Federal Court  Cour fédérale

**Date: 20250207**

**Docket: T-1526-24**

**Citation: 2025 FC 250**

**Toronto, Ontario, February 7, 2025**

**PRESENT: The Honourable Justice Battista**

**BETWEEN:**

**NITA GUILLEMETTE**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review of two decisions that found her ineligible for the Canada Emergency Response Benefit (CERB) and the Canada Recovery Benefit (CRB), respectively. An officer (Second Reviewer) of the Canada Revenue Agency (CRA) found that she had not met the minimum $5,000 income criteria in 2019 to be eligible for the programs, based on income made from her employer and income reported from her dog sitting business.

[2] For the reasons below, the decisions are reasonable and the application for judicial review is dismissed.

## II. Background

[3] The CERB is implemented through the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*]. The CRB is implemented through the *Canada Recovery Benefit Act*, SC 2021, c 12, s 2 [*CRB Act*]. Both require a prior "eligible" income of at least $5,000.

[4] The Applicant based her applications on her employment as a Rehabilitation Therapist with Wright Rehab, and on self-employment income from her dog sitting/walking activity.

[5] The Second Reviewer found that the Applicant's income from Wright Rehab in 2019 was not sufficient to be eligible for the programs, but suggested to the Applicant that she may be eligible for benefits based on income in the 12 months prior to her application. The Second Reviewer invited the Applicant to provide evidence supporting this eligibility, but she did not do so.

[6] The Second Reviewer found that the Applicant's income from her dog walking activity was not considered income for the purpose of eligibility for the programs because the Applicant had not demonstrated that the income fell into the self-employment category and was not merely "casual."

## III. Issues and Standard of Review

[7] Preliminary issues raised by the Respondent involve the renaming of the Respondent and the consideration of the CERB and the CRB decisions in this application for judicial review.

[8] The Respondent asserts, and I agree, that the proper Respondent in this matter is the Attorney General of Canada rather than the Minister of National Revenue. The style of cause will therefore be amended to reflect the proper Respondent.

[9] I also agree with the Respondent that the Court should order that both the CERB and the CRB decisions be considered together as part of this application for judicial review (*Federal Court Rules*, SOR/98-106, r 302; *Rehman v Canada (Attorney General)*, 2023 FC 1534 [*Rehman*] at paras 15-17).

[10] Aside from these preliminary issues, the remaining issue is whether the decision is reasonable pursuant to the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*].

## IV. Analysis

[11] As stated above, the Applicant was found ineligible for both programs on the basis that her past income did not exceed $5,000. The Applicant asserts four bases for challenging this reason for denial:

A. The decision letters contain no justification for the finding that the Applicant had not met the $5,000 income eligibility threshold;

B. The decision failed to reasonably calculate the Applicant's income, because the Applicant was able to establish $5,000 in invoices through her employer and $320 in income through her dog sitting business, reported as $5,300 in gross employment income in her 2019 tax assessment, and the Applicant provided bank statements establishing her eligibility for benefits based on her income over the 12 months prior to her applications;

C. The Second Reviewer offered no explanation for finding the receipts for the dog sitting activity to be insufficient, without any reference to the Supreme Court's decision in *Stewart v Canada*, 2002 SCC 46 [*Stewart*], and in contravention of *Crook v Canada (Attorney General)*, 2022 FC 1670 [*Crook*]; and

D. The decision maker misinterpreted the statutes because the definition of "worker" under the relevant Acts refers to having "had" income, rather than having "received" income, especially in reference to the Applicant's income earned through her employer.

A. *Lack of reasons justifying the finding of income less than $5,000*

[12] The first basis for challenging the decisions is without merit because the Second Reviewer's report forms part of the reasons for the decision (*Crook* at para 14 [citations omitted]).

[13] The Applicant argues that the detailed report explaining the decision should have been provided at the time that the briefer, formal decision letter was provided. However, this is a quarrel

with the Respondent's administrative practices in communicating its decisions and does not raise an issue of reasonableness.

B. *Evidence of combined income from employment and self-employment*

[14] The second basis for challenging the decisions is also without merit. Tax assessments do not conclusively prove that an applicant has "actually earned the income reported" nor do they prove that "income was earned from an eligible source" (*Rehman* at para 30 [citations omitted]).

[15] The Applicant argued that the reasons were unresponsive to the evidentiary record because they did not explain why the Second Reviewer requested further documentation and did not rely upon the invoices which were provided. However, the Second Reviewer was entitled to request further documents from the Applicant's employer (*CRB Act*, s 6; *CERB Act*, s 10), and the Second Reviewer noted that a human resource and accounting document from the employer showed the Applicant to have earned $4,966.47 in 2019. This was corroborated through her bank statements showing $4,805.58 in 2019. While the Applicant's bank statement deposits for 2019 amount to more than this figure ($5,734.33), subtracting the Canada Child benefit she received each month ($928.75 in total), the Second Reviewer correctly arrived at $4,805.58 in income. Her employer also clearly provided she made a total of $4,966.47 in invoicing. The Second Reviewer did not err with respect to the evidence of the Applicant's tax assessment and employer-based income.

[16] At the judicial review hearing, the Applicant also raised a new argument regarding the reasons' lack of responsiveness, indicating that the record did in fact contain evidence of the Applicant's qualifications based on her income over the 12 months prior to the applications. As

noted below, the Applicant was given the opportunity to establish eligibility on this basis and did not seek a calculation based on this option. It is not the role of this Court to conduct a *de novo* analysis of the Applicant's eligibility based on evidence that was before the decision maker but not drawn to the decision-maker's attention in order to establish eligibility (*Vavilov* at paras 15, 83). As Justice Denis Gascon held, "the primary purpose of a judicial review is to review administrative decisions, not to decide, through a trial *de novo*, issues that have not been adequately considered on the evidence before the appropriate administrative decision maker" (*Lavigne v Canada (Attorney General)*, 2023 FC 1182 at para 23 [citations omitted]).

C. *Treatment of dog sitting income as "casual", not "business", income*

[17] The Second Reviewer's decision was also reasonable in its treatment of the dog sitting service income. The Second Reviewer found that the Applicant did not "have any invoice or payment proof and [was] unable to provide documents to establish this income falls under self-employment category and not casual". The only evidence the Applicant provided in support of the dog sitting service as income was typed receipts; she did not issue any invoices or have other proof of payment. She was advised of the opinion that this income stream was "casual" in a phone call on May 14, 2024.

[18] The Second Reviewer was entitled to require proof that the Applicant's dog sitting service was not merely casual. Both Acts require income from valid "sources," including self-employment, and CRA can demand any information it may require for an application (*CRB Act*, s6; *CERB Act*, s 10). The question before the Second Reviewer was whether the Applicant's dog sitting service was a "source of income," which requires demonstrating the taxpayer's

"predominant intention is to make a profit from the activity and that the activity has been carried out in accordance with objective standards of businesslike behaviour" (*Stewart* at para 54). Factors for answering this question include, but are not limited to: (1) profit and loss in past years; (2) training; (3) the "intended course of action"; and (4) the capability to show a profit (*Stewart* at para 54).

[19] The Second Reviewer noted that the Applicant did not provide any documents to establish that her dog sitting service fell under the self-employment category of source of income. The only evidence of dog sitting income for 2019 was two receipts, and the Applicant's explanation that the dog sitting service first started out by "helping friends" and then the Applicant opting to charge for her services.

[20] The CRA advised the Applicant that "a service that is provided once or twice on a casual basis without establishing an ongoing activity or additional factors (i.e., no business card, registration, advertising, use of invoice, etc.)" could not be a service generating income under the self-employment income category. The Second Reviewer clearly communicated to the Applicant that she did not establish, during the qualifying period, that her predominant intention of the dog sitting service was to make profit. This determination was reasonable and was consistent with *Stewart*: There was little, if any, evidence of profit and loss in past years (including none in 2018), no evidence of training, the intended course of action was at least initially to help friends rather than make profit, and the Applicant had not shown a capacity to make profit other than the two receipts provided. The Second Reviewer's decision in this regard is reasonably responsive to the evidence and corresponds with *Stewart* (*Vavilov* at para 99).

D. *Statutory definition of "worker" does not require receipt of income*

[21] The Applicant submits that income should have been calculated on the basis of invoiced amounts rather than received payments. The Applicant supports this argument by referring to the use of the word "had" in paragraph 3(1)(d) of the *CRB Act* or "has" in section 2 within the definition of "worker" under the *CERB Act*. The Applicant argues that the statutes would have used the word "received" if collected payments were intended by Parliament.

[22] The Applicant invites a statutory interpretation of the Acts to determine whether the Second Reviewer's interpretation of income calculation can be supported by the legislation. Two considerations regarding the statutory interpretation exercise are relevant: first, a Court conducting statutory interpretation does not conduct a *de novo* analysis but seeks to determine whether the interpretation by the decision maker is reasonable (*Vavilov* at para 116), and second, in the statutory interpretation exercise, the text is the interpretive "anchor" (*Quebec (Commission des droits de la personne et des droits de la jeunesse) v Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para 24).

[23] This statutory interpretation argument was not placed before the decision maker and therefore no interpretation of the statute on this point appears in the reasons. Nevertheless, it is reasonable to interpret the statute as referring to income actually received rather than income which is expected to be received (*Imbewa v Canada (Attorney General)*, 2024 FC 1495 at paras 17-18). The Second Reviewer applied a reasonable interpretation of the statute, given that the statute is not "overwhelmingly" in favour of only one reasonable interpretation (*Vavilov* at para 124).

[24] The Respondent is correct in pointing out that even if the Applicant's interpretation were to be accepted, the Applicant was given the opportunity to provide bank statements for 2020 to substantiate that she had been paid amounts owed in 2019. She did not avail herself of that opportunity. As mentioned, CRA is empowered by statute to ask for any information required to determine eligibility. It did not have to merely accept the Applicant's invoices as determinative of income.

## V. Conclusion

[25] The Applicant has not raised a reviewable error with the decisions and I find they are justified in light of constraining facts and law. The Respondent did not seek costs; in the circumstances of this matter, and none will be awarded.

**JUDGMENT in T-1526-24**

**THIS COURT'S JUDGMENT is that**:

1. The Attorney General of Canada replaces the Minister of National Revenue as the Respondent, effective immediately.

2. The decisions finding the Applicant ineligible for both the CRB and the CERB benefits are both considered within this application.

3. The application for judicial review of both decisions is dismissed, with no order regarding costs.

"Michael Battista"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1526-24 |
| **STYLE OF CAUSE:** | NITA GUILLEMETTE v ATTORNEY GENERAL OF CANADA |
| **PLACE OF HEARING:** | TORONTO, ONTARIO |
| **DATE OF HEARING:** | FEBRUARY 5, 2025 |
| **JUDGMENT AND REASONS:** | BATTISTA J. |
| **DATED:** | FEBRUARY 7, 2025 |

**APPEARANCES:**

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| Ian Pillai | FOR THE RESPONDENT |

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