



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. H. v Canada Employment Insurance Commission*, 2019 SST 231

Tribunal File Number: GE-18-3825

BETWEEN:

**N. H.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Eleni Palantzas

FINAL SUBMISSIONS: January 25, 2019

DATE OF DECISION: January 29, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant failed to meet the criteria in order to be entitled to family caregiver benefits while she cared for her ill mother.

## **OVERVIEW**

[2] The Claimant took a leave of absence from her employment on June 22, 2018 in order to travel to Japan to care for her elderly ill mother. She applied for 9 weeks of employment insurance family caregiver benefits. The Canada Employment Insurance Commission (Commission) determined that the Claimant did not qualify for these special benefits, from June 24, 2018 onward, because she failed to submit the required medical certificate. The Claimant requested that the Commission reconsider its decision submitting that her mother's doctor in Japan does not speak English and is not permitted to complete the medical certificate. The Commission maintained its decision noting that unfortunately the Claimant did not provide a medical certificate where the physician attested (a) that her mother was critically ill (b) that she required the care and support of the Claimant and (c) the period that her mother required care. The Claimant appealed to the Social Security Tribunal of Canada (Tribunal).

## **PRELIMINARY MATTERS**

[3] The Claimant submitted documents to the Tribunal that were in a language (Japanese) other than English or French (GD2-8 to GD2-12). The documents were returned to the Claimant with instructions to have the documents translated and resubmitted to the Tribunal.

[4] The Tribunal initially scheduled a teleconference hearing for January 21, 2019. The Claimant however wrote to the Tribunal indicated that she cannot take time off work in order to attend a hearing. The Claimant indicated that she had requested a 'written' form of hearing on her Notice of Appeal. She requested that the form of hearing change from a teleconference to a written question and answer hearing (GD5).

[5] On January 10, 2019, the Member requested that the Claimant respond to the following questions by January 25, 2019 (GD7):

1. Are you going to provide the Tribunal with the Authorization to Release Medical Certificate (Form 5242A)?
2. Are you going to provide the Tribunal with a Medical Certificate (Form 5242B) that is signed by a medical doctor or nurse practitioner?
3. Are you going to provide any other evidence i.e. a medical certificate signed by a medical doctor or nurse practitioner, that attests that your mother:
  - (a) was critically ill - a “critically ill adult” is a person 18 years of age or older whose baseline state of health has significantly changed and whose life is at risk as result of an illness or injury (subsection 1(7) of the Regulations)
  - (b) required your care or support, and
  - (c) the period during which your care or support was required? If so, please do so immediately.

[6] The Claimant responded by indicating that (1) she has provided the Form 5242A signed by her mother T. K. (2) she will not provide the Tribunal with the Medical Certificate “because the law prevents medical professionals from another country to disclose confidential patient information on Form 5242B” and (3) she provided another medical certificate from her mother’s physician providing details about her diagnosis, treatment and surgery (GD8).

## **ISSUE**

1. Did the Claimant prove that she qualified to receive family caregiver benefits to care for her critically ill mother?

## **ANALYSIS**

[7] Employment insurance family caregiver benefits are special benefits that are paid to qualified claimants who take leave from work in order to provide care or support to their critically ill or injured adult family member.

[8] In order to be entitled to such benefits, the claimant must provide the Commission with a medical certificate issued by a medical doctor or nurse practitioner that states (a) the adult family member is critically ill (b) they require the care or support of their family member, and (c) sets

out the period during which the adult requires care or support (subsection 23.3(1) of the *Employment Insurance Act* (EI Act)).

[9] A “critically ill adult” is a person 18 years of age or older whose baseline state of health has significantly changed and whose life is at risk as result of an illness or injury (subsection 1(7) of the Regulations).

[10] The medical certificate may only be issued by a member of a prescribed class of medical practitioners (subsections 1(3) of the *Employment Insurance Regulations* (Regulations) and 23.3(2) of the EI Act). If the medical doctor or nurse practitioner is in a country other than Canada, they must be authorized to practice by the appropriate government authority and must have substantially similar professional qualifications as those practicing in Canada (section 41.2 of the Regulations). Further, the patient, or an appointed representative of the patient, must provide consent to the medical doctor or nurse practitioner to release the medical information.

[11] In this case, the Claimant provided the Authorization to Release a Medical Certificate - Form 5242A (GD3-29). The Claimant submitted however, that she is unable to provide the Medical Certificate - Form 5242B because the laws in Japan prevent the physician from providing confidential medical information on this form.

**Issue 1: Did the Claimant prove that she qualified to receive family caregiver benefits to care for her critically ill mother?**

[12] No. The Claimant has not provided the Commission with a medical certificate that proves her mother was critically ill and required her care or support for a required period. She therefore does not qualify to receive family caregiver benefits.

[13] The Claimant has the burden of proving that she is a family member of a critically ill adult who needs her care and support. The Claimant must show that her mother’s baseline state of health has significantly changed, her life is at risk as a result of illness or injury and, she needs her care or support.

[14] The Member finds that the medical documentation provided by the Claimant does not prove that she is entitled to family caregiver benefits for a critically ill adult. The medical documentation that she has provided (instead of the Medical Certificate - Form 5242B) indicates

that the Claimant's mother had to undergo treatment and surgery to relieve lower back pain as a result of compression fractures (GD8-11 and GD8-12). The medical documentation does not indicate that her mother's health has significantly changed and that her life is at risk as result of an illness or injury. The Claimant therefore, has failed to prove that her mother is a critically ill adult (subsection 1(7) of the EI Regulations). She also has not provided medical documentation to show that her mother required the care or support of her family, nor the period she may have required the assistance. In order to be entitled to family caregiver benefits all these requirements must be met (subsection 23.3(1) of the EI Act).

[15] The Member finds it unfortunate that the Claimant was unable to obtain the required medical certificate, at the time that she made her decision to leave her employment and go care for her mother in Japan. The Member notes however, that the legislation is clear. The medical certificate must be provided and it must show that the Claimant's family member is a critically ill adult that requires the care and support of the Claimant for a given period. The Member is sympathetic to the Claimant's situation however; she has not proven that she is entitled to family caregiver benefits.

## **CONCLUSION**

[16] The appeal is dismissed.

Eleni Palantzas

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Questions and Answers
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