



Citation: *MD v Canada Employment Insurance Commission*, 2024 SST 811

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

## Decision

**Appellant:** M. D.  
**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision 551010 dated May 17, 2023  
(issued by Service Canada)

---

**Tribunal member:** Angela Ryan Bourgeois  
**Type of hearing:** Teleconference  
**Hearing date:** June 4, 2024  
**Hearing participant:** Appellant  
**Decision date:** July 14, 2024  
**File number:** GE-24-844

## Decision

[1] The appeal is dismissed but I have modified the amount of earnings allocated to the week of October 27, 2019.

[2] The Appellant received earnings. The Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks in the right amounts, except for the week of October 27, 2019.

## Overview

[3] The law says that all earnings must be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.<sup>1</sup>

[4] The Appellant applied for and received Employment Insurance (EI) regular benefits from July 2019 to November 2019. She did some work during this period. She reported earnings on her biweekly claims for EI benefits. The earnings reduced the amount of EI benefits the Commission paid her.

[5] After the Commission paid the Appellant EI benefits, it got information from the Appellant's employer about her earnings from September 15, 2019, to November 16, 2019. The information wasn't the same as what the Appellant reported on her claims for EI benefits.

[6] The Commission accepted the employer's information. It decided that the money had to be allocated as earnings. The Commission allocated the earnings in the amounts reported by the employer to the weeks the employer said it was earned.<sup>2</sup>

[7] The Appellant disagrees with the Commission. The Appellant says that she reported the correct earnings on her claims for EI benefits.

---

<sup>1</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

<sup>2</sup> See decision letter on page GD3-18.

## **Matter I have to consider first**

[8] This is the second decision of the General Division about this issue. The Appellant appealed the first General Division decision to the Appeal Division. The Appeal Division allowed the appeal and returned the matter to the General Division to be reconsidered by another member.

[9] When the file was assigned to me, I asked the Commission for an explanation about how it calculated the overpayment amount and a copy of the relevant record of employment. I also asked the Appellant to provide any other documents she wanted me to consider.<sup>3</sup>

[10] The Commission provided the requested information.<sup>4</sup> The Appellant didn't provide any new documents.

[11] At the hearing, the Appellant questioned the amounts the Commission alleged she reported on her biweekly reports. So, I asked the Commission for copies of her reports.<sup>5</sup> The Commission provided the reports.<sup>6</sup> The reports were sent to the Appellant, and she had an opportunity to provide a response.<sup>7</sup> She hasn't provided a response. The response deadline has passed so I have proceeded with this decision.

## **Issues**

[12] I have to decide the following issues:

- a) Did the Commission allocate the earnings correctly?
- b) Is the overpayment amount correct?

---

<sup>3</sup> See RGD2.

<sup>4</sup> See RGD3.

<sup>5</sup> See RGD4.

<sup>6</sup> See RGD5.

<sup>7</sup> See RGD6.

## Analysis

### Did the Commission allocate the earnings correctly?

[13] The law says that all earnings must be allocated to certain weeks.<sup>8</sup> Earnings for the performance of services are allocated to the weeks when the work was done.<sup>9</sup>

[14] The parties agree that the money the employer paid the Appellant is earnings for the performance of services.

[15] The table on the next page shows the days worked, the earnings reported by the Appellant, the earnings reported by the employer and how that information relates to the Appellant's record of employment and pay stubs.

---

<sup>8</sup> See sections 35 and 36 of the EI Regulations. Earnings are the entire income you get from employment. The EI Regulations also define income and employment.

<sup>9</sup> See section 36(4) of the EI Regulations.

Week code Week starting	Days worked as per pay stubs	Earnings reported by Appellant	Earnings reported by employer <sup>10</sup>	Record of Employment <sup>11</sup>	Information from pay stubs <sup>12</sup>
2204 September 15, 2019	2	\$242 <sup>13</sup>	\$487.86	\$487.86 Pay period 8	\$487.86 <sup>14</sup> deposited October 4, 2019
2205 September 22, 2019	2	0 <sup>15</sup>	0	487.86 Pay period 7	487.86 deposited on October 18, 2019
2206 September 29, 2019		242 <sup>16</sup>	487.86		
2207 October 6, 2019	5	242 <sup>17</sup>	487.86	1,219.65 Pay period 6	1,219.65 Deposited on November 1, 2019
2208 October 13, 2019		484 <sup>18</sup>	731.79	487.86 + 731.79 = 1,219.65	
2209 October 20, 2019	8	726 <sup>19</sup>	975.72	1,991.44 Pay period 5	1,991.44 Deposited on November 15, 2019
2210 October 27, 2019		726 <sup>20</sup>	1015.72 <sup>21</sup>	975.75 + 1015.72 = 1,991.44	
2211 November 3, 2019	8	968 <sup>22</sup>	1219.65	1,951.44 Pay period 4	1,951.44 Deposited on November 29, 2019
2212 November 10, 2019 <sup>23</sup>		484 <sup>24</sup>	731.79	\$1,219.65 + \$731.79 = \$1,951.44	

<sup>10</sup> See page GD3-16.

<sup>11</sup> See page RGD3-4.

<sup>12</sup> See pay stubs starting on page GD2B-13 and the Appellant's testimony.

<sup>13</sup> See page RGD5-31 where the Appellant reported she worked 7 hours and was paid \$242 this week.

<sup>14</sup> To make the information in the table easier to read I omitted the dollar signs in the rows that follow.

<sup>15</sup> See page RGD5-44 where the Appellant reported that she didn't work or earn wages for this week.

<sup>16</sup> See pages RGD5-44 to RGD5-45 where the Appellant reported that she worked 7 hours and earned \$242 this week.

<sup>17</sup> See pages RGD5-51 to RGD5-52 where the Appellant reported that she worked 7 hours and earned \$242 this week.

<sup>18</sup> See pages RGD5-52 to RGD5-53 where the Appellant reported that she worked 14 hours and earned \$484 this week.

<sup>19</sup> See pages RGD5-59 to RGD5-60 where the Appellant reported that she worked 21 hours and earned \$726 this week.

<sup>20</sup> See pages RGD5-60 to RGD5-61 where the Appellant reported that she worked 21 hours and earned \$726 this week.

<sup>21</sup> Includes \$40 as an occasional certified day RC or rate change. The Appellant explained that this would have been a correction or retroactive pay for services done at an earlier time.

<sup>22</sup> See pages RGD5-67 to RGD5-68 where the Appellant reported that she worked 28 hours and earned \$968 this week.

<sup>23</sup> This was the last week EI benefits were paid to the Appellant.

<sup>24</sup> See pages RGD5-69 to RGD5-70 where the Appellant reported that she worked 14 hours and earned \$484 this week.

[16] The pay stubs don't show the pay period, only the deposit date. But since the Appellant's pay period is from Sunday to Saturday and she is paid two weeks in arrears, I was able to match the pay stubs to the pay periods on the record of employment.

[17] I find that the Appellant's earnings are those earnings stated by the employer. The employer's information matches the information it reported on the Appellant's record of employment as well as the information on the Appellant's pay stubs.

[18] The Appellant doesn't dispute the information on her pay stubs. She told me that she verifies her pay when it is received.

– **Week of October 27**

[19] The Commission allocated earnings of \$1,016 to the week of October 27, 2019.

[20] At the hearing, the Appellant told me that \$40 of those earnings were due to a correction in her pay or retroactive pay. In other words, she was paid for work done at an earlier time during the week of October 27, 2019. She explained that this happens often because of contract negotiations.

[21] I accept the Appellant's testimony about the \$40. I find it's more likely than not that the \$40 relates to work she did before September 15, 2019. This is because in union settings there is often a lengthy delay in receiving retroactive pay.

– **Week of November 17**

[22] At the hearing, the Appellant said that she must have claimed benefits for the week of November 17, 2019, because she wasn't working full weeks then.<sup>25</sup>

[23] After the hearing, at my request, the Commission provided a copy of the Appellant's E-Report Questions and Answers. This report shows that the Appellant did not claim EI benefits for the weeks of November 17, 2019, to November 30, 2019.<sup>26</sup>

---

<sup>25</sup> Recording about 30:55.

<sup>26</sup> See page RGD5-72.

[24] Since benefits were neither claimed nor paid for the week of November 17, 2019, that week isn't relevant to this appeal.

– **The Appellant's earnings**

[25] Considering all the evidence before me, I find that the Appellant had earnings as reported by the employer in the table above. I find that those earnings were for work the Appellant performed during the weeks indicated in that table, except for \$40 retroactive pay paid during the week of October 27, 2019.

[26] So, the Appellant's earnings (rounded to the nearest dollar) are allocated to those weeks because earnings for work performed are allocated to the weeks in which the work was performed.<sup>27</sup>

[27] My allocation is the same as the Commission's allocation, except for the week of October 27, 2019.

[28] The allocation is shown in the table on the next page.<sup>28</sup>

---

<sup>27</sup> I've rounded the earnings to the nearest dollar. This is required by law. See section 6(2) of the *Employment Insurance Act*.

<sup>28</sup> The Commission's allocation is shown on page GD3-18.

<b>Week code Week starting</b>	<b>Earnings allocated</b>
2204 September 15, 2019	\$488
2205 September 22, 2019	\$0
2206 September 29, 2019	\$488
2207 October 6, 2019	\$488
2208 October 13, 2019	\$732
2209 October 20, 2019	\$976
2210 October 27, 2019	\$976 (\$40 less than what the Commission allocated)
2211 November 3, 2019	\$1,220
2212 November 10, 2019 <sup>29</sup>	\$732

### **The Appellant's claims for benefits**

[29] The Appellant says that she doesn't understand how the information on her claims for benefits could be wrong. She described how she verifies her pay and what she inputs for her claims.

[30] The Appellant says that given her checks, there is no way she could have made so many mistakes week after week. She says that there must have been a mistake in the Commission's system, or someone must have changed the numbers she inputted.

---

<sup>29</sup> This was the last week EI benefits were paid to the Appellant.



[31] As mentioned above, the Commission has provided a printout of the E-Report Questions and Answers.<sup>30</sup> This report shows the date and time the Appellant made her telephone claims, the script that was played over the telephone and the keys the Appellant pressed. The script shows that after the Appellant entered her hours and earnings the system read those amounts back to her, and she then pressed 1 to show that she agreed with the amounts.

[32] I see no discrepancy between the earnings shown in this report and the amounts the Commission alleges the Appellant declared on her claims for benefits.

[33] There is no evidence that the E-Reports misread what the Appellant inputted or that someone later changed what the Appellant declared on her claims for benefits.

[34] Even if there were evidence of these things, it wouldn't change the outcome of this appeal. This is because the Appellant's actual earnings, the allocation of those earnings, and the calculation of the overpayment amount wouldn't change. There is no discretion in these matters.

### **Is the overpayment amount correct?**

[35] The Commission provided a written explanation of how it calculated the overpayment amount. It showed the data it used in an accompanying table.<sup>31</sup>

[36] I see nothing wrong with the Commission's overpayment calculations. The Appellant hasn't pointed out any errors in the calculations.

[37] However, because the allocation for the week of October 27, 2019, has changed, it will have to recalculate the overpayment amount for that week.

### **Penalty**

[38] The Commission's original decision included a penalty, but the penalty was later removed.

---

<sup>30</sup> These reports (RGD5) were sent to the Appellant, and she was given a chance to provide a response. She did not provide a response.

<sup>31</sup> See page RGD3.

[39] However, the Appellant told me that before the penalty was removed, she had paid it in full. She paid the penalty by deductions from EI benefits payable to her.

[40] The Appellant says that the amount deducted from her EI benefits has never been returned to her.

[41] I explained that it's possible that this matter may be resolved upon the resolution of this appeal. If this isn't the case, the Commission may want to contact the Appellant to discuss the matter further.

## **Conclusion**

[42] The allocation is set out in paragraph 28 above.

[43] The overpayment amount for the week of October 27, 2019, will have to be recalculated.

[44] The appeal is dismissed, with a modification to the allocation for the week of October 27, 2019.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section