Federal Court Cour fédérale

Date: 20250926

Docket: T-3271-24

Citation: 2025 FC 1594

Ottawa, Ontario, September 26, 2025

PRESENT: The Honourable Justice Thorne

BETWEEN:

PERLE MATTHEW

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Ms. Perle Matthew, seeks judicial review of an October 25, 2024 decision [the "Decision"] of a Benefits Compliance Officer [the "Officer"] of the Canada Revenue Agency ["CRA"] regarding the redetermination of the Applicant's eligibility for the Canada Recovery Benefit ["CRB"] under the *Canada Recovery Benefits Act*, SC 2020, c 12, s 2 ["CRB Act"]. The Decision found that the Applicant was ineligible for this COVID-19 benefit because she had not satisfied the eligibility requirement of having earned at least $5,000 of employment or net self-employment income in 2019, or in the 12 months prior to applying for CRB. The

consequence of this was that the Applicant was required to repay the $24,540 that she had received in benefits.

[2] For the reasons that follow, I grant the application and return the decision to the CRA for redetermination.

II. Background

[3] The Applicant, Perle Matthew, is a resident of Toronto. She states that she suffers from certain mental health disabilities and is of limited means, with her sole source of income being money that she generates by renting out rooms in her home on Airbnb. Unable to secure rentals during the COVID-19 pandemic, she then applied for CRB for 26 two-week periods, from October 25, 2020, until October 23, 2021.

[4] The CRB was part of a package of financial relief measures introduced by the Government of Canada in response to the COVID-19 pandemic, designed to assist employed and self-employed Canadians who were directly affected by COVID-19 but were not entitled to Employment Insurance benefits.

[5] The Applicant specifically claims that in the 12-month period preceding her CRB claim she was a single, disabled mother of two, and was unable to work outside of the home. She asserts that during this time, as in recent years generally, she had operated a room rental service via Airbnb where she rented five rooms in her home. Her records indicate that, through this activity, she earned more than $5,000 in 2019.

[6] In 2022, the CRA, the body that administered the CRB, reviewed the Applicant's CRB eligibility. After reviewing the documentation provided by the Applicant, the reviewing officer determined that the Applicant had been ineligible for CRB during the time she had claimed it. The officer found that Ms. Matthew had not satisfied the income eligibility requirement of having earned at least $5,000 employment or net self-employment income in 2019 or in the 12 months prior to applying for CRB. In essence, the reviewing officer held that the income generated by the Applicant through the Airbnb rentals in her home was rental income, and as such did not qualify as self-employment income for the purposes of CRB eligibility, though the Applicant claims that this should be the case.

[7] I note that the CRA has established non-binding "Confirming Covid-19 benefits eligibility" guidelines, which are used by CRA officers to assist in conducting eligibility assessments, [the "Guidelines"]. The CRA essentially holds that rental income from property is not considered self-employment income for the purposes of assessing CRB (or other COVID-19 benefit programs) income eligibility. However, among the matters addressed by the Guidelines is the issue of how income generated via digital platforms such as Airbnb is to be regarded in this assessment. The Guidelines hold that such income will generally be considered rental income from property, but that this is not always the case. Instead, they essentially establish that such income may be considered self-employment business income where sufficient additional services are provided by an Airbnb host, such that this service goes beyond providing a basic rental. The Guidelines state that officers are to consider the range of services provided in making this determination, including such things as the provision of meals, cleaning services, security, excursion services, or the like.

[8] The Applicant requested that the CRA review the March 2, 2022 decision, and as part of this second review was interviewed by the reviewing officer and provided additional documentary submissions. The second review similarly found the Applicant ineligible for the CRB. She then received a March 2023 notice of reassessment from the CRA demanding repayment of the CRB benefits she had received. On November 14, 2023, the Applicant made an application for judicial review of the second CRA decision, but that matter was subsequently discontinued upon agreement of the parties that the CRA would commence a review of the second decision. However, the resulting October 25, 2024 Decision again found that the Applicant was ineligible for CRB, for the same income eligibility reasons. It is this Decision, of the final review, which is currently under judicial review.

III. Issues

[9] This application raises the following issues:

(a) *Is the Decision procedurally fair?*

(b) *Is the Decision reasonable?*

[10] In addition, the Respondent also raised the following preliminary issues in this application:

(1) Whether the Applicant properly named the Respondent?

(2) Whether the Applicant failed to include the correct Notice of Application in the Applicant's Record?

(3) Whether the Applicant improperly submitted new evidence in this judicial review that should be excluded?

IV. Standard of Review

[11] The standard of review of the merits of a decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 25 [*Vavilov*]. In undertaking reasonableness review, the Court must assess whether the decision bears the hallmarks of reasonableness, namely justification, transparency and intelligibility: *Vavilov* at para 99. In particular, when reviewing a decision on this standard, "a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified": *Vavilov* at para 15. Ultimately, a reasonable decision is one which is "based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law": *Vavilov* at para 85.

[12] Issues of procedural fairness are reviewed on a correctness standard, or at least a standard akin to that of correctness: *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56 [*Canadian Pacific Railway Company*]. The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice": *Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13. In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances: *Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Suresh v Canada (Minister of Citizenship and Immigration*), 2002 SCC 1 at para 115; see also *Mission Institution v Khela*, 2014 SCC 24 at para 79.

[13] Correctness is therefore a non-deferential standard of review. Reviewing courts are not required to show deference to administrative decision makers on matters of procedural fairness: *Vargas Cervantes v Canada (Citizenship and Immigration)*, 2024 FC 791 at para 16; *Baron v Canada (Attorney General)*, 2023 FC 1177 at para 23. The central question for issues of procedural fairness is rather whether the procedure was fair having regard to all of the circumstances, including the factors enumerated in *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paragraphs 21–28: *Canadian Pacific Railway Company* at para 54.

V. Relevant Schematic Principles

[14] The CRB was implemented through the CRB Act. To qualify for the CRB, an applicant must have received $5,000 in eligible income in 2019, 2020, or the 12 months preceding their application, and also had to experience at least a 50% reduction in income due to COVID-19: CRB Act, ss 3(1)(d), (f), (g), (i), (k)(i) and (l)(i); *Sjogren v Canada (Attorney General)*, 2022 FC 951 at para 15; *Desautels v Canada (Attorney General)*, 2022 FC 1774 at para 7.

[15] To assist CRA officers in conducting eligibility assessments, I note that the CRA established the aforementioned non-binding "Confirming Covid-19 benefits eligibility" Guidelines. These provide that the "existence and nature" of $5,000 in employment or net self-employment income must be validated during eligibility review. The Guidelines establish the following with respect to accommodation sharing digital platform income:

> Platform economy:
>
> Earnings from a digital platform may be considered to be self-employment income, investment income, property income (rental

> income) depending on the situation. For more information see: Taxes and the platform economy - Canada.ca.
>
> Accommodation sharing (e.g., AirBnB, CanadaStays):
>
> Generally, this type of income will be considered as rental income from property (line 12599/12600 of the Return). The client would be providing only basic services when renting space such as heat, water, parking, internet, laundry facilities or maintenance of the rental property, adjacent areas, appliances or furnishing (towels, utensils, beddings, etc.) provided.
>
> The income may be considered to be self-employment business income if additional services are offered or made available like meals, security, cleaning during the stay, delivery service, transportation, city tours or excursions, etc.
>
> The number of additional services, their frequency, and their nature are elements to consider while determining if the rental operation could be considered as a business. The range of services offered must be such that the payment could be considered as being largely put towards those services instead of a pure rental.

VI. Analysis

A. Preliminary Issues

(1) Style of Cause

[16] The Applicant named "S. Constantin, Manager, Canada Emergency Benefits Validation, Canadian Revenue Agency" as the Respondent in the Notice of Application for this matter.

[17] At the request of the Attorney General, without objection from the Applicant, and in accordance with Rule 303(2) of the *Federal Courts Rules, SOR/98-106* [the "Rules"], the title of proceedings shall be amended to name the Attorney General of Canada as the Respondent in this application.

(2) Notice of Application

[18] As noted by the Respondent, it appears that the unrepresented Applicant inadvertently included an incorrect Notice of Application [“NOA”], dated October 24, 2023, in her Application Record. It seems that that this was the NOA that pertained to the earlier, discontinued judicial review of the second review decision and that it was mistakenly included in the Applicant’s Record for this matter. However, at the hearing, Counsel for the Respondent helpfully noted that they were not prejudiced by this error in the Applicant’s Record, and that they did not challenge or object to the Applicant’s Record or the proceedings. I commend Respondent’s Counsel for his capable, helpful and sensitive submissions and approach throughout the hearing.

(3) New Evidence

[19] As part of this application, the Applicant has attached certain documents that were apparently not submitted to the CRA during the various reviews of the Applicant’s benefits: (1) a 2016 Medical Note, (2) a 2023 Medical Note, and (3) a document containing some 18 pages of printed excerpts from CRA websites and publications, concerning business and rental income.

[20] As the Respondent rightly pointed out, it is trite law that the record before this Court on judicial review is generally restricted to the evidentiary record that was before the administrative decision maker. Evidence that goes to the merits of the matter and that was not before the decision maker is generally not admissible on judicial review: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22

at paras 19–20; *Shhadi v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1580, at para 43; *Bolduc v Canada (Attorney General)*, 2023 FC 1497, at para 48.

[21] In the specific context of a judicial review of CRA decisions of COVID-19 benefit programs, this Court has ruled numerous times that it is not to consider additional documents that were not previously submitted to the CRA, since it is not the role of the Court to make a fresh decision on eligibility: *Alhusaini v Canada (Attorney General)*, 2024 FC 2033, at para 19; *Lussier v Canada (Attorney General)*, 2022 FC 935 at para 2.

[22] As the documents in question were not part of the evidentiary record before the decision maker, and do not qualify under any of the exceptions to the above-noted principle of admissibility, I find those documents to be inadmissible and cannot consider them.

B. The Applicant's Right to Procedural Fairness Was Breached

[23] For the reasons that follow, I find that the Decision was rendered in a procedurally unfair manner. As a result, it is unnecessary to address the issue of the Decision's reasonableness.

[24] On review of the record in this matter, it appears that during the second review of her benefit eligibility the Applicant, who was unrepresented throughout her dealings with the CRA, had told the reviewing officer that she suffers from the mental health conditions of clinical depression and agoraphobia. According to the officer's file notes, this occurred in their October 11, 2023 call with the Applicant, and the notes record that the Applicant had stated that she suffered from "acute depression" and was agoraphobic. The Applicant had also evidently

provided this information to the CRA earlier, in a letter dated April 23, 2023, which is also contained in her CRA file.

[25] However, despite this information having been brought to the attention of the CRA by the Applicant, there is no indication that it was taken into consideration, inquired about, or in any way accounted for by the second reviewing officer in their treatment of the Applicant or in the rendering of that decision. More pertinently, nor was this done in respect of the final Decision that is currently under judicial review. Indeed, the notes of the final, deciding Officer do not, in any way, acknowledge or even mention this information, and there is no indication that it was considered or played any part in their treatment or dealings with the Applicant or in the evaluation of her file.

[26] During the hearing, counsel for the Respondent was asked whether it presented a fairness issue that the Applicant had specifically raised the issue of her alleged mental health conditions in the course of the CRA review, but that this was seemingly not considered or followed up upon by the Officer in either their dealings with the Applicant or in their Decision. Counsel conceded that from the record, this appeared to be the case, and allowed that the record indicated that the Applicant had identified to the second review officer that she suffered from depression, but that nothing had come of this. However, Counsel argued that while the Applicant had alerted the second reviewing officer to this condition, she had not directly stated or reiterated this point to the Officer who decided the final review. When it was raised to Counsel that the Officer's final Decision generally relied on, or incorporated, a series of documents that had been provided during the earlier reviews, and that the Officer was privy to all such information previously

provided, without the Applicant having to resubmit such information, Counsel again conceded that was the case and stated that he had no further submissions on this point. Later in the hearing, Respondent's Counsel also stated that the Applicant had not provided medical documentation supporting her allegations of mental health conditions, prior to her attempting to do so before the Court.

[27] With respect, I do not find the Respondent's arguments relating to this issue persuasive. As pointed out during the hearing, the Officer was privy to all of the information previously provided by the Applicant during the course of her earlier reviews. The Applicant was not required to resubmit any of her other information or documents for these to be considered in the final Decision, so it is not clear why the Applicant would have needed to have done so only in relation to the information about her mental health conditions. In addition, it is true that the Applicant did not provide supporting medical documentation as to her alleged mental health conditions to the CRA during the reviews (and in fact, that she attempted to do so for the first time in this judicial review). However, it is also the case that after she alerted the CRA about her conditions, they were never discussed with her, in any way, and nor was she ever told that providing such medical documentation was necessary or significant.

[28] It is important to consider the context and real-life circumstances at play in this matter. The Applicant is of extremely limited means and was consequently unrepresented throughout all of her CRB eligibility reviews as well as, for that matter, this judicial review. She was not a sophisticated party and, as with most anyone regardless of their sophistication, understandably needed information and guidance as to how to negotiate the CRA review process with respect to

her eligibility for CRB benefits. In her case, she also claims that this reality was further exacerbated by her medical conditions. Having specifically brought these medical conditions to the attention of the CRA reviewers, I find that someone in her position had no way of knowing: (a) that she was required to do more with respect to these conditions; or (b) what it was she might have been further required to do, in order to receive assistance with respect to the identified conditions, in navigating the CRB review process. To someone unversed with respect to concepts such as procedural fairness or accommodation, it is reasonable for them to expect that specifically alerting the government organization she was dealing with about her conditions would result in some sort of assistance, if the right to any such assistance, or the capacity for it to be provided, existed – something else that she was unaware of. In such a situation, I find that the Applicant alerting the CRA to her alleged conditions constituted an implicit, but clear, request for accommodation. I also do not find that it was necessary for her to reiterate this request to each Officer that conducted a review. I note that one central component of any accommodation might well be to inform the Applicant as to what she further needed to do in order to receive the assistance or accommodation that she required, including advising whether it was necessary for her to then provide supporting medical documentation.

[29] This Court has previously found that the CRA's failure to respond to an Applicant's requests for accommodation in a CRB eligibility review may constitute a breach of procedural fairness sufficient to warrant the granting of an application for judicial review: *Cameron v. Canada (Attorney General)*, 2024 FC 2 [*Cameron*]. Further, in that case, my colleague Justice Ahmed determined that in not responding to the applicant's requests for accommodation, procedural fairness had been violated, and that "the CRA failed to provide the Applicant with the

opportunity to know his case and respond to it.": para 34. I also find that to be a concern here. The Officer completely ignored that the Applicant had alerted the CRA to her alleged disability, and made no inquiries about that condition or how it could impact her understanding of the review process, nor whether it could potentially impact her provision of information that would support her position. I find that in not having done so, or taken any steps whatsoever after having been specifically informed about the Applicant's alleged conditions multiple times, the CRA breached procedural fairness. It did so in both rendering its decision without having made any effort to determine if accommodation was necessary to assist the Applicant in either navigating the review process or in determining whether the condition she identified may have potentially impacted the Applicant's understanding of the matter, or functionally impeded her provision of information to the CRA that could have supported her case in the review.

[30] This is particularly so given that the CRA's COVID-19 eligibility review process itself appears to incorporate an expectation that officers will work collaboratively with recipients to help determine if they can provide sufficient documents and information that could support their case. The Guidelines state:

> **Confirming Covid-19 benefits eligibility**
>
> During the review, you may need to discuss the situation with the applicant. If the applicant is unable to provide any of [*sic*] documents suggested, work with them to see what other acceptable documents they may have. Please notate what example of documentation you suggested and that you informed taxpayer to submit whatever documents they think could support their application. [Emphasis added]

[31] The Guidelines also reaffirm this at various other points, including by directly instructing officers to:

> Inform the taxpayer that documentation is required to validate their eligibility to benefits. Share with them the suggested acceptable

> proof list but work with them to determine what kind of other documentation they may have that would be acceptable for the review.

[32] As the Officer made no effort to determine what, if any, accommodation might have been necessary to assist the Applicant in understanding what was required of her, and what information she potentially needed to provide in support of her position, it is unknowable how the failure to provide accommodation may have impacted her ability to know and make her case.

[33] I also note that in this finding I am not mandating specific steps that the CRA should be held to have undertaken, though, of course the duty of accommodation generally requires a service provider to accommodate the needs of a recipient to the point of undue hardship. The determination of what, if anything, needed to be done would come down to a case-by-case analysis of the specific circumstances in any given instance. In this particular matter, beyond inquiring further about the Applicant's alleged medical conditions and having considered the question of accommodation, it may be that any number of the following potential steps could have been taken if judged necessary, including: indicating to the Applicant that providing medical documentation would be helpful or necessary; asking the Applicant if she wished for accommodation be extended; inquiring as to how she believed her medical conditions might impact her ability to provide needed information; discussing and considering, if not accepting, what action she believed would be of assistance; ensuring that the Applicant clearly understood the Decision, the reasons for it, and what she was required to establish in hopes of proving her eligibility; or considering taking other steps such as extending deadlines or the like, if necessary. It may be that upon consideration of the Applicant's alleged mental health conditions, it might also have emerged that perhaps no such accommodation was required, at all. However, I find that

in doing nothing and simply ignoring the Applicant's information about her medical conditions – particularly in the context mentioned and when dealing with an unrepresented party – the Decision was rendered in a procedurally unfair manner.

[34] As the Federal Court of Appeal has recently reaffirmed, Federal government agencies and institutions, including the courts themselves, have an obligation to ensure functional equality for those with disabilities who come before them: *Haynes v Canada (Attorney General)*, 2023 FCA 158 at paras. 18–32 [*Haynes*]. That Court has also affirmed that one consideration that can assist a court in determining whether the procedures followed in a specific case respected the duty of fairness is the accommodation of needs of litigants with disabilities: *Haynes* at paras 28–29. Federal institutions also have a duty to ensure that individuals accessing their services who possess disabilities are appropriately accommodated to ensure they receive the same level of procedurally fair service (or in the case of the courts, justice), as that accorded to other Canadians: *Pilarski v Canada*, 2024 FCA 60. That simply did not happen here.

[35] I am mindful that the question in procedural fairness is not whether an individual is to be given an ideal procedure, or one of their choosing, but whether the procedure provided, assuming the duty of fairness applies, accords with the "simple overarching requirement" of fairness (*Canada (Attorney General) v Mavi*, 2011 SCC 30 at para 42). In my view, the procedure in this matter did not.

[36] As a final word, I note that I am also mindful of another real-life context in this matter: that of the high volume of COVID-19 eligibility reviews and the attendant demands on the

resources and capacity of the CRA. Such considerations would, of course, impact the question of what might have constituted undue hardship, had any level of accommodation actually been afforded in this situation. Beyond that, I also note that the circumstances in this application would appear to be somewhat aberrational. They involved: a COVID-19 benefit program eligibility review, where it had been clearly documented and established that an unrepresented claimant had proactively alerted the CRA to their alleged disability, only to have that entreaty completely ignored, in the context of an eligibility determination process predicated on officers engaging in a largely collaborative review process with benefit recipients, and in a circumstance where evidence indicated that there remained further outstanding information that the Applicant could obtain in support of their eligibility claim. Given all of this, I would expect that in few other matters would there be similar circumstances, where such a failure to accommodate, and thus a breach of procedural fairness would be occasioned.

VII. Conclusion

[37] For these reasons, I find that the Decision is procedurally unfair, and the application for judicial review is allowed.

[38] However, in a case such as this, it is not my role to simply order that the Applicant be found eligible for the CRB or instruct the CRA to classify the income in question as business income. I rather set aside the Decision and refer the matter back for redetermination by a different decision-maker, who is to address the Applicant’s need for accommodation and to permit the Applicant to submit additional evidence in support of her position. No costs are ordered.

JUDGMENT IN T-3271-24

THIS COURT'S JUDGMENT is that

1. The judicial review application is granted.
2. The decision of the Officer dated October 25, 2024, is set aside and the matter is returned to the Canada Revenue Agency for redetermination by a different officer.
3. In the redetermination, the CRA shall consider and address the Applicant's need for accommodation.
4. The style of cause is amended to identify the Respondent as the Attorney General of Canada, effective immediately.

"Darren R. Thorne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3271-24
STYLE OF CAUSE:	PERLE MATTHEW v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 16. 2025
JUDGMENT AND REASONS:	THORNE J.
DATED:	SEPTEMBER 26, 2025

APPEARANCES:

Perle Matthew	FOR THE APPLICANT (ON THEIR OWN BEHALF)
Elliot McPhail	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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