



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. A. v. Canada Employment Insurance Commission*, 2018 SST 309

Tribunal File Number: GE-17-2264

BETWEEN:

M. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: March 7, 2018

DATE OF DECISION: March 16, 2018

REASONS AND DECISION

OVERVIEW

[1] The Appellant established a claim for employment insurance benefits and while on claim he was self-employed in farming. Following the end of his claim he advised the Commission that he had sold cattle for a net amount of \$11,970.00. He advised that the transaction was in relation to raising cattle from February 20, 2016, to October 3, 2016. The Commission advised the Appellant they had allocated the money to the same period and the allocation had resulted in an overpayment of \$4,905.00. The Commission requested the Appellant to provide details of the sale of the cattle and the dates born so they could review the period the work was performed and ensure the allocation of earnings is to the correct period. The Appellant did not respond to the Commission request but at the time he filed his Notice of Appeal he submitted the calf birth dates beginning February 2, 2016, and bill of sale for the cattle, dated October 3, 2016, The Appellant later submitted to the Tribunal a list of expenses with supporting receipts to be applied to the sale of the cattle for a total of \$9,546.07. The Commission was provided with the new information and found the list of expenses incurred as reasonable. The Commission maintained the money gained from the sale of the cattle is considered earnings to be deducted from benefits payable but recommended the weekly amount to be modified to reflect the eligible operating expenses and the date the work was performed.

DECISION

[2] The appeal is dismissed with modifications to the weekly amount of farming earnings. The Tribunal finds the money the Appellant received is considered earnings; however it was not correctly allocated to the period the work was performed.

ISSUE

[3] Did the money the Appellant receive from the sale of his cattle constitute earnings? If so, how should the earnings be allocated?

ANALYSIS

[4] The relevant legislative provisions are reproduced in the Annex to this decision.

Issue #1: Did the money the Appellant receive from the sale of his cattle constitute earnings? If so, how should the earnings be allocated?

[5] For income to be considered earnings pursuant to subsection 35(2) and paragraph 35(10)(b) of the *Employment Insurance Regulations* it will include income arising out of a claimant who is self-employed in farming, the gross income from that self-employment, including any farming subsidies the claimant receives under any federal or provincial program, remaining after deducting the operating expenses, other than capital expenditures, incurred in that self-employment.

[6] The Appellant has the onus of proof to show that the money he received should not be considered earnings and should not be allocated.

[7] The Appellant has submitted the dates the calves were born in the week of February 2, 2016, instead of February 20, 2016, and operating expense receipts that have reduced the amount of his weekly earnings but he did not prove that the money he received was not earnings and should not be allocated.

[8] The Appellant initially argued the Commission's information was incorrect and that he didn't sell two calves for \$11,970.00 but later submitted with his appeal to the Tribunal that he sold 10 calves with corresponding birth dates ranging from February 2, 2016, to February 9, 2016, on sold them on October 3, 2016, for a net amount of \$11,970.00.

[9] The Appellant submitted expenses with corresponding receipts of \$9,546.07 that reduced his gross income to be determined for allocation purposes to \$2,472.83 ($\$11,970.90 - \$9,546.07 = \$2,472.83$).

[10] The Commission was provided an opportunity to review the additional information submitted by the Appellant and agreed the expenses \$9546.07 incurred in the raising of 10 calves for worked performed from February 2, 2016, to October 3, 2016, = 245 days as being reasonable. The Commission recommends the Appellant's farming earnings per week be modified to $(\$2,472.83 - 245 \text{ days}) \times 7 \text{ days} = \69.30 farming earnings per week. This would reduce the overpayment to \$998.00.

[11] The Tribunal notes the Commission is correct in the final number of \$69.30 per week. However it has made an error in their calculation as they reported $(\$11,970.90 - \$9546.07 = \$2472.83)$ the total should be recorded as \$2424.83 and not \$2472.83.

[12] The Appellant conceded that he was engaged in farming and that he did receive the money for the sale of cattle. He submits that the receipts were operating expenses and should be deducted. He did not have any other expenses to report. He expressed his frustration that when he sold his cattle he was no longer on employment insurance benefits and nobody ever told him they would apply it to the period while he was collecting benefits.

How the earnings should be allocated?

[13] The earnings of a claimant who is self-employed in farming should be allocated pursuant to subsection 36(7)(a) of the Regulations if they arose from a transaction, in accordance with subsection (6.1).

[14] The Tribunal acknowledges the Appellant's frustration but the Appellant does not dispute he was engaged in the self-employment of farming and in receipt of employment insurance benefits while he was raising his cattle from February 2, 2016, to October 3, 2016, until when he sold them, therefore the income must be allocated to the period the work was performed that gave rise to the transaction.

[15] The Tribunal finds the money the Appellant received was earnings; however, it was not correctly allocated.

[16] The Tribunal finds since the Appellant submitted proven operating expenses that reduced the earnings and should be recalculated resulting in a weekly allocation of \$69.30 ($\$11,970.90 - \$9,546.07 \text{ expenses} = \$2,424.83$ ($\$2,472.83 - 245 \text{ days}$) $\times 7 \text{ days} = \69.30) farming earnings per week.

CONCLUSION

[17] The appeal is dismissed with modifications.

Teresa Jaenen
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Regulations

35 (1) The definitions in this subsection apply in this section.

employment means

(a) any employment, whether insurable, not insurable or excluded employment, under any express or implied contract of service or other contract of employment,

(i) whether or not services are or will be provided by a claimant to any other person, and

(ii) whether or not income received by the claimant is from a person other than the person to whom services are or will be provided;

(b) any self-employment, whether on the claimant's own account or in partnership or co-adventure; and

(c) the tenure of an office as defined in subsection 2(1) of the *Canada Pension Plan*. (*emploi*)

income means any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in bankruptcy. (*revenu*)

pension means a retirement pension

(a) arising out of employment or out of service in any armed forces or in a police force;

(b) under the *Canada Pension Plan*; or

(c) under a provincial pension plan. (*pension*)

self-employed person has the same meaning as in subsection 30(5). (*travailleur indépendant*)

(2) Subject to the other provisions of this section, the earnings to be taken into account for the purpose of determining whether an interruption of earnings under section 14 has occurred and the amount to be deducted from benefits payable under section 19, subsection 21(3), 22(5), 152.03(3) or 152.04(4) or section 152.18 of the Act, and to be taken into account for the purposes of sections 45 and 46 of the Act, are the entire income of a claimant arising out of any employment, including

(10) For the purposes of subsection (2), "income" includes

(b) in the case of a claimant who is self-employed in farming, the gross income from that self-employment, including any farming subsidies the claimant receives under any federal or provincial program, remaining after deducting the operating expenses, other than capital expenditures, incurred in that self-employment;

(c) in the case of a claimant who is self-employed in employment other than farming, the

36 (1) Subject to subsection (2), the earnings of a claimant as determined under section 35 shall be allocated to weeks in the manner described in this section and, for the purposes referred to in subsection 35(2), shall be the earnings of the claimant for those weeks.

(6.1) The earnings of a claimant who is self-employed, or the earnings of a claimant that are from participation in profits or commissions, that arise from a transaction shall be allocated

(a) if the aggregate amount of earnings that arise from a transaction occurring in a week is greater than the maximum yearly insurable earnings referred to in section 4 of the Act divided by 52, to the weeks in which the work that gave rise to the transaction was performed, in a manner that is proportional to the amount of work that was performed during each of those weeks or, if no such work was performed, to the week in which the transaction occurred; or

(b) if the aggregate amount of earnings that arise from a transaction occurring in a week is less than or equal to the maximum yearly insurable earnings referred to in section 4 of the Act divided by 52, to the week in which the transaction occurred or, if the claimant demonstrates that the work that gave rise to the transaction occurred in more than one week, to the weeks in which the earnings were earned, in a manner that is proportional to the amount of work that was performed during each of those weeks.

(7) The earnings of a claimant who is self-employed in farming shall be allocated

(a) if they arose from a transaction, in accordance with subsection (6.1); and

(b) if they were received in the form of a subsidy, to the week in which the subsidy was paid.