

Federal Court



Cour fédérale

Date: 20250114

Docket: T-1942-23

Citation: 2025 FC 77

Vancouver, British Columbia, January 14, 2025

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

BRIAN CHIU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] Brian Chiu seeks judicial review of a decision of the Canada Revenue Agency [CRA] that found him ineligible to receive the Canada Recovery Benefit [CRB]. The CRB provided financial support to employed and self-employed Canadians who were directly affected by the COVID-19 pandemic, and who were not entitled to receive Employment Insurance [EI] benefits.

[2] The Respondent concedes that the CRA's decision was procedurally unfair and unreasonable. However, the Respondent opposes Mr. Chiu's request that this Court confirm his

eligibility for the CRB, and asks that the matter be remitted to a different CRA reviewer for redetermination.

[3] The CRA's initial reasons for refusing Mr. Chiu the CRB were explained in a letter dated August 11, 2022:

- (a) he did not earn at least \$5,000 of employment or net self-employment income in 2019, 2020, or in the 12 months before the date of his first application;
- (b) he did not experience a 50% reduction in his average weekly income compared to the previous year due to COVID-19; and
- (c) he received EI benefits during the same period.

[4] By letter dated August 15, 2022, Mr. Chiu expressed disagreement with the refusal and requested a second review. In support of his request, he submitted screenshots of his 2019 and 2020 income tax assessments.

[5] On January 24, 2023, a second level reviewer telephoned Mr. Chiu and asked for his record of employment and paystubs for 2020, as well as statements from his personal bank account. Mr. Chiu said he was unable to provide his record of employment or paystubs, but he would try to submit any additional documents he could locate.

[6] On February 16, 2023 and February 21, 2023, the second level reviewer called Mr. Chiu about the requested documents. Mr. Chiu said he was waiting to receive the account statements from his bank, and would submit them the following week. On March 1, 2023, the reviewer left another message asking Mr. Chiu to return his call.

[7] On March 2, 2023, the second level reviewer found Mr. Chiu to be ineligible for the CRB. The reviewer noted that the bank statements provided did not demonstrate that Mr. Chiu had earned more than \$5,000 from December 2019 to December 2020, and he had not submitted paystubs to prove his income.

[8] By letter dated March 9, 2023, the CRA informed Mr. Chiu that he was ineligible for the CRB because he did not experience a 50% reduction in his average weekly income compared to the previous year due to COVID-19. The letter did not mention paystubs.

[9] On March 14, 2023, Mr. Chiu telephoned the CRA. He said he had been unable to submit the account statements on time due to a bank error. The CRA officer advised Mr. Chiu to request another review.

[10] On March 15, 2023, Mr. Chiu sent a letter to the CRA. He repeated his explanation about the bank error, and said that he had now submitted the bank statements. He also noted that he had called the reviewer six times and left four voice messages requesting additional time, but received no response.

[11] By letter dated August 25, 2023, the CRA informed Mr. Chiu that he was ineligible for the CRB, because:

- (a) he did not earn at least \$5,000 of employment income or net self-employment income in 2019, 2020, or in the 12 months prior to the date of his first application; and
- (b) he did not experience a 50% reduction in his average weekly income compared to the previous year due to the COVID-19 pandemic.

[12] The reviewer's notes indicate a concern about when Mr. Chiu earned T4 income in 2020. However, this concern was never conveyed to Mr. Chiu. The Respondent concedes that Mr. Chiu was not given a full and fair opportunity to know the case he had to meet, and to respond to the reviewer's concerns. The reviewer's decision was therefore procedurally unfair (*Komleva v Canada (Attorney General)*, 2024 FC 1562 at paras 19-39).

[13] Nor was Mr. Chiu given specific reasons why his income did not meet the eligibility criteria for the CRB. The Respondent concedes that the reviewer's decision lacked transparency, and was therefore unreasonable.

[14] Mr. Chiu asks this Court to confirm his eligibility for the CRB. This form of remedy is sometimes described as a "directed verdict". The Respondent says that the appropriate remedy is to remit the decision to another CRA reviewer for redetermination.

[15] The Court may order the outcome of an administrative decision in only limited circumstances: for example, when remitting the matter for reconsideration would prevent the timely and effective resolution of the matter in a manner not intended by the legislature (*D'Errico v Canada (Attorney General)*, 2014 FCA 95 at paras 18-19), or when a particular outcome is inevitable (*Groia v Law Society of Upper Canada*, 2018 SCC 27 at para 161; *Sharif v Canada (Attorney General)*, 2018 FCA 205 at paras 54-55).

[16] I am unable to say whether a redetermination of Mr. Chiu's eligibility for the CRB will result in a favourable decision or not. There is insufficient evidence before the Court to permit me to make this assessment. Nor is there evidence before the Court suggesting any particular urgency in this matter. While Mr. Chiu is understandably frustrated about the number of times his case has been reviewed, his inability to produce relevant documents in a timely manner has contributed to the delays encountered to date.

[17] For all of these reasons, the application for judicial review is allowed, and the matter is remitted to a different CRA reviewer for redetermination. As success is divided, there will be no order of costs.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, and the matter is remitted to a different CRA reviewer for redetermination.
2. No costs are awarded.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1942-23

STYLE OF CAUSE: BRIAN CHIU v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: JANUARY 13, 2025

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: JANUARY 14, 2025

APPEARANCES:

Brian Chiu
(on his own behalf)

FOR THE APPLICANT

Nicolas Sigouin

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Vancouver, British Columbia

FOR THE RESPONDENT