



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. D. v. Canada Employment Insurance Commission*, 2019 SST 1114

Tribunal File Number: GE-18-2089

BETWEEN:

**P. D.**

Appellant/Claimant

and

**Canada Employment Insurance Commission**

Respondent/Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Candace R. Salmon

HEARD ON: October 10, 2018

DATE OF DECISION: October 17, 2018

## **DECISION**

[1] The appeal is dismissed. The Claimant is not entitled to receive special benefits as the family member of a critically ill child.

## **OVERVIEW**

[2] The Claimant made a claim for employment insurance (EI) benefits as the family member of a critically ill child, her son, who required total care for a lengthy period of time. The Claimant submitted a medical report to the Canada Employment Insurance Commission (Commission), which did not confirm that the child's life was at risk as the result of illness or injury. The Commission determined the Claimant was not entitled to receive benefits because the medical certificate did not confirm her son was critically ill or injured. The Commission upheld this decision on reconsideration. The Claimant appeals the decision to the Social Security Tribunal (Tribunal).

## **ISSUE**

[3] Is the Claimant entitled to receive special benefits as the family member of a critically ill child?

## **ANALYSIS**

[4] To receive benefits as a family member of a critically ill child, a certificate must be issued by a medical doctor or a nurse practitioner stating that the child is critically ill, requires the care or support of one or more of their family members, and set out the period during which the child requires that care or support (subsection 23.2(1), *Employment Insurance Act* (Act)).

[5] A "family member," in relation to an individual, is defined in part as a child of the individual or a child of the individual's spouse or common-law partner (*Employment Insurance Regulations* (Regulations), paragraph 1(3)(b)).

[6] A "critically ill child" is defined as 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 (Regulations, subsection 1(6)).

[7] To fulfill the requirements of the Act, the Commission required a Medical Certificate for Employment Insurance Family Caregiver Benefits form to be completed by the Claimant's son's physician. The form requests "yes" or "no" responses to three statements:

1. The patient's life is at risk as a result of illness or injury;
2. There has been a significant change in the baseline state of health of the patient; and
3. The patient requires the care or support of one or more family members (Act, subsection 23.2(1)).

To be eligible for the benefit, all three questions must be answered in the affirmative.

[8] The Claimant submitted the completed form to the Commission on April 16, 2018. The form was completed by a doctor, and states the answer "yes" to the second and third questions, but answers "no" to the first question—the patient's life is at risk as a result of illness or injury.

[9] The Commission determined the Claimant was not entitled to be paid benefits because the medical certificate did not state that the child was critically ill or injured. The Claimant requested reconsideration of this decision because her son had been in a full body cast after surgery and required 24 hour care. The Claimant stated to the Commission that her son was five years old at the time of surgery, and the full body cast meant he had to use a bedpan and urinal, and could not care for himself.

[10] The Commission spoke to the Claimant on May 15, 2018, who stated there was no further information to review. The Commission considered the medical evidence, which stated the child was not critically ill or injured, and issued a letter on June 12, 2018, stating the decision to deny benefits for the care of a critically ill child would be maintained.

[11] The Claimant testified at the hearing that while her son was not in danger of death due to his medical condition, there is always a risk when undergoing surgical procedures and that her son could have had any number of complications. She also submitted that it was impossible for her son to go to school or daycare, due to a metal bar between his legs throughout the healing

process, and his personal care requirements. The Claimant stated she had to turn her son every two hours, and was entirely responsible for his care because he could do nothing for himself. At the hearing, the Claimant entered photographs of her son's condition and healing process as evidence.

[12] The Claimant admitted at the hearing that her son was not critically ill, but stated there should be a system to assist in situations such as hers: a single parent with multiple children, having to take time off from work to care for a seriously, but not critically, ill or injured child. The Claimant submitted the legislative provisions are not fair.

[13] The Commission argued that it was not possible to pay family caregiver benefits for children as of February 25, 2018, because the medical note submitted by the physician clearly stated that the child's life was not at risk as a result of the illness or injury. It argued that the entitlement conditions were not met to allow the Claimant to claim the benefit. The Commission accepted that the Claimant's child did have hip surgery, however found he was not critically ill or injured which is an entitlement condition that is required to be eligible for these benefits.

[14] The requirements to be met in order to be entitled to benefits for the care of a critically ill child are based in the Act. I note that while the word "critical" does not appear on the Medical Certificate for EI Family Caregiver Benefits form, the three questions contained in the form set out the same three requirements to be met as contained in the legislation: the patient's life is at risk as a result of illness or injury; there has been a significant change in the baseline state of health of the patient; and, the patient requires the care or support of one or more family members.

[15] I find that the Claimant has not met the criteria of the Act to be entitled to benefits because the medical certificate did not confirm her son's life was at risk as a result of illness or injury. Due to this, the Claimant failed to establish that her son met the definition, as contained in the Regulations, of a critically ill child. Accordingly, I must find the Claimant is not eligible for benefits.

[16] I recognize the difficulty the Claimant and her family experienced through her son's surgery and healing process, and her perception of unfairness in the law. As it is written, the law

does not intend to allow EI benefits to be paid in circumstances such as those experienced by the Claimant. Further, I have no jurisdiction to change the law; the Federal Court of Appeal has confirmed that 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. Knee*, 2011 FCA 301).

## CONCLUSION

[17] The appeal is dismissed. The Claimant does not meet the legislative requirements to be entitled to special benefits as the family member of a critically ill child.

Candace R. Salmon  
Member, General Division - Employment Insurance Section

HEARD ON:	October 10, 2018
METHOD OF PROCEEDING:	In person
APPEARANCES:	P. D., Appellant

## ANNEX

### THE LAW

#### Employment Insurance Act

**23.2 (1)** Despite section 18, but subject to this section, benefits are payable to a major attachment claimant, who is the parent of a critically ill child, in order to care for or support that child if a specialist medical doctor has issued a certificate that

(a) states that the child is a critically ill child and requires the care or support of one or more of their parents; and

(b) sets out the period during which the child 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 subsection (4) and 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 child 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 specialist medical doctor certifies that the child 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 child are exhausted,

(ii) the child dies, or

(iii) the expiry of 52 weeks following the first day of the week referred to in paragraph (a).

(4) Subject to section 12, if more than one child of the claimant is critically ill as a result of the same event, 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 any of the children 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 first day from which the specialist medical doctor certifies that any of the children 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 children are exhausted,

**(ii)** the last of the children dies, or

**(iii)** the expiry of 52 weeks following the first day of the week referred to in paragraph (a).

**(5)** Subparagraph (3)(a)(ii) or (4)(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) or (4), as the case may be, 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.

**(6)** Subject to subsection (7), 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 152.061 in respect of the same child 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 152.061 in respect of the same child 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 152.061 in respect of the same child, meets the prescribed requirements.

**(7)** A claimant who makes a claim for benefits under this section - and more than one of whose children is critically ill as a result of the same event - 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 152.061 in respect of the same children during the period described in subsection (4) 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 152.061

in respect of the same children 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 152.061 in respect of the same children, meets the prescribed requirements.

(8) If a claimant makes a claim for benefits under this section and another claimant makes a claim for benefits under this section or section 152.061 in respect of the same child or the same children who are critically ill as a result of the same event, any remaining weeks of benefits payable under this section, under section 152.061 or under both those sections, up to a maximum of 35 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.

(9) For greater certainty, if, in respect of the same child or the same children who are critically ill as a result of the same event, a claimant makes a claim for benefits under this section and another claimant makes a claim for benefits under section 152.061, the total number of weeks of benefits payable under this section and section 152.061 that may be divided between them must not exceed 35 weeks.

(10) Benefits under section 23.1 or 152.06 are not payable in respect of a child during the period referred to in subsection (3) or (4) or 152.061(3) or (4) that is established in respect of that child.

(11) 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(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 of the Act.

**Family Member**, in relation to an individual, means any one of the following:

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

1(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*)