



Citation: *Canada Employment Insurance Commission v SW*, 2025 SST 309

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Adam Forsyth

Respondent: S. W.

Decision under appeal: General Division decision dated October 8, 2024
(GE-24-2617)

Tribunal member: Glenn Betteridge

Type of hearing: Hybrid (in-person and teleconference)

Hearing date: March 12, 2025

Hearing participants: Appellant's representative (by teleconference)
Respondent (in person)

Decision date: March 28, 2025

File number: AD-24-724

Decision

[1] I am allowing the Canada Employment Insurance Commission's appeal.

[2] The General Division made two errors. I fixed those errors by making the decision the General Division should have made.

[3] I have decided the Commission overpaid S. W. \$848 in benefits she wasn't entitled to.

[4] The Canada Revenue Agency (CRA) has recovered money on behalf of the Commission. The Commission said it will work with the CRA to figure out whether the CRA recovered the correct amount (\$848).

Overview

[5] S. W. is the Claimant. She made a claim for the Compassionate Care Benefit (benefit). Unfortunately, for a number of reasons her claim became complicated.

[6] The Commission has appealed a General Division decision. The General Division allocated the Claimant's earnings to weeks in her claim. It figured out the amount the Commission overpaid her. It found the CRA recovered more than that overpayment. In the end, the General Division decided the Commission owed the Claimant \$1,196.56.

[7] The Commission argues the General Division made errors. It didn't decide what weeks the Claimant was eligible to get benefits, which was the issue in the appeal. It should not have allocated her earnings because that wasn't an issue in the appeal. And it had no power to decide the Commission owed the Claimant money.

[8] The Claimant argues she tried to do everything properly. She told the Commission she no longer needed the benefits and had gone back to work. She returned two paper benefit cheques to Service Canada but kept and cashed another.

She argues the CRA recovered too much money. She says the Commission (or CRA) owes her \$2,000.

Preliminary matters: I am accepting new evidence by agreement of the parties

[9] Generally, the Appeal Division can't consider new evidence the General Division didn't have. A court decision says there might be an exception where both parties agree the Appeal Division should consider an important document.¹

[10] The parties agreed if I found the General Division made an error, I should make the decision it should have made. To make the decision, I need to figure out whether the Commission overpaid benefits to the Claimant.²

[11] To calculate the Claimant's overpayment I need to know whether the Claimant actually received benefits for May 14 and May 21, 2023.³ The Commission says it sent the Claimant a paper cheque for \$653, after it made its reconsideration decision in May 2024.⁴ But there was no evidence at the General Division to prove this.

[12] I asked the Claimant and the Commission if they would agree to me accepting and considering two documents:

- information from the Commission's payment records system
- the Claimant's bank account statements

[13] The parties agreed. And after the hearing they submitted this new evidence, which I will consider when I make the decision the General Division should have made.⁵

¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 39.

² See section 43 of the *Employment Insurance Act* (EI Act).

³ See *Roby v Canada (Attorney General)*, 2013 FCA 251 at paragraph 16, citing *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

⁴ See the Commission's reconsideration decision at GD3-60, dated May 27, 2024. And see the table at AD5-5.

⁵ See AD17 and AD18.

[14] By accepting this new evidence, I am not interfering with the General Division's role as the primary fact finder in EI appeals. Screen shots from government computer systems and bank statements are very reliable sources of evidence. In my experience, a Tribunal member usually doesn't have to decide whether these types of documents are reliable. Finally, the law gives the Commission the power to certify as true evidence an entry, ledger, record, or account it holds.⁶

[15] The Tribunal isn't bound by the formal rules of evidence. By accepting this new evidence, I am following the Tribunal's rules. I am ensuring the appeal process is as simple and quick as fairness allows.⁷ I am using a flexible approach that's appropriate to an issue I have to decide to bring the appeal to an end. The parties asked me to do this. And sending the appeal back to the General Division to calculate the overpayment isn't a good use of the Tribunal's resources, or the parties' time.

[16] I want to reinforce that I have used my discretion to accept this new evidence "by agreement of the parties" based on the unusual and exceptional circumstances in this case.

Issues

[17] I have to decide four issues.

- Did the General Division make a legal error when it allocated the Claimant's earnings to weeks in her claim?
- Did the General Division make a jurisdictional error when it decided the Commission owed the Claimant money, based on the amount the CRA recovered from her?
- If the General Division made an error, should I fix the error by making the decision?

⁶ See section 134(1) of the EI Act.

⁷ See sections 6 and 8(1) of the *Social Security Tribunal Rules of Procedure*.

- If so, did the Commission pay the Claimant more benefits than she was entitled to get?

Analysis

The law I used to decide this appeal

[18] The law gives the Appeal Division powers to fix General Division errors.⁸ The law says the Appeal Division can step in when the General Division used an unfair process, or made a legal error, a jurisdictional error, or an important factual error.⁹

[19] The Compassionate Care Benefit is a special benefit available to people who take a leave from work to care for a family member who is expected to die within 26 weeks.¹⁰

[20] If a person works and earns income for the same weeks they get EI benefits, the Commission has to allocate then deduct a percentage of their earnings in that week.¹¹ This meant the Commission had to deduct 50% of the Claimant's earnings in a week from the benefits she was entitled to get that week.

At the General Division the Claimant and the Commission agreed on these things

[21] At the General Division the Claimant and the Commission agreed, or the uncontradicted evidence accepted by the General Division showed:

- the Claimant applied for 26 weeks of benefits to take care of her dying mother
- the Commission paid her benefits starting the week of May 14, 2024¹²

⁸ See section 59(1) of the DESD Act.

⁹ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls these the "grounds of appeal." I call them errors. Section 59(1) of the DESD Act gives the Appeal Division the power to fix General Division errors.

¹⁰ See section 23.1 of the EI Act.

¹¹ See section 19(2) of the EI Act and sections 35 and 36 of the *Employment Insurance Regulations*.

¹² The week of May 7, 2023 was the mandatory one-week waiting period.

- the Claimant stopped caring for her mother and returned to work on May 26, 2023, and she told the Commission
- this meant she was no longer eligible for benefits as of May 29, 2023

The General Division made a legal error when it allocated earnings to weeks the Claimant wasn't eligible for benefits

[22] The Commission argued the General Division had no decision-making power to allocate the Claimant's earnings to weeks in her benefits claim. In law, a tribunal's legal power to decide an issue is called jurisdiction. The Commission says the General Division only had jurisdiction to decide on the Claimant's eligibility for benefits.

[23] I disagree with the Commission.

[24] The General Division gets its power to decide an issue from the Commission's reconsideration decision combined with a claimant's appeal of the reconsideration decision. The Commission allocated the Claimant's earnings in its reconsideration decision.¹³ The Claimant appealed that decision.

[25] So the General Division had the power to review the Commission's allocation of the Claimant's earnings for weeks in her claim when she was eligible for benefits.

[26] But I find the General Division made a legal error when it allocated earnings for weeks the Claimant wasn't eligible for benefits.

[27] At the General Division, the parties agreed the Claimant wasn't eligible for benefits effective May 29, 2023 because she returned to work May 26, 2023. This meant the General Division had no legal authority to allocate and deduct the Claimant's earnings in each week from May 28 through June 25, 2024 (paragraph 17).

[28] Because the General Division allocated earnings for those weeks, its calculation of the Claimant's overpayment was wrong (paragraphs 17 and 18).

¹³ See GD3-60 and GD3-61.

The General Division had no authority to look at CRA collection and decide the Commission owed the Claimant money

[29] The law doesn't give the General Division (or the Appeal Division) the power to make decisions about the collection or recovery of overpayments.¹⁴

[30] This means the General Division made a jurisdictional error when it reviewed the amounts the CRA withheld from the Claimant to pay off her overpayment. And it made a jurisdictional error when it decided the Commission owed the Claimant \$1,196.56.

[31] Because the General Division made errors, the law gives me the power to step in and fix those errors.

Fixing the errors by making the decision

[32] The Commission and the Claimant asked me to make the decision the General Division should have made. I agreed to do this because it is simple, quick, and fair to both parties.

[33] I have to decide whether the Commission overpaid the Claimant. And if it did, the amount it overpaid her.

[34] For the reasons that follow, I find the Commission overpaid the Claimant \$848 in benefits.

– Benefits the Claimant was entitled to

[35] The Commission included a helpful table in its written submission to the Appeal Division.¹⁵ It shows the Claimant's entitlement to benefits, her earnings and the deductions, and accounts for the cheques she returned to Service Canada. Based on the table I asked the parties many questions about the facts and the evidence the

¹⁴ Section 112 of the EI Act says the General Division can only hear an appeal of a Commission reconsideration decision. Section 112.1 of the EI Act says a person can't ask the Commission to reconsider a decision about writing off an amount payable. An overpayment is an amount payable.

¹⁵ See AD5-5.

General Division had. And I listened to their positions on the amount of the Claimant's overpayment.

[36] The Commission says **after its reconsideration** the Claimant was entitled to benefits, as follows:¹⁶

- week of May 7, 2023 (**\$0**, mandatory waiting period when a person can't get benefits)
- week of May 14, 2023 (**\$424**)
- week of May 21, 2023 (**\$253**, after the Commission allocated and deducted the Claimant's earnings)
- week of May 28, 2023 and following weeks (**\$0**, parties agree Claimant wasn't entitled to any benefits)

[37] I reviewed the Commission's calculation and evidence, and I agree with these amounts.

– **I didn't count returned cheques**

[38] I didn't count the cheques the Claimant returned to Service Canada.¹⁷ The parties agree the Claimant returned the paper cheques the Commission **originally sent her** to pay benefits for the weeks of May 14, May 21, May 28, June 18 and June 25, 2023.

– **I didn't count a cheque for benefits the Claimant was entitled to, which she received after the Commission's reconsideration decision**

[39] Because the Claimant was entitled to and received benefits for the weeks of May 14 and May 21, 2023, they don't count as an overpayment. So I didn't include these benefits in my overpayment calculation.

¹⁶ See GD4-6 and AD11-2

¹⁷ See GD7.

[40] By agreement of the parties, after the hearing the Commission sent screen shots of the government payment system.¹⁸ I accept this evidence because I have no reason to doubt it.

[41] The screen shots show the Commission issued a paper cheque to the Claimant for \$653 on May 27, 2024. This is the **after-tax amount** of benefits she was entitled to for the weeks of May 14 and May 21, 2023—based on the Commission's reconsideration decision. The screen shots show the cheque was redeemed on June 10, 2024. So I find the Claimant cashed or deposited the cheque that day.

[42] By agreement, the Claimant sent records from two bank accounts.¹⁹ Unfortunately, these records only show transactions for May 2024. So they aren't relevant to whether the Claimant received the \$653 cheque the Commission sent her.

– **The Claimant didn't return one cheque, and she wasn't entitled to receive benefits for these two weeks**

[43] The Commission sent the Claimant a benefits cheque for the weeks of June 4 and June 11, 2024. It decided she was entitled to \$424 per week (\$848 total). The cheque would have been for less money because the Commission deducts tax.

[44] But the parties now agree the Claimant wasn't eligible for benefits after May 29, 2023 because she went back to work and wasn't providing care.

[45] The Commission says the Claimant didn't return the cheque for these two weeks of benefits.²⁰ The Claimant said she returned two cheques to Service Canada but kept one cheque.²¹ I find the Claimant's evidence supports what the Commission says.

[46] Because the Claimant didn't return the cheque, she has an \$848 overpayment.

¹⁸ See AD18.

¹⁹ See AD17.

²⁰ See GD11-2.

²¹ Listen to the General Division hearing recording starting at 10:00. The Claimant also gave the General Division a photocopy of the two cheques she returned, stamped received by the Service Canada. See GD7.

Conclusion and next steps

[47] The General Division made a legal error and a jurisdictional error. I fixed those errors by making the decision the General Division should have made.

[48] I decided the Commission overpaid the Claimant \$848. This is the correct amount of the overpayment and debt.

[49] The parties agree the CRA has already recovered money from the Claimant. I have no power to consider CRA recovery (collection).

[50] At the Appeal Division hearing the Commission's representative said the Commission will now figure out whether the CRA recovered too much money from the Claimant. He explained this will take time because the Commission has to work with CRA to figure this out.

[51] I strongly encourage the Commission to contact the Claimant on an ongoing basis to update her. And I strongly encourage the Commission to give the Claimant a final account statement that explains CRA's debt collection in her claim.

Glenn Betteridge
Member, Appeal Division