

Federal Court



Cour fédérale

Date: 20250411

Docket: T-1614-24

Citation: 2025 FC 681

Ottawa, Ontario, April 11, 2025

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

MONA MIU CHEUNG WAN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review of two Canada Revenue Agency (“CRA”) decisions denying the Applicant, Mona Miu Cheung Wan, the Canada Emergency Response Benefit (“CERB”) and the Canada Recovery Benefit (“CRB”) (the “Relevant Decisions”).

[2] For the reasons that follow, the application is dismissed.

II. Background

A. *The Applicant's Tax Filing History*

[3] In her 2019 income tax return, the Applicant reported gross commission income of \$1,256 and net self-employment commission income of \$1,256.

[4] In her 2020 income tax return, the Applicant reported gross commission income of \$3,569 and net self-employment commission income of \$3,569. The Applicant's 2020 taxation year was reassessed, but no changes were made to her gross or net self-employment income.

[5] In her 2021 income tax return, the Applicant reported gross commission income of \$6,354 and net self-employment commission income of \$6,354.

B. *Application and Eligibility Determination for the CERB and the CRB*

[6] The Applicant applied for and received the CERB for the periods between March 15, 2020 and September 26, 2020. The Applicant subsequently applied for and received the CRB for the periods between September 27, 2020 and October 9, 2021.

[7] After the CRA commenced a review of the Applicant's eligibility for the CERB and the CRB, the Applicant provided two sets of submissions and documents, which were received by the CRA between April 16, 2023 and August 30, 2023. Included were a T-1 adjustment request

for her 2019 taxation year, a statement of professional and business activities, and a letter explaining that a T-1 adjustment request has been submitted.

[8] By letter dated August 4, 2023, the CRA notified the Applicant that she was not eligible to receive the CERB and the CRB for the respective periods.

[9] The Applicant requested a second review of the decision. In conducting its second review, the Second Reviewer considered the following:

- A. the procedure and phone script documents provided to CRA Agents instructing them on how to determine CERB and CRB eligibility;
- B. the notes stored in the CRA system in respect of the Applicant's application for the CRB and the CERB;
- C. the Applicant's income tax assessment summary for the 2019 taxation year as initially assessed and filed;
- D. the Applicant's income tax assessment summary for the 2020 taxation year as filed and initially assessed;
- E. the Applicant's income tax assessment summary for the 2020 taxation year as reassessed;
- F. the Applicant's income tax assessment summary for the 2021 taxation year as filed and assessed;
- G. the Applicant's eligibility overview showing what benefits had been paid to the Applicant; and

H. the documents and submissions made by the Applicant throughout the first review and second review.

III. The Relevant Decisions

[10] By letters dated June 3, 2024, the CRA notified the Applicant that she was ineligible for the CERB and the CRB because she did not demonstrate she earned at least \$5,0000 in net self-employment income or employment income in 2019, 2020, or in the 12 months before the date of her application for the CERB or the date of her first application for the CRB.

IV. Preliminary Issues

[11] The Respondent raises two preliminary issues.

[12] First, the Respondent submits that the Applicant has named the incorrect Respondent in this matter. I agree that the proper respondent is the Attorney General of Canada, as the Applicant is challenging a decision made by an officer of the CRA on behalf of the Minister of Employment and Social Development (*Federal Courts Rules*, SOR/98-106 [*Rules*], s 303(1)(a); *Kleiman v Canada (Attorney General)*, 2022 FC 762 [*Kleiman*] at para 10).

[13] The style of clause is hereby amended to name the Attorney General of Canada as the Respondent.

[14] Second, the Respondent asserts that Exhibit A to the Applicant's Affidavit within the Applicant's Record is an irrelevant document as it was not before the Second Reviewer. The document is a copy of her modified 2019 tax return, which includes some pages that were issued after the Relevant Decisions, and therefore could not have been before the Second Reviewer during their review.

[15] As a general rule, and absent exceptional circumstances, the evidentiary record before this Court on judicial review is restricted to the evidentiary record that was before the administrative decision maker (*Ganesh v Canada (Attorney General)*, 2023 FC 1405 at paras 17-19, citing *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19-20).

[16] The Applicant has not made any arguments as to which exceptional circumstances apply, and I find that none apply. As a result, Exhibit A of the Applicant's Affidavit is inadmissible and will not be considered.

V. Issue

[17] The only issue is whether the Relevant Decisions were reasonable.

VI. Analysis

A. *Standard of Review*

[18] The standard of review with respect to the reviewer's substantive findings is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

B. *Relevant Legislation*

[19] The enabling legislation of the CERB is the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 (the "*CERB Act*"). The enabling legislation of the CRB is the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the "*CRB Act*"). The *CERB Act* and the *CRB Act* set out eligibility requirements to receive the CERB and the CRB. For this application, the relevant criteria require that a worker, for 2019, 2020 (relevant for CRB only), or in the 12 months preceding the day they make their respective application, have a total income of at least \$5,000 from employment, self-employment, and other specified sources.

[20] Both the *CERB Act* and the *CRB Act* require that an applicant provide the Minister with any information that the Minister may require in respect of the application (*CRB Act*, s 6; *CERB Act*, s 10).

C. *Reasonableness of the Relevant Decisions*

[21] The Second Reviewer determined the Applicant did not meet the \$5,000 net income requirement because the Applicant reported net commission income of \$1,256 for 2019 and \$3,569 for 2020.

[22] The Applicant does not identify any errors in the Relevant Decisions, but rather asserts that after modification of her 2019 income tax return, she meets the CRA requirements of earning at least \$5,000 in 2019, and so is qualified to receive the CERB and the CRB. Although the Applicant's modified tax return submitted on this judicial review will not be considered, I accept that the changes in her T-1 adjustment for the year 2019, which was before the Second Reviewer, would also demonstrate this.

[23] As noted by the Respondent, there is no requirement in either the *CERB Act* or the *CRB Act* that the Minister is bound by an individual's most recent tax filings or assessments. This is consistent with the case law that establishes that while an applicant's income tax filings may form part of the evidence considered by a reviewer, it is not the only evidence to be considered, and it is not binding (*Doxsee v Canada (Attorney General)*, 2024 FC 1029 at para 21; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 35). Consequently, I cannot find the Relevant Decisions were unreasonable for not considering her new filings.

[24] Upon my review of the record and the eligibility criteria under the statute, I find the Relevant Decisions were reasonable. Although the Second Reviewer made an error in their notes

with respect to the Applicant's 2021 tax filings, as acknowledged by counsel for the Respondent during the hearing, this error is not fatal. The Second Reviewer considered the totality of the information before them in light of the legal constraints and CRA Guidelines and determined that additional documents were required to support the income eligibility criterion, as set out above. The summary at the end of the notes indicates the Second Reviewer applied and assessed the correct criteria for receiving the CERB and the CRB. The noted error with respect to the 2021 tax filings is not a sufficiently serious shortcoming to render the Relevant Decisions unreasonable (*Vavilov* at paras 91, 100).

[25] The burden of proving eligibility to receive benefits rested with the Applicant (*Walker v Canada (Attorney General)*, 2022 FC 381 at paras 33–37 and *Desautels v Canada (Attorney General)*, 2022 FC 1774 at para 41). The Applicant was required to provide the Minister with any information the Minister may require in respect of the application. The Applicant did not provide the documents required, and did not respond to phone calls from the Second Reviewer to discuss these shortcomings. Failure of the Applicant to do so does not render the Relevant Decisions unreasonable.

[26] The Decision meets the reasonableness requirements on judicial review of being justifiable, transparent, and intelligible.

VII. Conclusion

[27] This application for judicial review is dismissed.

[28] The Respondent has not sought costs and accordingly, no costs will be awarded.

JUDGMENT in T-1614-24

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1614-24

STYLE OF CAUSE: MONA MIU CHEUNG WAN v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 18, 2025

JUDGMENT AND REASONS: MANSON J.

DATED: APRIL 11, 2025

APPEARANCES:

Mona Miu Cheung Wan

FOR THE APPLICANT
(ON HER OWN BEHALF)

Jason Winter

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Ottawa, Ontario

FOR THE RESPONDENT