

Federal Court



Cour fédérale

Date: 20260206

Docket: T-2371-25

Citation: 2026 FC 177

Toronto, Ontario, February 6, 2026

PRESENT: Madam Justice Whyte Nowak

BETWEEN:

NAHID MUKTA

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, Nahid Mukta [Applicant], seeks judicial review of a decision of a second level review officer [Officer] of the Canada Revenue Agency [CRA] dated June 6, 2025 [the Decision]. The Officer determined that the Applicant is ineligible for the Canada Emergency Response Benefit [CERB] for four of the six periods she applied for, by reason that she had

exceeded the income threshold under the relevant legislation and had not shown a stoppage of work or reduction in hours due to COVID-19 [COVID].

[2] For the reasons that follow, I am dismissing this application as the Applicant failed to meet her onus of showing that the Decision is unreasonable or procedurally unfair. While the result seems particularly harsh considering the Applicant's position as a front-line healthcare worker during the COVID pandemic [Pandemic] and the fact that she exceeded the relevant income threshold in two periods by small amounts, it is not the role of the Court to rewrite the eligibility criteria, which the Officer reasonably and fairly applied.

II. Legal Framework

[3] The relevant CERB income criteria for the purposes of this application are found at paragraph 6(1)(a) and subparagraph 6(1)(b) of the *Canada Emergency Response Benefit Act*, SC 2020, c 5, s 8 [*CERB Act*], which generally provide that a worker is eligible for CERB if the worker, whether employed or self-employed, ceases working for reasons related to COVID and do not receive income from employment or self-employment, allowances, money or other benefits, or any other income that is prescribed by regulation during that period.

[4] Section 1 of the *Income Support Payment (Excluded Nominal Income) Regulations*, SOR/2020-90 [*Excluded Nominal Income Regulations*], creates an exception for the application of subparagraph 6(1)(b)(i) of the *CERB Act*. It reads:

Nominal income

1 Any income received by a worker for employment or

Revenu nominal

1 Sont soustraits à l'application du sous-alinéa

self-employment is excluded from the application of subparagraph 6(1)(b)(i) of the *Canada Emergency Response Benefit Act* if the total of such income received in respect of the consecutive days on which they have ceased working is \$1000 or less.

6(1)b)(i) de la *Loi sur la prestation canadienne d'urgence* les revenus du travailleur provenant d'un emploi ou d'un travail qu'il exécute pour son compte, à condition que le total de tels revenus soit de mille dollars ou moins pour les jours consécutifs pendant lesquels il cesse d'exercer son emploi ou d'exécuter un travail pour son compte.

[5] Together these provisions allow workers to receive some income from employment or self-employment, as long as the total of such income received does not exceed the \$1,000 income limit (*Severcan v Canada (Attorney General)*, 2025 FC 197 at para 11).

III. Facts

A. *The Applicant's CERB application and payments*

[6] The Applicant received a total of \$12,000 in CERB payments during the periods of April 12, 2020 to May 9, 2020, July 5, 2020 to August 1, 2020, August 2, 2020 to August 29, 2020 and August 30, 2020 to September 26, 2020 [the Periods].

[7] Prior to March 2020, the Applicant worked at a hospital and long-term care facility working 60 to 70 hours bi-weekly. When she was let go from her job at the long-term care facility, her hours were reduced to 30 to 35 hours bi-weekly. According to the Applicant, this was due to legislation referred to as the *Limiting Work to a Single Long-Term Care Home, O.*

Reg. 146/20, which provided that an employee of a long-term care home could not also be employed by a health service provider.

[8] In addition to her income from the hospital, the Applicant received an amount from the Ontario provincial government due to the high-risk nature of her work as frontline staff during the Pandemic [Pandemic Pay]. The Applicant alleges that this amount could not have been anticipated when she applied for CERB, nor was it guaranteed. She also notes that as an employee of a health service provider, it was difficult to stay under the \$1,000 threshold because her shifts were variable, and she had no control over her hours or income.

B. *The First Decision*

[9] The Applicant alleges that she applied for CERB in good faith and received some of her pay only after she submitted her CERB applications.

[10] By letter dated March 11, 2022, the first reviewer requested documents from the Applicant to support her eligibility for the periods applied for between April 12, 2020 to September 26, 2020 stating that the information on file showed that the Applicant earned over \$1,000 during the periods she received CERB and therefore the CRA required documentation to confirm her eligibility.

[11] The first reviewer determined that the Applicant was ineligible and notified the Applicant via a letter dated February 21, 2024 [the First Decision]. The reasons given for the First

Decision were that she earned more than \$1,000 of employment income and she had not demonstrated that she stopped working or had reduced hours due to COVID.

C. *The second level review*

[12] The Applicant requested a second review and made submissions dated March 17, 2024, May 13, 2024, June 29, 2024 and August 11, 2024. The Applicant submitted that she qualified for CERB and explained that she applied for CERB because it was her only choice to help pay for her family's expenses. She stated that where she exceeded the \$1,000 threshold, it was because of an unexpected surplus that was deposited into her account. The Applicant complained that she was notified by the CRA that she did not qualify for CERB long after receiving the benefit with no prior indication of her ineligibility or warning that she would have to return the benefit.

[13] On June 12, 2025, the Applicant received a Notice of Redetermination for her benefits [the Notice] stating that the Applicant is required to pay \$8,000 minus any amounts she was paid that had not yet been processed. The Notice detailed that the Applicant was eligible for CERB from May 10, 2020 to July 4, 2020, but not during the Periods.

D. *The Decision*

[14] The Applicant was notified on June 6, 2025, of the Decision in which the Officer found that the Applicant was not eligible for CERB during the Periods because she earned more than

\$1,000 in employment income and did not stop working nor have reduced hours for reasons related to COVID.

IV. Issues and Standard of Review

[15] The Applicant has raised issue going to both the merits and fairness of the Decision.

[16] The standard of review with respect to the merits of a decision is reasonableness as articulated in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 16-17 [*Vavilov*]. A reasonable decision must be transparent, intelligible and justified in relation to the relevant factual and legal constraints that bear on the decision maker (*Vavilov* at para 99).

[17] Issues of procedural fairness on the other hand, are reviewed on a standard akin to correctness (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 34 [*Canadian Pacific*]). The ultimate question to be answered is whether the Applicant knew the case to meet and had a full and fair chance to respond (*Canadian Pacific* at para 56).

V. Analysis

A. *The Decision is reasonable*

While the Court canvassed a number of issues at the hearing, the Respondent argued that the arguments considered by the Court should be limited to those raised by the Applicant in her Memorandum of Fact and Law (*Davis v Canada (Royal Canadian Mounted Police)*, 2024 FCA

115 at para 39). I am forced to agree as there are clear limits to a judge's ability to assist a self-represented litigant, which does not extend to substantive matters (*Davis v Canada (Royal Mounted Police)*, 2024 FCA 115 at paras 39-40).

[18] The Applicant submits that the Decision is unreasonable for three reasons.

[19] First, the Applicant argues that the repayment requirement is based on minor and unforeseeable income overages of \$30.59 for the August 29, 2020 to September 26, 2020 period, and \$43.58 for the period July 4, 2020 to July 31, 2020. The Applicant submits that the rigid application of the \$1,000 threshold in these instances undermines the remedial intent of the *CERB Act*.

[20] While I am sympathetic to the Applicant, I agree with the Respondent that the Officer was required to apply the income threshold in section 1 of the *Excluded Nominal Income Regulations*. The \$1,000 income limit was chosen by Parliament and neither the CRA nor the Court can rewrite the eligibility criteria to create "wiggle room" (*Coscarelli v Canada (Attorney General)*, 2022 FC 1659 at paras 27-28 [*Coscarelli*]).

[21] Second, the Applicant submits that her CERB applications include income she could not have foreseen when she submitted her applications whether because of the unpredictability of her shifts, or the CRA's improper inclusion of her Pandemic Pay as regular income, which she says is not analogous to regular wages because it was a temporary supplement for extraordinary risk.

[22] I agree that it was not unreasonable for the Officer to include her Pandemic Pay in the calculation of the Applicant's income as it is income received from employment. The Applicant's suggestion that it should be excluded as it is not "regular income" is not supported by a plain reading of subparagraph 6(1)(b)(i) of the *CERB Act*, which draws no such distinction.

[23] Finally, the Applicant argues that her reduction in hours was as a direct result of Pandemic restrictions and therefore meets the statutory requirement of having stopped working or reduced her hours due to COVID. Be that as it may, the Officer found the Applicant is ineligible because she was required to meet the requirements of both paragraphs 6(1)(a) and 6(1)(b) of the *CERB Act* and the fact that the Applicant ceased working at the City of Toronto does not change the fact that her earnings exceeded the \$1,000 threshold for the Periods.

[24] The Decision is therefore reasonable in light of the legal and factual constraints that bore on the Officer.

B. *The Applicant was not denied procedural fairness*

[25] I agree with the Respondent that the Applicant was not denied procedural fairness: the Applicant was advised of her ineligibility and provided with multiple opportunities to respond to the first reviewer's findings in writing and on a call with the Officer on June 2, 2025.

[26] While the Applicant considers it unfair for the CRA to have notified her of her ineligibility so many years after she applied, subsection 13(1) of the *CERB Act* allows the Minister of Employment and Social Development [Minister] to commence an action or

proceeding to recover money owed under the *CERB Act* within six years of the date when the money became due and payable. Nor is there any basis for the Officer to have considered that the Applicant relied on CERB for survival rather than discretionary purposes since the *CERB Act* does not permit the Minister to consider compassionate factors or financial hardship (*Coscarelli* at paras 27 and 28).

VI. Conclusion

[27] As the Applicant has not met her onus of showing a basis for this Court's intervention, this application for judicial review is dismissed. The Respondent did not request costs, and none shall be awarded.

[28] At the request of the Respondent, and with the consent of the Applicant, the style of cause shall be amended to name the Attorney General of Canada as the named respondent to this proceeding pursuant to subsection 303(1) of the *Federal Courts Rules*, SOR/98-106.

JUDGMENT in T-2371-25

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to name the Attorney General of Canada as the named Respondent;
2. The Application for judicial review is dismissed; and
3. There is no award of costs.

"Allyson Whyte Nowak"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2371-25

STYLE OF CAUSE: NAHID MUKTA v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 26, 2026

JUDGMENT AND REASONS: WHYTE NOWAK J.

DATED: FEBRUARY 6, 2026

APPEARANCES:

Nahid Mukta

FOR THE APPLICANT
(ON HER OWN BEHALF)

Patrick (Zhen Zhou) Wu

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT