Federal Court Cour fédérale

Date: 20230512

Docket: T-1120-22

Citation: 2023 FC 678

Ottawa, Ontario, May 12, 2023

PRESENT: Mr. Justice Norris

BETWEEN:

NATALIA MIKOULA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant applied for the Canada Recovery Benefit ("CRB") for 22 two-week periods from December 6, 2020, to October 23, 2021. To be eligible for this benefit, among other things, she had to have earned at least $5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of her application: see *Canada Recovery Benefits Act*, SC 2020, c 12, paragraph 3(1)(e).

[2] On a review of her application, a Canada Revenue Agency ("CRA") agent determined that the applicant did not meet the financial eligibility requirement. The applicant was informed of this decision by letter dated December 1, 2021. The letter also informed the applicant that, if she disagreed with the decision, she could request a second review within 30 days of the date of the letter. The letter also stated that, if she requested a second review, the applicant must explain why she disagreed with the decision, provide any relevant new documents, facts or correspondence, as well as her contact information, including her current phone number.

[3] The applicant requested a second review. In her request, she stated that she had found a document to support her application – namely, an Earnings Statement from Manulife Financial that confirmed what the applicant called her "employment pay" in 2019. The applicant enclosed a copy of this document with her request for a second review. It stated that for the period ending January 15, 2019, the applicant had received gross pay from Manulife Financial of $117,790.96. The Earnings Statement also indicated that, after federal taxes were deducted, a net amount of $82,453.67 was deposited in the applicant's bank account on January 15, 2019. The applicant also provided her home and mobile telephone numbers in her request for a second review.

[4] On the basis of the information available to her, the second reviewer was not satisfied that the applicant had received this income. As a result, the second reviewer attempted to reach the applicant on the mobile number she had provided to ask some follow-up questions. When she was unable to reach the applicant or even leave a message despite trying three times over two days, the second reviewer concluded that the applicant had not established that she was

financially eligible to receive the CRB. The applicant was informed of the decision confirming that she was not eligible for the CRB by letter dated May 6, 2022.

[5] The applicant now applies for judicial review of this decision under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7. She contends that the decision was made in a procedurally unfair manner because the second reviewer did not make a sufficient effort to obtain answers to her follow-up questions about the applicant's income from Manulife Financial. According to the applicant, having failed to reach her on her mobile number, the second reviewer should have tried her home phone number, which she had also provided. The applicant also challenges the determination that she had not established her financial eligibility to receive the CRB.

[6] For the reasons that follow, I have concluded that the second reviewer's determination that the applicant did not establish her financial eligibility to receive the CRB is unreasonable. The matter must, therefore, be reconsidered. As a result, it is not necessary to address the applicant's procedural fairness argument.

[7] The applicant, who is self-represented, did not address the standard of review I should apply when reviewing the merits of the decision. The respondent submits that the decision should be reviewed on a reasonableness standard, citing *Santaguida v Canada (Attorney General)*, 2022 FC 523 at para 11. I agree. Reasonableness is now the presumptive standard of review for administrative decisions and there is no basis to depart from that presumption here: see *Canada (Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10.

[8] 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" (*Vavilov* at para 85). A decision that displays these qualities is entitled to deference from a reviewing court (*ibid.*). When applying the reasonableness standard, it is not the role of the reviewing court to reweigh or reassess the evidence considered by the decision maker or to interfere with factual findings unless there are exceptional circumstances (*Vavilov* at para 125). To set aside a decision on the basis that it is unreasonable, the reviewing court must be satisfied 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" (*Vavilov* at para 100).

[9] It is apparent from the second reviewer's case notes as well as her affidavit filed in connection with this application for judicial review that her concern was not whether the applicant's stated income qualified her for the CRB but, rather, whether she had actually received that income. As the second reviewer put it in her affidavit, "Based on the earnings statement alone, I was unable to confirm that the Applicant earned the alleged income." The second reviewer therefore attempted to contact the applicant in "an effort to confirm" that she received the alleged income. The second reviewer's case notes indicate that she intended to ask the applicant for "documentation to verify this income ex: bank statements, paystubs, T4, invoices, copies of cheques." Not having been able to obtain such documentation (because she was unable to reach the applicant at the number she had provided), the second reviewer was not satisfied that the applicant had received the income. She therefore concluded that the applicant was not eligible for the CRB.

[10] As *Vavilov* emphasizes, to be reasonable, a decision must be based on reasoning that is both rational and logical (at para 102). A decision will be unreasonable "if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point" (*Vavilov* at para 103). As well, among other things, the decision must be "justified in light of the facts" (at para 126). The decision maker "must take the evidentiary record and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them" (*ibid.*).

[11] In my view, on the basis of the information available to her, the second reviewer's concern that the applicant had not received the income she reported receiving from Manulife Financial is unreasonable. The second reviewer knew that the applicant had reported this income on her 2019 tax return. She knew that the applicant had paid tax on this income. She also knew that the applicant had reported this income to Service Canada in connection with her application for Employment Insurance benefits and that her receipt of these benefits was delayed as a result. Not to put too fine a point on it, it is simply incomprehensible why the second reviewer thought it necessary to request a pay stub or a copy of a pay cheque when that is exactly what the applicant had already provided in the form of the Earnings Statement (which included confirmation of a direct deposit to the applicant's bank account). Notably, there is no explanation in the case notes for why the decision maker found the information on file to be insufficient to establish the applicant's receipt of the income in question.

[12] This shortcoming in the decision is sufficiently serious that the decision does not exhibit the requisite degree of justification, intelligibility and transparency. The matter must, therefore,

be reconsidered. If the CRA continues to be of the view that further proof of receipt of the income in question is required, the applicant should be given a reasonable opportunity to provide it. Needless to say, the applicant should ensure that the CRA has up to date information on the best way to contact her if necessary.

[13] Finally, the original style of cause names the respondent as the Minister of National Revenue. The correct respondent is the Attorney General of Canada: see *Federal Courts Rules*, SOR/98-106, rule 303(2). As part of this Court's order, the style of cause is amended accordingly.

JUDGMENT IN T-1120-22

THIS COURT'S JUDGMENT is that

1. The style of cause is amended to name the Attorney General of Canada as the correct respondent.
2. The application for judicial review is allowed.
3. The decision of the Canada Revenue Agency dated May 6, 2022, is set aside and the matter is remitted for redetermination in accordance with these reasons.
4. No costs are awarded.

"John Norris"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1120-22
STYLE OF CAUSE:	NATALIA MIKOULA V ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	NOVEMBER 4, 2022
JUDGMENT AND REASONS:	NORRIS J.
DATED:	MAY 12, 2023

APPEARANCES:

Natalia Mikoula	ON HER OWN BEHALF
Desmond Jung	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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