



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. M. v Canada Employment Insurance Commission*, 2019 SST 93

Tribunal File Number: AD-18-824

BETWEEN:

M. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 7, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, M. M. (Claimant), filed an application for the family caregiver benefit for adults (also called “benefits – critically ill adult”) to be able to care for her daughter, who had postpartum depression. The Canada Employment Insurance Commission refused to pay the Claimant the benefits because the medical certificate filed in support of her application did not mention that the patient’s life was at risk as a result of an illness or injury. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal’s General Division.

[3] The General Division determined that the medical certificate the Claimant submitted did not meet the criteria set by the *Employment Insurance Act* (EI Act) and the *Employment Insurance Regulations* (Regulations) and that the Claimant was therefore not entitled to the family caregiver benefit for adults.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. She argues that the Regulations do not mention a risk of death. The Claimant submits that the EI Act or the Regulations must be improved to amend the prerequisites. She maintains that she qualifies for benefits.

[5] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that gives the appeal a reasonable chance of success.

[6] The Tribunal refuses leave to appeal because the appeal does not have a reasonable chance of success based on any of the grounds of appeal raised by the Claimant.

ISSUE

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[10] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESDA, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[12] In support of her application for leave to appeal, the Claimant argues that the Regulations do not mention a risk of death. She submits that the EI Act or the

Regulations must be improved to amend the prerequisites. She maintains that she qualifies for benefits.

[13] The EI Act states that the family caregiver benefit for adults is payable to a family member of a “critically ill adult” who files a medical certificate that states this fact.¹ As for the Regulations, they clearly define what constitutes a critically ill adult; to meet this definition, the patient’s life must be at risk as a result of an illness or injury.²

[14] In keeping with the General Division’s finding, the medical certificate the Claimant submitted does not meet this criterion because it shows that the patient’s life was not at risk as a result of an illness or injury.

[15] Unfortunately for the Claimant, the federal courts have held that the requirements of the EI Act do not allow any discrepancy and provide no discretion to the Tribunal in applying the EI Act.³ Any changes must undoubtedly come from Parliament.

[16] The Tribunal notes that the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[17] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

¹ EI Act, s 23.3(1).

² Regulations, s 1(7).

³ *Canada (Procureur Général) c Lévesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

CONCLUSION

[18] The Tribunal refuses leave to appeal to its Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. M., self-represented
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