

Federal Court



Cour fédérale

Date: 20240423

Docket: T-437-23

Citation: 2024 FC 612

Ottawa, Ontario, April 23, 2024

PRESENT: Mr. Justice O'Reilly

BETWEEN:

DONNA ROYSTON-BIRBARI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Ms Donna Royston-Birbari began operating a small pet-care business in 2019, just before the COVID-19 pandemic struck. During COVID, people largely stayed at home and did not need pet-care services. Her business suffered.

[2] Ms Royston-Birbari applied for and received a number of benefits offered by the government, specifically, the Canada Emergency Response Benefit (CERB), the Canada Recovery Benefit (CRB), and the Canada Worker Lockdown Benefit (CWLB). The Canada

Revenue Agency (CRA) subsequently responded to Ms Royston-Birbari's applications by requesting additional evidence of her income.

[3] The CRA found that Ms Royston-Birbari was not eligible for any of the three benefits. Ms Royston-Birbari requested a second review of her applications. The second reviewer came to the same conclusion. In particular, the second reviewer found that Ms Royston-Birbari had not earned sufficient income during the relevant timeframes.

[4] Ms Royston-Birbari submits that the CRA's decisions were unreasonable because the evidence supported her assertion that she was eligible for the benefits she claimed. She asks me to quash the CRA's decisions.

[5] I agree with Ms Royston-Birbari that the CRA's decisions were, in part, unreasonable because they failed to consider her gross, rather than net, income in respect of the CERB. That error affected the CRA's assessment of Ms Royston-Birbari's entitlement to the CERB and, indirectly, the CWLB. Accordingly, I will grant this application in part, and will order another CRA officer to reconsider Ms Royston-Birbari's eligibility for the CERB and the CWLB.

[6] The respondent raised a preliminary issue regarding the admissibility of new evidence that Ms Royston-Birbari wished me to consider on this judicial review, evidence that was not before the reviewing officer. I agree with the respondent that I may only consider evidence that was before the officer.

II. The CRA's Decisions

[7] Regarding the CERB, the reviewing officer found that Ms Royston-Birbari had provided documents showing that she earned a total of more than \$5,000 during the 12 months prior to her application. However, the officer found that Ms Royston-Birbari's net income was less than the \$5,000 threshold for eligibility. While Ms Royston-Birbari's was not eligible for the CERB, the officer concluded that she did not have to repay the benefits she had already received because her gross income was greater than \$5,000.

[8] For the CRB, the reviewing officer found that Ms Royston-Birbari's net income was below \$5,000 both in 2019 and 2020, and during the 12 months prior to her application. She was therefore not eligible.

[9] With respect to the CWLB, the reviewing officer concluded that Ms Royston-Birbari's income was below \$5,000 both in 2020 and 2021, and during the 12 months prior to her application. Further, because she was not eligible for the CERB, her CERB benefits could not be considered as part of her income for purposes of calculating her eligibility for the CWLB (even though she did not have to repay her CERB benefits). Similarly, Ms Royston-Birbari was not eligible for the CRB, so those benefits could not be considered income during the relevant years.

III. Were the CRA's Decisions Unreasonable?

[10] The respondent submits that the reviewing officer's decisions were reasonable given that they were based on the documentary evidence provided by Ms Royston-Birbari showing that her income fell short of the eligibility criteria.

[11] I agree with the respondent in respect of the CRB, but not in respect of the CERB and the CWLB.

[12] The key question is whether eligibility for benefits was based on gross income or net income.

[13] For the CERB, the *Canada Emergency Response Benefit Act* defines a “worker” as a person earning at least \$5,000 in “total income” in 2019, or in the 12 months preceding their application (SC 2020, c 5, s 2). It does not refer to “net income” (see *Zhang v Canada (Attorney General)*, 2023 FC 1761 at para 6). The reviewing officer found that Ms Royston-Birbari had, in fact, earned more than \$5,000 in gross income. Accordingly, the officer’s conclusion that she was not eligible for the CERB is unjustified.

[14] By contrast, for the CRB, eligibility is based on net income. The provisions of the *Canada Recovery Benefits Act* make clear that income from self-employment means revenue less expenses (SC 2020, c 12, s 3(1)(d) and s 3(2)). The officer did not err, therefore, in finding Ms Royston-Birbari ineligible for the CRB.

[15] Finally, for the CWLB, the *Canada Worker Lockdown Benefit Act* provides that a person is eligible for the benefit if they earned at least \$5,000 from employment, self employment, or from receiving the CERB or the CRB (SC 2021, c 26, s 4(1)(d)). The reviewing officer found Ms Royston-Birbari ineligible based on her low self-employment earnings but, having concluded that she was not eligible for the CERB, did not take into account her income from the CERB

benefits. As mentioned, the officer's finding that Ms Royston-Birbari was ineligible for the CERB was unreasonable. Accordingly, the conclusion that Ms Royston-Birbari was ineligible for the CWLB is also unreasonable.

IV. Conclusion and Disposition

[16] The reviewing officer's decisions that Ms Royston-Birbari was ineligible for the CERB and the CWLB were not justified – they were unreasonable. I must, therefore, allow this application for judicial review and order another CRA officer to reconsider Ms Royston-Birbari's eligibility for those two benefits.

JUDGMENT IN T-437-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, in part.
2. Another CRA officer shall reconsider Ms Royston-Birbari's eligibility for the CERB and the CWLB.
3. The style of cause is amended to name the Attorney General of Canada as respondent.
4. There is no order as to costs.

"James W. O'Reilly"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-437-23

STYLE OF CAUSE: DONNA ROYSTON-BIRBARI V AGC

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 11, 2024

JUDGMENT AND REASONS: O'REILLY J.

DATED: APRIL 23, 2024

APPEARANCES:

Donna Royston-Birbari

FOR THE APPLICANT
(ON HER OWN BEHALF)

Haleigh Johns

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT