



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Maria McGowan,
Department of Human Services

Administrative Appeal

CSC Docket No. 2017-2031

ISSUED: OCT 23 2017 (SLD)

The Department of Human Services (DHS), on behalf of Maria McGowan, requests a waiver of repayment of a salary overpayment, pursuant to *N.J.S.A. 11A:3-7*, which provides that when an employee has erroneously received a salary overpayment, the Civil Service Commission (Commission) may waive repayment based on a review of the case.

By way of background, McGowan was transferred to DHS from the Office of the Child Advocate in 2010 as an Assistant Division Director (M98) at a salary of \$104,940. On December 28, 2013, McGowan was placed in salary range &98, with no change to her salary. In 2014, McGowan assumed new duties, including the supervision of an individual in a &32 position. Thereafter, a request was made to return her to salary range M98 and increase her salary to \$113,335.20. At that same time, the International Brotherhood of Electrical Workers (IBEW)¹ contract called for retroactive increases to salary range &32. McGowan's Personnel Management Information System (PMIS) record reflects the following:

Effective Date	Title	Range	Salary
6/19/10	Assistant Division Director	M98	\$104,940
12/28/17	Assistant Division Director	&98 ²	\$104,940
1/11/14	Assistant Division Director	&98	\$105,989

¹ IBEW covers employees in certain management titles in State government.

² A notation in PMIS indicates that this change was due to the implementation of the new IBEW contract for manager titles.

7/12/14	Assistant Division Director	&98	\$107,844.21
9/6/14	Assistant Division Director	M98	\$113,335.20

However, the Department of the Treasury's (Treasury) system (Treadhoc) indicates that McGowan's salary went from \$104,940 to \$113,335.20, then to \$114,468.55, and finally to \$116,471.75. As a result, she was overpaid a total \$7,035.62 from 2014 to 2016.³

On appeal, DHS argues that a waiver of the repayment of the salary overpayment should be granted as circumstances that resulted in the overpayment were such that neither it nor McGowan could have reasonably been aware of the error, since PMIS correctly reflected her salary. McGowan argues that a waiver of the overpayment should be granted since it was due to an unspecified administrative error, and the circumstances were such that she could not have reasonably been unaware of the overpayment amounts. In this regard, she notes that although she was aware of the increases to her salary, they coincided to changes in her duties and changes to the IBEW contract.

Additionally, McGowan asserts that her mother passed away on December 30, 2016, and as a result, her disabled brother moved in with her. McGowan asserts that this has caused a significant financial hardship to her as she is helping to support him by paying a "significant portion" of his medical treatment and other living expenses. McGowan maintains that any repayment of the amount owed would create a serious financial hardship for herself and her family. No further details are provided.

CONCLUSION

N.J.A.C. 4A:3-4.21 Salary overpayments: State service, provides as follows:

- (a) The [Commission] may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:
 1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
 2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;

³ No repayment schedule has been set as it was held pending the disposition of this appeal

3. The terms of the repayment schedule would result in economic hardship to the employee.

It is well settled that **all** of the factors outlined in *N.J.A.C. 4A:3-4.21* must be satisfied to successfully obtain a waiver of the repayment obligation. Thus, in *In the Matter of Thomas Micaï v. Commissioner of Department of Personnel, State of New Jersey*, Docket No. A-5053-91T5 (App. Div., July 15, 1993), the Superior Court of New Jersey, Appellate Division, affirmed the Commissioner of Personnel's decision to deny a request for waiver of repayment of salary overpayment, finding that, although the appellant had established that the overpayment was the result of an administrative error, he failed to show that enforcement of the repayment would create economic hardship.

DHS requests a waiver of the salary overpayment since it claims that the circumstances of the overpayment were such that it and McGowan were unaware of the overpayment. Moreover, it notes that the overpayment was the result of an, as yet unidentified, administrative error. Although the record clearly shows that an administrative error resulted in the salary overpayments, McGowan cannot benefit from the error, as she was not entitled to the higher compensation. See e.g., *Cipriano v. Department of Civil Service*, 151 N.J. Super. 86 (App. Div. 1977); *O'Malley v. Department of Energy*, 109 N.J. 309 (1987); *HIP of New Jersey v. New Jersey Department of Banking and Insurance*, 309 N.J. Super. 538 (App. Div. 1998) (No vested or other rights are accorded by an administrative error).

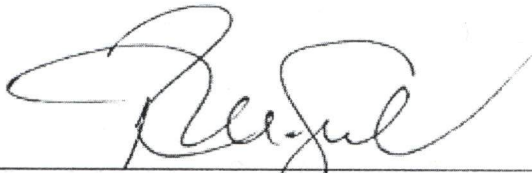
Moreover, although DHS and McGowan assert that any repayment amount would result in economic hardship to her, other than general statements, she has not provided any specific information concerning her economic situation. See *In the Matter of Ruth Samonski* (Commissioner of Personnel, decided July 5, 2005) (Waiver of repayment of a salary overpayment in the amount of \$20,568.40 for improperly receiving SLI benefits denied, where the appellant failed to provide any information to establish that the repayment would cause an economic hardship). Compare, *In the Matter of Peter Spencer* (Commissioner of Personnel, decided December 13, 1996) (Waiver of salary overpayment granted since repayment would cause an economic hardship based on employee's level of compensation). Additionally, the repayment amount in this matter is \$7,035.62. Further, since DHS has failed to set a repayment schedule, it cannot demonstrate that, given McGowan's level of compensation, the amount McGowan would be required to pay per bi-weekly pay period would create a hardship to her. However, the appointing authority and McGowan are encouraged to set a reasonable repayment schedule for her to repay the \$7,035.62.

ORDER

Therefore, it is ordered that the request for a waiver of the repayment by Maria McGowan be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 18TH DAY OF OCTOBER, 2017



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