



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. M. v. Canada Employment Insurance Commission*, 2018 SST 326

Tribunal File Number: GE-17-2934

BETWEEN:

M. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: March 16, 2018

DATE OF DECISION: April 3, 2018

REASONS AND DECISION

DECISION

[1] The Appeal is dismissed. The Appellant cannot be paid two additional weeks of benefits because her benefit period has expired and cannot be extended further.

OVERVIEW

[2] The Appellant worked for her employer for thirty-nine years and was laid off due to a shortage of work. She applied for employment insurance and qualified for 36 weeks of regular benefits which commenced upon completion of the allocation of her separation money. The Appellant is a long-tenured worker and is entitled to receive an additional 25 weeks of benefits based on amendments that were made to the *Employment Insurance Act* (Act) in July 2016, under the *Budget Implementation Act, 2016, No. 1* (Bill C-15).

[3] During her benefit period, the Appellant contacted the Respondent and inquired about how a two-week vacation would affect the number of weeks she was entitled to be paid. The Appellant interpreted the Respondent's response to mean that her total weeks of benefit entitlement would not be reduced and the two weeks she was not paid while on vacation would be paid upon her return.

ISSUE

[4] Can the Appellant's benefit period be extended further?

ANALYSIS

[5] Benefits may be paid to the Appellant for each week of unemployment that falls in a benefit period, as provided by subsection 12(1) of the *Employment Insurance Act* (Act).

[6] The length of a benefit period is 52 weeks unless the Appellant qualifies for an extension under section 10 of the Act. An extension must not result in a benefit period of more than 104 weeks, as stipulated in subsection 10(14) of the Act.

[7] The Appellant's initial benefit period was the 52-week period from July 19, 2015, to July 16, 2016. Her benefit period was extended 41 weeks due to the allocation of her separation money plus an additional 11 weeks due to Bill C-15. This meant the Appellant's benefit period was a total of 104 weeks from July 19, 2015, to July 15, 2017.

[8] The Respondent determined that although the Appellant qualified for a total of 61 weeks of benefits she could not be paid the full benefit entitlement because her benefit period ended on July 15, 2017. The Respondent submits that their calculations are correct and they have not erred in its application of the legislation.

[9] The Appellant argues that she acted in accordance with the information she was provided by the Respondent. She states that she would not have taken a two-week vacation had she known it would reduce her overall entitlement to benefits. The Appellant testified that she now understands that benefits cannot be paid after the end of a benefit period and that a benefit period cannot exceed 104 weeks. However, she would like consideration for payment of the two weeks of benefits she lost due to the incorrect information provided by the Respondent.

[10] Incorrect information which may be given by the Respondent on the interpretation of the Act and representations which they may make to the Appellant regarding her particular situation cannot be upheld if they are contrary to the Act. Those representations cannot be upheld even if the information turns out to be against the Appellant's interests (*Granger* 1986 CanLII 3962 FCA).

[11] The Tribunal empathizes with the Appellant's circumstances. However, the Tribunal must apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

CONCLUSION

[12] The Appellant cannot be paid an additional two weeks of benefits because her benefit period expired and it cannot be extended further. The Appeal is dismissed.

Linda Bell
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	In person
APPEARANCES:	M. M., Appellant

ANNEX

THE LAW

Employment Insurance Act

10 (1) A benefit period begins on the later of

- (a) the Sunday of the week in which the interruption of earnings occurs, and
- (b) the Sunday of the week in which the initial claim for benefits is made.

(2) Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

(3) Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

(5) A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

(5.1) A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;
- (b) the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or
- (c) the claim is made in any other circumstances set out in the regulations.

(5.2) A claim for benefits referred to in section 23.2 with respect to a critically ill child or children who are critically ill as a result of the same event must not be regarded as having been made on an earlier day under subsection (4) or (5) if

- (a) at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

(b) the beginning of the period referred to in subsection 23.2(3) or (4) has already been determined with respect to that child or those children and the claim would have the effect of moving the beginning of that period to an earlier date; or

(c) the claim is made in any other circumstances set out in the regulations.

(6) Once a benefit period has been established for a claimant, the Commission may

(a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

(b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

(7) A cancelled benefit period or portion of a benefit period is deemed never to have begun.

(8) A benefit period ends when any of the following first occurs:

(a) no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

(b) the benefit period would otherwise end under this section; or

(c) [Repealed, 2002, c. 9, s. 12]

(d) the claimant

(i) requests that their benefit period end,

(ii) makes a new initial claim for benefits under this Part or Part VII.1, and

(iii) qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

(9) Whether or not the benefit period has ended, a request under paragraph 8(d) shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the

delay throughout the period beginning on the earlier day and ending on the day when the request was made.

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

(a) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

(b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;

(c) in receipt of workers' compensation payments for an illness or injury; or

(d) in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

(11) A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

(12) If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

(12.1) If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

(13) If, during a claimant's benefit period,

(a) regular benefits were not paid to the claimant,

(b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and

(c) the maximum total number of weeks established for those reasons is greater than 50,

the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

(13.1) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.2) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.3) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.4) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

(13.5) A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

(13.6) A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

(13.7) A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

(14) Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

(14.1) The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

(15) Unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).

12 (1) If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

(2) Subject to subsections (2.1) to (2.6), the maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of

the claimant in their qualifying period.

(2.1) Subject to subsection (2.7), the number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by five weeks if the following conditions are met:

- (a)** the claimant is not a long-tenured worker;
- (b)** the claimant's benefit period began during the period beginning on January 4, 2015 and ending on July 8, 2017;
- (c)** the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and
- (d)** benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.2) If subsection (2.1) applies in respect of a claimant whose benefit period is deemed under subsection 10(13.2) not to have ended,

- (a)** the claimant may, for weeks beginning on or after July 3, 2016, be paid benefits because of a reason mentioned in subsection (2) for no more than the five additional weeks referred to in subsection (2.1); and
- (b)** the claimant may not be paid those additional five weeks of benefits for any week that began before July 3, 2016.

(2.3) Subject to subsection (2.7), the number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 25 weeks if the following conditions are met:

- (a)** the claimant is a long-tenured worker;
- (b)** the claimant's benefit period began during the period beginning on January 4, 2015 and ending on October 29, 2016;
- (c)** the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and
- (d)** benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.4) If subsection (2.3) applies in respect of a claimant whose benefit period is deemed under subsection 10(13.4) not to have ended,

- (a)** the claimant may, for weeks beginning on or after July 3, 2016, be paid benefits

because of a reason mentioned in subsection (2) for no more than the 25 additional weeks referred to in subsection (2.3); and

(b) the claimant may not be paid those additional 25 weeks of benefits for any week that began before July 3, 2016.

(2.5) The number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 17 weeks if the following conditions are met:

(a) the claimant is a long-tenured worker;

(b) the claimant's benefit period began during the period beginning on October 30, 2016 and ending on February 25, 2017;

(c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and

(d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.6) The number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 10 weeks if the following conditions are met:

(a) the claimant is a long-tenured worker;

(b) the claimant's benefit period began during the period beginning on February 26, 2017 and ending on July 8, 2017;

(c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and

(d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.7) If more than one benefit period in respect of a claimant began before July 3, 2016, subsection (2.1) or (2.3), as the case may be, applies to increase the number of weeks of benefits only in the benefit period that began on the day that is closest to that day.

(2.8) The regions, for the purposes of subsections (2.1) to (2.6), are the following regions described in Schedule I to the *Employment Insurance Regulations*:

(a) the region of Northern Ontario described in subsection 2(3) of that Schedule;

(b) the region of Sudbury described in subsection 2(14) of that Schedule;

(c) the region of Northern Manitoba described in subsection 6(3) of that Schedule;

(c.1) the region of Southern Interior British Columbia described in subsection 7(1) of that Schedule;

(d) the region of Northern British Columbia described in subsection 7(5) of that Schedule;

(e) the region of Saskatoon described in subsection 9(2) of that Schedule;

(e.1) the region of Southern Saskatchewan described in subsection 9(3) of that Schedule;

(f) the region of Northern Saskatchewan described in subsection 9(4) of that Schedule;

(g) the region of Calgary described in subsection 10(1) of that Schedule;

(g.1) the region of Edmonton described in subsection 10(2) of that Schedule;

(h) the region of Southern Alberta described in subsection 10(3) of that Schedule;

(i) the region of Northern Alberta described in subsection 10(4) of that Schedule;

(j) the region of Newfoundland/Labrador described in subsection 11(2) of that Schedule;

(k) the region of Whitehorse described in subsection 12(1) of that Schedule; and

(l) the region of Nunavut described in subsection 14(2) of that Schedule.

(3) The maximum number of weeks for which benefits may be paid in a benefit period

(a) because of pregnancy is 15;

(b) because the claimant is caring for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption is 35;

(c) because of a prescribed illness, injury or quarantine is 15;

(d) because the claimant is providing care or support to one or more family members described in subsection 23.1(2) is 26; and

(e) because the claimant is providing care or support to one or more critically ill children described in subsection 23.2(1), is 35.

(4) The maximum number of weeks for which benefits may be paid

(a) for a single pregnancy is 15; and

(b) for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is 35.

(4.01) If a claim is made under this Part in respect of a child or children referred to in paragraph

(4)(b) and a claim is made under section 152.05 in respect of the same child or children, the maximum number of weeks of benefits payable under this Act in respect of the child or children is 35.

(4.1) Even if more than one claim is made under this Act, at least one of which is made under section 23.1 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.1 - for the same reason and in respect of the same family member, the maximum number of weeks of benefits payable under this Act in respect of that family member is 26 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.1(4)(a).

(4.2) If a shorter period is prescribed for the purposes of subsection 23.1(5), then that shorter period applies for the purposes of subsection (4.1).

(4.3) When a shorter period referred to in subsection (4.2) has expired in respect of a family member, no further benefits are payable under section 23.1 in respect of that family member until the minimum prescribed number of weeks has elapsed.

(4.4) Even if more than one claim is made under this Act, at least one of which is made under section 23.2 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 - for the same reason and in respect of the same critically ill child, the maximum number of weeks of benefits payable under this Act in respect of that child is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(3)(a).

(4.5) Even if more than one claim is made under this Act, at least one of which is made under section 23.2 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 - for the same reason and in respect of the same children who are critically ill as a result of the same event, the maximum number of weeks of benefits payable under this Act in respect of those children is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(4)(a).

(5) In a claimant's benefit period, the claimant may combine weeks of benefits to which they are entitled because of a reason mentioned in subsection (3), but the maximum number of combined weeks is 50. If the benefit period is extended under subsection 10(13), the maximum number of combined weeks equals the maximum number of weeks in the benefit period calculated under subsection 10(15) less two weeks.

(6) In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of benefits to which the claimant is entitled because of a reason mentioned in subsections (2) and (3), but the total number of weeks of benefits shall not exceed 50 or, if the maximum number of weeks for which benefits may be paid to a claimant because of a reason mentioned in subsection (2) is greater than 45 weeks as a result of the application of any of subsections (2.1), (2.3), (2.5) and (2.6), the number that corresponds to that maximum number of weeks increased by five weeks.

(7) [Repealed, 2000, c. 14, s. 3]

(8) For the purposes of this section, the placement with a major attachment claimant, at the same or substantially the same time, of two or more children for the purpose of adoption is a single placement of a child or children for the purpose of adoption.