

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130604

Docket: A-476-12

Citation: 2013 FCA 145

**CORAM: SHARLOW J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

GULNAZ SHAHID

Respondent

Heard at Vancouver, British Columbia, on June 4, 2013.

Judgment delivered from the Bench at Vancouver, British Columbia, on June 4, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Vancouver, British Columbia, on June 4, 2013)

SHARLOW J.A.

[1] The Crown seeks judicial review of a decision of the Umpire (CUB 79897) allowing the appeal of Ms. Shahid as to her entitlement to family supplement benefits under the *Employment Insurance Act*, S.C. 1996, c. 23, and ordering the Commission to recalculate those benefits based on the finding that she was entitled to them at the relevant time.

[2] Broadly speaking, there are two conditions that must be met to establish entitlement to family supplement benefits. One condition relates to the receipt of the “Canada Child Tax Benefit” (CCTB) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The other condition is an income test.

[3] Before the Board of Referees there was insufficient evidence as to the first condition. That deficiency was cured by new documentary evidence that Ms. Shahid presented to the Umpire. It would have been preferable for the Umpire to refer the new evidence to the Board for reconsideration of their previous decision. However, given that the new evidence is conceded to establish Ms. Shahid’s entitlement to the CCTB for the relevant time, we are not inclined to set aside the Umpire’s decision on that procedural ground.

[4] The Crown argues that the Umpire failed to consider whether the income test was met. It is true that the Umpire did not consider the income test, and we agree that he should have done so.

[5] However, if he had done so, he would have found in the record no conclusive evidence on that point. Since the Crown is the party best placed to determine from the Canada Revenue Agency Ms. Shahid’s family income for the relevant period, the only conclusion reasonably open to the Umpire would have been that the Crown failed to meet the onus of proving that the income test was not met. That onus cannot now be met because the Crown could, with due diligence, have obtained the relevant income evidence and presented it to the Board or the Umpire.

[6] For these reasons, we will dismiss this application for judicial review.

"K. Sharlow"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-476-12

STYLE OF CAUSE: Attorney General of Canada v.
Gulnaz Shahid

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: June 4, 2013

REASONS FOR JUDGMENT OF THE COURT BY: SHARLOW, WEBB, NEAR J.J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Nathan Murray FOR THE APPLICANT

Gulnaz Shahid ON HER OWN BEHALF

SOLICITORS OF RECORD:

William F. Pentney FOR THE APPLICANT
Deputy Attorney General of Canada