



Citation: *DM v Canada Employment Insurance Commission*, 2022 SST 793

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** D. M.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Angèle Fricker

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**Decision under appeal:** General Division decision dated May 13, 2022  
(GE-22-1035)

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**Tribunal member:** Jude Samson

**Type of hearing:** On the Record

**Decision date:** August 19, 2022

**File number:** AD-22-337

## Decision

[1] D. M. is the Claimant in this case. I'm dismissing her appeal.

## Overview

[2] The Claimant was overpaid emergency response benefits (ERB). She doesn't really dispute this. Instead, she's asking for the overpayment to be written off (cancelled) because the program was mismanaged and because she doesn't even have enough money to pay for her basic needs.

[3] The General Division summarily dismissed her appeal. It concluded that only the Canada Employment Insurance Commission (Commission) can write off overpayments.<sup>1</sup>

[4] The Claimant is now appealing the General Division decision to the Tribunal's Appeal Division. She argues that the Tribunal does have the power to write off overpayments.

[5] I disagree. As a result, I have to dismiss her appeal.

## Issue

[6] The issue in this appeal is whether the General Division made an error by concluding that it couldn't write off the Claimant's overpayment.

## Analysis

[7] I could intervene in this case if the General Division made an error of law or failed to use all its powers.<sup>2</sup>

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<sup>1</sup> Although the Commission has decision-making powers, most people are used to dealing with Service Canada. Service Canada delivers programs for the Commission.

<sup>2</sup> The errors that I can consider, also known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act*.

## The Tribunal has no power to make or review write-off decisions

[8] The Claimant says that she's struggling financially, so the General Division should have written off her overpayment. To support her argument, the Claimant relies on section 153.1306 of the *Employment Insurance Act*, which says this:

### Write-off of amounts wrongly paid

**153.1306 (1)** An amount payable under section 43 may be written off by the Commission if

[...]

(f) the Commission considers that, having regard to all the circumstances,

(i) the amount is uncollectable,

(ii) the repayment of the amount would result in undue hardship to the debtor, or

[Underlining added]

[9] The Commission (operating through Service Canada) and the Tribunal are different.

[10] Only the **Commission** can write off the Claimant's ERB overpayment. The Tribunal cannot make write-off decisions and it cannot review the Commission's write-off decisions either.<sup>3</sup>

[11] I see no errors in the General Division, meaning that I have to dismiss the Claimant's appeal.

### – The Claimant's write-off request

[12] Before closing, I want to say a few words about the Claimant's write-off request.

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<sup>3</sup> See section 153.1307 of the *Employment Insurance Act*.

[13] Confusingly, the Commission's arguments say that it refused the Claimant's write-off request.<sup>4</sup> Then, in the very next sentence, it says that the Claimant has never made a formal write-off request.

[14] The Claimant replied to the Commission's arguments explaining her situation once again and asking for a write-off.<sup>5</sup> I hope that the Commission will consider this as the formal write-off request that it needs. If not, then I would ask the Commission to provide the Claimant with more precise and detailed instructions about all the steps she needs to take to formally ask for her overpayment to be written off.

## **Conclusion**

[15] The Claimant is in a very difficult situation. I sympathize with her and hope she gets the help she needs. However, I have to apply the law as it's written. I cannot bend the rules or expand my powers to write off overpayments, even for people who are in dire financial need.

[16] Since there are no errors in the General Division decision, I'm dismissing the Claimant's appeal.

Jude Samson  
Member, Appeal Division

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<sup>4</sup> See page AD2-3 in the appeal record.

<sup>5</sup> See document AD3.