

Federal Court



Cour fédérale

**Date: 20250522**

**Docket: T-60-24**

**Citation: 2025 FC 930**

**Ottawa, Ontario, May 22, 2025**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**ANGELIKI KOUROUCLIS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

**I. Overview**

[1] The Applicant seeks judicial review of a decision made by a Canada Revenue Agency [CRA] officer finding that she was ineligible for the Canada Recovery Caregiving Benefit [CRCB]. The CRA officer determined that the Applicant did not establish that she met the caregiving criteria in the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [CRB Act].

[2] Despite the Applicant's able submissions on her own behalf, I am dismissing the application. She has failed to establish that the CRA officer's decision is unreasonable or was made in a procedurally unfair manner. I find that the CRA officer provided intelligible, justified and transparent reasons for their decision. Further, the Applicant was afforded the opportunity to explain how she met the statutory criteria for the CRCB and to provide supporting evidence. There is no legal basis upon which I can interfere with the officer's decision.

## **II. Background**

[3] The Applicant received the Canada Emergency Response Benefit [CERB] from March until September 2020. Following the end of the CERB, she applied for and received CRCB payments from September 27, 2020, to July 17, 2021.

[4] In June 2022, the CRA advised the Applicant that her eligibility for both programs was under review. The issue at that time was whether she had met the requisite \$5,000 income threshold. After being found ineligible twice, the Applicant applied for judicial review. She subsequently discontinued that application, and the matter was remitted to the CRA for reconsideration.

[5] On reconsideration, the CRA accepted that the Applicant met the \$5,000 income threshold, and her eligibility for the CERB was confirmed. However, the CRA ultimately determined that she was ineligible for the CRCB due to the program's caregiving requirement.

[6] During their review, the CRA officer inquired why the Applicant had applied for the CRCB. The Applicant explained that she home-schooled her children because vaccines were not available to those between five and eleven years of age until November 2021: CRA officer's notes, entry dated October 19, 2023, Certified Tribunal Record [CTR] at 14.

[7] In another phone call, the CRA officer reviewed the CRCB criteria with the Applicant and asked her further questions about her eligibility:

I inquired if [the Applicant] had registered her children in school and [she] advised me that they were supposed to start September 2020 but due to Covid-19 and no vaccine she decided to home school them. I inquired if they were sick with Covid-19 or had symptoms, if they were at risk of serious health complications if they were to contract Covid-19 and were advised by a medical professional or were self isolating due to Covid-19 and [the Applicant] stated no. [The Applicant] stated that she lost her babysitting services and she was too worried about sending her children to school. I advised [the Applicant] that choosing not to send her children to school out of fear would not be covered by the Canada Recovery Caregiving Benefit (CRCB). [The Applicant] stated that her son has allergies and gets the flu but she wasn't advised by her doctor to not send them to school. [The Applicant] advised that there were not [*sic*] Covid-19 vaccines and she couldn't send her children to school.

CRA officer's notes, entry dated October 19, 2023, CTR at 17

[8] Following this phone conversation, the Applicant submitted a letter and numerous documents addressing her reasons for home-schooling her children in 2021: Letter dated October 21, 2023, Respondent's Record at 477–541. The Applicant stated that her family physician advised her that “sending them to school without vaccination would be ‘dangerous’ and that there was a substantial risk of them contracting the disease”: Letter dated October 21, 2023, Respondent's Record at 477; CRA officer's notes, entry dated December 6, 2023, CTR at 21.

[9] Subsequently, the family physician stated by letter dated November 6, 2023, that the Applicant home-schooled her children because she “was worried about the dangers of contracting covid 19 during this time, especially given their age and their difficulties managing masking.” Further, the physician stated that they “supported [the Applicant’s] decision to keep the children home from school during the height of the pandemic in 2020 and 2021 and part of 2022”: Letter dated November 6, 2023, Respondent’s Record at 550.

[10] After considering the Applicant’s evidence and submissions, the CRA officer concluded that the Applicant had failed to meet the statutory criteria for the CRCB.

### **III. Issues and Standard of Review**

[11] There is no dispute that the standard of review applicable to determinations of eligibility for the benefits administered by the CRA is reasonableness: *Chen v Canada (Attorney General)*, 2025 FC 723 at para 21; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15; *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 16 [Aryan]. A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker”: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [Mason]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

[12] The Applicant argues that the CRA officer's decision is unreasonable because they failed to properly interpret and apply the *CRA Act*. She asserts that "[i]n doing so, the CRA fettered its discretion by mechanically applying its delegated authority without adequate consideration of the circumstances before it": Applicant's Memorandum of Fact and Law at para 47. Further, the Applicant argues that the CRA officer failed to provide adequate reasons for their decision.

[13] In addition, the Applicant alleges that the CRA breached procedural fairness by changing the reason for finding her ineligible for the CRCB. Where breaches of procedural fairness are alleged, no standard of review is applied but the Court's reviewing exercise is "best reflected on a correctness standard": *Canadian Hardwood Plywood and Veneer Association v Canada (Attorney General)*, 2023 FCA 74 at para 57; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*CPR*]. When assessing whether procedural fairness was met, a reviewing court asks whether the "procedure was fair having regard to all of the circumstances": *CPR* at para 54.

#### IV. Analysis

##### A. *New evidence is inadmissible*

[14] The Respondent takes issue with documents attached to the Applicant's affidavit that were not before the CRA officer when they made their decision: Respondent's Memorandum of Fact and Law at paras 48–54; Affidavit of Brandi Mclean, affirmed March 11, 2024 at para 34, Respondent's Record at 11–14.

[15] Generally, evidence not before a decision-maker when they made their decision is not admissible before this Court on judicial review: *Andrews v Public Service Alliance of Canada*, 2022 FCA 159 at para 18; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]. While the list is not closed, there are three exceptions to this general rule. New evidence may be admissible if it: (i) provides general background information; (ii) highlights the complete absence of evidence before the decision-maker below; or (iii) demonstrates procedural unfairness in the decision-making process: *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 13–25; *Access Copyright* at para 20.

[16] I agree with the Respondent that none of the exceptions apply here, and there is no basis for creating a new one in this case. As a result, I did not consider any evidence that was not before the CRA officer.

**B. *The CRA officer's decision is reasonable***

[17] The CRCB was a federal government measure introduced in response to the COVID-19 pandemic. It offered financial support to employed and self-employed individuals who had to stop working due to caregiving duties stemming from the pandemic. The relevant eligibility criteria are set out in subparagraph 17(1)(f)(i) of the *CRB Act*:

**Eligibility**

**17 (1)** A person is eligible for a Canada recovery caregiving benefit for any week falling within the period beginning on September 27, 2020 and ending on May 7, 2022 if

**Admissibilité**

**17 (1)** Est admissible à la prestation canadienne de relance économique pour les proches aidants, à l'égard de toute semaine comprise dans la période commençant le 27 septembre 2020 et se terminant le 7 mai 2022, la personne qui

[...]

**(f)** they have, as an employee, been unable to work for at least 50% of the time they would have otherwise worked in that week — or they have, as a self-employed person, reduced the time devoted to their work as a self-employed person by at least 50% of the time they would have otherwise worked in that week — because

**(i)** they cared for a child who was under 12 years of age on the first day of the week because

**(A)** the school or other facility that the child normally attended was, for reasons related to COVID-19, closed, open only at certain times or open only for certain children,

**(B)** the child could not attend the school or other facility because

**(I)** the child contracted or might have contracted COVID-19,

**(II)** the child was in isolation on the advice of a medical practitioner, nurse practitioner, person in authority, government or public health authority for reasons related to COVID-19, or

**(III)** the child would, in the opinion of a medical practitioner or nurse practitioner, be at risk of having serious health complications if the child contracted COVID-19, or

remplit les conditions suivantes :

[...]

**f)** au cours de la semaine visée, elle a été incapable d'exercer son emploi pendant au moins cinquante pour cent du temps durant lequel elle aurait par ailleurs travaillé — ou a réduit d'au moins cinquante pour cent le temps qu'elle aurait par ailleurs consacré au travail qu'elle exécute pour son compte — pour l'une ou l'autre des raisons suivantes :

**(i)** elle s'occupait d'un enfant qui avait moins de douze ans le premier jour de la semaine visée, pour l'une ou l'autre des raisons suivantes :

**(A)** l'école ou toute autre installation que l'enfant fréquentait était fermée, ou ouverte seulement durant certaines périodes ou seulement pour certains enfants, pour des raisons liées à la COVID-19,

**(B)** l'enfant ne pouvait fréquenter l'école ou l'installation car :

**(I)** soit il a contracté la COVID-19 ou pourrait avoir contracté la COVID-19,

**(II)** soit il était en isolement sur l'avis d'un médecin, d'un infirmier praticien, d'une personne en situation d'autorité, d'un gouvernement ou d'un organisme de santé publique pour des raisons liées à la COVID-19,

**(III)** soit il risquait, de l'avis d'un médecin ou d'un infirmier praticien, de développer de graves complications s'il contractait la COVID-19,

(C) the person who usually cared for the child was not available for reasons related to COVID-19, or

[...]

(C) la personne qui s'en occupait habituellement n'était pas disponible pour des raisons liées à la COVID-19,

[...]

[18] Based on the evidence, I find that the CRA officer reasonably concluded that the Applicant did not meet the eligibility criteria for the CRCB. With respect to the criteria set out in clauses 17(1)(f)(i)(A) and (C) of the *CRB Act*, the Applicant's children's school, day care, day program, care facility, or regular care services were not closed or unavailable due to COVID-19. The Applicant advised the CRA officer that she had chosen to home-school her children rather than register them for kindergarten when they came of age in September 2020.

[19] The CRA officer determined that the Applicant's reasons for home-schooling her children did not meet the eligibility criteria:

Furthermore, during our phone conversation on October 19, 2023 [the Applicant] advised that the reason her kids couldn't go to school was because they were not vaccinated. [The Applicant] advised that she was scared for her children due to the pandemic. [The Applicant] mentions having fears, being worried and scared. [The Applicant] also mentions it was her choice and decision to homeschool her children. These reasons are not Covid-19 related and do not meet the eligibility criteria.

CRA officer's notes, entry dated December 6, 2023, CTR at 24

[20] The Applicant submitted documentation about school closures in support of her eligibility. However, this was not relevant given that the Applicant had chosen not to register her



children for school. As a result, any school closures had no affect on the Applicant's circumstances for the purposes of the CRCB eligibility.

[21] With respect to clause 17(1)(f)(i)(B) of the *CRB Act*, the Applicant informed the CRA officer that her children had not been sick with COVID-19, did not have symptoms of COVID-19, were not at risk of serious health complications if they got COVID-19, and were not self-isolating due to COVID-19. As the CRA officer noted, the family physician's "does not indicate that [the Applicant's] children were at risk of serious health complications if they contracted Covid-19": CRA officer's notes, entry dated December 6, 2023, CTR at 24.

[22] In both her affidavit and oral submissions for this judicial review, the Applicant referred to her son's developmental challenges and recent autism assessment: Affidavit of Angeliki Kourouclis, sworn April 20, 2024, Applicant's Record at 34–35. However, this evidence was not before the CRA officer and is, therefore, not admissible on this application for the reasons set out in paragraphs 15–16 above. In addition, the family physician did not address these challenges in her letter or cite them as a reason that the son could not attend school during the pandemic.

[23] I do not agree that the CRA officer fettered their discretion. The jurisprudence is clear that eligibility conditions are established by statute and that CRA officers have no discretion to change them: *Ashurova v Canada (Attorney General)*, 2025 FC 428 at para 54; *Moghtaderi v Canada (Revenue Agency)*, 2024 FC 2069 at para 17; *Feng v Canada (Attorney General)*, 2024 FC 1913 at para 18; *Flock v Canada (Attorney General)*, 2022 FC 305 at para 23.

[24] Finally, I am unable to agree that the CRA officer did not adequately justify their decision. An officer's notes are deemed part of their decision: *Shtokal v Canada (Attorney General)*, 2025 FC 498 at para 14; *Fahandez-Saadi v Canada (Attorney General)*, 2023 FC 1665 at para 22; *Aryan* at para 22. Here, the CRA officer's notes are comprehensive and express their reasons in an intelligible, justified and transparent manner: *Vavilov* at para 95.

[25] Based on the foregoing, the Applicant has failed to establish that the CRA officer's decision is unreasonable.

C. *No breach of procedural fairness*

[26] The Applicant argues that the CRA officer breached procedural fairness because the reason for refusal differs from the CRA's earlier denial of benefits. It is true that previously, the CRA had determined that the Applicant did not meet the \$5,000 income threshold. However, on remittance, the CRA officer reconsidered all eligibility criteria.

[27] Officers must ensure that all statutory criteria are met before confirming an applicant's eligibility: *El Harim v Canada (Attorney General)*, 2023 FC 1689 at para 12; *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 24 [*Lussier*]. There is no breach of procedural fairness where a decision is based on different criteria than the initial refusal, provided the applicant has been given notice and an opportunity to respond: *Tremblay c Canada (Procureur général)*, 2025 CF 17 at para 75; *Benakezouh c Canada (Procureur général)*, 2024 CF 1883 at para 48; *Rashidian v Canada (Attorney General)*, 2024 FC 327 at paras 42–61; *Lussier* at para 24; *Ngyuen v Canada (Citizenship and Immigration)*, 2020 FC 1126 at paras 19–20.

[28] This is precisely what occurred here. The CRA officer specifically informed the Applicant about the caregiving criteria for the CRCB, asked questions about the Applicant's circumstances, and gave the Applicant the opportunity to submit supporting documentation.

[29] The Applicant relies on this Court's decision in *Baron v Canada (Attorney General)*, 2023 FC 1177 [*Baron*]. However, in that case the CRA failed to notify the applicant that the second review was based on different eligibility criteria. The Court held that he was therefore denied a full and fair opportunity to respond: *Baron* at paras 27–49.

[30] Based on the foregoing, there was no breach of procedural fairness. The CRA officer made clear that the caregiving eligibility criteria was being assessed, and the Applicant was given the chance to file supporting evidence and submissions, which she did.

## **V. Conclusion**

[31] I have considerable sympathy for the Applicant's circumstances as a sole parent of two young children having to repay the CRCB payments that she received. However, there is no legal basis upon which I can overturn the CRA officer's decision. The decision is both reasonable and procedurally fair. As such, this application for judicial review is dismissed. I note that the CRA's refusal letter states that if the Applicant is unable to pay the debt immediately and in the full amount, the CRA offers various solutions tailored to an individual's situation: Letter dated December 11, 2023, Respondent's Record at 564.

[32] At the hearing, Respondent's counsel advised that they were not seeking costs if successful on this application. I agree that no costs should be payable by the Applicant in the circumstances.

**JUDGMENT in T-60-24**

**THIS COURT’S JUDGMENT is that** the application for judicial review is dismissed  
without costs.

“Anne M. Turley”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-60-24

**STYLE OF CAUSE:** ANGELIKI KOUROUCLIS v ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** APRIL 10, 2025

**JUDGMENT AND REASONS:** TURLEY J.

**DATED:** MAY 22, 2025

**APPEARANCES:**

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ON HER OWN BEHALF

Mira Amin

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