



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. B. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 81

Tribunal File Number: GE-16-4325

BETWEEN:

**M. B.**

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: Angela Ryan Bourgeois

HEARD ON: May 23, 2017

DATE OF DECISION: June 8, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] Pregnancy benefits under the *Employment Insurance Act* (EI Act) can only be paid during a defined period of time as set out in subsection 22(2) of the EI Act.

[2] Pregnancy benefits are commonly called maternity benefits, and the parties use this reference in their evidence and submissions. However, to maintain consistency with the EI Act, the Tribunal will use pregnancy benefits.

[3] The Appellant applied for pregnancy benefits in September 2016 and a benefit period was established as of September 4, 2016.

[4] The Canada Employment Insurance Commission (Commission) determined that the Appellant's benefit period did not fall within the defined period when pregnancy benefits could be paid, and disentitled her from receiving pregnancy benefits.

[5] The Appellant requested a reconsideration of the Commission's decision. The Commission maintained its decision and the Appellant is now appealing the reconsideration decision to the Tribunal.

[6] A hearing was scheduled to be held by teleconference after considering the following:

- a) the complexity of the issue under appeal;
- b) the fact that credibility was not anticipated to be a prevailing issue;
- c) the fact that the Appellant was anticipated to be the only party in attendance; and
- d) to respect the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as permitted by the circumstances and the considerations of fairness and natural justice.

[7] No one attended the hearing.

[8] Section 12 of the *Social Security Tribunal Regulations* allows the Tribunal to proceed in a party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[9] Upon reviewing the file the Tribunal was satisfied that:

- a) the Respondent received notice of the hearing by electronic means; and
- b) the Appellant and her Representative, Joseph Goulet, received notice of the hearing by way of two separate letters sent to each of them via Canada Post ExpressPost because the letters were signed for as having been received.

[10] Therefore, the Tribunal proceeded with the hearing despite the absences of the parties.

## **ISSUE**

[11] The Tribunal must determine whether the Appellant is entitled to pregnancy benefits under the EI Act, which requires a determination of:

- a) the weeks in which pregnancy benefits can be paid; and
- b) the Appellant's benefit period.

## **EVIDENCE**

[12] The Appellant gave birth to a baby boy, E. B., on December 4, 2015.

[13] The baby was premature; the expected date of birth was February 10, 2016.

[14] Following his birth, E. B. spent time in intensive care. At GD3-24 the Appellant indicated that E. B. was in intensive care for ten weeks. At GD2-5 the Appellant indicated that E. B. spent eight weeks in intensive care. The Respondent's notes at GD3-20 indicate that the Appellant stated that E. B. was hospitalized until January 28, 2016.

[15] At the time of the E. B.'s birth, the Appellant was working but had not accumulated 600 insurable hours.

[16] The Appellant indicated that she was on course to have the required 600 hours of insurable employment and would have had the hours but for her baby being born so prematurely.

[17] The Appellant indicated that she did not work while completing her master's degree between 2013 and 2015. She returned to the workforce in July 2015, after her graduation (GD3-24, GD3-9 and GD3-19).

[18] The Appellant returned to work in March 2016 and worked until September 2, 2016. She applied for pregnancy and parental benefits on September 12, 2016. She indicated that she would be returning to work in February 2017 (GD3-8), when her son reached his one-year corrected birthday (GD2-5).

[19] The Records of Employment on file indicate that the Appellant had 343 hours of insurable employment between July 10, 2015 and December 15, 2015. Between March 14, 2016 and September 2, 2016 she had 513 hours of insurable employment.

## **SUBMISSIONS**

[20] The Appellant submitted that she should qualify for pregnancy benefits because she returned to work as soon as possible after E. B.'s birth so that she could earn the requisite number of hours. The reason she did not have the hours before his birth is because of his premature birth, which was outside of her control.

[21] The Appellant submitted that even with the critically ill child benefits, their family will have received 35 weeks of total benefits, while a more typical family would receive 52 weeks. She indicated that they are feeling somewhat punished by circumstances that exclusively relate to E. B.'s premature birth, which was a harrowing experience for their family.

[22] The Appellant submitted that her being denied pregnancy benefits is not in the spirit of how the critically ill child and pregnancy benefit programs are supposed to work. She submitted that she does not think that her request for benefits is unreasonable and is an ideal scenario for reconsideration.

[23] The Respondent submitted that the Appellant's maternity range was from February 7, 2016 to June 11, 2016 and that because this range fell outside of the Appellant's benefit period

which started on September 4, 2016, the claimant cannot be issued pregnancy benefits as requested.

[24] The evidence does not indicate that the Appellant requested an antedate of her initial claim. However, the Respondent has indicated that it considered establishing an earlier benefit period, compatible within the parameters of what it considered to be the maternity range, but the Appellant had not accumulated sufficient hours.

## **ANALYSIS**

[25] The relevant legislative provisions are reproduced in the Annex to this decision.

[26] Pursuant to sections 6 and 22 of the EI Act, a claimant with 600 or more hours of insurable employment in their qualifying period who proves her pregnancy is entitled to pregnancy benefits for each week of unemployment during a certain period of time, which is referred to herein as the “window”.

[27] Subsection 22(1) of the EI Act determines the window. It provides that the window begins the earlier of:

- a) eight weeks before the week in which the claimant’s confinement is expected, and
- b) the week in which her confinement occurs.

[28] The window ends 17 weeks after the later of:

- a) the week in which her confinement is expected, and
- b) the week in which her confinement occurs.

[29] The window is extended by the number of weeks the baby is hospitalized pursuant to subsection 22(6) of the EI Act.

[30] Subsection 2(1) of the EI Act defines “week” as a period of seven consecutive days beginning on and including Sunday.

[31] Pregnancy benefits are only payable during this window. If a claimant's benefit period does not fall within this window, she will not be entitled to pregnancy benefits.

[32] Therefore, the Tribunal must determine the Appellant's window and her benefit period.

### **Benefit Period**

[33] The Appellant applied for benefits on September 12, 2016. The Commission states that a benefit period was established as of September 4, 2016. The Appellant has not disputed this date. Therefore, the Tribunal accepts that the Appellant's benefit period started on September 4, 2016.

[34] The Tribunal notes that the Commission considered a possible antedate and stated that the Appellant did not have enough hours to qualify earlier. The Commission did not indicate what dates it considered. However, given the Appellant's evidence, the Tribunal accepts that the Appellant did not have 600 hours of insurable employment at the time of E. B.'s birth in December 2015.

[35] Therefore, where the Appellant did not request an antedate, the Tribunal has not considered whether the Appellant qualifies for an antedate.

[36] The Tribunal finds that the Appellant's benefit period started on September 4, 2016.

### **The Window**

[37] In the Appellant's case, her window begins the earlier of:

- a) eight weeks before February 10, 2016, which date is December 20, 2015; and
- b) the week her confinement occurred, which date is December 4, 2015.

[38] The Sunday of the week of December 4, 2015 was Sunday, November 29, 2015.

[39] Therefore, her window begins on November 29, 2015.

[40] Without considering any extensions because of E. B.'s hospitalization, the Appellant's window ends 17 weeks after the later of:

- a) the week in which her confinement was expected (the week of Sunday, February 7, 2016); and
- b) the week in which her confinement occurred, (the week of Sunday, November 29, 2015).

[41] Seventeen weeks from Sunday, February 7, 2016 is Saturday, June 4, 2016.

[42] The Appellant's window, before consider the hospitalization extension, is from Sunday, November 29, 2015 to Saturday, June 4, 2016.

[43] There is conflicting evidence as to when E. B. was discharged from the hospital. The Tribunal was not able to clarify this discrepancy because the Appellant did not attend the hearing. Therefore, based on the evidence before it, the Tribunal finds that E. B. was hospitalized until January 28, 2016, because this evidence is more specific than the conflicting written statements by the Appellant that he was in the hospital for eight and ten weeks.

[44] The Tribunal finds that E. B. was hospitalized for nine weeks.

[45] Therefore, the Appellant's window is extended by nine weeks, to Saturday, August 6, 2016. Her window is from November 29, 2015 to August 6, 2016.

## **CONCLUSION**

[46] Because the Appellant's benefit period started in September 2016 and the window in which she was entitled to receive pregnancy benefits ended on August 6, 2016, the Tribunal finds that the Appellant is not entitled to pregnancy benefits.

[47] The Tribunal understands the Appellant's submissions that now that she has 600 hours of insurable employment she should be entitled to pregnancy benefits. She feels she is being penalized because E. B. was premature: her family cannot receive the same number of benefit weeks as some other families. However, pregnancy benefits are designed to be paid to the mother during a window of time around the baby's birth. In the Appellant's case, it is unfortunate that she did not qualify for benefits at the time of E. B.'s birth, but the Tribunal cannot change the law. The Appellant's benefit period does not fall within the window in which pregnancy benefits can be paid and therefore she simply does not qualify for pregnancy

benefits. The Tribunal must interpret and apply the law as it is written. It cannot change the law to allow the Appellant to receive benefits for which she does not qualify.

[48] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division - Employment Insurance Section



## ANNEX

### THE LAW

#### *Employment Insurance Act*

**22 (1)** Notwithstanding section 18, but subject to this section, benefits are payable to a major attachment claimant who proves her pregnancy.

**(2)** Subject to section 12, benefits are payable to a major attachment claimant under this section for each week of unemployment in the period

**(a)** that begins the earlier of

**(i)** eight weeks before the week in which her confinement is expected, and

**(ii)** the week in which her confinement occurs; and

**(b)** that ends 17 weeks after the later of

**(i)** the week in which her confinement is expected, and

**(ii)** the week in which her confinement occurs.

**(3)** When benefits are payable to a claimant for unemployment caused by pregnancy and any allowances, money or other benefits are payable to the claimant for that pregnancy under a provincial law, the benefits payable to the claimant under this Act shall be reduced or eliminated as prescribed.

**(4)** For the purposes of section 13, the provisions of section 18 do not apply to the two week period that immediately precedes the period described in subsection (2).

**(5)** If benefits are payable under this section to a major attachment claimant who receives earnings for a period that falls in a week in the period described in subsection (2), the provisions of subsection 19(2) do not apply and, subject to subsection 19(3), all those earnings shall be deducted from the benefits paid for that week.

**(6)** If a child who is born of the claimant's pregnancy is hospitalized, the period during which benefits are payable under subsection (2) shall be extended by the number of weeks during which the child is hospitalized.

**(7)** The extended period shall end no later than 52 weeks after the week of confinement.