



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. N. v. Canada Employment Insurance Commission*, 2018 SST 999

Tribunal File Number: GE-18-1922

BETWEEN:

**D. N.**

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: August 27, 2018

DATE OF DECISION: September 25, 2018

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant applied for critically ill adult benefits<sup>1</sup> under the *Employment Insurance Act* (Act). The Canada Employment Insurance Commission (Commission) determined that the Appellant did not qualify for these benefits because he had not provided the required medical certificate setting out that the adult requiring care was critically ill, that is, that both her baseline state of health had significantly changed and that her life was at risk because of an illness or injury.

[3] I agree with the Commission. The Appellant has not provided the medical evidence required under the Act, and therefore, he has not proven that he qualifies for benefits while caring for a critically ill adult.

## **ISSUE**

[4] Did the Appellant provide a certificate from a medical doctor or nurse practitioner that states that his wife was a critically ill adult?

## **ANALYSIS**

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

[6] For a claimant to qualify for benefits to care for or support a critically ill adult, a medical doctor or nurse practitioner must issue a certificate that, among other things, states that the adult is a critically ill adult.<sup>2</sup>

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<sup>1</sup> Section 23.3 of the *Employment Insurance Act*

<sup>2</sup> Section 23.3 of the Act

**Did the Appellant provide a certificate from a medical doctor or nurse practitioner that states that his wife was a critically ill adult?**

[7] No. The Appellant has not provided a medical certificate that states that his wife was a critically ill adult.

[8] A critically ill adult is one whose:

- a) baseline state of health has significantly changed; **and**
- b) life is at risk as a result of an illness or injury.<sup>3</sup>

[9] The Appellant provided the following medical evidence:

- a) a note dated February 9, 2018, that stated that she had major pelvic surgery and would require help at home for six weeks;
- b) a letter dated March 19, 2018, that stated that she had had major surgery and that it was critical for her to have postoperative help at home;
- c) a letter dated June 19, 2018, that stated that her baseline health was deteriorating, that it was essential for her to have surgery because of the persistence of high-grade precancerous cells on her cervix, and that she required help at home during her post-operative recovery phase; and
- d) a medical certificate signed by her family doctor that indicated that her life was *not* at risk as a result of illness or injury, but she was restricted to minimal activity for six weeks, that there was a temporary significant change in the baseline state of her health post-operatively, and, that she required the care or support of a family member for the initial post-operative period.

[10] Having reviewed the medical evidence, I find that there is no medical certificate before me which states that the Appellant was a critically ill adult because none of the reports state that she was critically ill, or that her life was at risk because of an illness or injury. The only report

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<sup>3</sup> Subsection 1(7) of the *Employment Insurance Regulations*

that addresses whether her life was at risk states that her life was **not** at risk. The other reports state that she required surgery and post-operative help, but not that her life was at risk.

[11] The Appellant argued that his wife's life was at risk because she would have developed cancer if she had not had the surgery, and that she required his help to avoid various post-operative complications, such as hemorrhaging and infections. Further, she was unable to feed herself after the surgery, could not drive, and was at risk if there had been an emergency in the home.

[12] I have no doubt that the Appellant's wife required post-operative care and that the Appellant had to stay home during her recovery period because there was no one else to care for her and he worked offshore.

[13] However, the Act requires a medical certificate stating that the adult is critically ill, there are no exceptions, and there is no room for discretion. Because there is no such certificate before me, the Appellant cannot be paid benefits to care for a critically ill adult.

## CONCLUSION

[14] The appeal is dismissed.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	August 27, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. N., Appellant K. N., Representative for the Appellant

## ANNEX

### THE LAW

#### *Employment Insurance Act*

**23.3** (1) Despite section 18, but subject to this section, benefits are payable to a major attachment claimant who is a family member of a critically ill adult, in order to care for or support that adult, if a medical doctor or nurse practitioner has issued a certificate that

- (a) states that the adult is a critically ill adult and requires the care or support of one or more of their family members; and
- (b) sets out the period during which the adult requires that care or support.

(2) In the circumstances set out in the regulations, the certificate referred to in subsection (1) may be issued by a member of a prescribed class of medical practitioners.

(3) Subject to section 12, benefits under this section are payable for each week of unemployment in the period

- (a) that begins on the first day of the week in which either of the following falls:
  - (i) the day on which the first certificate is issued in respect of the adult that meets the requirements of subsection (1) and is filed with the Commission, or
  - (ii) in the case of a claim that is made before the day on which the certificate is issued, the day from which the medical doctor or nurse practitioner certifies that the adult is critically ill; and
- (b) that ends on the last day of the week in which any of the following occurs:
  - (i) all benefits payable under this section in respect of the adult are exhausted,
  - (ii) the adult dies, or
  - (iii) the expiry of the 52 weeks following the first day of the week referred to in paragraph (a).

(4) Subparagraph (3)(a)(ii) does not apply to a claim if

- (a) at the time the certificate is filed with the Commission, 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 (3) has already been determined and the filing of the certificate with the Commission 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) A claimant who makes a claim for benefits under this section may have their waiting period deferred until they make another claim for benefits in the same benefit period if

- (a) another claimant has made a claim for benefits under this section or section 152.062 in respect of the same adult during the period described in subsection (3) and that other claimant has served or is serving their waiting period in respect of that claim;

(b) another claimant is making a claim for benefits under this section or section 152.062 in respect of the same adult at the same time as the claimant and that other claimant elects to serve their waiting period; or

(c) the claimant, or another claimant who has made a claim for benefits under this section or section 152.062 in respect of the same adult, meets the prescribed requirements.

(6) If a claimant makes a claim for benefits under this section and another claimant makes a claim for benefits under this section or section 152.062 in respect of the same adult, any remaining weeks of benefits payable under this section, under section 152.062 or under both those sections, up to a maximum of 15 weeks, may be divided in the manner agreed to by those claimants. If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules.

(7) For greater certainty, if, in respect of the same adult, a claimant makes a claim for benefits under this section and another claimant makes a claim for benefits under section 152.062, the total number of weeks of benefits payable under this section and section 152.062 that may be divided between them must not exceed 15 weeks.

(8) Benefits under section 23.1 or 152.06 are not payable in respect of an adult during the period referred to in subsection (3) or 152.062(3) that is established in respect of that adult.

(9) When benefits are payable to a claimant for the reasons set out in this section and any allowances, money or other benefits are payable to the claimant under a provincial law for the same or substantially the same reasons, the benefits payable to the claimant under this section shall be reduced or eliminated as prescribed.

2017, c. 20, s. 238.

### ***Employment Insurance Regulations***

**1 (7)** The following definition applies in these Regulations and in subsections 23.3(1) and 152.062(1) of the Act.

**critically ill adult** means a person who is 18 years of age or older on the day on which the period referred to in subsection 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.