



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. M. v Canada Employment Insurance Commission*, 2019 SST 235

Tribunal File Number: GE-18-3733

BETWEEN:

**M. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Josée Langlois

HEARD ON: January 23, 2019

DATE OF DECISION: January 31, 2019

## **DECISION**

[1] The appeal is dismissed. The Tribunal finds that the earnings of \$43,127.14 the Appellant received were correctly allocated to her benefit period.

## **OVERVIEW**

[2] The Commission established a benefit period for sickness benefits starting February 5, 2017. The Appellant told the Commission that her position was eliminated during the week of May 21, 2017, and that she received severance pay from the employer. On August 11, 2017, the Commission informed the Appellant that the \$19,379.32 received from the employer as separation pay was allocated to her benefit period of May 28, 2017, to November 25, 2017. On April 4, 2018, the employer issued an amended Record of Employment indicating that it had paid the Appellant \$1,218.19 as notice of dismissal as well as \$41,908.95 as severance pay.

[3] At the time of reconsideration, the Commission allowed the Appellant's application to be antedated for the period of June 4, 2017, to October 7, 2017, which reduced the overpayment. The Appellant admits receiving the full amount of \$41,908.95 as notice of dismissal and separation pay, but she argues that the Commission did not properly inform her, that there were several errors in the file, and that the amount should be written off. The Tribunal must determine whether the amounts received by the Appellant as notice of dismissal and severance pay were correctly allocated to her benefit period.

## **ISSUE**

[4] Were the earnings of \$43,127.14 that the Appellant received as pay in lieu of notice and severance pay correctly allocated to her benefit period?

## ANALYSIS

### **Were the earnings of \$43,127.14 that the Appellant received as pay in lieu of notice and severance pay correctly allocated to her benefit period?**

[5] A claimant's entire income arising out of any employment is to be taken into account when calculating the amount to be deducted from their benefits (section 35(2) of the Regulations and *McLaughlin v Canada (Attorney General)*, 2009 FCA 365 (CanLII)).

[6] The Appellant does not dispute this point. She admits receiving total earnings of \$43,127.14 as notice of dismissal and severance pay. She was paid that amount because of a permanent separation from employment that occurred during her sick leave. That situation created an overpayment of \$8,397. When the decision was reconsidered, the Commission granted an antedate so that the Appellant could file her claimant reports from June 4, 2017, to October 7, 2017, which helped reduce the overpayment to \$6,500.

[7] An amount paid by an employer because of a separation from employment must be allocated under section 36(9) of the Regulations. It is the reason for the payment, and not the date of the payment, that determines when the amount must be allocated.

[8] On April 4, 2018, the employer issued an amended Record of Employment indicating that the amount for separation pay was increased to \$41,908.95 instead of \$18,102.73, as initially reported. Furthermore, that record indicates that \$1,218.19 was paid to the Appellant as notice of dismissal. The total earnings paid to the Appellant amount to \$43,127.14.

[9] The Commission argues that this amount is earnings because it was given as pay in lieu of notice and severance pay. The Commission allocated this amount to the Appellant's benefit period as of May 28, 2017, based on the rate of the Appellant's weekly earnings, which is \$579. That new rate of weekly benefits was adjusted once the Appellant was granted the antedate in this file. The Commission states that it understands the Appellant's disappointment, given that the employer issued new records of employment specifying the amounts that were paid to her, and the Commission states that these new calculations may have made it harder for the Appellant to understand the file.

[10] During the hearing, the Appellant stated that not only had she received a total amount of \$43,127.14 as separation pay, but she also recognized that that amount must be allocated to her benefit period. However, she lamented the fact that the Commission did not properly inform her and that she is struggling to repay such a high benefits overpayment. For these reasons, the Appellant asks that the amount be written off.

[11] The Commission indicates that the issue of the write-off was not considered but that it will be able to consider it after the Tribunal's decision.

[12] As the Tribunal explained during the hearing, only the Commission has the power to write off an amount of a benefits overpayment, and the Appellant understands that she will have to submit this request to the Commission (section 112.1 of the Act).

[13] The amounts received as severance pay and separation pay constitute earnings and must be allocated to a claimant's benefit period.

[14] The Tribunal is of the view that the total amount of \$43,127.14 that the Appellant received as separation pay must be allocated to a number of weeks that begins with the week of the Appellant's separation from employment. The Appellant permanently stopped working on May 30, 2017, and the Commission allocated this amount starting from Sunday, May 28, 2017, based on the rate of the Appellant's weekly earnings, which is \$579 (section 36(9) of the Regulations).

[15] The Tribunal finds that the Commission correctly allocated the \$43,127.14 to the Appellant's benefit period.

**CONCLUSION**

[16] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section

HEARD ON:	January 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M. M., Appellant  Gaëtan Guérette (counsel), Representative for the Appellant