

Federal Court



Cour fédérale

**Date: 20240905**

**Dockets: T-754-24**

**T-755-24**

**T-757-24**

**T-758-24**

**Citation: 2024 FC 1386**

**Ottawa, Ontario, September 5, 2024**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**MICHAEL GODIN**

**Applicant**

**And**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Michael Godin, brings these consolidated applications for judicial review of four decisions that were made following a second review of his eligibility to receive the Canada Recovery Benefit (CRB), the Canada Recovery Caregiving Benefit (CRCB), the Canada Recovery Sickness Benefit (CRSB), and the Canada Emergency Response Benefit (CERB)

(together, the Benefits). Mr. Godin applied for and received the Benefits for various periods between 2020 and 2021.

[2] The eligibility criteria for the Benefits are set out in sections 3, 10 and 17 of the *Canada Recovery Benefits Act*, SC 2020, c 12 and section 8 of the *Canada Emergency Response Benefit Act*, SC 2020, c 5.

[3] The Canada Revenue Agency (CRA) is responsible for administering the Benefits on behalf of the Minister of Employment and Social Development. In January 2023, the CRA sent a letter to Mr. Godin asking him to submit proof of eligibility for the Benefits he received by demonstrating that he earned at least \$5,000 in employment or net self-employment income in certain calendar years or in the 12 months before he applied. A first reviewer decided that Mr. Godin was not eligible for any of the Benefits because he did not earn at least \$5,000 in employment or net self-employment income in any of the relevant periods.

[4] Mr. Godin asked for a second review. By letters dated February 29, 2024, the second reviewer informed Mr. Godin that he was not eligible for any of the Benefits and would have to repay them. In addition to the \$5,000 income threshold referred to in the January 2023 letter and the first reviewer's decisions, the second reviewer found that Mr. Godin also did not meet other eligibility criteria:

- for the CRB, Mr. Godin did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, or in the 12 months before his

application, his reasons for not working were unrelated to COVID-19, and his average weekly income was not reduced by at least 50% due to COVID-19;

- for the CRCB, Mr. Godin did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months before his first application, his scheduled work week was not reduced by at least 50% because he was caring for a family member for reasons related to COVID-19, and he was not employed or self-employed on the day before he first applied;
- for the CRSB, Mr. Godin did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months before his first application, his scheduled work week was not reduced by at least 50% because he was self-isolating due to COVID-19, and he was not employed or self-employed on the day before he first applied;
- for the CERB, Mr. Godin did not earn at least \$5,000 (before taxes) of employment or net self-employment income in 2019 or in the 12 months before his first application, and he did not stop or reduce work for reasons related to COVID-19.

[5] Mr. Godin submits that his eligibility review was procedurally unfair and the decisions are unreasonable. He states that the second reviewer failed to consider the extraordinary circumstances and personal hardship that affected him, including a home fire in 2019 and the impact of the COVID-19 pandemic on his self-employed status and income. Mr. Godin had

explained to the second reviewer that he worked very little in 2019 because of the fire, which caused a lot of damage, including to his work tools, and COVID-19 further impaired his ability to earn income. Furthermore, Mr. Godin states the second reviewer unreasonably rejected evidence he had submitted to demonstrate that he met the income criteria. Despite working very little in 2019, Mr. Godin submits that his income in 2019 did exceed \$5,000.

[6] The respondent submits Mr. Godin has not identified any shortcomings in the second reviewer's decisions that would warrant setting the decisions aside. The second reviewer reasonably concluded, based on the available information, that Mr. Godin did not meet the income criteria for any of the Benefits. The respondent states the second reviewer spoke with Mr. Godin in January 2024 to determine his eligibility for the Benefits and recorded the following main points from the call:

- Mr. Godin stated he did not do much work in 2019 because of the fire, and he only had "verbal contracts" for work he lost due to COVID-19;
- Mr. Godin's insurance company contracted him to complete work on his home, but the \$10,000 invoice he had provided was an issue because Mr. Godin was a home owner and policy holder and he was paid to complete work due to the fire, which did not support that he had active employment that he lost due to COVID-19;
- the second reviewer asked if Mr. Godin had any documentation from 2020 or 2021 to support the verbal contracts that he lost due to COVID-19 and Mr. Godin said he would look into the request.

[7] The respondent states that the second reviewer attempted to follow up but Mr. Godin could not be reached. Therefore, the second reviewer could not discuss the results of the second review with Mr. Godin.

[8] The respondent also states the second reviewer reasonably concluded that, in addition to the income criteria, Mr. Godin did not satisfy other eligibility criteria. While the first reviewer's decisions only mentioned the income criteria, the respondent states it was Mr. Godin's onus to show that he satisfied all of the eligibility criteria for the Benefits he received.

[9] In my view, Mr. Godin was not afforded procedural fairness. This issue is determinative and it is unnecessary to address whether the decisions are also unreasonable.

[10] Whether Mr. Godin was denied procedural fairness is reviewed on a standard that is akin to correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54 [*Canadian Pacific Railway*]. Procedural fairness requirements depend on context. A reviewing court is required to consider whether the procedure was fair having regard to all of the circumstances, including the factors referred to in *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817: *Canadian Pacific Railway* at para 54. Here, the key question is whether Mr. Godin was aware of the case to meet and given a full and fair chance to respond.

[11] In my view, Mr. Godin was not aware of the case to meet and he was not given a full and fair chance to respond.

[12] With respect to the income criteria, the record before the second reviewer included Mr. Godin's reassessed 2019 income tax return reporting \$10,000 in self-employment income in 2019, as well as supporting documentation about the income—such as the invoice he issued to the insurer, documentation about the arrangement, and proof that Mr. Godin received payment. Mr. Godin explained to the second reviewer that the insurer “dropped” the contractors it had hired, the contractors created additional damage that was not due to the fire, and the insurer contracted him to complete the work. Mr. Godin also explained that the home is owned by a mortgage company who agreed to the arrangement and inspected the work he completed.

[13] While the respondent contends the second reviewer told Mr. Godin that the invoice to the insurer was an issue, in my view this is not quite accurate. The second reviewer's notes from the January 2024 call with Mr. Godin state she told him the invoice was “likely” an issue. Importantly, the second reviewer also told Mr. Godin that this was something she would need to check, and that she would contact him after further review. The notes from the January 2024 call conclude: “I advised I would check on this since it is a unique situation and see what information that I can find based on our criteria that has to be met”. Contrary to the respondent's submission, it appears that the second reviewer did reach Mr. Godin by telephone on February 20, 2024. However, there is no indication that the second reviewer told Mr. Godin what she found out after checking into the invoice issue. The second reviewer's notes from that call only state that she told Mr. Godin she had received his further documentation and he would get four separate letters outlining the results of the second review.

[14] During the January 2024 call, the second reviewer also informed Mr. Godin that part of the criteria for some of the Benefits was to have lost work that had already been scheduled. She asked Mr. Godin whether he had any documents from 2020 or 2021 to support the verbal contracts he said he lost due to COVID-19. Mr. Godin responded that he would look. He sent in an estimate dated February 28, 2020 for a basement renovation, a job he had told the reviewer he was about to start “but then it did not go through because of covid”. It does not appear that the reviewer explained why the estimate was inadequate to support Mr. Godin’s statement that he lost work due to the pandemic, particularly since she did not specify the type of document she would require as proof. As noted above, the January 2023 letter only explained the \$5,000 income threshold criteria for each of the Benefits, and gave examples of documents that Mr. Godin could provide to show that he met the applicable \$5,000 threshold.

[15] Finally, the second reviewer found Mr. Godin was ineligible based on eligibility criteria that he was never asked to prove. Again, the January 2023 letter and the first reviewer’s decisions only point to the \$5,000 earnings threshold for each of the Benefits. The second reviewer’s conversations with Mr. Godin focused on the \$5,000 threshold, and also raised the criterion about missing scheduled work due to COVID-19 (Mr. Godin sent the estimate for the basement renovation in response). It does not appear that the second reviewer asked Mr. Godin to provide proof that he met any other eligibility criteria.

[16] Based on the foregoing, I find Mr. Godin has established that his eligibility review was procedurally unfair and the decisions ought to be set aside.

[17] While Mr. Godin asked for costs, he did not explain what costs he incurred. I am not satisfied he is entitled to an award of costs as a self-represented litigant.

[18] The respondent correctly points out that the style of cause should be amended to delete the CRA and name the Attorney General of Canada as the proper respondent.



**JUDGMENT IN T-754-24**

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

1. The style of cause is amended to name the Attorney General of Canada as the sole respondent.
2. This application for judicial review is allowed and the issue of the applicant's eligibility for the Benefits is referred back to the Canada Revenue Agency for redetermination by a different reviewer.
3. No costs are awarded to either party.
4. The Registry is directed to place a copy of the Judgment and Reasons in Court File Nos. T-754-24, T-755-24, T-757-24 and T-758-24.

"Christine M. Pallotta"

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Judge

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

**DOCKETS:** T-754-24, T-755-24, T-757-24 AND T-758-24

**STYLE OF CAUSE:** MICHAEL GODIN v THE ATTORNEY GENERAL OF CANADA

**PLACE OF HEARING:** CALGARY, ALBERTA

**DATE OF HEARING:** AUGUST 12, 2024

**JUDGMENT AND REASONS:** PALLOTTA J.

**DATED:** SEPTEMBER 5, 2024

**APPEARANCES:**

Michael Godin

FOR THE APPLICANT  
ON HIS OWN BEHALF

Alexander Millman

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada  
Calgary, Alberta

FOR THE RESPONDENT