



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. P. v Canada Employment Insurance Commission*, 2018 SST 1314

Tribunal File Number: GE-18-2454

BETWEEN:

M. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: October 11, 2018

DATE OF DECISION: October 26, 2018

DECISION

[1] The appeal is allowed in part.

OVERVIEW

[2] The Appellant applied for sickness benefits as of April 22, 2018. In support of his application, he filed a medical certificate filled out by his social worker. It stated that he was unable to work between April 25 and May 18, 2018.

[3] The Canada Employment Insurance Commission (Commission) denied the Appellant sickness benefits. It determined that the medical certificate he presented was not filled out by a medical doctor or a medical professional as the *Employment Insurance Regulations* (Regulations) require.

[4] The Appellant is disputing the Commission's decision. He argues that the social worker he consulted is a mental health professional who offered him care in that domain when he needed it.

ISSUE

[5] Did the Appellant present a medical certificate that complies with the Regulations' requirements to receive sickness benefits?

ANALYSIS

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

Did the Appellant present a medical certificate that complies with the Regulations' requirements to receive sickness benefits?

[7] A claimant who applies for sickness benefits must show, for each working day in a benefit period: 1) that they are unable to work because of a prescribed illness, injury, or quarantine; and 2) that they would have been available to work were it not for the illness, injury, or quarantine (section 18(1)(b) of the *Employment Insurance Act* (Act)).

[8] The *Employment Insurance Regulations* (Regulations) stipulate that the information and evidence to be provided to the Commission by a claimant in order to prove inability to work because of illness, injury, or quarantine under section 18(1)(b) of the Act is a medical certificate completed by a medical doctor or other medical professional attesting to the claimant's inability to work and stating the probable duration of the illness, injury, or quarantine (section 40(1) of the Regulations).

[9] Consequently, in summary, the Act states that, to be entitled to sickness benefits, a claimant must show that they were unable to work for health reasons, and the Regulations establish that the only way a claimant can show such inability is to present a medical certificate completed by a doctor or other medical professional and that contains specific information.

[10] On April 24, 2018, the Appellant took a leave of absence because of illness after he had a severe crisis. He contacted the employee assistance program and asked for mental health assistance, which was granted. He spoke to someone and then he was referred to a social worker a few days later.

[11] In support of his application for sickness benefits, the Appellant presented a medical certificate issued by C. D., a social worker working in the town of X. The certificate confirms that the Appellant was unable to perform his work between April 25 and May 18, 2018 (GD3-21).

[12] A few days after the Appellant submitted this certificate, the Commission informed him that it would not accept the document because it was not signed by a medical doctor or other medical professional (GD3-24). The Appellant tried to get a medical certificate from his doctor, but the doctor did not want to issue a retroactive certificate (GD3-23).

[13] This issue actually revolves around the definition of a medical professional because that expression is not defined in the Act or the Regulations.

[14] In its arguments to the Tribunal, the Commission submits that the Appellant is unable to provide a medical certificate attesting to his inability. The Commission did not explain however why it does not consider a social worker to be a medical professional. It also does not explain

what, in its view, constitutes a medical professional and does not refer to any policy, law, regulation, or case law that could enlighten the Tribunal on the issue (GD4-3).

[15] In a conversation with the Appellant during the reconsideration, the Commission submitted that a social worker is not a medical professional but a person [translation] “working in the field of social work” (GD3-26). However, this statement is not supported by an explanation or other evidence that could establish that a social worker’s scope is indeed limited to [translation] “social work.”

[16] In the Tribunal’s opinion, there is no doubt that the job of social worker is a profession. Social workers must complete advanced university studies and be a member of a professional order that governs their activities to be eligible to work.

[17] It must now be determined whether this profession is connected to the mental or physiological health domains.

[18] During the hearing, the Appellant stated that he had a severe crisis in late April and asked for quick mental health assistance from the employee assistance program that he had access to because of his partner’s employment. It was the employee assistance program (EAP) that referred him to that social worker for care. The Appellant started consulting her in early May and continues to receive treatment today.

[19] The Appellant’s description of the care he received clearly shows that the care concerned the mental health domain; furthermore, it is why the EAP referred the Appellant to that person when he asked for mental health care. The Appellant also argues that the social worker’s care has greatly contributed to his mental health and has enabled him to return to work, when he would have been unable to do so otherwise.

[20] The Tribunal obviously acknowledges that the Commission has the right to adopt policies to guide its agents in the application of the Act and the Regulations. However, policy is not law. When it interprets terms that are not otherwise defined, as is the case here for “medical professional,” the Commission should not blindly rely on its policy. Instead, it should consider the Act’s intended objectives and the circumstances of each case to determine what is the right

decision to make in a particular case (See, for example, *Canada (Attorney General) v Picard*, 2014 FCA 46).

[21] For the Federal Court of Appeal, it is clear that, in enacting the *Employment Insurance Act*, Parliament did not want claimants who are not available for work after an illness to be disentitled to benefits (*Crupi v Canada Employment and Immigration Commission*, A-451-85).

[22] In this case, the Appellant showed that he was unable to work during the period at issue, as the Act requires, and provided the medical certificate required by the Regulations, completed and signed by someone the Tribunal considers a mental health professional. The Tribunal has no reason to doubt the authenticity of the certificate presented by the Appellant or his version of facts about his inability to work. In the Tribunal's view, a qualified social worker is just as capable of confirming an inability to work because of illness as another professional in this field, such as a doctor or a psychologist.

[23] The Appellant therefore fulfilled his obligations under the Act and Regulations and showed that he was unable to work because of illness between April 25 and May 18, 2018, the dates stated on the medical certificate (GD3-21).

CONCLUSION

[24] The appeal is allowed in part. The disentitlement to benefits is rescinded between April 25 and May 18, 2018. However, the Appellant cannot receive sickness benefits after May 18, because he did not present a medical certificate establishing his inability to work after that date.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	October 11, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. P., Appellant

ANNEX

THE LAW

Employment Insurance Act

18 (1) A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

- (a) capable of and available for work and unable to obtain suitable employment;
- (b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or
- (c) engaged in jury service.

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

Employment Insurance Regulations

40 (1) The information and evidence to be provided to the Commission by a claimant in order to prove inability to work because of illness, injury or quarantine under paragraph 18(1)(b) or subsection 152.03(1) of the Act, is a medical certificate completed by a medical doctor or other medical professional attesting to the claimant's inability to work and stating the probable duration of the illness, injury or quarantine.

(1.1) Despite subsection (1), if either of the following circumstances occur in respect of a quarantine, a claimant need only provide the Commission with a declaration that a period of quarantine was

(a) imposed on the claimant by a public health official for the health and safety of the public at large; or

(b) recommended by such an official for the health and safety of the public at large and the claimant was asked by their employer, a medical doctor, a nurse or another similar person in authority to place themselves under quarantine.

(2) Notwithstanding that a certificate is provided by a claimant pursuant to subsection (1), the Commission may require a claimant to undergo a medical examination at such time and place as it may reasonably direct for the purpose of determining the nature of the illness, injury or quarantine, the physical or mental condition of the claimant, the probable duration of the inability to work and any other circumstances relating to that inability.

(3) A medical examination referred to in subsection (2) shall be made at the expense of the Commission and a claimant who undergoes such an examination shall be reimbursed for their reasonable travel and other expenses.

(4) For the purposes of paragraphs 8(2)(a) and 18(1)(b) and subsections 28(7) and 152.03(1) of the Act, illness, injury or quarantine is any illness, injury or quarantine that renders a claimant incapable of performing the duties of their regular or usual employment or of other suitable employment.