



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. L. v Canada Employment Insurance Commission*, 2018 SST 1327

Tribunal File Number: GE-18-2525

BETWEEN:

G. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: September 20, 2018

DATE OF DECISION: October 4, 2018

DECISION

[1] The appeal is dismissed. The Tribunal finds that the Appellant is not entitled to receive family caregiver benefits for adults because she failed to show that her sister, whom she cared for and supported during recovery, was critically ill.

OVERVIEW

[2] The Appellant submitted an application for family caregiver benefits for adults on May 6, 2018. She indicated that she had to take care of her 62-year-old sister. The Appellant provided a medical note that stated that her sister's life was not at risk as a result of an illness or injury but that she required care or support from a family member until July 1, 2018. The Canada Employment Insurance Commission (Commission) found that the Appellant was not entitled to receive benefits because the medical certificate did not indicate that her sister was critically ill as a result of an illness or injury. The Appellant submits that her sister could not be alone without putting her life at risk because of a shoulder surgery she had had. The Tribunal must determine whether the Appellant is entitled to receive benefits for caring for or supporting her sister who was sick.

ISSUE

[3] Was the Appellant's sister critically ill?

ANALYSIS

[4] The relevant statutory provisions appear in the annex of this decision.

Was the Appellant's sister critically ill?

[5] A claimant may receive benefits for caring for or supporting a critically ill family member if a medical doctor or authorized nurse has issued a medical certificate (section 23.3 of the *Employment Insurance Act*).

[6] A critically ill adult is a person who is 18 years of age or older whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury (section 1(7) of the *Employment Insurance Regulations*).

[7] To determine whether an adult is critically ill, a medical certificate must indicate that the adult is critically ill as a result of an illness or injury and that they require the care or support of one or more family members. It must also specify the period during which the person requires care or support.

[8] The Appellant stopped working on May 4, 2018, to care for her sister. She told the Commission that her sister had had shoulder surgery and that, because of it, she could not perform the usual daily tasks. The Appellant explained that her sister's left arm had to remain immobilized for six weeks.

[9] The Appellant sent a medical certificate indicating that her sister's life was not at risk but that she needed care or support from a family member until July 1, 2018, to help her remain independent in her home.

[10] The Appellant maintains that her sister could not care for herself on her own without putting her life at risk. She explained that she could not get out of bed or out of a chair on her own and that she needed help with all daily tasks and with her sleep apnea device. The Appellant added that her sister could not drive, go grocery shopping, cook, wash herself, or go to the bathroom on her own.

[11] At the hearing, the Appellant stated that the concept of [translation] "life at risk" is subject to interpretation and that medical doctors will not want to [translation] "endorse" this statement out of fear of reprisal because, if a person's life is at risk and they are discharged from hospital, medical doctors are liable. She argued that the Act should be amended to take this into account.

[12] The Commission states that the Appellant is not entitled to family caregiver benefits for adults because the medical certificate she submitted does not indicate that her sister's life was at risk or that she was critically ill.

[13] The Tribunal is of the same view. The medical doctor of the Appellant's sister did not indicate that her life was at risk and did not state that the Appellant's sister was critically ill within the meaning of the Regulations. The Tribunal must apply the Act and the Regulations, and this requirement is restrictive. For an adult to be found critically ill, a medical certificate must state it. The form provided by the Commission asks the medical doctor or authorized nurse to indicate whether the adult is critically ill by answering yes or no to the question of whether "[t]he patient's life is at risk as a result of illness or injury." The evidence shows that the medical doctor indicated "No" as a response. The Tribunal cannot therefore find that the baseline state of health of the Appellant's sister significantly changed and that her life was at risk as a result of an illness or injury.

[14] While the Tribunal understands the Appellant's disappointment and that she maintains that if her sister's life had been at risk, she would have stayed in hospital, the medical certificate indicates that her sister's life was not at risk. The Appellant's sister was recovering after shoulder surgery, and the medical certificate indicates that the Appellant's sister needed help to complete daily tasks after the surgery to remain independent in her home.

[15] According to the definition in the Regulations, a critically ill adult is an adult whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. To satisfy the eligibility conditions for family caregiving benefits for adults, the Appellant must provide a medical certificate issued by a medical doctor or authorized nurse indicating that the adult in question is critically ill. However, the medical certificate that the Appellant submitted shows that the medical doctor indicated that her sister's life was not at risk, and the certificate does not show that the Appellant's sister was critically ill within the meaning of the Regulations.

[16] In this case, and although the Tribunal understands the Appellant decided to take care of her sister who could not carry out her daily tasks after surgery because her left arm had to stay immobilized, the Appellant does not satisfy the requirements for receiving family caregiving benefits for adults under the Act and the Regulations. For the Appellant to receive Employment Insurance benefits as a caregiver of an adult, the medical certificate had to indicate that her sister was critically ill. However, that is not the case. The Appellant's sister needed care or support

from a family member until July 1, 2018, to recover after surgery and to help her remain independent in her home.

[17] Having regard to all of the circumstances in the record, the Tribunal finds that the Appellant cared for her sick sister, but the evidence does not show that that adult was critically ill. For this reason, the Appellant is not entitled to these benefits.

CONCLUSION

[18] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	September 20, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	G. L., 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 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.

Employment Insurance Regulations

1 (1) The definitions in this subsection apply in these Regulations.

Act means the *Employment Insurance Act*. (*Loi*)

pay period means the period in respect of which earnings are paid to or enjoyed by an insured person. (*période de paie*)

self-employed person, other than in sections 30 and 35, has the same meaning as in subsection 152.01(1) of the Act. (*travailleur indépendant*)

(2) For the purposes of these Regulations and section 5 of the Act, **international organization** means

(a) any specialized agency of which Canada is a member that is brought into relationship with the United Nations in accordance with article 63 of the *Charter of the United Nations*; and

(b) any international organization of which Canada is a member, the primary purpose of which is the maintenance of international peace or the economic or social well-being of a community of nations. (*organisme international*)

(3) The following definitions apply in these Regulations and in subsections 23.1(2), 23.2(1), 23.3(1), 152.06(1), 152.061(1), and 152.062(1) of the Act.

family member, in relation to an individual, means any one of the following:

(a) the 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;

(d) a child of the individual's parent or a child of the spouse or common-law partner of the individual's parent;

(e) a grandparent of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's grandparent;

(f) a grandchild of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's grandchild;

(g) the spouse or common-law partner of the individual's child or of the child of the individual's spouse or common-law partner;

(h) a parent, or the spouse or common-law partner of a parent, of the individual's spouse or common-law partner;

(i) the spouse or common-law partner of a child of the individual's parent or of a child of the spouse or common-law partner of the individual's parent;

(j) a child of a parent of the individual's spouse or common-law partner or a child of the spouse or common-law partner of the parent of the individual's spouse or common-law partner;

(k) an uncle or aunt of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's uncle or aunt;

(l) a nephew or niece of the individual or of the individual's spouse or common-law partner or the spouse or common-law partner of the individual's nephew or niece;

(m) a current or former foster parent of the individual or of the individual's spouse or common-law partner;

(n) a current or former foster child of the individual or the spouse or common-law partner of that child;

(o) a current or former ward of the individual or of the individual's spouse or common-law partner;

(p) a current or former guardian of the individual or the spouse or common-law partner of that guardian;

(q) a person, whether or not related to the individual by marriage, common-law partnership, or any legal parent-child relationship, whom the individual considers to be like a close relative or who considers the individual to be like a close relative. (*membre de la famille*)

nurse practitioner means a registered nurse who, under the laws of a province, is entitled to practise as a nurse practitioner — or under an equivalent designation — and to autonomously make diagnoses, order and interpret diagnostic tests, prescribe substances and treat patients. (*infirmier praticien*)

(4) For the purpose of the definition *family member* in subsection (3), **guardian** means a person who is legally authorized to act on behalf of a minor or incapable adult and includes a tutor, curator, mandatary acting under a protection mandate or any person who is appointed to act in a similar capacity and **ward** means a person for whom a guardian is appointed.

(5) The following definitions apply in these Regulations and in paragraphs 23.1(2)(b), 23.2(1)(a), 23.3(1)(a), 152.06(1)(b), 152.061(1)(a) and 152.062(1)(a) of the Act.

care means all care that is required because of the state of health of a family member referred to in subsections 23.1(2) or 152.06(1) of the Act, of a critically ill child or of a critically ill adult, other than the care provided by a health care professional. (*soins*)

support means all psychological or emotional support that is required because of the state of health of a family member referred to in subsections 23.1(2) or 152.06(1) of the Act, of a critically ill child or of a critically ill adult. (*soutien*)

(6) The following definition applies in these Regulations and in subsection 23.2(1) and 152.061(1) of the Act.

critically ill child means a person who is under 18 years of age on the day on which the period referred to in subsection 23.2(3) or 152.061(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. (*enfant gravement malade*)

(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. (*adulte gravement malade*)