



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: R. L. v Canada Employment Insurance Commission, 2019 SST 274

Tribunal File Number: GE-19-332

BETWEEN:

R. L.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: February 28, 2019

DATE OF DECISION: March 7, 2019

DECISION

[1] The appeal is dismissed. The Claimant is unable to change her election of the parental benefit term.

OVERVIEW

[2] The Claimant established a benefit period for maternity and parental employment insurance benefits. She elected on her application to receive “extended parental benefits” for a period of 54 weeks. The application stated the extended parental benefit option pays a lower rate of benefits over a longer period of time. The Claimant was paid several weeks of parental benefits and realized that her weekly benefits were lower than she anticipated. She requested a reconsideration of the Canada Employment Insurance Commission’s (Commission) decision to pay her extended parental benefits and asked to be converted to “standard parental benefits” which pays a higher rate of benefits over a shorter period of time.

[3] The Commission refused to reconsider the decision and the Claimant appealed to the Social Security Tribunal (Tribunal), who determined that the Commission must reconsider the decision. The Commission determined on reconsideration it could not change the Claimant’s extended parental benefits to standard parental benefits, as it was not statutorily allowed. The Claimant now appeals to the Tribunal to allow her to change to standard parental benefits.

ISSUE

[4] Can the Claimant change her election and be paid standard parental benefits instead of extended?

ANALYSIS

[5] When making a claim for parental benefits, a claimant elects the maximum number of weeks for which parental benefits may be paid.¹ Namely, a claimant will select to be entitled to receive benefits up to a maximum of 35 weeks or 61 weeks.²

[6] A claimant's election of the maximum number of weeks for which parental benefits may be paid cannot be changed once parental benefits are paid.³

[7] The Claimant made an initial claim for maternity and parental benefits on March 28, 2018. On this application, she chose to receive parental benefits immediately following her maternity benefits. She then elected to receive up to 61 weeks of parental benefits (which I will call "extended parental benefits") and stated that she wanted to claim 54 weeks of parental benefits.

[8] On the same page of the application for benefits, it stated that claimants must select between two options for parental benefits: standard or extended. The standard option was defined as allowing up to 35 weeks of benefits at a benefit rate of 55% of the Claimant's weekly insurable earnings, up to a maximum amount. The extended option was defined as allowing up to 61 weeks of benefits at a benefit rate of 33% of the Claimant's weekly insurable earnings, up to a maximum amount. The application form also states that the choice between standard and extended parental benefits is irrevocable once benefits have been paid on the claim.

[9] The Claimant was paid parental benefits starting August 3, 2018. On August 21, 2018, the Claimant requested a reconsideration of the amount of her parental benefits and asked the Commission to reduce her maximum weeks of parental benefits to allow her to receive the higher rate of weekly benefits. She stated in a letter dated August 21, 2018, that she had only noticed the reduced benefit amount that day and realized that she made a mistake in choosing the extended parental benefit option. She stated that when she made the election, she believed the

¹ The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is found in subsection 23(1.1) of the *Employment Insurance Act*.

² The maximum number of weeks for which parental benefits may be paid is found in paragraph 12(3)(b) of the *Employment Insurance Act*, based on the election the claimant makes under section 23 of the *Employment Insurance Act*.

³ Subsection 23(1.2) of the *Employment Insurance Act*.

benefit rate would be adjusted to reflect only the duration of time for which she wanted to claim benefits, namely the 54 weeks she entered on the application form. She stated if she had understood that she would only be paid parental benefits at 33% of her weekly insurable earnings for the full duration of her parental benefit claim, she would have opted to receive standard parental benefits for a shorter period of time.

[10] The Commission submits the Claimant elected to receive extended parental benefits, per sections 23 and 12 of the *Employment Insurance Act* (Act), and that this election is irrevocable once parental benefits are paid to the Claimant.

[11] The Claimant does not dispute that she elected to receive extended parental benefits. Rather, the Claimant argues that she should be able to modify this choice because the phrase “once benefits are paid” is ambiguous and could be interpreted to mean once the whole amount of parental benefits have been paid under a claim. In support of her argument, the Claimant states she attempted to correct her selection by requesting reconsideration as soon as she became aware that she was being paid at a reduced rate of benefits, but the Commission said she was already too late. She argues it is unreasonable to expect a claimant to catch a mistake in their election of the number of weeks of parental benefits before the first benefit payment is even made.

[12] On February 8, 2019, the Tribunal requested the Commission provide its position related to the Claimant’s argument. On February 11, 2019, the Commission provided a response which argues it would be incorrect to interpret the meaning of the wording “the election is irrevocable once benefits are paid under this section”⁴ to mean “the election is irrevocable once all parental benefits have been paid.” The Commission states that parental benefits are paid under the section in question and parental benefits were paid to the Claimant once a payment for parental benefits was processed on August 3, 2018. The Commission argues that the Claimant’s decision to change the type of parental benefits became irrevocable as of that date.

[13] It is worth noting the phrase “once benefits are paid” is used only twice in the *Act*,⁵ in nearly identical provisions, but the phrase “benefits were paid” appears in several sections. For example, paragraph 10(6)(a) of the *Act* provides that a benefit period can be canceled if, among

⁴ Quoted from subsection 23(1.2) of the *Employment Insurance Act*.

⁵ This exact phrase is used in subsections 23(1.2) and 152.05(1.2) of the *Employment Insurance Act*.

other things, “no benefits were paid” during the benefit period. The Courts have interpreted this to mean any benefits.⁶ I note that section 23 of the *Act* also uses the phrase “benefits were paid.”⁷

[14] Based on the foregoing, I am satisfied that the provisions are similar and I find the interpretation of the phrase “benefits were paid” to be persuasive in my statutory interpretation of the phrase “benefits were paid.”

[15] I also consider the consequences of the Claimant’s proposed interpretation. If her interpretation of the provision was correct, it would mean a person could switch their choice between standard and extended parental benefits up until the point they were paid all of the weeks in their parental benefit claim. This could have the effect of a person electing standard parental benefits and, after receiving 34 weeks of benefit payments, modifying their election to extend their parental benefit payments up to 61 weeks. In the alternate, a person who elects to receive 61 weeks of benefits could, after receiving their 60th benefit payment, change their election to receive a maximum of 35 weeks of benefit payments. Similarly, there would be nothing to limit a claimant from changing the election multiple times during their benefit period. These outcomes are clearly outside of what was intended by the operation of this section of the *Act*, as they produce an absurd result. It is on these bases that I find the Claimant’s interpretation cannot be supported.

[16] As the facts of this case are undisputed, I accept that the Claimant elected to have a maximum of 61 weeks for which parental benefits may be paid, pursuant to subsection 23(1.1) and paragraph 12(3)(b) of the *Act*. I also accept the Claimant was paid parental benefits as of August 3, 2018. Further, I find this payment of parental benefits on August 3, 2018, made the election of her maximum number of weeks for which parental benefits may be paid irrevocable. Therefore, I conclude that the Claimant is not able to change the election of the maximum number of weeks for which parental benefits may be paid.

[17] I understand the Claimant regrets the election she made to receive extended parental benefits and acknowledge her testimony that this election has put herself and her family into financial and emotional distress. I truly sympathize with the Claimant’s circumstances; however,

⁶ *Canada (Attorney General) v. Hamm*, 2011 FCA 205.

⁷ This phrase is used in subsections 23(3.2), 23(3.21) and 23(3.22) of the *Employment Insurance Act*.

I am bound by the requirements of the law and have no jurisdiction to change the law nor to interpret it in a manner that is contrary to its plain meaning, even in the interest of compassion.⁸

CONCLUSION

[18] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	February 28, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. L., Appellant/Claimant

⁸ *Canada (Attorney General) v. Knee*, 2011 FCA 301.