

Citation: *A. O. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 17

Appeal #: GE-14-3341

BETWEEN:

**A. O.**

Appellant  
Claimant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance**

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SOCIAL SECURITY TRIBUNAL MEMBER: Richard Sterne

HEARING DATE: January 8, 2015

TYPE OF HEARING: Teleconference

DECISION: Appeal is dismissed.

## **PERSONS IN ATTENDANCE**

The Claimant, A. O., attended the hearing by telephone.

## **DECISION**

[1] The Tribunal finds that the Claimant is not entitled to receive employment insurance compassionate care benefits (EI compassionate care benefits) because she did not provide a signed certificate stating that her mother had a serious medical condition with a significant risk of death within 26 weeks, pursuant to section 23.1 of the *Employment Insurance Act* (Act).

[2] The appeal is dismissed.

## **INTRODUCTION**

[3] The Claimant was employed until March 14, 2013.

[4] On March 25, 2013, the Claimant applied for EI compassionate care benefits.

[5] On March 26, 2013, the Claimant travelled to Hungary to care for her mother who had been diagnosed with liver cancer.

[6] On May 9, 2013, the Canada Employment Insurance Commission (Commission) advised the Claimant that they were unable to pay her EI compassionate care benefits from March 17, 2013 because she did not submit a medical certificate confirming that her family member was gravely ill, at risk of dying, and required care or support.

[7] On September 9, 2013, the Claimant's mother passed away.

[8] On March 10, 2014, the Claimant filed a request for reconsideration of the Commission's May 9, 2013 decision, which was denied on August 8, 2014.

[9] On September 16, 2014, the Claimant filed a request for reconsideration of the Commission's August 8, 2014 decision, which was subsequently denied.

## **FORM OF HEARING**

[10] The hearing was a teleconference hearing for the reasons provided in the Notice of Hearing dated November 14, 2014.

## **ISSUE**

[11] Was the Claimant entitled to receive EI compassionate care benefits?

## **THE LAW**

### **[12] Section 23.1 of the Act**

- (1) In this section, “family member”, in relation to an individual, means
  - (a) a spouse or common-law partner of the individual;
  - (b) a child of the individual or a child of the individual's spouse or common-law partner;
  - (c) a parent of the individual or a spouse or common-law partner of the parent; and
  - (d) any other person who is a member of a class of persons prescribed for the purposes of this definition.
- (2) Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant if a medical doctor has issued a certificate stating that
  - (a) a family member of the claimant has a serious medical condition with a significant risk of death within 26 weeks
    - (i) from the day the certificate is issued;

- (ii) in the case of a claim that is made before the day the certificate is issued, from the day from which the medical doctor certifies the family member's medical condition; or
  - (iii) in the case of a claim that is regarded to have been made on an earlier day under subsection 10(4) or (5), from that earlier day; and
- (b) the family member requires the care or support of one or more other family members.

**[13] Section 41.2 of the Regulation**

For the purpose of subsection 23.1(3) of the Act, the medical certificate under subsection 23.1(2) of the Act may be issued by the following persons:

- (a) if the family member in need of care or support is in a geographic location in Canada where treatment by a medical doctor is not readily available, a medical practitioner designated by a medical doctor to provide treatment to the family member;
- (b) if the family member in need of care or support is outside Canada, a medical doctor who is recognized by the appropriate government authority and has qualifications that are substantially similar to those of a medical doctor in Canada or, if the family member in need of care or support is in a geographic location outside Canada where treatment by a medical doctor is not readily available, a medical practitioner designated by that medical doctor to provide treatment to the family member.

**EVIDENCE**

[14] The Claimant was employed from August 3, 1998 to March 14, 2013.

[15] On March 25, 2013, the Claimant applied for EI compassionate care benefits.

[16] On March 26, 2013, the Claimant travelled to Hungary to care for her mother who had been diagnosed with liver cancer.

[17] On May 9, 2013, the Commission advised the Claimant that they were unable to pay her EI compassionate care benefits from March 17, 2013 because she did not submit a medical certificate confirming that her family member was gravely ill, at risk of dying, and required care or support.

[18] On September 9, 2013, the Claimant's mother passed away.

[19] On March 10, 2014, the Claimant filed a request for reconsideration of the Commission's May 9, 2013 decision. In her request, the Claimant stated that her mother had been diagnosed with liver cancer in February 2013. She said that she had travelled to Hungary to be with her mother on March 26, 2013 and returned to Canada on September 2, 2013. The Claimant said that her mother's doctor had refused to sign the medical certificate because her mother had refused chemo therapy treatment. The Claimant submitted a number of medical documents including her mother's death certificate.

[20] On May 6, 2014, the Claimant told the Commission that she had now submitted several medical documents, including a death certificate indicating that the family member passed away on September 9th, 2013. She stated that she delayed in filing the medical documents because it was not easy to obtain such documents. She stated that the doctors in Hungary had refused to sign or issue documents about her mother's situation which took place in the past. The Claimant stated that she was finally able to obtain the documents in 2014.

[21] On May 6, 2014, the Commission advised the Claimant that they had decided in her favour and the May 9, 2013 decision had been overturned. They stated that a decision, with respect to her entitlement to EI compassionate care benefits, would be rendered upon receipt of the English translation of the medical documents provided.

[22] On August 8, 2014, the Commission advised the Claimant that they were unable to pay her EI compassionate care benefits from March 17, 2013, because the medical certificate submitted did not indicate that the family member was at risk of dying within the next 26 weeks. They said that they were unable to pay her EI compassionate care benefits from March 17, 2013,

because the medical certificate submitted did not indicate that the family member required care or support.

[23] On September 16, 2014, the Claimant filed a request for reconsideration of the Commission's August 8, 2014 decision.

[24] During the hearing, the Claimant stated that she had received a telephone call from the Commission denying her request a few days after filing her request for reconsideration. (She could not remember the date.) She said that she has not received the denial in writing.

## **SUBMISSIONS**

[25] The Claimant submitted that:

- a) her mother was diagnosed with liver cancer in February 2013.
- b) she travelled to Hungary on March 26, 2013, to care for her mother.
- c) her mother did not want to take chemo therapy.
- d) the doctors said the chemo therapy would only prolong her life.
- e) her mother died on September 9, 2013.
- f) none of her mother's doctors were willing to sign the certificate stating that her mother would probably die within 26 weeks.
- g) the doctors in Hungary were afraid to sign any documents.

[26] The Respondent submitted that:

- a) EI compassionate care benefits could not be paid from 17 March 2014 because the medical certificate did not indicate that the family member was at risk of dying within the next 26 weeks.

## ANALYSIS

[27] Subsection 23.1 of the Act, states that compassionate care benefits are payable to a claimant for a maximum of six weeks so that he or she can take care of a family member who has a serious medical condition with a significant risk of death within six months, but only if the risk is indicated in a medical certificate.

[28] During the hearing, the Claimant stated that she had gone to Hungary in March 2013, to care for her mother who had been diagnosed with liver cancer. The Claimant provided several signed medical reports confirming that her mother had liver cancer. The Claimant provided a death certificate confirming her mother's death in September 2013.

[29] The Tribunal finds that the Claimant provided evidence that her mother had liver cancer, required care, and died in September 2013.

[30] The Claimant stated that initially the doctors had refused to sign the medical certificate because her mother had refused to take the prescribed chemo therapy. The Claimant said that after her mother's death, the doctor's refused to sign the medical certificate stating that "her mother had a serious medical condition with a significant risk of death within 26 weeks", because it was after the fact.

[31] The Tribunal has great sympathy for the Claimant on the death of her mother and the predicament she finds herself in. The Tribunal finds that the Claimant did not submit a signed doctor's certificate stating that a family member of the claimant has a serious medical condition **with a significant risk of death within 26 weeks**, pursuant to section 23.1 of the Act.

[32] The jurisprudence is well established. As stated by in **CUBs 74029 and 67738**: " The Act states that in order for a claimant to be entitled to compassionate care benefits, the person cared for must present a significant risk of death within the period specified. The text contains no ambiguity, and leaves no room for interpretation. Unfortunately for the claimant, she could not meet the conditions for entitlement to compassionate care benefits. Parliament could have set broader and more generous conditions for entitlement to compassionate care benefits, but that is not the case."

[33] The Tribunal finds that the Claimant is not entitled to compassionate care benefits because she did not provide a signed certificate stating that her mother had a serious medical condition with a significant risk of death within 26 weeks. The Tribunal has no option, but to follow the legislation.

## **CONCLUSION**

[34] The appeal is dismissed.

Richard Sterne  
Member, General Division

DATED: January 28, 2015