



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. S. v. Canada Employment Insurance Commission*, 2018 SST 1115

Tribunal File Number: GE-18-2446

BETWEEN:

L. S.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: September 19, 2018

DATE OF DECISION: October 15, 2018

DECISION

[1] The appeal is dismissed. The Claimant's maternity benefits cannot begin before September 23, 2018 based on the provisions in the *Employment Insurance Act* (Act).

OVERVIEW

[2] The Claimant is pregnant, and following related medical complications made a claim for special employment insurance (EI) benefits for sickness. The Claimant sought to have her maternity and parental benefits commence immediately following 15 weeks of sickness benefits. The Canada Employment Insurance Commission (Commission) determined the Claimant's maternity benefits could not begin on the requested date as the date was more than 12 weeks before the estimated due date for her pregnancy. The Commission upheld this decision upon reconsideration. The Claimant appeals the decision to the Social Security Tribunal (Tribunal).

ISSUE

[3] Is the Claimant eligible to receive maternity benefits immediately after her sickness benefits end, in the week of August 18, 2018?

ANALYSIS

[4] Pregnancy benefits, as defined in the Act, are often referred to by claimants and the Commission as maternity benefits. As the Claimant used this term, I will also use "maternity" instead of "pregnancy" in reference to benefits. Maternity benefits are a type of special benefit, payable to certain claimants who prove pregnancy, and are payable for each week of unemployment in the period that begins on the earlier of either 12 weeks before the pregnancy due date, or the week in which the birth or delivery occurs (Act, subsection 22(2)).

[5] The maximum number of weeks for which maternity benefits may be paid in a benefit period because of pregnancy is 15 weeks (Act, subsection 12(3)(a)).

[6] The maximum number of weeks for which sickness benefits, also a special benefit, may be paid in a benefit period because of an illness, injury, or quarantine is 15 weeks (Act, subsection 12(3)(c)).

[7] Parental benefits are also special benefits, and can be claimed by a 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 (Act, subsection 23(1)). The maximum number of weeks for which parental benefits may be paid is 35 weeks or 61 weeks, depending on the claimant's election (Act, subsection 12(3)(b)(i) and (ii)).

[8] In this case, the Claimant stated on the initial claim for benefits that she sought to claim sickness benefits, followed by 15 weeks of maternity benefits and 35 weeks of parental benefits.

[9] The Claimant experienced medical complications early in her pregnancy, and provided medical evidence to the Tribunal that she ceased working at the end of April 2018, and was unable to return to work until December 21, 2018. The Claimant established a benefit period and was paid sickness benefits starting the week of April 29, 2018, until the week of August 18, 2018. She claimed the maximum 15 weeks.

[10] The Commission determined the Claimant could not start maternity benefits at the end of the sickness benefits, because the law specifies these benefits can begin only a maximum of 12 weeks before the pregnancy due date, which for the Claimant is December 21, 2018. The Commission determined, and the Claimant agreed at the hearing, that 12 weeks from the pregnancy due date is September 23, 2018.

[11] The Commission acknowledged that there will be a gap between the end of the sickness benefits and the beginning of maternity benefits. The Commission also submitted that because of this gap, the Claimant will only be able to collect 31 weeks of the 35 weeks of parental benefits.

[12] The Claimant argued that it was unfair to expect her to live with no benefits from August 18, 2018 until September 23, 2018, when there is medical evidence that she is unable to work. Further, she submitted that she is losing weeks between her sickness and maternity benefits, and also losing weeks at the end of her parental benefits, which she believes is unfair and inconsistent with what some other people have received.

[13] The Commission submitted there is no basis in law to allow the Claimant to receive additional weeks of maternity benefits, or to commence payment of her maternity benefits at an earlier date, due to sickness. The Commission submitted that the Act allows maternity benefits

to start up to 12 weeks before the pregnancy due date, but there is no flexibility or discretion to extend it beyond that time.

[14] The issue before me is solely maternity benefits; while the start date of the maternity benefits has an impact on how many weeks of parental benefits can be collected in the benefit period, I must consider the law specific to maternity benefits.

[15] The Act is clear that the Claimant cannot begin to collect maternity benefits more than 12 weeks before her pregnancy due date. There is no discretion to start the benefits before this timeframe. While the Claimant submitted that she believed this was unfair, the law is specific relative to when maternity benefits can begin, and given her pregnancy due date is December 21, 2018, which is not in dispute, I find the benefits cannot commence at the end of her sickness benefits, on August 18, 2018, but at the earliest can commence the week of September 23, 2018—12 weeks prior to her due date. While I accept that the Claimant is incapacitated and has provided a doctor's certificate as evidence, there is still no discretion to start maternity benefits more than 12 weeks before the pregnancy due date, despite her evidenced inability to return to work.

[16] I note the Claimant expressed confusion at the hearing about why she could not collect all 35 weeks of parental benefits, as she has accumulated the required number of hours of insurable employment and has paid into the EI system. The establishment of a benefit period does not guarantee that benefits will be paid throughout the duration of that period. In the present case, the claimant received 15 weeks of sickness benefits and was still unable to return to work. While she was not working, her benefit period was still running. When she is eligible to start receiving maternity benefits on September 23, 2018, she will not have enough hours of insurable employment to establish a new benefit period, therefore a reactivation of the existing claim will occur and the Claimant will receive EI maternity benefits without having to serve another waiting period. The benefit period continues to run, through the parental benefits as well. It is possible to exhaust the benefit period before being able to collect all weeks of benefits to which a claimant is eligible. While I appreciate that the Claimant believes this is unfair, I have no jurisdiction to change the law.

[17] The Claimant also made submissions relative to her being more entitled to EI benefits than some other people, who may seek to exploit the system. Even though the Claimant made contributions to the EI program, this does not automatically entitle her to receive benefits during a period of unemployment. The Act is an insurance plan and, like other insurance plans, claimants must meet the conditions of the plan to obtain benefits (*Pannu v. Canada (Attorney General)*, 2004 FCA 90).

[18] The Claimant also stated that the Commission advised her that her husband could take the remaining parental benefit weeks, which she was unable to use in the benefit period. The Claimant stated she and her husband could not afford for him to take the additional weeks, as they needed her husband's salary to survive. She questioned why that was an option but allowing her to start maternity leave when her sickness benefits end is not. I note that there is the option for the other parent to claim parental weeks, but it is a personal decision to make as to whether it is prudent in each individual circumstance. There is no nexus between the right of either parent to claim parental benefits and the start date of the Claimant's maternity benefits. I accept that the Claimant was trying to express that the benefits were available to be paid if her husband claimed them, so she did not understand why they could not be paid out to her in the form of earlier maternity leave. Again, there is no discretion to allow the payment of maternity leave benefits prior to 12 weeks before the pregnancy due date.

[19] Finally, the Claimant submitted that if a claimant has a miscarriage after 20 weeks of pregnancy, she would be entitled to 15 weeks of maternity benefits. The Claimant stated that she was 20 weeks pregnant on August 3, 2018, and does not understand why she would receive 15 weeks of maternity benefits if she had a miscarriage, but is ineligible to receive all of the weeks if she delivers a child. She submitted that she did not understand why her physician putting her off of work until the end of her pregnancy was insufficient to receive maternity leave benefits, when "so many others are so easily pushed through." I note that the Claimant is not being denied any of the 15 weeks of maternity leave benefits—she is simply unable to start receiving the benefits on the date of her choice because it is too far removed from her pregnancy due date.

[20] While I am sympathetic to the Claimant's position, there is no legal basis to allow maternity benefits to begin in this case prior to September 23, 2018. Further, I am only able to

consider the case before me, thus the anecdotal evidence of colleagues and acquaintances in similar circumstances being granted early maternity benefits or misusing the EI system is an irrelevant consideration. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has found:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning (*Canada (Attorney General) v. Kneé*, 2011 FCA 301).

While the Claimant may find this result to be harsh, I must follow the law and render decisions based on the relevant Act, Regulations, and precedents set by the courts.

CONCLUSION

[21] The appeal is dismissed. The Claimant's maternity leave benefits cannot begin before September 23, 2018.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	September 19, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. S., Appellant

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.