



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. M. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 81

Tribunal File Number: GE-16-156

BETWEEN:

**S. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Eleni Palantzas

HEARD ON: June 8, 2016

DATE OF DECISION: June 20, 2016

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Claimant, Ms. S. M., attended the hearing by teleconference.

### **INTRODUCTION**

[1] The Claimant applied for parental benefits on October 31, 2015 after having to take an approved leave from her employment to temporarily care for her newborn granddaughter instead of her being placed in foster care.

[2] On November 19, 2015 the Canada Employment Insurance Commission (Commission) advised the Claimant that she does not qualify to receive parental benefits pursuant to subsection 23(1) of the EI Act because she has not proven that her granddaughter was placed with her for the purposes of adoption. On December 1, 2015, the Claimant requested that the Commission reconsider its decision however; on December 15, 2015, the Commission maintained its decision.

[3] On January 6, 2016, the Claimant appealed to the Social Security Tribunal of Canada (Tribunal) General Division.

[4] The hearing was held by teleconference given since the Claimant was going to be the only party in attendance and given the information in the file, including the need for additional information.

### **ISSUE**

[5] The Member must decide whether the Claimant is entitled to receive parental benefits pursuant to subsection 23(1) of the *Employment Insurance Act* (EI Act).

### **THE LAW**

[6] Subsection 23(1) stipulates that notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant to care for (a) one or more new-born

children of the claimant; or (b) one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.

## **EVIDENCE**

[7] On October 31, 2015, the Claimant applied for employment insurance parental benefits after taking an approved leave of absence from her employer from October 18, 2015 to care for her newborn granddaughter. The Claimant stated to the Commission that her granddaughter was not placed with her for the purpose of adoption (GD3-3 to GD3-16).

[8] On November 19, 2015, the Commission advised the Claimant that she was not eligible for parental benefits because she has not proven that her granddaughter was placed with her for the purposes of adoption as would be required under subsection 23(1) of the EI Act (GD3-17).

[9] On December 1, 2015, the Claimant requested that the Commission reconsider its decision noting that she was advised to apply for such benefits by the Ministry of Children and Family Development and provide a letter as such from the social worker. She explained that she had to take temporary custody of her granddaughter given her daughter's health. If she did not, her granddaughter would be placed with a foster family. She took a leave from her employment and had no financial assistance. She was able to return to work on December 4, 2015 (GD3-18 to GD3-23).

[10] On December 15, 2015, the Commission maintained its decision as the Claimant did not meet the requirements of section 23 of the EI Act (GD3-24).

[11] At the hearing, the Claimant confirmed that she had to take temporary custody of her granddaughter; she confirmed that she was not planning on adopting her. She testified that the Ministry was concerned about the child's safety because of something her daughter said at the hospital so they asked if her granddaughter can come home with her but not her daughter (she lived with her). She had to take a leave of absence to care of both them and was told by the Ministry that she would be entitled to employment insurance parental benefits.

[12] Although her employer was very understanding, she had to take an unpaid leave from work from October 19, 2015 to December 4, 2015 and received no other financial assistance from anyone.

## **SUBMISSIONS**

[13] The Claimant submitted that she was advised by the Ministry of Children and Family Development to apply for parental benefits since she had to take a leave of absence from work in order to provide care for her granddaughter while her daughter recovered. Having to do so, has caused her a lot of financial hardship.

[14] The Commission submitted that parental benefits are only payable to a major attachment claimant to care for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption. In this case, the Claimant confirmed that her granddaughter was placed with her temporarily and not for the purposes of adoption therefore, parental benefits are not payable.

## **ANALYSIS**

[15] Subsection 23(1) of the EI Act is clear that, subject to section 18, benefits under this section are payable to a major attachment claimant to care for a new-born child/children of the claimant or, a child/children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.

[16] In this case, the Claimant was clear and consistent, that her granddaughter was placed with her temporarily until her daughter could come home and care for her (she lives with the Claimant). She testified that her granddaughter was not placed with her for the purpose of adoption.

[17] The Member understands the unexpected predicament that the Claimant was placed in when her granddaughter was born and her daughter was unable to care for her. The Member also understands that she had to take an unpaid leave from her employment and that she was told by the Ministry of Children and Family Development to apply for employment insurance parental benefits. The Member notes however, that the legislation, as it is presently written,

does not allow for parental benefits to be payable unless the new-born child/children are born to the claimant or are placed with the claimant for the purpose of adoption. As neither is the case herein, the Member finds that the Claimant is not entitled to employment insurance parental benefits effective October 19, 2015 pursuant to subsection 23(1) of the EI Act.

[18] The Member is supported by a Federal Court of Appeal decision very similar to the one at hand, where a grandparent applied for parental benefits while caring for her grandchild (Hunter, 2013 FCA 12). It stands for the principle that in order for a claimant to receive parental benefits under subsection 23(1), it must be proven that the child was placed with the claimant for the purpose of adoption. In the absence of that evidence, parental benefits under this section are not payable to the claimant.

## **CONCLUSION**

[19] The appeal is dismissed.

Eleni Palantzas  
Member, General Division - Employment Insurance Section