



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Kimberly Clinton,
Judiciary, Vicinage 15-Gloucester,
Cumberland, and Salem Counties

CSC Docket No. 2021-1137

Request for Waiver of Repayment of
Salary Overpayment

ISSUED: JULY 2, 2021 (SLD)

Kimberly Clinton, a Court Services Supervisor 2 with the Judiciary, Vicinage 15-Gloucester, Cumberland, and Salem Counties, represented by Lynsey A. Stehling, Esq., 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.

As background, the appellant was appointed, in relevant part, to the unclassified title of Court Services Supervisor 2, effective June 1, 2002, at a salary of \$49,682.40. Effective December 29, 2012, the appellant's salary had increased to \$103,921.19. The original Personnel Management Information System (PMIS) records reflect that the appellant was thereafter compensated as follows:

DATES	SALARY
December 28, 2013	\$107,350.59
December 27, 2014 – June 24, 2016	\$109,229.23

In her request to the Commission, the appellant recounts that the appointing authority advised her that she had been overpaid in the amount of \$5,235.18 from December 28, 2013 through June 24, 2016 and that the overpayment would be recouped in the amount of \$100 biweekly beginning November 13, 2020 until the overpayment was repaid. The overpayment occurred due to an administrative error by an employee who changed the appellant's salary from Maximum 1 on the Compensation Schedule to Maximum 2 prior to her being eligible to move to the

Maximum 2 salary. The appellant maintains that she was entirely unaware that her salary had been incorrectly processed. The appellant states that any time she received a salary increase, it was her understanding that it was based upon “contractual” across-the-board or step increases.

The appellant maintains that the salary recoupment, \$100 biweekly, has resulted in a substantial economic hardship. Specifically, she only has one income for her family. Her 21-year-old and 17-year-old sons live in her home, and the appellant solely pays bills associated with her home and any expenses incurred in her and her sons’ personal lives.¹ The appellant specifically notes the following expenses:

	Amount
Monthly mortgage payment	\$1,529.10
Average Monthly Citi credit card payment	\$1,518.34
Monthly grocery expenses	\$420.00
Average monthly car insurance payment (for appellant and one son)	\$159.81
Monthly payment for equitable investments	\$150.00
Expected monthly gas bill for her vehicle upon the return to work	\$150.00
Average cable services bill (over a seven-month period)	\$130.64
Average monthly cell phone bill for herself and one son (over a 12-month period)	\$105.80
Average monthly gas bill (over a 12-month period)	\$91.60
Average monthly electric bill	\$83.48
Average monthly water and sewer bill	\$54.24
Monthly payment for tax preparation services	\$25.00
Monthly payment for miscellaneous items	\$20.00

The appellant also indicates that due to her divorce decree, she is responsible for 50% of her sons’ college tuition, so for her 21-year-old son, she is responsible for \$22,010 and her second son has been accepted for college for next year, and she estimates that her responsibility will be \$15,000.

According to the appellant, she receives approximately \$4,347.44 per month in salary from the Judiciary, after taxes, the salary recoupment amount, and applicable deductions. She calculates that her monthly expenses total as approximately \$4,461.41.² Thus, the appellant asserts that she spends \$113.97 more per month than

¹ The appellant notes that her sons pay for gas for the vehicles.

² Although the appellant calculates the total as \$4,461.41, the total using the numbers she indicated above equals \$4,427.41, leaving her with a deficit of \$79.97.

she makes through her Judiciary employment, including the \$100.68 salary recoupment.³

As support for her waiver request, the appellant points to the Commission's decision in *In the Matter of Ramona Halliday, Office of the Public Defender* (CSC, decided July 13, 2011). In that case, the Commission determined that an administrative error occurred when Halliday was placed in the wrong title after the Office of the Public Defender (OPD) mistakenly offered her the salary of a Legal Secretary 1. The error was compounded over a period of three years, resulting in a significant overpayment. Halliday submitted evidence regarding her financial obligations. The Commission found that although Halliday was able to meet her monthly expenses, her expenses did not take into account her future increases in costs, her pension contributions, or the cost of emergency situations. In addition, the Commission found that Halliday's expenses were reasonable and not extravagant. Thus, the Commission found that the repayment of \$135.00 per pay period for three years would result in an economic hardship to Halliday and granted a waiver of repayment.

In response, the appointing authority, represented by Susanna J. Morris, Esq., indicates that the 2012-2016 collective negotiations agreement between the Probation Association of New Jersey, Professional Supervisors Union and the Judiciary (CNA)⁴ required that an employee had to complete 24 months in her job title at the Maximum 1 salary before being moved to the Maximum 2 salary. The appellant was advanced to Maximum 1 on December 29, 2012, and pursuant to the CNA, she was required to complete 24 months – until December 29, 2014 – in her job title at the Maximum 1 salary before being moved to Maximum 2. However, the appellant was erroneously advanced to Maximum 2 on December 28, 2013, 12 months early, and the salary overpayment continued through June 24, 2016. Once the overpayment was discovered, PMIS was corrected to reflect the following compensation for the appellant:

DATES	SALARY
December 28, 2013	\$104,960.40
December 27, 2014 – June 24, 2016	\$107,350.59

The appointing authority notes that the Judiciary's Salary Overpayment Recovery Policy (Overpayment Policy) makes clear that:

Employees are responsible for knowing the amount of salary and vacation time to which they are entitled and should discuss any

³ Later in the appellant's submission she claims that due to the additional "\$101.69 biweekly deduction" to recoup the overpayment, she spends "approximately \$377.37 per month" more than she makes through her Judiciary employment.

⁴ There is no dispute that the appellant was covered by the CNA.

questions they have in that regard with the local Human Resources office.

In the appointing authority's view, this obligation combined with the plain language of the CNA⁵ – an employee must be in her job title at Maximum 1 for 24 months before being moved to Maximum 2 – should have quickly alerted the appellant to the overpayment and caused her to contact the Vicinage Human Resources Office to address the issue.

CONCLUSION

N.J.A.C. 4A:3-4.21 provides, in pertinent part:

- (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. 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 Micai 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.

The appellant requests a waiver of the salary overpayment since she claims that the circumstances of the overpayment were such that she was unaware of the overpayment and repayment would result in economic hardship to her. Moreover,

⁵ The Overpayment Policy states that it applies to all Judiciary employees and that "employees are entitled to no more or no less compensation than is required under the terms of collective negotiations agreements and Judiciary salary setting procedures."

she and the appointing authority note that the overpayment was the result of an administrative error. Although the record clearly shows that an administrative error resulted in the salary overpayment, the appellant cannot benefit from the error, as she was not entitled to the higher compensation, unless she can satisfy the other conditions presented above. *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).

In that regard, even assuming, *arguendo*, that repayment poses an economic hardship to the appellant,⁶ the Commission is not persuaded that it was reasonable for the appellant to be unaware of the error. The Overpayment Policy explicitly charged the appellant with “knowing the amount of salary . . . to which [she is] entitled” and specifically noted that “employees are entitled to no more or no less compensation than is required under the terms of *collective negotiations agreements* and Judiciary salary setting procedures” (emphasis added). The appellant’s own CNA, in turn, defined when the appellant was entitled to receive the Maximum 2 salary. In short, the CNA was an important resource that the appellant could and should have consulted and that would have revealed the error. Evidently, the appellant was aware that the CNA governed any salary increases she received as she acknowledges that any time she received a salary increase, it was her understanding that it was based upon “*contractual*” (emphasis added) across-the-board or step increases. Thus, since the appellant cannot satisfy all three factors in *N.J.A.C. 4A:3-4.21*, she is not eligible for a waiver of the repayment obligation. *See, In the Matter of Sharon Edwards* (CSC. Decided June 2, 2021) (The Commission denied the request for a salary overpayment waiver for a Court Services Supervisor 2, who received the Maximum 2 salary one year earlier than she was entitled to, finding that she had not established that it was “reasonable” for her to be unaware of the error). Moreover, the Commission’s decision in *Halliday, supra*, does not compel a different result. No similar representations were made in this case. The parties may, however, create a more lenient repayment schedule if necessary.

ORDER

Therefore, it is ordered that this request be denied.

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

⁶ While the Commission is not making a specific finding in this regard, some of the appellant’s listed expenses could likely be lessened, such as her average monthly credit card payment of \$1,518.34. The Commission further notes that the appellant’s current salary is \$111,687.55. Accordingly, it is dubious that a \$100 per pay period repayment schedule would be a significant burden.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 30TH DAY OF JUNE, 2021

Deirdre' L. Webster Cobb

Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Allison Chris Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. Kimberly Clinton
Lynsey A. Stehling, Esq.
Carmelita Vazquez
Susanna J. Morris, Esq.
Division of Agency Services
Records Center