

CANADA / JUDGMENT

Devi v. Canada (Attorney General)

2024 FC 33

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Federal CourtDECIDED
10 January 2024

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Devi v. Canada (Attorney General) Court (s) Database Federal Court Decisions Date 2024-01-10
Neutral citation 2024 FC 33 File numbers T-1022-23 Decision Content Date: 20240110 Docket:
T-1022-23 Citation: 2024 FC 33 Toronto, Ontario, January 10, 2024 PRESENT: Mr. Justice Gascon
BETWEEN: JAYANTI DEVI Applicant and ATTORNEY GENERAL OF CANADA Respondent
JUDGMENT AND REASONS I. Overview

- [1] The applicant, Ms. Jayanti Devi, is seeking judicial review of two decisions dated April 11, 2023 [Decisions] whereby the Canada Revenue Agency [CRA] found her inadmissible for the Canada Emergency Response Benefit [CERB] and the Canada Recovery Benefit [CRB]. The CRA found Ms. Devi ineligible because she had not earned at least \$5,000 of employment income in the prescribed periods, and because she had not stopped working or had her hours reduced for reasons related to COVID-19.
- [2] Ms. Devi submits that the CRA failed to consider the entirety of the documentation she submitted, including her medical records and the income she derived from other benefits. Ms. Devi further submits that these documents demonstrate she has no means of repaying the benefits she received under the CERB and CRB programs and that the CRA should have considered her personal, financial, and medical situation in its analysis. Ms. Devi argues that the CRA should write off the amounts she now owes.
- [3] For the reasons that follow, Ms. Devi's application for judicial review will be dismissed. I am satisfied that the CRA's Decisions were responsive to the evidence, and that its findings regarding Ms. Devi's ineligibility for both the CERB and CRB payments have the qualities that make the CRA's reasoning logical and consistent in relation to the relevant legal and factual constraints. Furthermore, the CRA was obligated to determine Ms. Devi's eligibility based on the relevant statutory provisions. Here, the CRA reasonably found that these provisions do not provide any discretion to grant an application based on financial hardship, reasonable mistakes, or any other compassionate grounds.

- [4] As I mentioned to Ms. Devi at the hearing before this Court, her application for judicial review strictly relates to the CRA's decisions regarding her eligibility to receive the CERB and CRB payments. On this application, the Court is not called upon to determine her ability to repay the amounts that may be owed to the CRA further to the Decisions or to review the CRA's assessment of her financial and medical situation in deciding how and when such amounts shall be repaid. II. Background A. The CERB and CRB eligibility requirements
- [5] The CERB and CRB were part of an arsenal of measures introduced by the federal government starting in 2020 to alleviate the economic repercussions caused by the COVID-19 pandemic. They consisted of targeted monetary payments designed to provide financial support to workers who suffered a loss of income due to the pandemic, and who could not benefit from the protection offered by the usual employment insurance plan. The CRA is the federal agency responsible for administering these income-supplementing programs on behalf of the Minister of Employment and Social Development.
- [6] The CERB was available for seven four-week periods between March 15, 2020 and September 26, 2020, for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic. The CRB followed the CERB and was available for any two-week period between September 27, 2020 and October 23, 2021, for eligible employees and self-employed workers who had suffered a loss of income due to the COVID-19 pandemic (*Aryan v Canada (Attorney General)*, 2022 FC 139 [Aryan] at para 2).
- [7] The eligibility criteria for the CERB are set out and detailed in the Canada Emergency Response Benefit Act, SC 2020, c 5, s 8 [CERB Act]. Among other things, the CERB Act requires employees or self-employed workers to have earned at least \$5,000 in employment income or self-employment income in 2019 or in the 12-month period preceding their application for the CERB. It also states that the worker ceased working for reasons related to COVID-19 for at least 14 consecutive days within the four-week period in respect of which the worker had applied for the CERB.
- [8] The eligibility criteria for the CRB are set out in the Canada Recovery Benefits Act, SC 2020, c 12, s 2 [CRB Act]. Notably, the CRB Act requires employees or self-employed workers to have earned at least \$5,000 in employment income or net self-employment income in 2019, 2020, or in the 12 months preceding the date of their last application. In addition, employees or self-employed workers had to have suffered a 50% drop in their average weekly income compared with the previous year for reasons related to COVID-19. B. Ms. Devi's CERB and CRB applications
- [9] Ms. Devi applied for and received CERB payments for the seven four-week periods covered by the program as well as CRB payments for four two-week periods. Those payments were received in the fiscal year 2020. As was the customary practice at the time, the CRA accepted Ms. Devi's applications as submitted, subject to further verification. On November 28, 2022, Ms. Devi provided a letter to the CRA in support of her CERB and CRB applications. In the letter, Ms. Devi stated that she has a full-time disability and that she had understood that she

was entitled to apply for the CERB and CRB payments because she was receiving Workplace Safety and Insurance Board [WSIB] and pension benefits.

- [10] On February 7, 2023, further to a first review of her applications, the CRA found Ms. Devi ineligible for both the CERB and the CRB. Ms. Devi requested a second review of these first decisions. In her letter requesting a second review, sent on February 27, 2023, Ms. Devi spoke to her current health issues, stated that she does not have the funds to pay back the benefits she received and is experiencing financial hardship, explained that she paid taxes on the CERB and CRB payments she received, and asked that the first decisions be reconsidered in light of her declining health and lack of funds.
- [11] On April 11, 2023, after conducting a second review of both Ms. Devi's CERB and CRB applications, the CRA once again determined that Ms. Devi was ineligible for both benefits.
- C. The Decisions
- [12] The Decisions regarding Ms. Devi's CERB and CRB eligibility were delivered on April 11, 2023. Ms. Emily Bamsey was assigned as the CRA agent to conduct both secondary reviews. In conducting her second reviews, Ms. Bamsey considered the notes made by the previous CRA officers, Ms. Devi's written and oral submissions, as well as Ms. Devi's income and deductions for the 2019, 2020, and 2021 taxation years.
- [13] Ms. Bamsey ultimately concluded that based on the evidence before her, Ms. Devi was not eligible to receive the CERB or the CRB payments she claimed as she had not earned the requisite prescribed income of at least \$5,000, nor was she unable to work for reasons related to COVID-19. With respect to the CRB, Ms. Bamsey further found that Ms. Devi did not have a 50% reduction in her average weekly income.
- D. The standard of review
- [14] It is now well established that the standard of review applicable to the merits of the CRA's decisions regarding CERB and CRB payments is reasonableness (*Flock v Canada* (Attorney General), 2022 FC 305 at para 15; *He v Canada* (Attorney General), 2022 FC 1503 at para 20 [He]; *Lajoie v Canada* (Attorney General), 2022 FC 1088 at para 12; *Aryan* at paras 15–16). This is in line with the Supreme Court of Canada's landmark decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [Vavilov], where the Court established a presumption that the standard of reasonableness is the applicable standard in judicial reviews of the merits of administrative decisions (*Mason v Canada* (Citizenship and Immigration), 2023 SCC 21 at para 7 [Mason]).
- [15] Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision-maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision-maker" (Vavilov at para 85; Mason at para 64). The reviewing court must therefore ask whether the "decision bears the hallmarks of reasonableness—justification, transparency and intelligibility" (Vavilov at para 99). Both the outcome of the decision and its reasoning process must be considered in assessing whether these hallmarks are met (Vavilov at paras

15, 95, 136).

- [16] Such a review must include a rigorous and robust evaluation of administrative decisions. However, as part of its analysis of the reasonableness of a decision, the reviewing court must take a “reasons first” approach and begin its inquiry by examining the reasons provided with “respectful attention”, seeking to understand the reasoning process followed by the decision-maker to arrive at its conclusion (Mason at paras 58, 60; Vavilov at para 84). The reviewing court must adopt an attitude of restraint and intervene “only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process” (Vavilov at para 13), without “reweighing and reassessing the evidence” before it (Vavilov at para 125).
- [17] The onus is on the party challenging the decision to prove that it is unreasonable. Flaws must be more than superficial for the reviewing court to overturn an administrative decision. The court must be satisfied that there are “sufficiently serious shortcomings” (Vavilov at para 100). III. Analysis
- [18] Ms. Devi submits that the second reviewer erred by concluding that her WSIB and pension benefits could not satisfy the CERB or CRB income requirements. Ms. Devi further seeks compassionate relief from the CRA due to her declining health and financial hardship.
- [19] On both fronts, I am not persuaded by Ms. Devi’s arguments. A. The Decisions are reasonable
- [20] Ms. Devi first takes issue with the reasonableness of the Decisions. To this effect, she argues that it was unreasonable for the CRA not to into account her WSIB and pension benefits as income for the purposes of the CERB and CRB income requirements.
- [21] In light of the evidence before this Court, the legislative framework, and this Court’s prior jurisprudence, these arguments cannot justify the Court’s intervention.
- [22] As rightly pointed out by the Attorney General of Canada [AGC] on behalf of the CRA, the jurisprudence of this Court indicates that WSIB or pension income cannot satisfy the income requirements of the CERB Act or the CRB Act. It was therefore entirely reasonable for the CRA agent, Ms. Bamsey, to conclude that Ms. Devi did not properly establish that she earned the requisite amount of income in the prescribed periods to render her eligible for the benefits.
- [23] Indeed, Ms. Bamsey drafted detailed notes to record her findings. She also consulted the previous findings of her colleague who had conducted the first reviews of Ms. Devi’s applications. It is well established that these reports form part of the reasons of the Decisions (Lavigne v Canada (Attorney General), 2023 FC 1182 at para 26; He at para 30; Aryan at para 22). Upon reading Ms. Bamsey’s notes and decision reports, it is clear that the CRA considered Ms. Devi’s arguments as well as the evidence she submitted. Ms. Bamsey specifically turned her mind to Ms. Devi’s WSIB and pension benefits and ultimately concluded that these do not constitute income for the purposes of CERB and CRB eligibility.

As mentioned by the CRA officer in her notes, WSIB payments were not affected by the COVID-19 pandemic, contrary to employment or self-employment income of many Canadians.

- [24] The CRA officer's finding is concordant with the jurisprudence of this Court. In *Coscarelli v Canada (Attorney General)*, 2022 FC 1659 [Coscarelli], Mr. Justice Diner concluded that "WSIB payments do not fall within the definition of income under subsection 3(1)(d) of the CRB Act. The only employment insurance benefits that are exempted within the statute... are those relating to parental and maternity benefits" (Coscarelli at para 24). In her submissions, Ms. Devi has not raised any argument or authority to contradict such findings. It was therefore reasonable for Ms. Bamsey to conclude that Ms. Devi's WSIB benefits were insufficient to meet the income requirements for the CERB and CRB payments.
- [25] In addition to these findings, Ms. Bamsey concluded that Ms. Devi was unable to work and had not worked since 2015 because of her disability that occurred prior to the onset of the COVID-19 pandemic. Consequently, Ms. Devi did not stop working or see her hours reduced because of COVID-19. Ms. Devi does not dispute these facts. In fact, she acknowledged that she did not have employment or self-employment income for the applicable years of reference, sufficient to meet the prescribed threshold of \$5,000. Consequently, it was similarly reasonable for Ms. Bamsey to conclude that Ms. Devi did not meet the other eligibility requirements outside of the income requirement.
- [26] A party challenging an administrative decision must satisfy the reviewing court that "any shortcomings or flaws relied on [...] are sufficiently central or significant to render the decision unreasonable" (Vavilov at para 100). Here, Ms. Devi has not persuaded me that there is such a shortcoming. In this case, I am instead satisfied that the CRA's reasoning can be followed without a decisive flaw in rationality or logic and that the reasons were developed in such a way that the analysis could reasonably lead the reviewer, having regard to the evidence and the relevant legal and factual constraints, to conclude as it did (Vavilov at para 102). There is no serious deficiency in the Decisions that would taint the analysis and that would be likely to undermine the requirements of justification, intelligibility, and transparency.
- [27] The onus was on Ms. Devi to establish that she met, on a balance of probabilities, the eligibility criteria to receive the CERB and CRB payments (*Cantin v Canada (Attorney General)*, 2022 CF 939 at para 15; *Walker v Canada (Attorney General)*, 2022 CF 381 at paras 37, 55). She has failed to do so. B. The CERB and CRB legislative frameworks do not provide for compassionate relief
- [28] Ms. Devi further submits that given her health problems and financial hardship, she should be granted compassionate relief from the Decisions.
- [29] While I am sympathetic to Ms. Devi's personal circumstances, this argument cannot succeed before this Court. As noted by the AGC, neither the CERB Act nor the CRB Act contain fairness provisions. This position is supported by the jurisprudence. Indeed, the Federal

Court of Appeal has concluded that CRA officers do not have the ability to provide relief on grounds of fairness only, and that CRA officers have no choice but to assess entitlement to benefits or other forms of relief based on the eligibility criteria set out in the legislation (Flock v Canada (Attorney General), 2022 FCA 187 [Flock FCA] at para 7).

- [30] Omitting compassionate relief and fairness provisions from the CERB Act and CRB Act was a policy decision that Parliament was entitled to make (Flock FCA at para 7). In these circumstances, it was reasonable for the CRA to conclude that Ms. Devi could not receive compassionate relief from the Decisions. I note that Ms. Devi has not identified any basis for the CRA to grant compassionate relief, and no such authority exists.
- [31] Given Ms. Devi's precarious financial situation, there is nothing preventing her from attempting to conclude a repayment plan with the CRA, tailored to her particular situation. While this is a process to be handled and decided by the CRA, and not this Court, Ms. Devi may be able to conclude a repayment plan that could potentially alleviate some of the financial strain of having to repay the entirety of the sum she now owes to CRA, or allow her to do so in several instalments. IV. Conclusion
- [32] For the above-mentioned reasons, Ms. Devi's application for judicial review is dismissed. The Decisions are based on an internally coherent and rational analysis, and have the requisite attributes of transparency, justification, and intelligibility. According to the reasonableness standard, it is sufficient for the Decisions to be justified having regard to the legal and factual constraints to which the decision-maker is subject. This is the case here. Furthermore, the CERB and CRB legislative frameworks do not provide for compassionate relief. There are therefore no grounds justifying the Court's intervention.
- [33] The style of cause is amended to replace the "Canada Revenue Agency" and the "Ministry of the Attorney General's Office" by the "Attorney General of Canada".
- [34] Since the AGC is not seeking costs, and considering the circumstances of this case, no costs are awarded. JUDGMENT in T-1022-23 THIS COURT'S JUDGMENT is that: This application for judicial review is dismissed. The style of cause is amended to identify the respondent as the "Attorney General of Canada" in place of "The Canada Revenue Agency and the Ministry of the Attorney General's Office". No costs are awarded. "Denis Gascon" Judge FEDERAL COURT SOLICITORS OF RECORD DOCKET: T-1022-23 STYLE OF CAUSE: JAYANTI DEVI v ATTORNEY GENERAL OF CANADA PLACE OF HEARING: HELD BY VIDEOCONFERENCE DATE OF HEARING: JANUARY 8, 2024 JUDGMENT AND REASONS: GASCON J. DATED: JANUARY 10, 2024 APPEARANCES: Jayanti Devi For The Applicant (ON HER OWN BEHALF) Christopher Ware For The Respondent SOLICITORS OF RECORD: Attorney General of Canada Toronto, Ontario For The Respondent

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Prepared on 30 October 2026 · Esheria