms. Lang's affidavit, served on May 15, 2023, should not be admitted because it does not comply with Rule 80(2.1) of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]. The Respondent notes that Ms. Lang attested in her May 15, 2023, affidavit and in other material that she did not speak English fluently or write in English and, therefore, the affidavit should have been written in Ms. Lang's first language and translated to English by a competent and independent interpreter under oath in compliance with Forms 80B and 80C.

[25] The Respondent notes that Ms. Lang included her May 2023 affidavit in her Application Record filed in March 2024. However, the affidavit had been changed and, among other things, included the statement that "I am now able to converse in English as well as write it, reading was

NEVER a problem”. The Respondent notes that by Order of Justice Pamel dated April 4, 2024, the Respondent was directed to include Ms. Lang’s original May 15, 2023, affidavit in the Respondent’s Supplementary Record and that the updated version is not to be relied on. As a result, the statement regarding Ms. Lang’s improved English must be ignored.

[26] The Respondent also submits that several exhibits attached to Ms. Lang’s May 15, 2023, affidavit constitute new evidence not before the Agent at the time the decision was made and is, therefore, inadmissible.

A. *Ms. Lang’s affidavit is admitted*

[27] Ms. Lang’s May 15, 2023, affidavit is admissible; Rule 80(2.1) does not apply in this circumstance.

[28] Although English is not her first language, Ms. Lang represented herself at the hearing of the Application for Judicial Review and made her submissions and responded to the Court’s questions in English without difficulty. Ms. Lang attests that she dictated or relayed the content of her affidavit, which was written in English by her husband. She then read it over and swore to the truth of the contents of the affidavit. She has demonstrated that she does understand English.

[29] I note that the Court receives affidavits that are drafted by Counsel on the basis of their client’s account where the client then reads the affidavit and attests to the truth of the contents. Ms. Lang followed a similar process, albeit without Counsel.

B. *The evidence not before the decision-maker is not admissible*

[30] The Respondent objects to the admission of evidence that the Agent attests was not on the record.

[31] The Respondent notes that the reasonableness of the Agent's decision must be reviewed only on the documents on the record before the Agent at the time, which were:

- a. Documents submitted by Ms. Lang:
 - i. Extracts of Bank Statements of Joint Account under the names Christopher Lang, Arlene Lang, and Sandra Lang from December 14, 2018, to January 14, 2020;
 - ii. Handwritten Receipts dated from January 4, 2019, to December 6, 2019;
 - iii. Document entitled "Sandra – Self-employment Income – Year 2019";
 - iv. Ms. Lang's Notice of Assessment for the tax year 2020;
- b. The case specific notes relevant to the Canada Emergency Benefits for Ms. Lang found in the T1Case notes;
- c. The agency-wide notes relevant to the Canada Emergency Benefits for Ms. Lang found in the T1Case notes;
- d. Information found on the CRA's computer system regarding "Income and Deductions" with respect to Ms. Lang for the 2018-2020 taxation years; and
- e. Information found on the CRA's computer system showing the summary of Ms. Lang's T1 data.

[32] The Court agrees with the Respondent that documents attached to Ms. Lang's May 15, 2023, affidavit, which were not before the Agent are not admissible; they do not fall within any of the recognized exceptions to the general rule (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 18-20).

[33] The inadmissible documents include Ms. Lang's "additional explanations" (Exhibit 1-C). This information was set out in Ms. Lang's Notice of Application and reiterated in her submissions to the Court, but this was not on the record before the Agent.

[34] The Respondent also argues that other documents, including copies of receipts, ledgers, and colour-coded bank statements must be rejected because they are not "certified". The reference to "certified" appears to relate to the Respondent's position that Ms. Lang's May 15, 2023, sworn affidavit should be rejected. As noted above, Ms. Lang's original affidavit is admissible, as are the exhibits attached to it.

[35] Justice Pamel's April 4, 2024 Order stated, "The applicant's affidavit and exhibits filed as part of the applicant's record under Rule 309 is to be considered as not having been filed, and the applicant's record is deemed to include the version of the applicant's affidavit and exhibits found in the respondent's record. The applicant need not serve and file an amended applicant's record" (emphasis added). The Respondent's record includes Ms. Lang's May 15, 2023, affidavit with exhibits, including copies of receipts, a ledger, and bank statements.

[36] Ms. Lang did not request a complete record of the material in the possession of the decision-maker pursuant to Rule 317 of the *Federal Courts Rules*. In her Notice of Application, she requested only specific documents related to her CRA "my account". As a result, the Court does not have the benefit of a Certified Tribunal Record. Instead, the Court has differing accounts of the documents provided to the Agent by Ms. Lang.

[37] Ms. Lang attests that she submitted copies of all her handwritten receipts for 2019 (104 in total) and her ledger to the first review agent. Ms. Lang contends that the first agent was not receptive of her offer to provide all these documents.

[38] The second review Agent attests that all the documents Ms. Lang provided to the first review agent were on the record, but there were only 54 receipts for 2019 and none for 2020.

[39] Regardless of whether the documents attached to Ms. Lang's affidavit are inadmissible as new evidence, the reasonableness of the Agent's decision does not turn on the existence of these additional receipts, the handwritten ledger, or the colour-coded bank statements, but on how the Agent determined Ms. Lang's eligibility based on the documents acknowledged by the Agent as received.

[40] The colour-coded bank statements, which were not colour-coded when first submitted to CRA, are in all other respects identical to the annotated copies previously submitted to the CRA. The colour-coded bank statements attempt to distinguish deposits made by Ms. Lang from those made by her husband or late mother-in-law, whereas the annotated bank statements on the record only identify which deposits were attributable to Ms. Lang.

[41] The Agent's affidavit attaches several exhibits (which includes annotated copies of the bank statements) and receipts submitted by Ms. Lang. Exhibit F contains the Agent's internal notes, including the Agent's acknowledgment that Ms. Lang provided invoices (receipts) totalling more than \$5,000 of net income for 2019 from "only" two clients and the same amount

from the clients is noted each time. The notes indicate that the Agent focused on the fact that the deposits in the bank statements did not “match” the amounts on the invoices.

IV. ISSUES AND STANDARD OF REVIEW

[42] The Agent’s decision that Ms. Lang did not meet the income eligibility criteria for CERB or CRB is reviewable on a standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 23-27 [*Vavilov*]; *Laroque v Canada (Attorney General)*, 2022 FC 613 at para 16).

[43] The Court’s task is to examine the reasons of the decision- maker (in this case, the Agent) and to determine whether the decision is “based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law” (*Vavilov* at para 85), and more generally, whether the reasons are justifiable, intelligible, and transparent (*Vavilov* at para 95).

[44] For a decision to be found unreasonable and set aside, the Court must find shortcomings or flaws that are central to the decision (*Vavilov* at para 100); this includes irrational reasoning and indefensible outcomes in light of the relevant factual and legal constraints (*Vavilov* at para 101).

V. **The Applicant's Submissions**

[45] Ms. Lang submits that she met the eligibility criteria for both CERB and CRB; she earned income from self employment as a house cleaner and nanny, received in cash totalling \$13,000 in 2019 and \$2,500 for the first few months of 2020, and she could not continue to work after the onset of the pandemic. Ms. Lang attests that she has 104 receipts for 2019, which were uploaded for review by the Agent, and bank account statements and a ledger signed both employers noting their payments in 2019. She also notes that she filed Income Tax Returns for each taxation year.

[46] Ms. Lang submits that the first review agent did not want all the documents she offered to provide and failed to understand that some workers are paid in cash and that some families have joint bank accounts.

[47] Ms. Lang submits that all 104 receipts for the cash received from two families in 2019 were available to the second review Agent, along with her handwritten ledger and accounting summary sheet. She also explains that the deposits noted on her bank statements do not match her cash receipts because she uses some of the cash she receives for expenses and deposits some cash, but not immediately upon receipt.

VI. **The Respondent's Submissions**

[48] The Respondent submits that the Agent reasonably found that Ms. Lang was not eligible because she did not declare her income as employment income or self-employment income in her 2019 tax return and that the receipts for cash received from her employers and the deposits noted in her bank statements, which were considered by the Agent, do not match. The

Respondent submits that the Agent found that there was insufficient evidence to establish that Ms. Lang had earned at least \$5,000 in self-employment income in 2019.

[49] The Respondent relies on the affidavit of the Agent. The Agent attests that Ms. Lang's Notice of Assessment notes net self-employed income of \$19,780 in 2018 but no self-employment income in 2019, 2020 or 2021; 76 receipts that Ms. Lang attached to her affidavit were not provided to the Agent; complete bank statements covering the period December 14, 2018 to January 14, 2020 were not on the record when the Agent made the decision; and, the amounts on the receipts do not match the amount of deposits indicated in the bank statements.

[50] The Respondent submits that this Court has found that a Notice of Assessment based on self-reported income is not conclusive proof of income, and that taxpayers should be able to provide all relevant documents to support claims made in their income tax return (citing *Aryan v Canada (Attorney General)*, 2022 FC 139 at paras 40, 43 [*Aryan*]).

[51] The Respondent also submits that this Court has emphasized the importance of keeping detailed records to reflect cash transactions and that funds need to be contemporaneously deposited into an account at a financial institution and that handwritten receipts may not be sufficient evidence of payment to be eligible for CERB/CRB (citing *Walker v Canada (Attorney General)*, 2022 FC 381 at para 37 [*Walker*]; *Sjogren v Canada (Attorney General)*, 2023 FC 24 at paras 38, 40 [*Sjogren 2*]; *Zhang v Canada (Attorney General)*, 2023 FC 1761 at para 30 [*Zhang*]; *Mathelier-Jeanty v Canada (Attorney General)*, 2022 FC 1188 at para 24 [*Mathelier-Jeanty*]).

[52] The Respondent now submits that the Agent's notes convey that the Agent found the receipts lacked specificity because they did not include contact information for Ms. Lang's employers or set out the specific services provided. The Respondent adds that the Agent did not ask for more specificity because Ms. Lang had responded that she had already provided everything she had and because she "panicked", and the Agent did not wish to upset her. The Respondent also points to notes to suggest that there were concerns about the reliability of Ms. Lang's receipts, although this was not communicated to Ms. Lang.

VII. **The Decision is Unreasonable**

[53] Ms. Lang has expended a great deal of time and effort to establish her eligibility for CERB and CRB to the first and second review Agents and to this Court. The Respondent has also expended a great deal of time and effort to dispute Ms. Lang's eligibility, including challenging her affidavit based on her language proficiency and challenging the admissibility of "new evidence" and questioning whether exhibits were "certified". The Court questions whether this dispute could have been resolved earlier and more informally.

[54] As an observation, Ms. Lang's type of work (i.e., housecleaner, nanny) was contemplated at the time that the CERB and CRB were expeditiously launched to mitigate the impact of the COVID-19 pandemic. The CRA Guidelines, developed to assist review agents in assessing eligibility, provide examples of types of work and examples of the type of proof of self-employment income.

[55] However, the CRA's approach to the review of Ms. Lang's eligibility suggests that the Agent made an assumption that the only way to prove self-employment income is to deposit every cash payment in full immediately upon receipt into a bank account, to which no one else has access. Although some of the jurisprudence after the date of Ms. Lang's decision cautions that cash payments should be carefully accounted for and that certain types of records may be preferable to establish eligibility, the Agent appears to have imposed more rigid requirements on Ms. Lang that are not in the Guidelines. In addition, the Respondent now offers additional reasons for the decision which are not the reasons of the Agent.

[56] It is not disputed that CERB/CRB applicants must meet all eligibility criteria (*Fahandez-Saadi v Canada (Attorney General)*, 2023 FC 1665 at para 13 [*Fahandez-Saadi*]; *Ntuer v Canada (Attorney General)*, 2022 FC 1596 at para 24), and the eligibility criteria are non-discretionary (*Fahandez-Saadi* at para 13; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 23). However, the Guidelines convey that the review agent has some discretion with respect to the documents that are acceptable to establish income eligibility.

[57] The CRA Guidelines set out examples of acceptable proof of at least \$5000 in employment or self-employment;

Acceptable proof:

- Invoice for services rendered, for self-employed individuals or sub-contractors. For example an invoice for painting a house or a cleaning service etc. Must include the date of the service, who the service was for, and the applicant's or company's name.
- Documentation for receipt of payment for the service provided, e.g. statement of account, or bill of sale showing a payment and the remaining balance owed

- Documentation showing income is earned from carrying on a “trade or business” as a sole proprietor, an independent contractor, or some form of partnership
- Contract
- A list of expenses to support the net result of earnings
- Proof of advertising
- Any other documentation that will substantiate \$5,000.00 in self employment income

[58] Based on the information acknowledged to have been submitted by Ms. Lang to the Agent, Ms. Lang provided copies of at least 52 invoices/receipts from her two employers for 2019, specifying the services she provided (housekeeping and nanny or house cleaning), the dates of payment, her name, and the employer’s family name. She also provided copies of bank statements, annotating which deposits should be attributed to her, and a copy of a typed accounting sheet or ledger showing her self-employment income from 2019 as acknowledged by her two employers.

[59] As noted above, the Agent’s reasons for finding that Ms. Lang did not earn \$5,000 in self- employment income are:

- Ms. Lang did not file any self-employment income for the tax years 2019, 2020, and 2021;
- The handwritten receipts and bank statements could not be attributed to Ms. Lang because they did not contain her name or other identifying information, and the amounts on the receipts did not correspond with the amounts of the deposits indicated in the bank statements; and
- Ms. Lang shares a bank account with her spouse and his mother, making it difficult to attribute any income or deposits to Ms. Lang.

[60] The Respondent does not dispute that Ms. Lang filed income tax returns or that her 2018 return identified her income from self-employment. The 2019 return identified \$13,000 of income as “other income”. However, following a phone conversation with Ms. Lang, the Agent’s notes state “... TP HAS FILED TAX FOR 2019 AND 2020 SHOWING OTHER INCOME. OTHER INCOME IS SELF-EMPLOYED INCOME” (emphasis added).

[61] The Agent’s brief notes appear to acknowledge that although Ms. Lang’s 2019 tax return reports her income as “other income”, it is, or could be, self-employed income. However, the Agent’s reasons and brief report that is set out in the final decision state that Ms. Lang “did not file self-employment income” and “NO SELF EMPLOYMENT INCOME FILED...” for 2019, 2020, or 2021.

[62] Given that Ms. Lang does not describe any other source of income and that her receipts for her work in 2019 reflect the \$13,000 indicated as “other income”, the Agent appears to have considered that this was self-employment income. However, the Agent’s final decision states that Ms. Lang did not file any self-employment income in 2019.

[63] As the Respondent notes, the jurisprudence of this Court has found that a Notice of Assessment from the CRA does not provide “conclusive” proof of income because the income is self-reported. However, the Agent relied on the Notice of Assessment to conclude that Ms. Lang had no income from self-employment. If a Notice of Assessment cannot prove income from self-employment then it should not be used to conclusively *disprove* income from self-employment.

[64] The Agent's notes stating that "the handwritten receipts and bank statements could not be attributed to Ms. Lang because they did not contain her name or other identifying information, and the amounts on the receipts did not correspond with the amounts of the deposits indicated in the bank statements" are inaccurate and confusing. The receipts do include Ms. Lang's name, the date, the services she provided (in a general way), and her employers' family names. The annotated bank statements also include Ms. Lang's name along with two others, as it is a joint account. However, the deposits in the bank account do not "correspond" or "match" the cash receipts.

[65] The Agent's Exhibit F is the Agent's notes, which state that Ms. Lang provided invoices/receipts totalling more than \$5,000 net income, from two clients and for the same amounts each time. The notes also indicate that the Agent advised Ms. Lang that she must provide "matching" bank statements. Ms. Lang could not but attempted to identify the deposits that she made.

[66] The Agent focused on the fact that Ms. Lang's receipts do not match the amounts deposited in her bank account. In other words, she may have had a receipt for \$175 in cash payment, but deposited a different amount on a different day, which was often combined with other cash payments, resulting in a deposit greater than any of her individual cash payments. The Agent's Exhibit E shows screen shots of receipts and the bank statements for the same month. The Agent's attempt at reconciling cash receipts with the bank deposits appears to be based on the assumption that a worker paid in cash is required to deposit the full amount of cash received before withdrawing any of that same cash, rather than using some cash before making a deposit. Given the small amounts of cash received each week by Ms. Lang (each receipt indicates an

amount of \$175 or \$75), it is not realistic to expect that those amounts would be deposited individually and that any withdrawals would only be subsequently made, rather than what Ms. Lang appears to have done, and what she endeavoured to explain, which is to use some or all of the cash as needed for her immediate expenses and then to later deposit any surplus.

[67] The CRA's Guidelines do not suggest that cash must be contemporaneously deposited into a bank account (see *Sjogren v Canada (Attorney General)*, 2022 FC 951 at paras 23, 28 [*Sjogren I*]). In *Sjogren I*, Justice Furlanetto noted at para 29:

[29] Imposing such a mandatory requirement for bank statements effectively precludes the Applicant from obtaining CRB if she does not deposit the cash received in the bank and does not appear to recognize the varied information that could be provided as proof of income per the CRB Guidelines.

[68] The Agent's assumption would require that everyone conducts their business by receiving cheques or e-transfers and making debit payments, which generate bank records; the assumption also ignores that cash remains a legal form of tender in Canada and that some people prefer to use cash.

[69] The Respondent relies on several decisions of this Court regarding CRB/CERB determinations. However, these are not analogous to Ms. Lang's circumstances. The Court's role is to determine whether a particular decision is reasonable, i.e., justified, transparent and intelligible, and based on the facts, which tend to differ from case to case.

[70] In *Mathelier-Jeanty*, Justice Walker noted at para 16 that taxpayers who wish to be paid in cash must be particularly concerned about being able to prove payments in order to obtain a

benefit under the Act (citing *Cantin v Canada (Attorney General)*, 2022 FC 939 at para 15 [*Cantin*]). In *Cantin*, Justice Lafrenière found that the applicant's invoices and bank statements did not match, and the applicant had failed to overcome the Officer's concerns about the reliability of the invoices (at paras 15-16).

[71] The Respondent's argument, raised for the first time at the hearing of this judicial review, suggests that the agent also had concerns about the reliability or veracity of Ms. Lang's receipts. However, this is not borne out in the Agent's reasons. The Respondent pointed to notes of the first review agent, which are not the reasons for the Agent's decision now subject to judicial review. Nor do these notes suggest that there were concerns about the veracity of the receipts, only that Ms. Lang was worried about the impact of a negative decision. If there were concerns about the veracity or reliability of the receipts, the Agent should have clearly stated this as a reason for finding that Ms. Lang had not established her self-employment income. The Agent did not do so.

[72] In *Aryan*, the applicant only provided Notices of Assessment, bank statements for a six month period, and a copy of Employment Insurance [EI] registration for self-employed persons as proof of income (at para 5). The applicant was unable or unwilling to provide further documents to establish that they had earned more than \$5,000 in employment or self-employment income, such as receipts or invoices. At paragraph 35 of *Aryan*, Justice Strickland found that the CRA was not obliged to accept Notice of Assessment as proof of income because that income is self-reported.

[73] As noted above, if a Notice of Assessment is not conclusive proof of income, it cannot be conclusive proof of no income.

[74] In *Walker*, the applicant set up a consulting business and provided two copies of invoices from “Patel Hospitality” in 2020. On review, the CRA Agent found that Patel Hospitality had folded in 2019. When the CRA Agent requested proof that the applicant had received or deposited the funds, the applicant was unable to substantiate their claim that they had been paid in cash by Patel Hospitality (see paras 35-38).

[75] In *Sjogren 2*, the applicant claimed to be a self-employed artist who had sold artwork for \$5,225 in December 2020. The applicant claimed to receive her payments in cash, which were not deposited in a bank account. Justice Grammond found (at para 14) that Ms. Sjogren had no previous history of self-employment, she had not reported any self-employment income in taxation years prior to 2020, and she was unable to provide proof of income beyond six handwritten receipts. Justice Grammond added that Ms. Sjogren was “unable to provide any other evidence of her income such as a ledger, e-transfers, copies of cashed cheques, banking slips, credit card statements to show expenses, receipts from stores for artistic materials, letters from clients detailing the sale of the art.” Justice Grammond did not find that this type of evidence was *required* to establish self-employment income, but rather, that this type of evidence was not provided by the applicant, nor any other acceptable evidence to establish their income.

[76] In *Zhang*, the applicant provided only a single invoice without any details and several letters from her employer, also with limited details (at para 12).

[77] In *Fahandez-Saadi*, the applicant provided a list of clients and cash income earned as a dog-walker, but later provided receipts that did not match their original claim. Justice Régimbald found that due to the variances in the documents, the CRA Agent reasonably questioned their reliability.

[78] There are significant factual differences between the documents submitted by Ms. Lang to support her claim that she earned self-employment income – even if only the documents acknowledged by the Agent are considered and not the “new evidence” – and the facts in the case law relied on by the Respondent.

[79] In the circumstances, the Agent’s decision regarding Ms. Lang’s income eligibility is not reasonable. The Court is not reweighing and reassessing the evidence in coming to this conclusion, but rather, finds that the decision is based on irrational reasoning and is not justified or intelligible.

[80] The Agent applied requirements for establishing eligibility that are not reflected in the CRA Guidelines (i.e., that Ms. Lang show proof that she deposited all cash earned into a bank account, and that she provide additional information on her invoices that is otherwise not required by the Guidelines). Although subsequent case law may suggest that additional information may better establish self-employment income, the case law addresses particular factual circumstances that are distinguishable from Ms. Lang’s circumstances based on the evidence she provided to the Agent. The Agent also made unreasonable assumptions about how cash payments should have been treated by Ms. Lang.

[81] The Agent’s decision is also inconsistent regarding Ms. Lang’s 2019 Notice of Assessment. If Ms. Lang’s “other income” is self-employment income, while not conclusive proof, it should have been considered along with the other documents to determine whether Ms. Lang met the income eligibility requirements. As noted in the CRA Guidelines, acceptable proof includes “[a]ny other documentation that will substantiate \$5,000 in self employment income”. The decision regarding Ms. Lang’s eligibility for CERB and CRB must be remitted to a different agent for redetermination.

JUDGMENT in files T-2378-22 and T-2379-22

THIS COURT'S JUDGMENT is that

1. The Applications for Judicial Review are granted.
2. No costs are ordered.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2378-22, T-2379-22

STYLE OF CAUSE: SANDRA LANG v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: JULY 8, 2024

REASONS FOR JUDGMENT AND JUDGMENT: KANE J.

DATED: JULY 12, 2024

APPEARANCES:

Ms. Sandra Lang (Self-Represented) FOR THE APPLICANT

Helen Felemegos FOR THE RESPONDENT

SOLICITORS OF RECORD:

Ms. Sandra Lang (Self-Represented) FOR THE APPLICANT

Department of Justice on behalf of the Attorney General of Canada
Montréal, Quebec FOR THE RESPONDENT