

Federal Court



Cour fédérale

Date: 20251008

Docket: T-3328-24

Citation: 2025 FC 1663

Ottawa, Ontario, October 8, 2025

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

XIAO LAN LIN

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The Applicant seeks judicial review of a further second review decision made by the Canada Revenue Agency [CRA] dated November 15, 2024, in which the CRA determined that the Applicant was not eligible for the Canada Recovery Benefit [CRB] payments she received between September 27, 2020, and October 9, 2021.

[2] The eligibility criteria for the CRB are set out in the *Canada Recovery Benefits Act*, SC 2020, c 12 [*CRB Act*]. The particular requirement that the Applicant was found not to have

satisfied in this case is having earned at least \$5,000 of employment and/or net self-employment income in 2019, 2020, or in the 12 months before the date of her CRB application [see *CRB Act*, section 3(1)(d)].

[3] The Applicant asserts that: (a) the CRA's decision is unreasonable as she met the eligibility criteria necessary to receive the CRB; and (b) the CRA breached its duty of procedural fairness as it did not provide a reasonable deadline during the second review for the Applicant to provide additional evidence and it failed to successfully communicate with the Applicant.

[4] For the reasons that follow, I find that the decision was unreasonable as the CRA failed to explain the basis for the determination that the Applicant's net self-employment income in 2019 was only \$3,139. Accordingly, the application for judicial review shall be granted.

I. Background

[5] The Applicant, a self-employed acupuncturist, applied for and received CRB payments for the period between September 27, 2020, and October 9, 2021.

[6] On January 27, 2023, the CRA contacted the Applicant requesting documentation showing proof of eligibility for the benefits. The Applicant provided the CRA with a summary of receipts of payments showing client names, the dates of payments and the amounts received, accompanied by pictures of receipts, a summary of payments received from Groupon Inc., e-transfers with the dates and amounts of deposits and various personal bank account statements.

[7] By letter dated March 21, 2023, a first reviewing agent found the Applicant ineligible for CRB but invited her to submit additional documentation and information related to her CRB application. The Applicant did not respond to this letter and another first review was subsequently conducted.

[8] By letter August 8, 2023, a further first reviewing agent found the Applicant ineligible on the basis that she did not earn at least \$5,000 of employment and/or net self-employment income in 2019, 2020, or in the 12 months before the date of her application.

[9] On September 9, 2023, the Applicant sent a letter to the CRA requesting a second review, asserting that the CRA had failed to consider all of the information that she had submitted.

[10] Prior to the second review, the Applicant provided the CRA with additional documentation, which included her business name and number, additional bank statements, a summary of payments and receipts from Square Inc., business receipts, a summary of redacted client records, screenshots of text messages from clients and screenshots of Google reviews for her acupuncture business.

[11] By letter dated April 11, 2024, the second reviewing agent determined that the Applicant was not eligible for the CRB, again on the basis that she as did not earn at least \$5,000 of employment and/or net self-employment income in 2019, 2020, or in the last 12 months before the date of making her application.

[12] On May 2, 2024, the Applicant commenced an application for judicial review of the April 11, 2024 second decision. The application was ultimately discontinued and the CRA agreed to conduct a further second review.

[13] On August 30, 2024, a second reviewing agent contacted the Applicant by telephone. During that discussion, the Applicant confirmed that, to the best of her knowledge, her 2019 and 2020 tax returns were accurate. However, the Applicant went on to state that there may have been expenses on her 2019 tax return that should not have been claimed. The agent advised the Applicant that, if she needed to change her 2019 tax return, the agent would need to see all expenses that were initially claimed and what expenses should be removed, accompanied with a reasonable explanation for their removal. The Applicant was provided with an extension of time to September 16, 2024, to send in any additional documents.

[14] By letter dated September 8, 2024, the Applicant requested an additional extension of time to provide additional documents on the basis that she had requested an adjustment to her 2019 personal income tax return and had not yet heard back from the CRA. In support of her requested adjustment, the Applicant advised the CRA:

[...] In 2019, I accidentally duplicated the same expenses on both my corporation and personal tax returns when they should only have been reported on the corporation return and not on my personal tax return. The exact adjustment that I'm requesting is for all the expenses on the T2125 form to be removed as they are the corporation's expenses, leaving my personal net self-employment income to be \$7,272.28. [...]

[15] On September 18, 2024, the second reviewing agent contacted the Applicant and asked why the expenses were put on the wrong return when prior years looked similar to what she

reported in 2019. The Applicant responded that she was unsure, as her secretary usually took care of it. The agent requested that the Applicant provide her original 2019 T2125 for review, which she provided the following day. During the discussion, the agent also advised that as he was leaving the CRA, a further second reviewing agent would be taking over the Applicant's CRB eligibility review.

[16] On October 7, October 21, and November 1, 2024, the new further second reviewing agent [Agent] called the Applicant and left voicemail messages, requesting that she return their call by October 21, October 28, and November 8, 2024, respectively. The Applicant never responded to these communications and no further documentation nor information was provided by her regarding any over-claimed expenses.

[17] By letter dated November 15, 2024, the Agent determined that the Applicant was not eligible for the CRB, again on the basis that she as did not earn at least \$5,000 of employment and/or net self-employment income in 2019, 2020, or in the last 12 months before the date of making her application.

[18] The Agent's notes set out in the Case Specific Notepad Entries [Notes] further detail the basis for their finding and form part of the reasons for decision [see *Aryan v Canada (Attorney General)*, 2022 FC 139 at para 22; *Cozak v Canada (Attorney General)*, 2023 FC 1571 at para 24]. The Notes detail that, as part of the Agent's attempt to verify the Applicant's eligible income, they noted that she had not provided employment income slips for 2019 nor 2020, did not file a T4A with respect to her self-employment income earned in either 2019 or 2020 and had a history of filing self-employment income prior to 2019, of which her net income had never exceeded \$5,000.

Based on the documentation and information provided by the Applicant, the Notes record that the Agent found that:

- A. As of January 2021, the Applicant's 2019 income tax return claimed a gross commission income of \$7,272 resulting in a net self-employment income of \$3,139 and other employment income of \$1,044 (which other income the Agent was unable to verify). Therefore, the total eligible income for 2019 for the purpose of CRB eligibility was, at best, \$4,183.
- B. For 2020, the Applicant had a gross self-employment income of \$1,360 and a negative net self-employment income.
- C. For the 12 months prior to the CRB application (October 12, 2019, to October 11, 2020), the statement of earnings the Applicant provided from Square Inc. and the handwritten receipts provided by the Applicant herself demonstrate that she could have only earned a gross self-employment income of \$2,283 (assuming the 2019 income tax return is correct). If the Applicant could have proven that other employment income was earned in this period then she would have had, at most, an eligible income of \$3,327.94 (before any expenses for self-employment were deducted). Moreover, even if all of the gross self-employment income reported in the 2020 income tax return was earned during this period, the Applicant would still only have an income of \$4,687.94. Therefore, based on all information and documentation provided, the Applicant could not have met the \$5,000 in net self-employment income threshold for this period.

II. Preliminary Issues

[19] The Applicant included, as Exhibit I to her affidavit, the Express Notice of Reassessment for the 2019 taxation year that she received in November 2024 [Notice of Reassessment]. The Notice of Reassessment increased the Applicant's net self-employment income from \$3,139 to \$7,272 on account of the removal of expenses attributable to the earning of her gross commission income. Under the heading "Explanation of changes and other important information", the Notice of Reassessment stated that the CRA "may review this item later." The Respondent asserts that, as the Notice of Reassessment was not before the decision-maker, the Court should disregard this evidence. The Applicant did not make submissions on this issue.

[20] It cannot be disputed that the Notice of Reassessment was not before the CRA at the time the further second review decision was made, as the Notice of Reassessment post-dates the Agent's decision. Further, I find that the Notice of Reassessment does not fall within any of the exceptions to the rule against admitting new evidence on judicial review and, as such, it cannot be considered on this application [see *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19–20; *Namgis First Nation v Canada (Fisheries and Oceans)*, 2019 FCA 149 at para 10; *Shhadi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1580, at para 43].

[21] That said, the exclusion of this evidence is inconsequential as the Agent had before them, at the time that they made their decision, the Applicant's request to amend her 2019 income tax return to remove the expenses claimed against her gross commission income and her explanation

for the basis of that request (limited as it was). The Agent was aware that the impact of the removal of the expenses, if justified, would mean an increase her 2019 net self-employment income from \$3,139 to \$7,272 thereby allowing the Applicant to satisfy the income eligibility requirement necessary to receive the CRB. Moreover, a notice of assessment or reassessment is, in any event, not determinative of income for the purposes of determining CRB income eligibility [see *Aryan, supra* at para 35; *Sjogren v Canada (Attorney General)*, 2023 FC 24 at para 39].

III. Analysis

[22] I will begin by considering the reasonableness of the decision. The standard of review applicable to determinations of CRB eligibility is reasonableness [see *James v Canada (Attorney General)*, 2024 FC 730 at para 13; *Walker v Canada (Attorney General)*, 2022 FC 381 at para 15; *Aryan, supra* at para 16].

[23] A reasonable decision is “one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker” [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency” [see *Vavilov, supra* at para 100; *Mason, supra* at paras 59–61].

[24] While the majority of the Applicant’s submissions focused on her asserted denial of procedural fairness, she also asserted in both her notice of application and written representations

that the CRA erred in finding her ineligible for the CRB as she had provided evidence that she had a total income in excess of \$5,000 in 2019. This evidence included the Applicant's explanation for adjusting her 2019 income tax return to remove the expenses claimed against her gross commission income, which had the effect of increasing her net self-employment income to \$7,272. On its own, this income would be sufficient, if proven to the satisfaction of the CRA, to meet the \$5,000 eligibility threshold for 2019.

[25] In the Notes relevant to the decision, the Agent referred to the historical discussions between the Applicant and the previous agent regarding the removal of the expenses against her gross commission income and her information and documentation related thereto. The Notes go on to provide:

[...] Based on the information available to me, I was able to validate their self-employment earnings in 2019. The [Applicant] had a net self-employment income of \$3,139 in 2019 [...]

[26] However, the Agent fails to explain how, based on the information before them, they validated the Applicant's net self-employment income at only \$3,139 and not \$7,272 as asserted by the Applicant. The Respondent urges the Court to read the Notes holistically and piece together a rationale for the rejection of the removal of the expenses against her gross commission income, based on comments made to the Applicant from August 2024 onward regarding the nature of the evidence she would need to provide to justify the removal of the expenses, taken together with the limited information and documentation thereafter provided. However, it is not the role of the Court to speculate as to the rationale of the Agent and what documentation and/or information they found lacking. While the Agent's reasons did not have to be lengthy, they had to be sufficient to enable the Court and the Applicant to understand why her self-employment income was verified to be

only \$3,139, which understanding cannot be gleaned from the reasons. Moreover, I find that the absence of any reasons for this determination is particularly troubling given that, as acknowledged by the Respondent at the hearing, the issue of the removal of the expenses was a live issue that was discussed with the previous agent on multiple phone calls and caused the Agent thereafter to make three additional phone calls to the Applicant immediately prior to the decision. This was clearly a central issue to her eligibility determination, which further underscores the need for the Agent to justify their determination by way of reasons.

[27] Given the absence of an explanation as to how the Agent reached their finding that the Applicant's net self-employment income in 2019 was only \$3,139, I find that there is a sufficiently serious shortcoming in the decision such that it does not exhibit sufficient justification, intelligibility and transparency [see *Vavilov*, *supra* at para 100]. Accordingly, I find that the decision is unreasonable and must be set aside.

[28] In light of this finding, I need not go on to consider the Applicant's procedural fairness arguments.

IV. Remedy

[29] Generally, on an application for judicial review, the appropriate remedy is to set aside the decision and remit the matter to the decision-maker for redetermination with the benefit of the Court's reasons. This rule is grounded in respect for the legislature's intention to entrust the matter to the administrative decision-maker [see *Vavilov*, *supra* at para 142].

[30] Only in exceptional circumstances should a reviewing court exercise its discretion and decide the issues that are properly left to administrative decision-makers at first instance as the “merits-decider[s]” [see *Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 100]. For example, this Court may decline to remit a matter where it is evident that a particular outcome is inevitable (i.e., the outcome is a foregone conclusion) such that remitting the matter would serve no useful purpose [see *Vavilov*, *supra* at para 142; *Sharif v Canada (Attorney General)*, 2018 FCA 205 at para 54; *Canada (Attorney General) v Duval*, 2019 FCA 290 at para 38].

[31] While the Applicant has requested that this Court step in and make a determination that she is eligible for the CRB payments she received, I do not find that this is a case where such a result is inevitable. It is for the CRA, not this Court, to consider the evidence put forward by the Applicant to determine whether she has established that she meets the \$5,000 income eligibility criterion during the relevant period.

[32] As such, this matter shall be remitted to a different agent at the CRA for redetermination. Prior to the redetermination, the Applicant shall be afforded an opportunity to provide any additional information and documentation in support of her CRB eligibility.

V. Costs

[33] I see no reason to depart from the general principle that the successful party should be entitled to their costs. However, as the Applicant is self-represented and there is no evidence before the Court that she forewent any remunerative activity in the prosecution of her application, I find

that her entitlement to compensation is limited to any reasonable disbursements incurred [see *Yu v Canada (Attorney General)*, 2011 FCA 42 at para 37]. These disbursements would be the \$50 application filing fee and the \$50 fee associated with the filing of the requisition for hearing.

JUDGMENT in T-3328-24

THIS COURT’S JUDGMENT is that:

1. The application for judicial review is granted. The decision of the Canada Revenue Agency dated November 15, 2024, is hereby set aside and the matter is remitted for redetermination by a different agent, following an opportunity being given to the Applicant to provide additional documentation and information.
2. The Respondent shall pay to the Applicant costs of the application in the amount of \$100.

“Mandy Aylen”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-3328-24

STYLE OF CAUSE: XIAO LAN LIN v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HELD BY WAY OF VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 6, 2025

JUDGMENT AND REASONS: AYLEN J.

DATED: OCTOBER 8, 2025

APPEARANCES:

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FOR THE APPLICANT
ON HER OWN BEHALF

Wil Doucette

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