



Citation: *CM v Canada Employment Insurance Commission*, 2024 SST 1676

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: C. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (639630) dated January 25, 2024
(issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Teleconference

Hearing date: April 16, 2024

Hearing participant: Appellant

Decision date: April 25, 2024

File number: GE-24-893

Decision

[1] The appeal is allowed in part.

[2] The Appellant received money. The portion of the money she received is excluded as earnings to the extent that, when combined with the Appellant's weekly benefit rate from that employment, doesn't exceed her normal weekly earnings from that employment.¹

Overview

[3] The Appellant got \$439.00 weekly from Manulife, for the period of April 17 to May 28, 2023, due to a maternity leave of absence from her employer. The Commission decided that the money is "earnings" under the law because it is wage-loss insurance payments.²

[4] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.³

[5] The Commission allocated the earnings from April 23 to May 27, 2023, at an amount of \$439.00 per week.⁴ These are the weeks the money was paid or payable, after the waiting period.

[6] The Appellant disagrees with the Commission. She says that the money isn't earnings.

¹ See section 38 of the *Employment Insurance Regulations* (EI Regulations).

² See GD3-36 and 37.

³ See section 36 of the EI Regulations.

⁴ See GD3-48 to 49.

Issues

[7] I have to decide the following two issues:

- Is the money that the Appellant received earnings?
- If the money is earnings, did the Commission allocate the earnings correctly?

Analysis

Is the money that the Appellant received earnings?

[8] The portion of the money the Appellant received is **excluded** as earnings to the extent that, when combined with her weekly benefit rate from that employment, doesn't exceed her normal weekly earnings from that employment.

[9] The law says that earnings are the entire income that you get from any employment.⁵ The law defines both "income" and "employment."

[10] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.⁶

[11] **Employment** is any work that you did or will do under any kind of service or work agreement.⁷

[12] Earnings include money an appellant receives or is entitled to receive under a group wage-loss indemnity plan. It also includes money an appellant receives or is entitled to receive under a paid sick, maternity or adoption leave plan.⁸

[13] But the portion of the money paid to an appellant because of **pregnancy**, for the care of a child an appellant is receiving parental benefits for, or other listed reasons, is

⁵ See section 35(2) of the EI Regulations.

⁶ See section 35(1) of the EI Regulations.

⁷ See section 35(1) of the EI Regulations.

⁸ See section 35(2)(c) of the EI Regulations.

excluded as earnings under section 38 of the *Employment Insurance Regulations* (EI Regulations) when:⁹

- combined with an appellant's weekly benefit rate from that employment, doesn't exceed the appellant's normal weekly earnings from that employment
- it doesn't reduce the appellant's accumulated sick leave or vacation leave credits, severance pay or any other accumulated credits for the appellant's employment

[14] The Commission decided that the money is earnings under the law because it is wage-loss insurance payments.

[15] The Appellant doesn't agree. She says that the money isn't earnings.

[16] The Appellant gave birth on April 17, 2023.

[17] The Appellant says that, before the birth of her child, she was on sick leave from her employment. During her sick leave, she received short-term disability (STD) benefits from Manulife.

[18] The Appellant says that she called Manulife on April 17 or 18, 2023, to tell it her child was born. She says that Manulife told her that it was switching her payments from STD to maternity benefits.

[19] Manulife emailed the Appellant on April 19, 2023. The email says:¹⁰

- your STD benefits have been extended up to and including May 28, 2023
- you'll continue to receive a benefit of \$439.00 covering the period of April 17, 2023, to May 28, 2023, which is the health-related portion of your Maternity Leave of Absence (MLA)

⁹ See section 38(1) of the EI Regulations.

¹⁰ See GD3-32.

- since your MLA starts now, you may receive EI benefits and your STD claim closes

[20] The Commission spoke with the employer. The employer says that wage-loss insurance was paid to the Appellant by a third party. The employer says that it doesn't have details regarding the payments.¹¹

[21] The Appellant has to prove that the money is **not** earnings. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that the money isn't earnings.

[22] In a similar case, the Umpire decided that payments the claimant received from the Government of Ontario are excluded as earnings when, combined with the benefits under the *Employment Insurance Act* (EI Act), doesn't exceed the claimant's normal weekly earnings from employment. And to the extent that the combined payments exceed the claimant's normal weekly earnings from employment, the excess isn't excluded as earnings. The Umpire said that section 38 of the EI Regulations is broad and not ambiguous. Section 38 isn't limited to money received as "top-up" payments. Section 38 isn't limited to money received only from the claimant's employer.¹² I'm persuaded by this decision and I'm adopting its reasoning.

[23] I find that the Appellant received money. The Appellant got \$439.00 weekly from Manulife, for the period of April 17 to May 28, 2023. The money is earnings as it arises out of employment. But the portion of the money the Appellant received is **excluded** as earnings to the extent that, when combined with her weekly benefit rate from that employment, doesn't exceed her normal weekly earnings from that employment.

[24] I find that the money was paid to her due to maternity. I rely on the email the Appellant received from Manulife. Although the email says that the Appellant's STD benefits have been extended, it clarifies that the money received is the health-related portion of her maternity leave of absence and her STD claim is closed.

¹¹ See GD3-35.

¹² See CUB 60638.

[25] I find that the money from Manulife doesn't reduce the Appellant's accumulated credits from her employment. I rely on the employer's conversation with the Commission to make this decision. The employer says that it doesn't have details regarding the payments. There is no evidence given by the employer or in the appeal file to indicate that the payments reduce the Appellant's accumulated credits from her employment.

[26] Section 38 of the EI Regulations simply excludes the operation of section 35 of the EI Regulations to other maternity or parental benefits, from whatever source, that are paid to the Appellant, to the extent that those other benefits in combination with the benefits under the EI Act do not result in the Appellant earning more than her normal weekly earnings.

Did the Commission allocate the earnings correctly?

[27] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.¹³

[28] The money the Appellant received, that isn't exempt under section 38 of the EI Regulations, is to be allocated to the weeks which the payments are paid or payable.¹⁴

[29] The Commission says that the money is to be allocated to the weeks which the payments are paid or payable, after the waiting period.¹⁵ It allocated the earnings from April 23 to May 27, 2023. The Appellant doesn't dispute this.

[30] So, the Commission is to calculate the Appellant's normal weekly earnings. The portion of the money the Appellant received is excluded as earnings to the extent that, when combined with the Appellant's weekly benefit rate, doesn't exceed her normal weekly earnings from employment. And to the extent that the combined payments exceed the Appellant's normal weekly earnings from employment, these earnings are to

¹³ See section 36 of the EI Regulations.

¹⁴ See section 36(12) of the EI Regulations.

¹⁵ See section 39 of the EI Regulations.

be allocated to the weeks which the payments were paid or payable, after the waiting period.

Conclusion

[31] The appeal is allowed in part.

[32] The Appellant received money. The portion of the money received is excluded as earnings to the extent that, when combined with the Appellant's weekly benefit rate, doesn't exceed her normal weekly earnings from employment. To the extent that the combined payments exceed the Appellant's normal weekly earnings from employment, these earnings are to be allocated to the weeks which the payments were paid or payable.

Kristen Thompson

Member, General Division – Employment Insurance Section