

Federal Court



Cour fédérale

Date: 20250203

Docket: T-609-23

Citation: 2025 FC 220

Toronto, Ontario, February 3, 2025

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

AQSA MASOOD

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicant, Ms. Aqsa Masood, is seeking judicial review of a decision, in which the Canada Revenue Agency [CRA] found her ineligible for the Canada Emergency Response Benefit [CERB]. A CRA Agent found Ms. Masood ineligible because she could not establish that she had earned less than \$1,000 (before deductions) of self-employment income in the CERB periods for which she applied.

[2] While I am sympathetic to the Applicant's circumstances, this application for judicial review must be dismissed. The Applicant did not provide requested documentation to the CRA, and in the absence of this information, it was reasonable for the CRA Agent to find that the Applicant had failed to establish her CERB eligibility. The Applicant has failed to raise a reviewable error.

II. BACKGROUND

A. *The Applicant's work history and benefits applications*

[3] In 2020, with the onset of the global pandemic, Ms. Masood applied for CERB benefits for the period beginning March 15, 2020, and ending September 26, 2020. This constituted seven different 4-week CERB payment periods. Later, in 2022, the CRA decided to validate those applications.

[4] In a First Decision, a CRA agent determined that the Applicant was not eligible for the CERB because she had not met one of the program's eligibility criteria, which required applicants to have earned at least \$5,000 of employment or self-employment income in 2019 or in the 12 months preceding their application.

[5] On a second review conducted at Ms. Masood's request, a new CRA agent came to the same conclusion on eligibility, for the same reason [in these reasons, I will refer to this decision as the Initial Second Decision]. The Applicant brought an application for judicial review of the Initial Second Decision. Subsequently, that decision was set aside and the application for judicial

review of the matter was discontinued. A third CRA Agent was assigned to conduct the Further Second Review.

[6] On the reconsideration of the Applicant's CERB eligibility, a new issue arose. Where the first eligibility decisions concerned the Applicant's income in the period *prior* to applying for CERB benefits, the new issue related to the Applicant's income *while* receiving the CERB benefits. This is because another one of the criteria for receiving the CERB was that recipients could not earn more than \$1,000 in self-employment income before deductions in any relevant period.

[7] To assist in making a determination on this eligibility requirement, the new CRA Agent contacted Ms. Masood and requested that she submit documents indicating her income for the relevant periods. Ms. Masood stated that she had provided sufficient documentation to prove that she had earned enough to meet the \$5,000 eligibility requirement. The CRA Agent informed Ms. Masood that she was required to meet all of the CERB eligibility requirements, including that she did not earn more than \$1,000, before deductions, in all relevant CERB periods. Ms. Masood disagreed with the Agent that the specified amount needed to be before deductions, as she claimed the CRA website did not specify as such. Ultimately, Ms. Masood refused to provide further documents, indicating that she would rather provide them directly to this Court.

B. Decision under Review

[8] By letter dated March 15, 2023, the CRA Agent assigned to the Further Second Review informed the Applicant that she was not eligible for the CERB, because she had not established

that she met the requirements related to the cap on income during the applicable payment periods.

[9] This CRA Agent considered the following in coming to this Decision:

- The procedure document that instructs CRA Agents on how to determine eligibility for the CERB;
- The relevant agency-wide Notepad Entries;
- The Case Specific Notepad Entries;
- The disclosure provided by the Applicant in support of her earlier reviews;
- The Applicant's income and the deductions from income for the 2018 to 2020 taxation years as recorded on the CRA's computer system;
- The Applicant's T1 data summary for 2008 to 2022 taxation years as recorded on the CRA's computer system;
- The Applicant's Eligibility Overview as recorded on the CRA's computer system; and
- The phone script used by CRA Agents when callers ask what types of documents are required to support eligibility.

[10] Further to what the Applicant had indicated on the phone, the CRA Agent did not receive documentation from the Applicant as to her income for the months that she received the CERB.

[11] In the Further Second Review Report, which forms part of the reasons (*Aryan v. Canada (Attorney General)*, 2022 FC 139 at para 22), the CRA Agent found that because the Applicant declined to provide documents to establish that she had not earned more than \$1,000 before deductions during the CERB period for which she applied, they were unable to confirm that Ms. Masood's income for the payment period was under the prescribed threshold.

[12] The CRA Agent noted:

During my conversation with TP on February 7 TP stated "the letters we sent her had to do with the eligible income criteria of \$5000 and she disagreed we should be asking if she made over \$1000." I advised TP that I would require bank statements as additional documents to be submitted with dates from March to October of 2020 in order to confirm all criteria was met. During my phone conversation on February 13, 2023 TP had stated that "she spoke to her husband and wanted to go back to court". Additionally during our phone conversation TP stated "that she would prefer to submit documents to the court as we have already found her not to be eligible." I assured TP that was not the case and no decision had been made. I advised TP that I was requesting additional documents to make a decision. During the conversation I advised TP that the review would be completed and inquired if she would be sending in the requested bank statements. TP expressed that she would send the documents to court and not directly to the Canada Revenue Agency.

As per section 5(3) of the CERB Act TP is required to provide us with any information we require in respect of her application(s).

Therefore, since TP has not met all eligibility criteria and has declined to submit requested support documentation TP will be deemed not eligible.

III. ISSUES and STANDARD OF REVIEW

[13] The Applicant makes several submissions, all of which I understand to be challenging the reasonableness of the CRA's decision. It is well established that the standard of review applicable to the merits of the CRA's decisions regarding CERB benefits is reasonableness (*He v Canada (Attorney General)*, 2022 FC 1503 at para 20; *Lajoie v Canada (Attorney General)*,

2022 FC 1088 at para 12). This means that I cannot interfere with the CRA Agent's decision unless I find it was unreasonable.

IV. ANALYSIS

A. *Preliminary Matter: Style of Cause*

[14] The Applicant has variably referred to the Respondent as the "Canada Revenue Agency" and the "Attorney General of Canada". The CRA, in this matter, is the delegate of the Minister of Employment and Social Development. Pursuant to s. 303(2) of the *Federal Court Rules*, the responding party should be the Attorney General of Canada.

B. *Preliminary Matter: New Evidence*

[15] The Applicant has included the following exhibits in her Record before this Court that were not before the CRA Agent. I take it that these were the documents that the Applicant refused to submit to the Agent, as she preferred to provide them directly to the Court:

- a) A Business Income Spreadsheet for 2020 (Exhibit C);
- b) A Business Income Spreadsheet for 2021 (Exhibit F);
- c) An internet invoice (Exhibit H);
- d) Utility invoices for Hydro and Reliance Insurance (Exhibits I & J); and
- e) A phone bill (Exhibit K); and
- f) An Amazon receipt for toys purchased (Exhibit L).

[16] It is well established that the evidence considered in applications for judicial review is generally limited to the documentation that was before the administrative decision-maker:

Maltais v Canada (Attorney General), 2022 FC 817 at para 21. There are some exceptions to this general rule, which were set out by the Federal Court of Appeal in *Tsleil-Waututh Nation v Canada (Attorney General)*, 2017 FCA 128 at paras 97–98 [*Tsleil-Waututh*]. The exceptions may apply where the new evidence: (1) provides general background that might assist the Court in understanding the issues relevant to the judicial review; (2) is necessary to bring to its attention procedural defects; and (3) highlights the complete absence of evidence before the administrative decision-maker. None of the evidence submitted by the Applicant for the first time on this judicial review falls under these exceptions. As a result, I find that I cannot consider Exhibits C, F, H, I, J, K, and L, as contained in the Applicant’s Record.

C. *The Decision was Reasonable*

[17] The Applicant challenges the reasonableness of the Decision. She submits that when she consulted the CRA website to determine her eligibility for the CERB, it did not indicate that the \$1,000 income cap was to be assessed *before* deductions. She additionally submits that the CRA misapprehended the evidence she submitted, and that her documentation proves that her net income at the relevant time fell below the \$1,000 threshold.

[18] With respect, the Applicant has failed to raise a reviewable error.

[19] On the first issue, the Applicant had previously raised her concerns regarding the \$1,000 net income limit to the CRA Agent, who (as noted in the Further Second Review Report) looked into the Applicant’s claim and found that the “before deductions” criteria were indeed specified on the CRA website at the time of Ms. Masood’s CERB application on April 28, 2020. As such,

the Applicant's arguments to this Court amount to a request that I reweigh the evidence already considered by the decision-maker. This is not the role of this Court on judicial review.

[20] Further, the question of whether the \$1,000 limit relates to gross or net income is somewhat irrelevant, because the Applicant produced none of the documents that the CRA Agent requested in order to evaluate her income over the relevant periods. In the absence of any such documents, the Agent had little basis on which to find that the Applicant met the \$1,000 eligibility limit. And similarly, because these documents were not before the Agent, I have no basis on which to conclude that the CRA Decision was unreasonable.

[21] Further, as the CRA indicated in its reasons, s.5(3) of the *Canada Emergency Response Benefit Act* requires taxpayers to provide CRA agents with any information they may require in respect of a CERB application. It was therefore entirely reasonable for the Agent to conclude that Ms. Masood had failed to establish that she met all the statutory CERB eligibility requirements. This is a rational chain of analysis that can be followed without encountering any fatal flaws in the decision-maker's logic. The Agent's decision, therefore, should not be disturbed.

[22] As noted above, the Applicant declined to provide the requested supporting documentation to the CRA Agent, and instead has attempted to provide this documentation to the Court for consideration on judicial review. The documents in question are various invoices, receipts, and bills for the operational needs of the Applicant's daycare business, including hydro, insurance, the Applicant's phone plan, and toys; together with the Applicant's business income spreadsheets. These documents suggest that the Applicant's net income may well have been below \$1,000 from March to October 2020. This being the case, I have sympathy for the

Applicant, who appears to have misunderstood the scope of the Court's role in our system of administrative law. This misunderstanding does not, however, render the CRA decision unreasonable.

V. CONCLUSION

[23] This application for judicial review should be dismissed. The Applicant has not demonstrated that the decision under review was unreasonable. In concluding, I note the following passage from the decision under review:

We understand that it may not be possible for you to pay your debt immediately and in full. We're here to help. The CRA offers various solutions tailored to your personal situation.

[24] At the hearing into this matter, the Applicant explained that she and her husband were going through a difficult time during the pandemic and have continued to suffer from financial hardship since that time. They do not know how they will repay the CERB benefits that they received. The Applicant struggled to maintain a daycare during the pandemic, so that essential workers could go to work. In these circumstances, I would expect the CRA to adhere to the representations contained in the decision under review, and to exercise flexibility related to the quantum and/or timing of any repayments.

[25] The Respondent has clarified that they will not be seeking costs in this matter. I agree that an award of costs against the Applicant would not be appropriate, and none will be ordered.

JUDGMENT in T-609-23

THIS COURT'S JUDGMENT is that:

1. This application for judicial review is dismissed.
2. No costs.

"Angus G. Grant"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-609-23

STYLE OF CAUSE: AQSA MASOOD v CANADA REVENUE AGENCY

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 23, 2025

JUDGMENT AND REASONS: GRANT J.

DATED: FEBRUARY 3, 2025

APPEARANCES:

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FOR THE APPLICANT
(Self-Represented)

Princess Okechukwu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

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FOR THE RESPONDENT