

Federal Court



Cour fédérale

Date: 20230713

Docket: T-1062-22

Citation: 2023 FC 955

Ottawa, Ontario, July 13, 2023

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

AISHA NADEEM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This an application for judicial review of the decision of the Canada Revenue Agency (the “CRA”), dated April 28, 2022, denying the Applicant’s Canada Recovery Benefit (“CRB”) application (the “Decision”). The CRA found the Applicant ineligible for the CRB because the Applicant had not earned at least \$5,000 of income in 2019, 2020, or the 12 months preceding her application.

II. Background

[2] The Applicant, Aisha Nadeem, applied for the CRB for 27 two-week periods from September 27, 2020 to October 9, 2021.

[3] On December 7, 2020, the Applicant sent the following documents to the CRA:

- A. Statement from the Applicant explaining why she believed she was eligible for the CRB;
- B. Payslip from Humber College dated from March 15, 2020 to March 28, 2020;
- C. T4 from Humber College for the 2020 taxation year;
- D. December 3, 2020 letter from the CRA;
- E. Bank transaction history from January 1, 2019 to December 31, 2019; and
- F. Notice of Assessment for the 2020 tax year.

[4] The CRA agent found that the Applicant was not eligible for the CRB as she did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of the Applicant's first application.

[5] The Applicant was notified that she was not eligible for the CRB by letter dated November 18, 2021.

[6] The Applicant requested a second review of the CRA's initial determination by letter dated December 7, 2021. It is this second review decision that is the subject of this judicial review.

III. Decision under Review

[7] A CRA agent that was not involved with the first decision conducted the second review.

[8] In her request for a second review, the Applicant attached the following documents:

- A. Letter from an individual stating that he paid the Applicant \$550 for domestic services provided to a senior between January 2020 to March 2020;
- B. T4 Statements;
- C. Letter from the Applicant stating that she received \$550 in cash for domestic services;
- D. Bank statements for the period between November 7, 2020 and May 4, 2021; and

E. The Applicant's Notice of Assessment for the 2020 taxation year dated March 4, 2021.

[9] There is no dispute that the Applicant earned \$4,566.90 in employment income. The CRA considered whether the \$550 the Applicant allegedly earned as self-employment for providing domestic services would push the Applicant's total earnings over the \$5,000 threshold.

[10] The CRA found that it did not. In the Second Review Report, the CRA agent commented "[taxpayer] did not meet [the \$5,000 eligibility requirement], the \$500 made from working for her uncle was a side job around the house, can not use this as income".

[11] The refusal Decision was communicated to the Applicant through letter dated April 28, 2022.

IV. Issues

A. *Did the CRA breach the duty of procedural fairness?*

B. *Did the CRA err in refusing the Applicant's CRB application?*

V. Standard of Review

[12] Issues that relate to a breach of procedural fairness are reviewed on the standard of correctness or a standard with the same import (*Canadian Pacific Railway Company v Canada*

(Attorney General), 2018 FCA 69 at paras 34-35 and 54-55, citing *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[13] The standard of review with respect to the merits of the Decision is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 25).

VI. Analysis

A. *Did the CRA breach the duty of procedural fairness?*

[14] The Applicant argues that the CRA breached the duty of procedural fairness by failing to provide reasons.

[15] I disagree. The CRA has provided reasons that show the rationale behind its decision.

The Second Report Review document attached as Exhibit J to the Affidavit from the CRA agent that made the Decision (the “CRA Affidavit”) provides a concise explanation (reproduced above) under the section “Explain your decision regarding each criteria the taxpayer did not meet”.

[16] I find that there is no breach of procedural fairness.

B. *Did the CRA err in refusing the Applicant's CRB application?*

[17] The eligibility requirements for the CRB are set out in section 3 of the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 (the "Act"). Paragraphs 3(1)(d) and (e) of the Act provide that an applicant must have earned at least \$5,000 of income in prescribed periods from prescribed categories of income. For a two-week period beginning in 2020, a minimum of \$5,000 had to have been earned in 2019 or in the 12-month period preceding the day on which the person applied for the CRB. For a two-week period beginning in 2021, a minimum of \$5,000 had to have been earned in 2019, in 2020, or in the 12-month period preceding the day on which the person applied for the CRB.

[18] I find the Decision unreasonable. The CRA agent states only that the Applicant did not meet the \$5,000 eligibility requirement because she was working a "side job" and therefore she "can not use this as income". The Decision fails to disclose a rational chain of analysis. There is no basis for the proposition that income earned by a taxpayer does not contribute to their income for purposes of the CRB because it was earned in a "side job".

[19] I would note the CRA agent in the CRA Affidavit attempts to offer revisionist reasons for the Decision by claiming that the Applicant submitted insufficient evidence to establish that she actually earned \$550 for providing domestic services. That rationale is not reflected in the reasons for the Decision, where the CRA agent accepts that the Applicant was paid at least \$500.

VII. Conclusion

[20] The application is allowed and the matter returned to a different CRA agent for reconsideration having regard to the reasons in this judgment.

JUDGMENT in T-1062-22

THIS COURT'S JUDGMENT is that:

1. The application is allowed and the matter returned to a different CRA agent for reconsideration having regard to the reasons in this judgment.
2. No costs are awarded.

"Michael D. Manson"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1062-22

STYLE OF CAUSE: AISHA NADEEM v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JUNE 28, 2023

JUDGMENT AND REASONS: MANSON J.

DATED: JULY 13, 2023

APPEARANCES:

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FOR THE APPLICANT
(ON HER OWN BEHALF)

Amin Nur

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT