

Federal Court



Cour fédérale

Date: 20231211

Docket: T-1214-23

Citation: 2023 FC 1665

Ottawa, Ontario, December 11, 2023

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

VARGHA FAHANDEZ-SAADI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Mr. Vargha Fahandez-Saadi [Applicant], brings this application for judicial review of two decisions, dated June 12 and June 15, 2023 [Decisions], in which his claims for the Canada Recovery Benefit [CRB], the Canada Recovery Caregiver Benefit [CRCB] and the Canada Recovery Sickness Benefit [CRSB] were denied by the Canada Revenue Agency [CRA].

[2] The CRA found that the Applicant was not eligible to receive the CRB, CRCB and CRSB payments because he did not meet the minimum income requirement of at least \$5,000 of employment or self-employment income in 2019, 2020 or in the 12 months prior to the date of his first application, as required under the *Canada Recovery Benefits Act*, SC 2020, c12, s 2 [Act].

[3] For the following reasons, the judicial review is dismissed.

[4] The Court is not satisfied “that there are sufficiently serious shortcomings in the decisions such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov] at para 100). The CRA decisions finding the Applicant ineligible to the CRB, CRCB and CRSB are reasonable.

II. Background

[5] The Applicant applied for CRB for seven two-week periods from September 27, 2020, to October 9, 2021; for CRCB for six two-week periods from October 16, 2021, to November 20, 2021; and for CRSB for four two-week periods from November 27, 2021, to December 25, 2021.

[6] When CRA reviewed his application, the Applicant provided, among others, the following documents:

- A document of professional income listing 3 clients (1 each year) (Certified Tribunal Record [CTR] at p 86):

a) January to July 2019 dog-sitting at home for Bob from Venezuela. Client paid \$5,000 cash;

b) January to June 2020 cat-sitting at home for John from Alaska. Client paid \$5,000 cash;

c) January to February 2021 dog-sitting at home for Mary from Alaska. Client paid \$500 cash;

- Two invoices for “Pet Services” in 2019 and 2020 (CTR at pp 92, 101);

Invoice for 1 year dog-sitting for Scott from Alaska for \$5000.50 cash from January 1, 2019, until December 31, 2019;

Invoice for 1 year dog-sitting for Mary from Alaska for \$5000.50 cash from January 1, 2020, until December 31, 2020;

- 2019 and 2020 Notice of Assessments.

[7] In its communications with the Applicant, the CRA requested additional documentation to confirm the Applicant’s eligibility, including bank statements and month-to-month income/expense statements. The Applicant provided documents demonstrating professional income of \$500 and expenses of over \$7,000 for 2021. The Applicant stated that he was paid in cash and had no bank statements.

[8] The CRA denied the Applicant’s eligibility on the basis that the documents could not substantiate his income. The CRA held that the documentation was not sufficient to prove that the Applicant made \$5,000 in 2019, 2020 or in the 12 months prior to submitting his first application. The CRA held that there were discrepancies between the “Pet Services Invoices” and the client list submitted, as they had varying client names, varying times when services were conducted, and varying amounts. The CRA could therefore not rely solely on the documents.

[9] The CRA noted that the Applicant did not have bank statements demonstrating deposits. The CRA also noted that the Applicant had refiled his income tax assessments in order to include \$5,000 as revenue, presumably in order to qualify for the benefits. In the Applicant's 2019 initial income tax assessment, he did not claim any self-employment income. In the Applicant's 2020 initial income tax assessment, he claimed a net loss of \$7,000. In his 2021 income tax assessment, the Applicant claimed losses of \$13,000. In the 2019 and 2020 re-filings, the Applicant then reassessed and claimed gross professional income of \$5,000.

III. Issues and Standard of Review

[10] The appropriate standard of review of a decision of a CRA officer is reasonableness (*Vavilov* at paras 16-17; *Maltais v Canada (Attorney General)*, 2022 FC 817 at paras 18-19). The role of this Court is to examine the reasoning of the administrative decision maker and the result reached to determine whether the decision is “based on an internally coherent and rational chain of analysis” and is justified in light of legal and factual constraints (*Vavilov* at para 85). The burden of proof to show that a decision is unreasonable is on the party challenging the decision (*Vavilov* at para 100 (see also *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 45 [Aryan]; *Hayat v Canada (Attorney General)*, 2022 FC 131 [Hayat] at para 15; *Kleiman v Canada (Attorney General)*, 2022 FC 762 at para 29).

IV. Analysis

A. *The Decisions are reasonable*

[11] The CRB, CRCB and CRSB were introduced by the Government of Canada as part of a set of measures in response to the consequences caused by the COVID-19 pandemic.

[12] In order to receive the benefits, an eligible Canadian resident had to submit an application. One of the eligibility requirements to qualify for the benefits was to have had a minimum income of at least \$5,000 from employment or self-employment for the 2019 taxation year or in the 12-month period preceding the day on which they made the application.

[13] As set out by Justice Diner in *Ntuer v. Canada (Attorney General)*, 2022 FC 1596 at paragraph 24 [*Ntuer*], an applicant must meet all the criteria to be eligible to receive benefits under the programs. The eligibility criteria is also non-discretionary (*Flock v Canada (Attorney General)*, 2022 FC 305 at para 23).

[14] In order to receive any of the CRB, CRCB or CRSB, the Applicant had to demonstrate to the CRA that he met on a balance of probabilities all of the established criteria of those programs. To do so, the Applicant had to provide enough evidence to support his claim (*Payette c Canada (Procureur général)*, 2023 CF 131 at para 35).

[15] In this particular case, the CRA denied the Applicant's eligibility for the benefits because of contradictions and discrepancies in the documents he provided, but also because he was paid in cash and did not have the proper documentation, such as bank statements, to support his claim. Moreover, the Applicant presented amended income tax assessments. The Court has held

previously that requiring bank statements is allowed, and that an income tax assessment is not conclusive of an applicant's earnings.

[16] For example, in the situation where an applicant is paid in cash, Justice Elliot held that “when being paid in cash by customers it is important to have records that reflect the full details of the transaction and that the funds received be contemporaneously deposited to an account at a financial institution” (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55).

Moreover, as held in *Cantin v Canada (Attorney General)*, 2022 FC 939:

[15] Although it is not illegal to take payment in cash, a taxpayer who opts for this mode of payment must take all the more care to be able to provide proof of the payment to obtain benefits under the Act. Section 10 of the Act provides that the Minister may “for any purpose related to verifying compliance or preventing non-compliance with this Act... require that any person provide any information or document within the reasonable time that is stated in the notice.” The onus is on the applicant to establish for the agency responsible for administering the benefits that he meets, on a balance of probabilities, the requirements of the Act (*Walker v Canada (Attorney General of Canada)*, 2022 FC 381 at para 55).

[17] As for income tax assessments, providing an income tax assessment is not sufficient to prove eligibility to the CRB, CRSB or CRCB, especially when someone is paid in cash. As

Justice Diner held in *Ntuer*:

[27] In addition, a Notice of Assessment is insufficient to establish that an applicant earned a net income of at least \$5,000 (*Aryan* at para. 35). The Officer was required to assess not only the Notices of Assessment submitted by Mr. Ntuer but also the other evidence on file, including invoices and client payment receipts submitted by Mr. Ntuer, as well as the information available through the CRA's internal records, to verify that Mr. Ntuer had indeed earned a net income of at least \$5,000.

[18] Further, in *Aryan*, Justice Strickland held that :

[34] Given this, it was open to the first CRA agent to request additional documentation from the Applicant to establish an earned minimum income of \$5000, in the relevant period, as an eligibility requirement for the CRB. Further, as is apparent from the record, the requests made to the Applicant for supporting documentation were in keeping with those suggested by the CRB Guideline and the Common Question and Answer “Script” found in the CTR.

[35] There is no evidence to support the Applicant’s position that the Officer was obliged to accept her 2020 income tax assessment as sole and conclusive proof of her income. And while tax assessments are one document that could provide income information to CRA with respect to CRB eligibility, they do not “prove” that the Applicant actually earned the income that she reported in filing her income tax return, or that her income was earned from an eligible source prior to September 27, 2020, pursuant to ss. 3(1)(d)(i-v) of the *CRB Act*.

[...]

[37] When asked why the Officer asked the Applicant for proof of income, the Officer answered that documented proof of income was needed to complete the review. The Officer was also asked, if she considered the Applicant’s income and deductions from income for the 2017 to 2020 taxation years as recorded on CRA’s computer system as part of her review, then what was the basis of her conclusion? The Officer responded that after considering the Applicant’s tax return filing history for those years (the CTR documents indicate that the Applicant had reported nominal employment income in 2017, 2018 or 2019 (\$31, \$1 and \$273, respectively)) and the fact that she could not provide the appropriate documents (i.e. bank statements with corresponding invoices and or receipts) to support her 2020 income, that the Officer could not confirm that the Applicant did in fact receive those funds in 2020. The Officer again states that the decision was not solely based on the Applicant filing her tax return. CRA needed documents to support her income claimed in the CRB document driven preview process.

[19] As the Court explained in *Aryan*, it is reasonable for the CRA not to consider an income tax assessment as conclusive of qualifying income, and to draw their conclusions from other evidence before them.

[20] In this particular case, the CRA justified its decision by noting that the Applicant's documents presented contradictions and discrepancies and therefore they could not be relied upon. For example, the Applicant presented a list of three clients who paid him for dog or cat sitting in 2019, 2020 and 2021. The clients' names were Bob from Venezuela who paid \$5,000 cash in 2019, John from Alaska who paid \$5,000 cash in 2020 and Mary from Alaska who paid \$500 cash in 2021 (CTR at p 86). The CRA requested additional documents. The Applicant responded with two other invoices. The first one was to Scott from Alaska who paid \$5,000.50 in cash for 1 year dog-sitting between January 1, 2019, and December 31, 2019. The second one was to Mary from Alaska who paid \$5,000.50 in cash for 1 year dog-sitting between January 1, 2020, and December 31, 2020 (CTR at pp 92, 101). The CRA noted that the invoice to Scott from Alaska is contradictory to the client list originally sent (CTR at p 86). The second one from Mary is also contradictory to the information in the original client list (CTR at p 101). The client list (CTR at p 86) and the invoices (CTR at pp 92, 101) also did not include any invoice number or client addresses. The Applicant also submitted monthly expenses for 2021, but not any other earnings (CTR at p 76). The Applicant also explained not having anything else to submit to prove his earnings.

[21] Moreover, the Applicant had no bank statements demonstrating deposits, and his income tax assessments also did not prove any sufficient earnings. On the income tax assessments, the

Applicant claimed losses of \$13,000 in 2021. In his 2020 income tax assessment, the Applicant claimed a net loss of \$7,000. In his 2019 income tax assessment, the Applicant did not claim self-employment income. When the CRA sought an explanation as to why the Applicant reassessed, he stated, in part, that he needed to indicate an income of \$5,000 to qualify for the benefits (CTR at p 19).

[22] Because of the contradictions and discrepancies in the documents, the CRA was entitled to ask the Applicant for more evidence to prove his eligibility to the benefits (*Hayat* at paras 20-22). In this case, the record demonstrates that CRA considered all of the documents submitted by the Applicant. The Officer's role was to validate the Applicant's CRB, CRCB and CRSB applications. It is important to note that the Officer's notes form part of the reasons for the Officer's decision (*Sedoh v Canada (Citizenship and Immigration)*, 2021 FC 1431 at para 36; *Aryan* at para 22; *Ezou v Canada (Citizenship and Immigration)*, 2021 FC 251 at para 17; *McClintock's Ski School & Pro Shop Inc. v Canada (Attorney General)*, 2021 FC 471 at paras 26-27; *Vavilov* at paras 94-98).

[23] Consequently, because of the varying client names, varying time periods, varying amounts and lack of client information, and the absence of any other document that could prove the earnings, the decision maker held that there was insufficient information supporting that the Applicant had made sufficient income to qualify for the benefits. The Applicant simply did not discharge his burden to prove his eligibility (CTR at p 19).

[24] In my view, that conclusion was reasonable based on the record that was before the CRA. Consequently, the CRA's decision that the Applicant is not eligible to the benefits because he did not earn \$5,000 during a qualifying period is reasonable.

[25] The Applicant has also alleged that the CRA failed to observe the principles of natural justice or fairness. However, that argument was not substantiated in his factum and the Applicant made no argument at the hearing on the issue. In my view, CRA properly conducted its review in this case and did not breach the Applicant's right to procedural fairness.

V. Conclusion

[26] The Decisions regarding the Applicant's eligibility for the CRB, CRCB and CRSB are therefore based on a consistent and rational chain of analysis. In these circumstances, the Decisions are reasonable. The application for judicial review is therefore dismissed.

[27] Rule 400 gives the Court "full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid." Having considered the factors listed in sub rule 400(3) of the Rules, and all other circumstances of this case, I find that no award for costs is warranted in this matter.

JUDGMENT in T-1214-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed, without costs.

"Guy Régimbald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1214-23

STYLE OF CAUSE: VARGHA FAHANDEZ-SAADİ v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 6, 2023

JUDGMENT AND REASONS: RÉGIMBALD J.

DATED: DECEMBER 11, 2023

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