

Federal Court



Cour fédérale

Date: 20250124

Docket: T-1804-24

Citation: 2025 FC 150

Ottawa, Ontario, January 24, 2025

PRESENT: Madam Justice McDonald

BETWEEN:

ABIGAIL MORUM

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] On this application Abigail Morum seeks review of the Canada Revenue Agency's (CRA) decision of June 19, 2024, finding she was not eligible for the Canada Emergency Response Benefit (CERB). She seeks reinstatement of CERB benefits or an Order setting aside the decisions rendered by the CRA on the first and second reviews. She also makes procedural fairness arguments.

[2] For the reasons outlined below, I am granting this judicial review as I have determined that the Second Review Decision was reached in a manner that was not procedurally fair to Ms. Morum. The Second Review Decision is also unreasonable.

I. Background

[3] Ms. Morum applied for and received CERB benefits for the period of March 15, 2020, to September 26, 2020.

[4] On March 11, 2022, CRA sent a letter to Ms. Morum requesting information to verify her eligibility for CERB. She was asked to provide documents – bank statements, pay stubs, letter from employer, and amended T4 – for the periods of March 15, 2020, to September 26, 2020, to support her CERB eligibility. The letter indicates that earning over \$1,000.00 would prevent her from being eligible for CERB.

[5] On April 15, 2022, Ms. Morum provided bank statements for March 17, 2020, to September 17, 2020, a letter and two pay stubs from her employer, tax information slips, and an excel spreadsheet showing her bank deposit information.

[6] On August 2, 2023, a CRA Officer reviewed the information provided by Ms. Morum and determined she was not eligible for CERB because (1) she earned more than \$1,000.00 of employment or self-employment income during the applicable payment period; and (2) she did not stop working or have their hours reduced for reasons related to COVID-19 (First Review Decision).

[7] On September 4, 2023, Ms. Morum sent a letter to the CRA requesting a second review of the First Review Decision. In her letter she provides a breakdown of her income during the seven periods she received CERB. She acknowledges she made over \$1,000.00 during five of the seven periods but argues that she was entitled to receive CERB payments for two of the seven periods. The letter states:

When only taking into account the employment income I received from Sport Chek and Canadian Tire and the payments I requested from Poshmark, there are five periods where I made over \$1000 while also receiving CERB. I understand for these periods I may have to repay the benefits I received but for the first and second periods I made well under \$1000 and was also forced to stop working due to COVID-19 mandates and legislation.

[...]

I hope that this appeal is taken into serious consideration if a revaluation of my case is conducted. I have outlined above that I did receive two CERB payments that I was genuinely entitled to receiving but I am also aware that the other five payments I received may not have met the criteria to receive them.

II. Second Review Decision

[8] The CRA Officer notes having attempted to contact Ms. Morum by phone on three occasions in June 2024. The Second Reviewer was not able to reach the Applicant and therefore was unable to request further documents or information to support the Applicant's eligibility for CERB.

[9] On June 19, 2024, a CRA Officer sent a letter to Ms. Morum confirming the First Review Decision. The Officer concluded that Ms. Morum was not eligible for CERB as she earned more

than \$1,000.00 of employment or self-employment income during the applicable payment period, and she did not stop working or have her hours reduced for reasons related to COVID-19.

III. Issues and Standard of review

[10] Ms. Morum argues that the CRA's Second Review Decision was procedurally unfair and is not reasonably based upon the evidence she provided to CRA.

[11] The procedural fairness requirements for CERB decisions are "generally on the low end of the spectrum" (*Ramanathan v Canada (Attorney General)*, 2023 FC 1029 at para 46); however, the Court looks to whether the procedure allowed the applicant to know the case to meet, and whether the applicant had a full and fair opportunity to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54-56).

[12] In assessing the reasonableness of a decision, the Court looks for an internally coherent and rational chain of analysis that is justified in relation to the facts and law that constrain the decision maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85).

IV. IV Analysis

A. *Was the Decision procedurally fair?*

[13] Ms. Morum argues that CRA's unsuccessful attempts to reach her by phone were procedurally unfair and that more effort was required by CRA to contact her either through the on-line portal or by letter.

[14] Ms. Morum was aware from the First Review Decision that CRA was denying her entitlement to CERB benefits on the grounds that she earned more than \$1,000.00 of employment and self-employment income, and that she did not stop working or have her hours reduced for reasons related to COVID-19. In her September 4, 2023,'s letter requesting a second review, Ms. Morum noted "there are five periods where I made over \$1000 while also receiving CERB" demonstrating she understood she would be ineligible for those periods.

[15] She also acknowledged her obligation to provide CRA with the necessary information in support of her CERB application. During the hearing she confirmed that she had provided all such information. However, procedural fairness is not just about knowing the case to be met, it is also having a full and fair opportunity to respond to the questions or concerns of the decision maker.

[16] The record indicates that the Second Review officer, Tracy Murphy, did have questions or concerns with Ms. Morum's information and she attempted to contact Ms. Morum by telephone on three occasions. In her Affidavit, Ms. Murphy, states:

22. After reviewing the above listed documents and information I set out an action plan to call the Applicant and confirm that they were looking for a second review of their CERB. I wanted to ask the Applicant what she did for work, how Covid impacted her employment and request pay slips from FGL Sports for March – October 2020.

23. On June 13 and 17, 2024, I attempted to contact the Applicant via telephone three times. I was not able to reach the Applicant and therefore was unable to request further documents or information on the Applicant's working history and how Covid impacted her employment. The documents submitted for review were insufficient.

[17] In her Affidavit, Ms. Murphy explains that CRA enters phone calls into a computer program called T1Case that is available across the agency. Relevant here are three call log entries made on June 13 and June 17, 2024, as follows:

(i) Call #1 on June 13, 2024, at 9:53 am NL there was an attempt to call the Applicant but there was "no contact number on file" (emphasis added)

(ii) Call #2 on June 13, 2024, at 3:48 pm NL states "attempted to contact applicant...".

(ii) Call #3 is on June 17, 2024, 11:36 am NL and states "attempted to contact applicant...".

[18] In response to cross-examination on her Affidavit, Ms. Murphy confirmed "There was no contact phone number on the file to speak directly to the Applicant" to request any further documentation or provide a deadline.

[19] Given these events, Ms. Morum was not given a fair opportunity to respond to the decision maker's concerns. It was procedurally unfair, and frankly illogical, for the CRA to

assert that they attempted to reach Ms. Morum by phone on three occasions, when, at the same time, their own records acknowledge that they did not have a contact number for her. CRA's reliance on three failed phone calls to Ms. Morum as a basis to conclude she was not reachable – is not a fair process when the inability to reach Ms. Morum by phone is relied upon as a basis to deny the review.

[20] I find that the process followed by CRA in reaching the Second Review Decision was not fair to Ms. Morum.

B. *Is the decision reasonable?*

[21] Given my finding that the Decision was reached in a manner that was not procedurally fair to Ms. Morum, it is not necessary to address the reasonableness of the decision, but I will briefly address Ms. Morum's arguments that CRA failed to properly assess the information she provided. She notes that for 2 of the 7 CERB periods she had employment earnings of less than \$1,000.00 and this was highlighted in her letter to CRA when she requested a second review of the First Review Decision. Yet despite this, her CERB eligibility was denied for all 7 periods.

[22] In the absence of reasoning or justification as to why Ms. Morum owes repayment for these 2 CERB periods, the decision to require Ms. Morum to repay all 7 CERB periods lacks justification and transparency and is therefore unreasonable.

V. Conclusion

[23] I am granting this judicial review and Ms. Morum's application shall be fully reconsidered by a different officer. I am also granting Ms. Morum her costs in the amount of \$1,000.00.

JUDGMENT IN T-547-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is granted. The matter is remitted to a different Officer for reconsideration.
2. Ms. Morum shall have costs in the amount of \$1,000.00.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1804-24

STYLE OF CAUSE: ABIGAIL MORUM V ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: JANUARY 15, 2025

JUDGMENT AND REASONS: MCDONALD J.

DATED: JANUARY 24, 2025

APPEARANCES:

Abigail Morum FOR THE APPLICANT

Chelsea Barkhouse FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A – Self-Represented FOR THE APPLICANT
Halifax, Nova Scotia

Attorney General of Canada FOR THE APPLICANT
Halifax, Nova Scotia