

Federal Court



Cour fédérale

Date: 20250423

Docket: T-1314-24

Citation: 2025 FC 723

Toronto, Ontario, April 23, 2025

PRESENT: Mr. Justice Andrew D. Little

BETWEEN:

WANLIAN CHEN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] In this judicial review application, the applicant asks the Court to set aside a decision of Canada Revenue Agency (“CRA”) dated May 2, 2024. CRA determined that the applicant was not eligible for the Canada Recovery Benefit (the “CRB”).

[2] The applicant submitted that she was deprived of procedural fairness and that the decision was unreasonable under the principles set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 SCR 653.

[3] For the reasons that follow, I conclude that the application must be dismissed, without costs.

Summary

[4] By way of summary, the Court has concluded that the decision of the CRA was neither unreasonable nor procedurally unfair.

[5] First, when analyzing reasonableness, the Court must look at whether the decision maker made a reasonable decision considering the facts of the case, evidence, legislation and case law. In this case, CRA found that the applicant's tax returns did not provide enough information about her income to prove that she met the \$5,000 requirement for CRB eligibility. The law is that tax returns or notices of assessment are not necessarily enough to prove a person's income, without additional supporting evidence. The CRA requested additional documentation and tried to contact the applicant to explain this. Eventually, CRA was in touch with the applicant's representative (friend). However, the applicant did not provide additional documents. It was reasonable for CRA to conclude that there was not enough information to prove the applicant's income for the years in question.

[6] Second, the process leading to CRA's decision was procedurally fair. An applicant is entitled to know the case to meet and to have a reasonable opportunity to respond to it. In this case, CRA contacted the applicant by letter and telephone to make her aware of the additional information she needed to provide to show her eligibility. The applicant responded twice to the

request for documents. CRA advised the applicant or her representative that more information was needed. She had a reasonable opportunity to provide it. Accordingly, the applicant was not deprived of procedural fairness.

I. **Background and Events leading to this application**

[7] The *Canada Recovery Benefits Act*, SC 2020, c. 12 (the “CRB Act”) provided financial assistance to persons whose income was adversely affected by the COVID-19 pandemic. Persons could claim the CRB, subject to eligibility requirements in the statute: see *CRB Act*, esp. sections 3 and 4. Financial assistance was offered for the period from September 27, 2020, until October 23, 2021.

[8] The applicant is a self-employed hairdresser who worked out of a salon in Toronto operated by New Hair Inc. She received the CRB for 24 two-week periods from November 2020 until October 2021.

[9] By letter dated April 6, 2023, CRA requested information from the applicant to support her eligibility for the CRB.

[10] On May 7, 2023, the applicant provided CRA with a T4A from New Hair Inc for 2020.

[11] An officer at CRA conducted a first review of the applicant’s eligibility. By letter dated September 19, 2023, CRA advised the applicant that she was not eligible based on income requirements – she did not earn at least \$5,000 (before taxes) of employment and/or self-

employment income in 2019, in 2020, or in the 12 months before the date of her application for the CRB.

[12] By letter dated October 11, 2023, the applicant requested a second review. On October 16, 2023, the applicant provided CRA with the same T4A from New Hair Inc. for 2020 and a T4A from New Hair Inc. for 2021.

[13] As part of the second review, a CRA officer:

- a) Reviewed the file and made notes on March 27, 2024;
- b) Attempted to reach the applicant by telephone, three times, on March 27 and 28, 2024;
- c) Spoke to the applicant's representative and friend in mid-April 2024; and
- d) Prepared a Second Review Report on April 30, 2024.

[14] After the second review, CRA advised the applicant by letter dated May 2, 2024, that she was not eligible for the CRB. The reason was the same as the previous one: she did not earn at least \$5,000 (before taxes) of employment and/or self-employment income in 2019, 2020 or in the 12 months before the date of her application for the CRB.

[15] This second decision is under review in this proceeding.

II. New Evidence on this Application

[16] The applicant filed an affidavit in this judicial review proceeding, which contained new information related to her self-employment income. The affidavit attached a copy of the applicant's Notices of Reassessment for the 2020 and 2021 taxation years and copies of pages from (what appears to be) the applicant's amended tax returns for the 2020 and 2021 taxation years. The applicant also made new factual points in her written submissions.

[17] In my view, the new evidence filed on this application is not admissible on this application. The documents were not before the CRA officer. The new evidence falls under the general rule that the evidentiary record before a reviewing court is restricted to the evidentiary record that was before the administrative decision maker when the impugned decision was made: see e.g., *Terra Reproductions Inc. v. Canada (Attorney General)*, 2023 FCA 214, at para 5; *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22, at para 19; *Xin v. Canada (Attorney General)*, 2023 FC 595, at paras 54-55; *Aryan v Canada (Attorney General)*, 2022 FC 139, at para 42.

[18] However, the documents attached to the applicant's affidavit do not affect the outcome or analysis of reasonableness in this case. The only relevant and material information in those documents for CRA's second review decision was the amount of applicant's net self-employment income. The CRA officer was aware of that amount for both 2020 and 2021, as expressly mentioned in notes dated March 27, 2024, that the officer made and relied on in making the decision under review. The officer attempted to contact the applicant by telephone

that day and the next day. (At the hearing of this application, we discussed the applicant's net self-employment income in 2020 and 2021, including in the notes made on March 27, 2024.)

III. **Was CRA's Decision Reasonable?**

[19] Before considering the reasonableness of CRA's decision, there are some additional initial observations. I understand that the applicant initially reported net income from self-employment for 2020 and 2021 in amounts less than \$5,000. She revised her reported net income when she realized that some of her claimed expenses were personal rather than professional expenses and should not have been used to reduce her gross earnings. After these revisions to her tax returns, the result was reported net income from self-employment exceeding \$5,000 for both years. However, none of this process was the subject of evidence in the record. The officer did not refer to the applicant's initial tax returns for 2020 and 2021, or to the quantum of deductions initially claimed and subsequently claimed by the applicant. The officer made no finding that the applicant revised her reported net income from self-employment for the purpose of becoming eligible for the CRB. In addition, there is nothing in the record about a CRA audit of the applicant's 2020 or 2021 returns. Finally, there is no evidence in the record related the expenses claimed by the applicant for either year.

[20] The applicant's position was that CRA erred in concluding that she was not eligible for the CRB and that the Court should conclude that she was eligible. The applicant argued that CRA did not incorporate her amended tax returns and the resulting notices of re-assessment for 2020 and 2021 into its decision making on eligibility. The applicant submitted that if it had, CRA would conclude that she was eligible for the CRB because both showed that she earned slightly

more than \$5,000 in net self-employment income in those tax years. She also referred to procedural unfairness by CRA by failing to take into account her amended tax returns, and CRA's own reassessment, for 2020 and 2021.

[21] The standard of review of CRA's eligibility decision for the CRB is reasonableness, as described in *Vavilov: Shtokal v. Canada (Attorney General)*, 2025 FC 498, at para 9; *Li v. Canada (Attorney General)*, 2025 FC 346, at para 12.

[22] On this application, the Court has a limited, supervisory role: to determine whether that CRA's decision was reasonable. Reasonableness review is a deferential and disciplined evaluation of whether an administrative decision is transparent, intelligible and justified: *Vavilov*, at paras 12-13 and 15. The starting point is the reasons provided by the decision maker, which are read holistically and contextually, and in conjunction with the record that was before the decision maker. A reasonable decision is based on an internally coherent and rational chain of analysis and is justified in relation to the facts and law that constrained the decision maker: *Vavilov*, esp. at paras 85, 91-97, 103, 105-106 and 194.

[23] The Court's role is not to redetermine the decision. *Vavilov* instructs the Court not to do its own analysis of the circumstances or come to its own conclusion on the merits of the applicant's eligibility. In its analysis, the Court will not reweigh or reassess the information that was before the decision maker.

[24] In the words of *Vavilov*, a decision may be unreasonable if it did not meaningfully account for the central issues and concerns raised by the applicant or was not responsive to the applicant's central arguments. As *Vavilov* also recognized, the concept of responsive reasons is inherently bound up with the principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard. See *Vavilov*, at paras 127-128.

[25] Thus, the role of the Court is to ensure that the decision followed the applicable law and respected the facts and central concerns in the materials filed by the applicant at the time the decision was made. If the decision did so and was reasonable in that it displays the requisite transparency, intelligibility and justification, the Court will not interfere with the decision. On the other hand, if the Court concludes that the decision did not do so and therefore contained a reviewable error, then the Court may set aside the decision.

[26] Applying the principles in *Vavilov*, I conclude that CRA's decision was reasonable.

[27] First, I find no legal error in CRA's decision. To be eligible for benefits under the applicable provisions of the *CRB Act*, a person must have had a total income of at least \$5,000 from certain sources stated in the legislation for 2019 or 2020 or in a 12-month period preceding the day on which the person made an application for the benefits.

[28] The applicant's claim was under paragraph 3(1) of the *CRB Act*. For a claim under that provision, the statute provides that income from self-employment is net income for the purposes

of the CRB: “income from self-employment is revenue from the self-employment less expenses incurred to earn that revenue”: *CRB Act*, subsection 3(2).

[29] CRA was required to assess the applicant’s eligibility based on these statutory criteria: *Flock v. Canada (Attorney General)*, 2022 FCA 187 at paras 4, 7; *Olivet v. Canada (Attorney General)*, 2024 FC 1452, at paras 32, 35.

[30] Having reviewed the decision letter and the Second Review Report in light of the record in this case, I am satisfied that CRA applied the relevant statutory criteria: *Vavilov*, at para 108. The applicant did not argue otherwise. I find no legal error in the decision under review.

[31] Second, the Supreme Court held in *Vavilov* that absent “exceptional circumstances”, a reviewing court will not interfere with the decision maker’s factual findings and will not reweigh or reassess the evidence: *Vavilov*, at para 125. A reviewing court’s ability to intervene arises only if the reviewing finds that the decision maker “fundamentally misapprehended or failed to account for the evidence before it”: *Vavilov*, at paras 101, 126 and 194.

[32] In this case, the applicant has not shown that the CRA officer ignored or fundamentally misapprehended any material information in the record at the time of the second review decision. The Second Review Report dated April 30, 2024, referred to the documents submitted by the applicant and the attempts to contact her by telephone. The report recognized that the applicant worked as a hairdresser and received “service fees” of \$6,400 in 2020 and \$5,600 in 2021. The officer noted the intention to raise concerns with the applicant, through discussions with her,

about employment history and to request “income prove documents” [sic]. The Second Review Report noted that the CRA officer was unsuccessful in efforts to contact the applicant to discuss those issues with her.

[33] The Second Review Report found that the statutory requirement of \$5,000 of net self-employment income was not met. The Second Review Report also found that a letter and a T4A form were not sufficient to prove that the applicant earned over \$5,000. In my view, these conclusions were open to CRA on the record.

[34] In Canada’s self-reporting system of taxation, income (here, net self-employment income) reported by a taxpayer in a tax return, and CRA’s notices of assessment or reassessment that reflect that reported income (or net income from self-employment), prior to audit, are not conclusive proof of the reported amounts for the purposes of assessing whether an applicant was eligible to receive the CRB under the *CRB Act*: *Yao v. Canada (Attorney General)*, 2025 FC 399, at para 41; *Teymourian v. Canada (Attorney General)*, 2025 FC 216, at paras 13, 30, 32; *Ebada v. Canada (Attorney General)*, 2024 FC 1539, at para 38; *Aryan*, at para 35, 39-43.

[35] I appreciate that the officer understood that the applicant had reported earning “service fees” of \$6,400 in 2020 and \$5,600 in 2021. The officer’s notes on March 28, 2024, also referred to the applicant’s T1 Return Income for the 2020 and 2021 tax years, in amounts that slightly exceeded \$5,000 each year. However, the statutory test in the *CRB Act*, which the officer was bound to apply, required at least \$5,000 of net self-employment income – that is, the gross self-employment amounts of \$6,400 in 2020 and \$5,600 in 2021, less proper expenses that would

reduce the gross amount to a net amount. There was no evidence before the officer as to how those net amounts were reached – specifically, supporting documents for the gross earnings for each year (beyond the two T4As) and what were the expenses claimed as deductions and supporting documentation for them.

[36] Particularly after sending the letter dated May 23, 2023, it was within CRA’s mandate to require documentary proof of the applicant’s gross earnings and her deductible expenses to support her claim for the CRB under subsections 3(1) and 3(2) and section 6 of the *CRB Act*. In my view, CRA was not required to accept, without more, that the T4As for 2020 and 2021 and the net amounts reported by the applicant in her tax returns were sufficient to verify her eligibility for the CRB under the criteria in the *CRB Act* pertaining to net self-employment income.

[37] Accordingly, I conclude that CRA’s decision dated May 2, 2024, contained no reviewable error.

IV. **Was the CRA’s Decision Procedurally Fair?**

[38] Turning to procedural fairness, the question is whether the procedure used by the decision maker was fair, having regard to all of the circumstances including the nature of the substantive rights involved and the consequences for the individual(s) affected: see e.g., *Shull v. Canada*, 2025 FCA 25, at para 6; *Jagadeesh v. Canadian Imperial Bank of Commerce*, 2024 FCA 172, at para 53; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69,

[2019] 1 FCR 121, at paras 54-55; *Abdelmaksoud v. Canada (Attorney General)*, 2025 FC 432, at paras 14, 21.

[39] The degree of procedural fairness owed to claimants for pandemic benefits is at the low end of the spectrum: *Derosa v. Canada (Attorney General)*, 2025 FC 144, at para 19; *Ghukasyan v. Canada (Attorney General)*, 2025 FC 140, at para 21; *Cozak v. Canada (Attorney General)*, 2023 FC 1571, at para 17.

[40] When CRA began the process to verify the applicant's claims for the CRB, it requested information by letter dated May 23, 2023. That letter advised that CRA required further documentation to support the applicant's claims. It listed examples of the kinds of documents that could be provided to support self-employment income and advised how to send the documents to CRA.

[41] This request for additional information to verify claims for the CRB was consistent with section 6 of the *CRB Act*, which provides that an "applicant must provide the Minister with any information that the Minister may require in respect of the application".

[42] The applicant provided CRA with documents before the first review decision, and again before the second review decision. She provided two T4As as proof of her self-employment income.

[43] After reviewing the file, the CRA officer attempted to contact the applicant by telephone on March 27 and 28, 2024, but was not successful. The applicant advised at the hearing, through her friend who spoke on her behalf, that she often did not pick up the telephone because of her limited English. The record shows that CRA did speak to the same friend by telephone in mid-April 2024.

[44] I find that the applicant knew the case to meet, and had a meaningful opportunity to be heard and was heard. CRA requested documents and information from the applicant to support her claim for the CRB. She responded to that request, twice, by submitting documents. The applicant had the opportunity to make submissions before the first and second review decisions. CRA's first review decision advised the applicant why it found her ineligible for the CRB. CRA tried to reach her to obtain additional information it identified as needed and eventually spoke to her designated representative. In making the second review decision, CRA took into account the documents provided by the applicant, the information about her 2020 and 2021 tax years as reported by her to CRA and the information reported in her T4As.

[45] Lastly, I agree with the respondent that the applicant's concerns about procedural unfairness are, in substance, arguments about the unreasonableness of the decision for failing to account for or misapprehending the evidence or failing to listen to her position: see *Vavilov*, at para 127. As explained above, CRA did not ignore or fail to grapple with any critical or fundamental concern or argument made to it during the second review process: *Vavilov*, at paras 127-128.

[46] For these reasons, I conclude that the applicant was not deprived of procedural fairness.

V. **Conclusion**

[47] The application for judicial review is dismissed.

[48] The respondent did not request costs.

JUDGMENT in T-1314-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no costs order.

"Andrew D. Little"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1314-24

STYLE OF CAUSE: WANLIAN CHEN v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 26, 2025

REASONS: A.D. LITTLE J.

DATED: APRIL 23, 2025

APPEARANCES:

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Tristan Lee-Coughlin	FOR THE RESPONDENT

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