



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

*Citation: C. M. v Canada Employment Insurance Commission, 2019 SST 478*

Tribunal File Number: GE-19-1428

BETWEEN:

**C. 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: Solange Losier

HEARD ON: April 23, 2019

DATE OF DECISION: April 24, 2019

## **DECISION**

[1] The appeal is dismissed. The Appellant is only entitled to receive 15 weeks of employment insurance sickness benefits (sickness benefits) based on subsection 12(3)c) of the *Employment Insurance Act* (Act).

## **OVERVIEW**

[2] The Appellant applied for employment insurance compassionate care benefits (CCB) and a benefit period was established effective April 1, 2018. The Appellant was paid 26 weeks of CCB from April 1, 2018 to October 6, 2018. On or around October 30, 2018, the Appellant advised the Canada Employment Insurance Commission (Respondent) that the family member she was caring for had died in August 2018 and submitted a medical note requesting additional benefits because she was unable to work as of October 10, 2018 and October 29, 2018. The Respondent converted her claim to sickness benefits which resulted in an overpayment and two notices of debt totalling \$2,750.00 because she continued to receive CCB when she was not entitled to receive those benefits after her family member passed away.

[3] The Appellant submitted a new medical note to the Respondent which stated that she was unable to work as of August 14, 2018. The Respondent adjusted her claim so that the CCB amounts she received for 8 weeks from August 12, 2018 to October 6, 2018 were retroactively converted to sickness benefits. This also resulted in a cancellation of the overpayments totalling \$2,750.00. The Respondent noted that the manual and retroactive conversion resulted in the Appellant continuing to receive sickness benefits until December 29, 2018, which was in excess of 15 weeks maximum outlined in legislation. As a result, the Respondent issued an overpayment for the additional 5 weeks of sickness benefits totalling \$1,250.00 and a notice of debt was issued to the Appellant on January 19, 2019. The Appellant appealed to the Social Security Tribunal (Tribunal) submitting that she was misled by Service Canada agents and that she should not have to pay for the overpayment representing the additional 5 weeks of sickness benefits because it was not her error.

## ISSUES

[4] **Issue 1: Did the Appellant receive employment insurance sickness benefits and if so, how many weeks of employment insurance sickness benefits were paid to her?**

[5] **Issue 2: Is there any legislative discretion to write off the overpayment because the Appellant has compassionate circumstances and financial hardships?**

## ANALYSIS

[6] Subsection 12(3)c) of the Act states: The maximum number of weeks for which benefits may be paid in a benefit period because of a prescribed illness, injury or quarantine is 15.

**Issue 1: Did the Appellant receive employment insurance sickness benefits and if so, how many weeks of employment insurance sickness benefits were paid to her?**

[7] Yes, the Appellant received a total of 20 weeks of sickness benefits which were paid for the period from August 12, 2018 to December 29, 2018. This was 5 weeks in excess because the maximum number of sickness benefits paid in a benefit period is 15 weeks based on subsection 12(3)(c) of the Act.

[8] The Respondent submitted that the Appellant received 18 weeks of CCB and 20 weeks of sickness benefits, which resulted in an overpayment of 5 weeks of sickness benefits (GD4-3).

April 8, 2018 to August 11, 2018 = 18 weeks of CCB

August 12, 2018 to October 6, 2018 = 8 weeks of sickness (previously CCB converted to sickness benefits)

October 7, 2018 to November 24, 2018 = 7 weeks sickness benefits

November 25, 2018 to December 29, 2018 = 5 weeks sickness benefits overpaid

[9] The Respondent further submits that due to a retroactive conversion of 8 weeks of compassionate care benefits into sickness benefits, the Appellant received the maximum fifteen weeks of sickness benefits from August 12, 2018 to November 24, 2018. As a result, the sickness benefits paid for the period November 25, 2018 to December 29, 2018 resulted in an overpayment because she was not entitled to receive more than 15 weeks of sickness benefits in her benefit period (GD4-3).

[10] The Appellant testified that she does not dispute the Respondent's submissions, specifically that she received 20 weeks of sickness benefits and she was only entitled to receive a maximum of 15 weeks of sickness benefits.

[11] The Federal Court of Appeal has affirmed that subsection 12(3)(c) of the Act allows the payment of a maximum of 15 weeks of sickness benefits (*Brown v. Canada (Attorney General)*, 2010 FCA 148). Accordingly, I accept that the Appellant was only entitled to 15 weeks of sickness benefits based on subsection 12(3)(c) of the Act and that she received an additional 5 weeks of sickness benefits for which she was not entitled and this resulted in an overpayment of \$1,250.00.

**Issue 2: Is there any legislative discretion to write off the \$1,250.00 overpayment because the Appellant has compassionate circumstances and financial hardships?**

[12] No, there is no legislative discretion to write off the \$1,250.00 overpayment based on the Appellant's compassionate circumstances and financial hardships because there is no legal authority to do so. I further note that the Respondent has not rendered a decision on the issue of writing off of the overpayment, nor has the Appellant requested a write off of the overpayment to the Respondent.

[13] The Appellant submits that she should not have to pay the overpayment because of her compassionate circumstances and financial hardships. The Appellant further submits that she was misled by Service Canada agents.

[14] The Appellant also testified that the Service Canada agents misled her when they told her that she would be entitled to sickness benefits until March 2019, that she should continue to complete her claimant reports and that she did not owe an overpayment for the extra 5 weeks of sickness benefits she received.

[15] It has been established in case law that any commitment that the Commission or its representatives make, whether in good or bad faith, to act in a way other than that which is prescribed by the Act, is absolutely null and void (*Granger v. Canada Employment and Immigration Commission*, [1986] 3 FC 70).

[16] The Appellant testified that she has experienced significant personal and financial hardships during the past year. However, the legislation cannot be interpreted in a manner contrary to its plain meaning (*Canada (Attorney General) v. Knee*, 2011 FCA 301). Further, the legislation does not allow any discrepancy and provides no discretion regardless of individual circumstances (*Canada (Attorney General) v. Lévesque*, 2001 FCA 304).

**CONCLUSION**

[17] The appeal is dismissed.

Solange Losier  
Member, General Division - Employment Insurance Section

HEARD ON:	April 23, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	C. M., Appellant