Federal Court Cour fédérale

Date: 20240112

Docket: T-1469-23

Citation: 2024 FC 51

Toronto, Ontario, January 12, 2024

PRESENT: Mr. Justice Gascon

BETWEEN:

ANGELA SINGH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicant, Ms. Angela Singh, is seeking judicial review of two decisions dated June 21, 2023 [Decisions] whereby the Canada Revenue Agency [CRA] found her inadmissible for the Canada Emergency Response Benefit [CERB] and the Canada Recovery Sickness Benefit [CRSB]. The CRA found Ms. Singh ineligible because she had not earned at least $5,000 of employment or self-employment income in the prescribed periods, she had not stopped working

or had her hours reduced for reasons related to COVID-19, and her scheduled work week was not reduced by at least 50% because she was self-isolating for reasons related to COVID-19.

[2] Ms. Singh submits that the CRA did not properly exercise its discretion in arriving at the Decisions. To this effect, Ms. Singh alleges that she met all of the eligibility criteria to receive the CERB and CRSB payments, and that the CRA based its Decisions on erroneous findings of fact without regard for the materials before it. Ms. Singh further alleges that her right to procedural fairness was violated as she claims she was denied a fair opportunity to provide clarification on materials she submitted given the CRA's inability to contact her at the onset of their review.

[3] For the reasons that follow, Ms. Singh's application for judicial review will be dismissed. While I sympathize with Ms. Singh's situation, the CRA's Decisions were responsive to the evidence before it, and the findings regarding Ms. Singh's ineligibility for both the CERB and CRSB payments have the qualities that make the CRA's reasoning logical and consistent in relation to the relevant legal and factual constraints. Furthermore, Ms. Singh's right to procedural fairness was not violated. In the circumstances, there are no reasons justifying the Court's intervention.

II. Background

A. *The CERB and CRSB eligibility requirements*

[4] The CERB and CRSB were part of an arsenal of measures introduced by the federal government starting in 2020 to alleviate some of the economic repercussions caused by the

COVID-19 pandemic. They consisted of targeted monetary payments designed to provide financial support and supplement revenues to workers who suffered a loss of income due to the pandemic, and who could not benefit from the protection offered by the usual employment insurance plan. The CRA is the federal agency responsible for administering these income-supplementing programs on behalf of the Minister of Employment and Social Development.

[5] The CERB was available for seven four-week periods between March 15, 2020 and September 26, 2020, for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 [*Aryan*] at para 2). The CRSB was available for any one-week period, for up to a total of six weeks, between September 27, 2020 and May 7, 2022, for individuals who saw their work week reduced by at least 50% due to COVID-19 (*Canada Recovery Benefits Act*, SC 2020, c 12, s 10 [CRB Act]).

[6] The eligibility criteria for the CERB are set out and detailed in the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [CERB Act]. Among other things, the CERB Act requires employees or self-employed workers to have earned at least $5,000 in employment income or self-employment income in 2019 or in the 12-month period preceding their application for the CERB. It also states that the worker must have ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which the worker had applied for the CERB.

[7] The eligibility criteria for the CRSB are set out and detailed in the CRB Act at sub-section 10(1). Among other things, the CRB Act requires employees or self-employed workers to

have earned at least $5,000 in employment income or net self-employment income in 2019, 2020, 2021, or in the 12 months before the date of their first application; and that their scheduled work week was reduced by at least 50% because they were self-isolating for reasons related to COVID-19 to render themselves eligible for the CRSB.

B. *Ms. Singh's CERB and CRSB applications*

[8] Ms. Singh applied for the CERB for the seven four-week periods covered by the program, from March 15, 2020 to September 26, 2020. She also applied for the CRSB for periods from October 2020 to May 2021. Those payments were received in the taxation years 2020 and 2021. Ms. Singh indicates in her materials that she received a total of $16,000. As was the customary practice at the time, the CRA accepted Ms. Singh's applications as submitted, subject to further verification.

[9] On January 12, 2023, the CRA sent an initial contact letter to Ms. Singh indicating that they had decided to review and validate her CERB and CRSB applications. During this process, Ms. Singh submitted a document outlining why she believed she was eligible for the CERB and CRSB payments. The CRA received this letter on January 20, 2023.

[10] On January 25, 2023, the CRA officer who was conducting the first review of Ms. Singh's file attempted to contact her by telephone but the line did not work. The CRA officer tried again on January 26, 2023, but noted that the phone number provided was out of service. Consequently, the agent put Ms. Singh's file on hold for 45 days and entered a note in Ms. Singh's CRA account to have her contact them at their work phone number.

[11] Ms. Singh did not reply before the 45-day hold period elapsed. Consequently, on February 28, 2023, the CRA agent conducting the first review determined that Ms. Singh was ineligible for both the CERB and CRSB payments. Ms. Singh was then notified of these decisions on March 2, 2023.

[12] Upon receipt of the first decision letters, Ms. Singh submitted additional documentation to the CRA in support of her claim, on March 7 and March 14, 2023 respectively. The CRA considered these documents as a request for a second review of the first decisions.

[13] Ms. Karen Hickey was assigned as the second reviewing CRA agent. Upon her review of all the submitted materials and information in Ms. Singh's file, Ms. Hickey also concluded that Ms. Singh did not meet the eligibility criteria for the CERB or CRSB payments.

C. *The Decisions*

[14] The Decisions regarding Ms. Singh's CERB and CRSB eligibility were delivered to her on June 21, 2023.

[15] In conducting her second reviews, Ms. Hickey considered the notes made by the previous CRA officer, Ms. Singh's submissions — which included a January 27, 2020 letter indicating she had received $6,000 from her daughter for childcare of her grandson in 2019 and an amended tax return for 2019 —, Ms. Singh's income and deductions for the 2018, 2019, 2020, and 2021 taxation years, and Ms. Singh's T1 data as recorded by the CRA for the taxation years of 2008 to 2022. Furthermore, Ms. Hickey contacted Ms. Singh by phone on May 18, 2023 and

spoke with her about her CERB and CRSB applications and the supporting documentation she submitted.

[16] Ultimately, and based on the documentary evidence on file and the oral representations made by Ms. Singh, Ms. Hickey concluded that Ms. Singh was ineligible for both the CERB and CRSB payments. With respect to Ms. Singh's CERB application, Ms. Hickey first concluded that Ms. Singh did not earn at least $5,000 of employment or self-employment income in 2019 or in the 12 months before the date of her first application, as no documentation supported the payment of the $6,000 for childcare. Ms. Hickey further determined that Ms. Singh did not stop working or have her hours reduced for reasons related to COVID-19 as Ms. Singh stated she did not work or babysit in 2020 because of a surgery she needed on her leg.

[17] With respect to Ms. Singh's CRSB application, Ms. Hickey concluded that Ms. Singh did not earn at least $5,000 of employment or net self-employment income in 2019, 2020, 2021, or in the 12 months before the date of her first application, and that her scheduled work week was not reduced by at least 50% because she was self-isolating for reasons related to COVID-19. Again, the CRA agent came to this conclusion because Ms. Singh had failed to provide the necessary proof to support the payment of her claimed $6,000 in gross self-employment income.

D. *The standard of review*

[18] It is now well established that the standard of review applicable to the merits of the CRA's decisions regarding CERB or CRSB payments is reasonableness (*Flock v Canada (Attorney General)*, 2022 FC 305 at para 15; *He v Canada (Attorney General)*, 2022 FC 1503 at

para 20 [*He*]; *Lajoie v Canada (Attorney General)*, 2022 FC 1088 at para 12; *Aryan* at paras 15–16). This is in line with the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 7 [*Mason*]).

[19] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision-maker" (*Vavilov* at para 85; *Mason* at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (*Vavilov* at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (*Vavilov* at paras 15, 95, 136).

[20] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a "reasons first" approach and begin its inquiry by examining the reasons provided with "respectful attention", seeking to understand the reasoning process followed by the decision-maker to arrive at its conclusion (*Mason* at paras 58, 60; *Vavilov* at para 84). The reviewing court must adopt an attitude of restraint and intervene "only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process" (*Vavilov* at para 13), without "reweighing and reassessing the evidence" before it (*Vavilov* at para 125).

[21] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are "sufficiently serious shortcomings" (*Vavilov* at para 100).

[22] However, the standard of review applies differently on procedural fairness issues. The Federal Court of Appeal has repeatedly held that procedural fairness does not require the application of the usual standards of judicial review (*Canadian Hardwood Plywood and Veneer Application v Canada (Attorney General)*, 2020 FCA 196 at para 57; *Canadian Association of Refugee Lawyers v Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196 at para 35; *Lipskaia v Canada (Attorney General)*, 2019 FCA 267 at para 14; *Canadian Airport Workers Union v International Association of Machinists and Aerospace Workers*, 2019 FCA 263 at paras 24–25; *Perez v Hull*, 2019 FCA 238 at para 18; *Canadian Pacific Railway Company v Canada (Attorney General*), 2018 FCA 69 at para 54 [*CPR*]). It is for the reviewing court to ask, "with a sharp focus on the nature of the substantive rights involved and the consequences for an individual, whether a fair and just process was followed" (*CPR* at para 54). Consequently, when an application for judicial review concerns procedural fairness and a breach of the principles of fundamental justice, the question that must be answered is not necessarily whether the decision was "correct". Rather, the reviewing court must determine whether, given the particular context and circumstances of the case, the process followed by the administrative decision-maker was fair and gave the parties concerned the right to be heard, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to have their case considered (*CPR* at para 56). Reviewing courts are not required to show deference to administrative decision-makers on matters of procedural fairness.

III. Analysis

[23] Ms. Singh's application for judicial review raises two preliminary matters as well as two main substantive arguments. Each will be dealt with in turn.

A. *Preliminary matters*

(1) The Decisions should be reviewed by this Court in a consolidated manner

[24] The Attorney General of Canada [AGC], on behalf of the CRA, correctly notes that where separate decisions constitute a continuing course of conduct, applications for judicial review regarding those separate decisions should be reviewed together (*Potdar v Canada (Citizenship and Immigration)*, 2019 FC 842 at paras 18–19, citing *David Suzuki Foundation v Canada (Health)*, 2018 FC 380 at para 164). In the case at bar, the requisite factors are present to consider both Decisions in a consolidated manner, and the separate CERB and CRSB decisions do constitute a continuing course of conduct.

[25] Such an approach is in line with the jurisprudence of this Court whereby cases related to measures introduced by the federal government to alleviate the economic repercussions caused by the COVID-19 pandemic, and the multitude of benefits that Canadians could avail themselves of, are treated in tandem (*Zhang v Canada (Attorney General)*, 2023 FC 1761 [*Zhang*]; *Dumbrava v Canada (Attorney General)*, 2023 FC 1011; *Maltais v Canada (Attorney General)*, 2022 FC 817).

(2) The inadmissibility of evidence not before the decision-maker

[26] In Ms. Singh's record before this Court, two documents were included that were not before the CRA when the Decisions were issued. These documents are a letter dated June 30, 2023 sent by Ms. Singh's daughter, Alicia, along with a copy of Ms. Singh's daughter's 2019 tax return and proof of her claiming $6,000 in childcare expenses. The AGC submits that because these documents were not before the decision-maker, they cannot be considered by this Court.

[27] I agree with the AGC.

[28] It is well recognized that, in applications for judicial review, the general rule is that materials which were not in front of the decision-maker cannot be considered by the reviewing court, except for limited exceptions (*Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 14; *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20 [*AUCC*]). Those limited exceptions extend to materials that: 1) provide general background assisting the reviewing court in understanding the issues; 2) demonstrate procedural defects or a breach of procedural fairness in the administrative process; or 3) highlight a complete absence of evidence before the decision maker (*Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at para 98; *Bernard v Canada (Revenue Agency)*, 2015 FCA 263 at paras 23, 25; *AUCC* at paras 19–20; *Seklani v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 778 at para 18; *Nshogoza v Canada (Citizenship and Immigration)*, 2015 FC 1211 at paras 16–18).

[29] The essential purpose of judicial review is the review of the legality of decisions, not the determination, by trial *de novo*, of questions that were not adequately canvassed in evidence before the administrative decision-maker (*AUCC* at para 19, citing *Gitxsan Treaty Society v Hospital Employees' Union (CA)*, [2000] 1 FC 135 at pp 144–145). An application for judicial review is not an appeal.

[30] Since Ms. Singh's two documents mentioned above were not presented to the CRA during the second reviews and do not fit within any of the exceptions identified in the jurisprudence, the Court cannot examine them to determine the reasonableness or legality of the Decisions (*Fortier v Canada (Attorney General)*, 2022 FC 374 at para 17).

B. *The Decisions are reasonable*

[31] In terms of substantive arguments against the Decisions, Ms. Singh first submits that the CRA did not properly exercise its discretion in arriving at these Decisions. To this effect, Ms. Singh alleges that she met all of the eligibility criteria to receive the CERB and CRSB payments, and that the CRA based its Decisions on erroneous findings of fact without regard for the materials she submitted. Ms. Singh refers notably to the January 27, 2020 letter indicating that she had received $6,000 in income for childcare of her grandson, and her revised 2019 tax return. She also submits that the CRA rendered its Decisions based solely on the information they had received during the course of the first reviews.

[32] I do not agree.

[33] Contrary to Ms. Singh's claim that the CRA based its Decisions solely on information submitted in her first application, Ms. Hickey's second review reports and notes in the CRA system clearly indicate that Ms. Singh's oral and written representations and supporting documentation submitted after the first review were duly considered. It is well established that these reports form part of the reasons of the Decisions (*Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 26 [*Lavigne*]; *He* at para 30; *Aryan* at para 22). In her decision reports, Ms. Hickey dutifully took note of all of the materials before her and concluded that Ms. Singh had not submitted sufficient evidence to prove that she met the income requirement for the CERB and CRSB payments. In reaching this conclusion, Ms. Hickey specifically observed that Ms. Singh did not provide any supporting documentation or proof, such as receipts or invoices, to support her claim that she was paid $6,000 by her daughter to care for her grandson in 2019.

[34] Upon reading Ms. Hickey's notes and decision reports, I am not persuaded that the CRA failed to consider Ms. Singh's arguments or the evidence she submitted. In fact, the CRA officer's notes clearly point to the contrary.

[35] Ms. Singh further alleges that she did submit proof of income in the form of her amended 2019 tax return, and that this should have been considered by the decision-maker. This argument also cannot stand, as the CRA did in fact review Ms. Singh's amended tax return, which simply modified her net self-employment income by adjusting some deductions. Ms. Hickey specifically made note of having reviewed Ms. Singh's tax returns on file, as well as the letter received on March 20, 2023 stating that Ms. Singh's accountant made an error in filing her 2019 tax return and had since rectified the error, a copy of the "change my return" form, and a copy of Ms. Singh's updated tax summary for 2019.

[36] This Court has noted on numerous occasions that tax returns do not conclusively prove that a taxpayer actually earned the income they have reported (*Zhang* at para 34; *Sjogren v Canada (Attorney General)*, 2023 FC 24 at para 39 [*Sjogren*]; *Aryan* at para 35; *Hu v Canada (Attorney General)*, 2022 FC 1678 at para 25). Consequently, I find that it was reasonable for the CRA not to rely on such evidence to establish Ms. Singh's alleged income. Indeed, in *Lavigne*, the Court was similarly seized of the issue of an amendment to a tax return and determined that it is not unreasonable for a CRA agent to conclude that an amendment to a tax return made for the purpose of qualifying for CERB payments does not alter a factual finding that a person's net income did not exceed the $5,000 threshold. It was therefore reasonable for Ms. Hickey to require additional proof that Ms. Singh met the income requirement outside of her tax return form — proof that Ms. Singh unfortunately failed to provide.

[37] The onus was on Ms. Singh to establish that she met, on a balance of probabilities, the eligibility criteria (*Cantin v Canada (Attorney General)*, 2022 CF 939 at para 15; *Walker v Canada (Attorney General)*, 2022 CF 381 at paras 37, 55). In this case, the CRA agent, Ms. Hickey, concluded that the documents and explanations provided by Ms. Singh were insufficient to establish her eligibility (*Hayat v Canada (Attorney General)*, 2022 FC 131 at para 20) as there was no proof of the actual payment and receipt of $6,000 for her babysitting. I find nothing unreasonable in these findings.

[38] I further observe that, according to the CRA guidelines entitled "Confirming CERB, CRB, CRSB, CRCB and CWLB Eligibility", acceptable proof for self-employment income requires an invoice for services rendered and documentation for the receipt of payment for the service provided (for example, a statement of account or bill of sale showing the payment and

the balance owed or paid). The CRA specifically reminded this requirement to Ms. Singh in the January 12, 2023 letter asking for proof of her alleged earnings. This is precisely what Ms. Singh failed to provide to the CRA, despite several requests to that effect made by the CRA agent. As any taxpayer, Ms. Singh was certainly entitled to be remunerated in cash (as she claims to have been) for the services she provided, but it was her burden to maintain sufficient records in order to rely on cash payments to support her eligibility to the CERB or CRSB benefits (*Sjogren* at para 38).

[39] As this Court noted in *Zhang*, "[i]n order to access the exceptional economic relief offered by the CERB and CRB programs, applicants had to demonstrate that they had actually received employment or self-employment income" (*Zhang* at para 38). In the case of Ms. Singh, she was unable to provide the necessary evidence to convince the CRA officer that she indeed received the self-employment income she claimed to have made from babysitting her daughter's child.

[40] A party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable" (*Vavilov* at para 100). Here, Ms. Singh has not persuaded me that there is such a shortcoming. In this case, I am instead satisfied that the CRA's reasoning can be followed without a decisive flaw in rationality or logic and that the reasons were developed in such a way that the analysis could reasonably lead the reviewer, having regard to the evidence and the relevant legal and factual constraints, to conclude as it did (*Vavilov* at para 102). There is no serious deficiency in the Decisions that would taint the analysis and that would be likely to undermine the requirements of justification, intelligibility, and transparency.

C. *Ms. Singh's right to procedural fairness was not violated*

[41] Ms. Singh also submits that the CRA violated her right to procedural fairness. She claims that the CRA attempted to contact her during the course of the first reviews of her file but was unable to reach her. The CRA subsequently rendered its first decisions without contacting Ms. Singh. Ms. Singh alleges that it was not fair for the CRA not to send her a letter in the month of February 2023 if the CRA agent was then unable to contact her by telephone. She submits that the fact the CRA rendered the first decisions without giving her the chance to reply violated her procedural fairness.

[42] With respect, I disagree with Ms. Singh's arguments.

[43] The alleged breach of procedural fairness raised by Ms. Singh arose in the course of the first review of her applications, and it was cured by the procedurally-fair process followed by the CRA in the second review, which ultimately led to the Decisions.

[44] It is well accepted that procedural fairness violations can be corrected upon a *de novo* review (*McBride v Canada (National Defence)*, 2012 FCA 181 at paras 41–45; *Xin v Canada (Attorney General)*, 2023 FC 595 at paras 64–69). While one might conclude that Ms. Singh's procedural fairness was violated in reaching the first decisions in her file — where she did not have the possibility to provide clarification or to be heard with respect to the questions the CRA had in relation to her submissions —, the same cannot be said about the two Decisions under review before this Court, namely, the second review decisions. A close analysis of the CRA agent's reports and notes leaves no doubt that Ms. Singh was fulsomely able to submit further

evidence and materials to the CRA during the course of the second reviews. Furthermore, Ms. Hickey — the CRA agent handling the second review of Ms. Singh's applications — received additional documents from Ms. Singh that had not been submitted before the CRA during the first reviews, and she considered these additional submissions as well. Ms. Hickey endeavoured to contact Ms. Singh on multiple occasions, and spoke with Ms. Singh on the phone before rendering the Decisions. Consequently, the decision-maker carefully considered all of the available information, including the information available at the time of the first reviews as well as the additional oral and written representations provided by Ms. Singh during the second reviews.

[45] In sum, Ms. Singh was properly able to present her case before the decision-maker during the second reviews, and any procedural fairness defects that could have occurred in the course of the first reviews were corrected by the *de novo* review that was undertaken in reaching the Decisions. I am therefore satisfied that, given Ms. Singh's particular context and circumstances, the process followed by the CRA was fair and gave her the right to be heard and to know the case she was facing, as well as a full and fair opportunity to be informed of the evidence to be rebutted and to respond to it.

[46] This is not a situation where a violation of procedural fairness hampered the decision-making process.

IV. Conclusion

[47] For the above-mentioned reasons, and even though I have sympathy for Ms. Singh's situation, she has failed to show that the Decisions are unreasonable. The CRA reasonably concluded that she failed to meet the CERB and CRSB requirements because of a lack of evidence demonstrating she actually received payment for her babysitting. Furthermore, Ms. Singh has not demonstrated that her right to procedural fairness was violated. Consequently, her application for judicial review must be dismissed.

[48] The style of cause is amended to replace the "Canada Revenue Agency" by the "Attorney General of Canada".

[49] At the hearing before the Court, counsel for the AGC informed the Court that the AGC was not seeking costs. Accordingly, no costs are awarded.

JUDGMENT in T-1469-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.

2. The style of cause is amended to identify the respondent as the "Attorney General of Canada" in place of the "Canada Revenue Agency".

3. No costs are awarded.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 10, 2024
JUDGMENT AND REASONS:	GASCON J.
DATED:	JANUARY 12, 2024

APPEARANCES:

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