

Federal Court



Cour fédérale

**Date: 20230329**

**Docket: T-633-22**

**Citation: 2023 FC 439**

**Ottawa, Ontario, March 29, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**DEBRA MICHAELS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant, Debra Michaels, seeks judicial review of a decision by a Manager in the Canada Emergency Benefits Validation section [Officer] of the Canada Revenue Authority [CRA] dated February 24, 2022 [Decision], denying her application for the Canadian Recovery Benefit [CRB].

[2] The Applicant submits that she demonstrated that she had earned sufficient legitimate income as a self-employed worker in 2020 in order to qualify for the CRB. She states that following her discussion with the first CRA agent, she declared her income and paid income tax on it. She pleads that she has done everything that was requested of her and now considers that she is unfairly being stereotyped as someone who claimed she worked but in fact didn't.

[3] The Respondent submits that based on the evidence provided, namely a handwritten and undated list of amounts titled "2020 Invoice Details" with no descriptions, a handwritten receipt for \$5,364.19 which pre-dates the services, and e-transfers, the finding that the Applicant was not eligible for the CRB is reasonable. The Respondent pleads that the Officer reasonably took into account that the Applicant had no prior self-employment income and stated, during a telephone call, that the cleaning and packing job ended when her client moved.

[4] For the reasons that follow, this application for judicial review is dismissed.

## II. Issue and Standard of Review

[5] The sole issue is whether the Officer's decision is reasonable.

[6] A reasonable decision is one that is justified in relation to the facts and the law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]).

[7] It is the Applicant who bears the onus of demonstrating that the Officer's decision is unreasonable (*Vavilov* at para 100). For the reviewing court to intervene, the challenging party must satisfy the court that "there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", and that such alleged shortcomings or flaws "must be more than merely superficial or peripheral to the merits of the decision" (*Vavilov* at para 100).

[8] The focus must be on the decision actually made, including the justification offered for it, and not the conclusion the Court itself would have reached in the administrative decision maker's place. A reviewing court should not interfere with factual findings, absent exceptional circumstances, and it is not the function of this Court on an application for judicial review to reweigh or reassess the evidence considered by the decision maker (*Vavilov* at para 125).

### III. Preliminary Issues

[9] The Applicant designated the CRA as the Respondent. I agree with the Respondent that the proper named respondent is the Attorney General of Canada.

[10] The Applicant has included a post-Decision affidavit in her record containing information that was not before the Officer. The general rule is that the evidentiary record before this Court on judicial review of an administrative decision is restricted to the evidentiary record that was before the administrative decision maker (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 19 [*Access Copyright*]; *Heredia v Canada (Citizenship and Immigration)*, 2022 FC 25 at paras 12-14).

While there are exceptions to the general rule (*Access Copyright* at para 20), I do not find that they apply to the present matter.

[11] For this reason, the affidavit of Jessica McLaren is not admissible on judicial review and has therefore not been considered.

#### IV. Analysis

[12] The CRB was a benefit that provided financial support to eligible people residing in Canada and affected by the COVID-19 pandemic for any two-week period between September 27, 2020 and October 23, 2021. In order to be eligible for the CRB payments, applicants must meet the criteria set out under subsection 3(1) of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 [Act]. The eligibility requirements at issue in the present case are the income eligibility requirement. Paragraphs 3(1)(d) to (f) of the Act require an applicant to demonstrate that they had a total income of at least \$5,000 in 2019, 2020, or in the 12 months before the date of their first application and that for reasons related to COVID-19 they were not employed or self-employed or they had a reduction of at least 50% in their average weekly income.

[13] The Applicant applied for CRB payments for two-week periods 1 through 20, covering September 27, 2020 through July 3, 2021. Prior to the periods for which she sought the CRB, the Applicant had gone on disability leave. Following her leave, she states that she rendered services on a self-employed basis to Jessica McLaren, whom she assisted with cleaning and packing her condo in Alberta, as Ms. McLaren had moved to Quebec.

[14] In June 2021, the Applicant's application for the next period was denied. The Applicant contacted the CRA, and was informed by an officer on June 21, 2021, that she was on disability and did not earn the required \$5,000. In response to her enquiries, the officer informed the Applicant that to prove her self-employed income, she would need to provide documentation.

[15] On July 23 2021, the Applicant provided (a) handwritten and undated list of paid amounts per month with no descriptions titled "2020 Invoice Details"; (b) a handwritten receipt dated January 3 2020 describing services rendered from January 3 2020 to December 31 2020; and (c) scans of e-transfer email confirmations.

[16] On November 10, 2021, a first decision is issued by a Manager in the Canada Emergency Benefits Validation section of the CRA finding that the Applicant is not eligible for the CRB on the basis that she did not earn at least \$5,000 before taxes of employment income in the relevant period.

[17] Following the first decision, the Applicant appealed. On November 22, 2021, she filed a revised 2020 income tax declaration to include \$5,364 under other income. On February 18, 2022, the Applicant provided the following additional documents for the second review: (a) a list of e-transfers from Jessica McLaren to the Applicant generated by RBC; and (b) a printout of the Applicant's My Service Canada account.

[18] In February, the Officer spoke with the Applicant. According to the Officer's notes: (a) the Applicant was on disability but took the job for extra income; (b) her job cleaning, packing,

and moving for the client ended as her client moved; (c) she acquired the job through someone she knew; (d) she did not offer her services to anyone else, nor did she advertise; (e) the Applicant was waiting to hear if her job was going to start back up in June of 2021, which she went back to; and (f) she had no prior self-employment income.

[19] On February 24, 2022, the Officer issued the Decision finding that the Applicant was not eligible for the CRB, on the basis that the Applicant (i) did not earn \$5,000 in the relevant period; and (ii) did not have a 50% reduction in her average weekly income compared to the previous year due to COVID-19.

[20] The Applicant has raised a number of issues, including the difficulties she faced during her conversations with the CRA, her issue with her accountant who omitted to include her self-employment income in her first filing, and her employment with Ms. McLaren. She states that she worked for Ms. McLaren to help clean and pack her condo, because Ms. McLaren could not come back to Calgary from Quebec because of COVID-19. She pleads that she submitted everything that the CRA requested of her, and as such is eligible.

[21] The Respondent submits that the Decision is reasonable in light of the record, notably the handwritten list and generic receipt, the lack of prior self-employment income, and the information provided to the Officer over the phone. The Respondent highlights that there is nothing in the record that indicates that the Applicant suffered a reduction of income by reason of COVID-19. Rather, the Officer was informed that the job ended because Ms. McLaren moved.

[22] Having reviewed the record before the Officer, including the CRA notes of phone calls with the Applicant, and having considered the parties' submissions at the hearing, I have not been persuaded that the Officer committed a reviewable error. The Applicant has been unable to point to a sufficiently serious shortcoming or flaw that would render the Decision unreasonable. While I acknowledge the Applicant's frustration as to her experience with the CRA and her expectation that if she provided certain documentation it would be sufficient, she has failed to meet her burden of demonstrating that the Decision fails to meet the criteria set out in *Vavilov*. As noted above, it is not the function of this Court to reassess the evidence considered by the Officer, absent exceptional circumstances. I do not find that such circumstances exist in the present case.

[23] Accordingly, this application for judicial review is hereby dismissed. The Respondent has not sought its costs. In these circumstances, no costs shall be awarded.

**JUDGMENT in T-633-22**

**THIS COURT'S JUDGMENT is that:**

1. This application for judicial review is dismissed;
2. The style of cause is amended to name the Attorney General of Canada as the Respondent; and
3. No costs are awarded.

“Vanessa Rochester”

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Judge



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

**DOCKET:** T-633-22

**STYLE OF CAUSE:** DEBRA MICHAELS v ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** NOVEMBER 16, 2022

**JUDGMENT AND REASONS:** ROCHESTER J.

**DATED:** MARCH 29, 2023

**APPEARANCES:**

Debra Michaels

FOR THE APPLICANT  
(ON HER OWN BEHALF)

Tristen Cones

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Calgary, Alberta

FOR THE RESPONDENT