

Federal Court



Cour fédérale

**Date: 20230802**

**Docket: T-1642-22**

**Citation: 2023 FC 1062**

**Vancouver, British Columbia, August 2, 2023**

**PRESENT: Madam Justice Pallotta**

**BETWEEN:**

**HELEN BRYCHKA**

**Applicant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant, Ms. Helen Brychka, challenges three decisions that followed a second review of her eligibility to receive the Canada Recovery Benefit (CRB), the Canada Recovery Sickness Benefit (CRSB) and the Canada Worker Lockdown Benefit (CWLB).

[2] Ms. Brychka was a self-employed cleaner who applied for and received the CRB, CRSB and CWLB for various periods between September 2020 and March 2022. While none of her

applications were denied initially, the Canada Revenue Agency (CRA), acting on behalf of the Minister of Employment and Social Development, later reviewed Ms. Brychka's eligibility.

[3] A first reviewer concluded that Ms. Brychka did not meet the income eligibility requirements for any of these benefit programs because she did not earn net self-employment income of at least \$5000 (i) in 2019, 2020, or in the 12 months before her first CRB or CRSB application, and (ii) in 2020, 2021 or in the 12 months before her first CWLB application. Ms. Brychka asked for a second review. The second reviewer reached the same determination, and also found that Ms. Brychka was ineligible for the CWLB during certain periods when her region was not in lockdown. As a consequence, Ms. Brychka was informed that future applications would be denied, and she would be required to repay any amounts she had received and for which she was not eligible.

[4] Ms. Brychka asks this Court to set aside the second review decisions. She alleges that her eligibility review was procedurally unfair and the decisions are unreasonable, because the CRA did not consider all sources of her income, and did not explain to her why the information she provided was insufficient to prove that her net self-employment income met the \$5,000 threshold to qualify for the benefits in question. Ms. Brychka's work as a cleaner was impacted by the COVID-19 pandemic protection measures. Ms. Brychka's affidavit states her business suffered an 80% decline in income. She needed the benefits when she applied for them, and she believes she followed the rules and met the criteria in making her claims, including by confirming that her region was in lockdown each time she applied for the CWLB. Ms. Brychka's affidavit states she was the sole employee of her business for 10 years and has not

been able to work since March 2022 following a car accident. She is in a very difficult financial situation and has no ability to pay the benefits back.

[5] The respondent submits the decisions regarding Ms. Brychka's eligibility for the CWLB, CRSB, and CRB ought not to be disturbed, as they were reasonable and made in a procedurally fair manner.

[6] The parties agree that the standard of review for questions of procedural fairness has been described as being akin to a correctness standard. As the respondent correctly notes, the procedural fairness requirements applicable in a given set of circumstances depend on context. The ultimate question, in cases like this, is whether the applicant was aware of the case to meet and given a full and fair chance to respond.

[7] In my view, procedural fairness is the determinative issue on this application. It is unnecessary to address whether the eligibility decisions are unreasonable.

[8] Having reviewed the record, I find Ms. Brychka was not aware of the case to meet, and she was not given a full and fair chance to respond. CRA agents had a number of conversations with Ms. Brychka, pointing out that she had claimed net losses from self-employment on her tax returns since 2018. However, the tax returns are not determinative of whether Ms. Brychka met the income threshold as calculated in accordance with the benefits legislation.

[9] Ms. Brychka did provide proof of her income to the CRA, but only for the 2021 taxation year—even though Ms. Brychka’s 2019 gross income was higher than her 2021 gross income. In my view, Ms. Brychka was genuinely unaware she could be eligible for benefits if she is able to demonstrate that she satisfied the income threshold for one of the relevant taxation years, such as the 2019 taxation year, or for any 12-month period preceding each of her applications. The respondent confirmed that satisfying the net income threshold for 2019 alone would be sufficient; however, from the record it does not appear that this was explained to Ms. Brychka. At the hearing, it was clear that Ms. Brychka remains confused about the relevant time periods for determining whether she meets the income eligibility requirements.

[10] Based on the particular circumstances of this case, and in view of the record that is before me, I find Ms. Brychka was not afforded a full and fair opportunity to show that she meets the income eligibility requirements for one or more of the benefits she claimed. While it may turn out that Ms. Brychka will be unable to show that she meets the eligibility requirements, she should be afforded the opportunity to do so. Ms. Brychka may benefit from the assistance of her daughter and neighbour, both of whom helped Ms. Brychka with this application, or the person who prepares her tax returns.

[11] Ms. Brychka’s memorandum of argument requested costs in the amount of \$1,000 “for time, copies of documents, gas to travel to and from appointments related to this application, and filing and notary fees required to submit all documents in this application”. Ms. Brychka represented herself, with assistance from non-lawyers, and I am not satisfied I should award

costs to compensate Ms. Brychka for her time. However, in the exercise of my discretion, I award \$400 as a reasonable amount for Ms. Brychka's out-of-pocket expenses.

[12] 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-1642-22**

**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. The application for judicial review is allowed, and the issue of the applicant's eligibility for the benefits in question is referred back to the Canada Revenue Agency for redetermination by another officer.
3. Costs are awarded to the applicant, in the all-inclusive amount of \$400.

"Christine M. Pallotta"

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Judge

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

**DOCKET:** T-1642-22  
**STYLE OF CAUSE:** HELEN BRYCHKA v THE ATTORNEY GENERAL  
OF CANADA  
**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA  
**DATE OF HEARING:** JULY 24, 2023  
**JUDGMENT AND REASONS:** PALLOTTA J.  
**DATED:** AUGUST 2, 2023

**APPEARANCES:**

Helen Brychka THE APPLICANT ON HER OWN BEHALF  
Katherine Matthews FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Attorney General of Canada FOR THE RESPONDENT  
Vancouver, British Columbia