



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. G. v Canada Employment Insurance Commission*, 2018 SST 1369

Tribunal File Number: GE-18-2634

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: November 7, 2018

DATE OF DECISION: December 20, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant filed an application with the Commission for Employment Insurance caregiving benefits for a 15-week period.

[3] The Appellant's mother had a coronary artery bypass surgery, and she had postoperative complications. In support of his application, the Appellant submitted two medical certificates and a medical report from the cardiologist.

[4] The Commission found that the Appellant had failed to prove that his mother's life was at risk as a result of an illness or injury, even though his mother's state of health had changed significantly and she needed the support of a family member.

[5] According to the Appellant, he had to stay with his mother because his mother's life would be at risk if she were left unattended.

ISSUE

[6] Is the Appellant entitled to receive Employment Insurance caregiving benefits?

ANALYSIS

[7] Section 23.3(3) of the *Employment Insurance Act* (Act) enables a claimant to care for a critically ill adult family member.

[8] To receive benefits, a certificate must state that the family member is critically ill and that they require care for a specified period.

[9] Section 1(7) of the *Employment Insurance Regulations* (Regulations) defines a critically ill adult as "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*).”

[10] The Tribunal is of the view that the Appellant has failed to prove that his mother’s life is at risk as a result of an illness or injury, even though her baseline state of health has significantly changed and she needs care.

[11] In this case, the certificates provided do not state that the life of the Appellant’s mother is at risk as a result of an illness or injury.

[12] In the medical certificates from May 29, 2018, and May 26, 2018, the cardiologist, Stéphanie Deneault-Bissonnette, answered no to the question “[t]he patient’s life is at risk as a result of illness or injury.” In the May 29, 2018, certificate, she mentioned that the Appellant’s mother needs monitoring because there is a risk of complications. She added that it is not life-threatening but that, without monitoring, the risk of morbidity and complications is severe.

[13] In her June 21, 2018, report, the cardiologist wrote:

[Translation]

The patient’s life is not at risk but complications related to the fact that she is not being monitored may carry a risk of severe morbidity and severe complications, possibly leading to the patient’s death.

Given the patient’s history and current situation and the fact that the patient’s life could be at risk if she is not monitored if a severe complication or morbidity were to arise because of a complication, I have suggested that the patient get the support of one or more of her family members.

[14] Moreover, she specifies that the state of health of the Appellant’s mother changed considerably and that she needs support from one or more of her family members.

[15] According to the Appellant, although the doctor answered no to the question, the doctor had in fact indicated that his mother’s life was at risk as a result of an illness or injury. In this way, his mother’s life is at risk if she is not monitored, and she has to have the support of her relatives.

[16] The Tribunal finds that the evidence on file does not support a finding that the life of the Appellant's mother is at risk. The doctor indicated several times that the life of the Appellant's mother is not at risk. We cannot put words in the doctor's mouth.

[17] The Tribunal notes that the definition in section 1(7) of the Regulations is clear: the patient's life must be at risk as a result of an illness or injury. The Tribunal cannot find indirectly what it cannot find directly from the Appellant's evidence. Therefore, it has not been proven that the life of the Appellant's mother is at risk. After all, the cardiologist was not able to say so.

[18] The Appellant also submits that the Tribunal needs to adhere to the Act and not rely on the Regulations.

[19] The Tribunal cannot disregard section 1(7) of the Regulations, which defines a critically ill adult person within the meaning of the Act.

[20] The Tribunal understands that the rules are strict and that the Appellant finds the outcome harsh. However, the role of the Tribunal is not to rewrite the Act or interpret it in a manner contrary to its meaning (*Canada (Attorney General) v Knee*, 2011 FCA 301).

[21] In this context, the Tribunal is of the view that the Appellant has not proven that his mother's health is at risk within the meaning of the Act and Regulations.

CONCLUSION

[22] The Tribunal finds that the Appellant is not entitled to receive caregiving benefits according to section 23.3 of the Act.

[23] The appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section

HEARD ON:	November 7, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. G., Appellant J. D., Representative for the Appellant