



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. M. v Canada Employment Insurance Commission*, 2019 SST 903

Tribunal File Number: GE-19-1833

BETWEEN:

E. M.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: June 4, 2019

DATE OF DECISION: June 21, 2019

DECISION

[1] The appeal is dismissed. The Claimant's election of her parental benefit term is unable to be changed.

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 realized her parental benefits were lower than she expected after she received her first payment. She requested a reconsideration of the Canada Employment Insurance Commission's (Commission) decision to pay her extended parental benefits. She had only intended to be off work for one year and had made a mistake in choosing extended benefits. She asked to be switched to "standard parental benefits" which pays a higher rate of benefits over a shorter period of time.

[3] The Commission determined on reconsideration it could not change the Claimant's extended parental benefits to standard parental benefits, as the selection was irrevocable after the first payment of parental benefits was made. The Claimant now appeals to the Social Security Tribunal.

ISSUE

[4] Can the Claimant's election of extended parental benefits be changed to standard parental benefits?

ANALYSIS

[5] Parental benefits are payable to a claimant to care for their newborn child.¹ A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be

¹ *Employment Insurance Act*, subsection 23(1)

paid.² 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

[6] The Claimant made an initial claim for maternity and parental benefits on July 5, 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 52 weeks of parental benefits.

[7] On the same page of the application for benefits, it states the Claimant 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.

[8] The Commission submits the Claimant was paid parental benefits starting November 16, 2018, and submitted a record of the Claimant's weekly benefits for this period. The Claimant stated she received her first parental benefit payment on November 20, 2018.

[9] The Claimant said she noticed the decrease in her benefit payments but had trouble contacting the Commission to inquire about it. She called the Commission on February 21, 2019, and was informed the decrease in her benefit rate was due to her election of the extended parental benefit. On March 22, 2019, the Claimant requested a reconsideration of the amount of her parental benefits. She said she had mistakenly elected to receive extended parental benefits on her application form and asked the Commission to correct her election by switching her parental benefit from extended to standard.

² 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*. 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.

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

[10] The Claimant stated she made the mistake on her election because she understood the extended benefit to be associated with a 52-week time period, and she had intended to return to work after one year. Her work and family circumstances do not allow her or the other parent to extend their leave past this first year, which means a significant portion of their parental benefit entitlement can not be claimed under the extended parental benefit term. She states this error in her application has put her at a significant financial disadvantage.

[11] The Claimant agreed at the hearing that the legislation does not allow her to revoke her election of the parental benefit term, as she has already been paid benefits under that section. Rather, she argues that her choice of extended parental benefits was the result of a simple mistake and the Tribunal should make the decision the Commission should have made by correcting her mistake. The Claimant argues that even though she is not able to change her election of her parental benefit term, the Commission has the ability to remediate her mistake and the *Employment Insurance Act* does not prevent it from doing so.

[12] The Commission argues the Claimant elected to receive extended parental benefits and that this election is irrevocable once parental benefits were paid to her on November 16, 2018. Because her request to change her election from extended benefits to standard benefits was made after the first payment of extended parental benefits, she cannot change her election to now receive standard parental benefits.

[13] 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 under the extended parental benefit option. I also accept the Claimant was paid parental benefits as of November 2018. Further, I find this payment of parental benefits made the election of her maximum number of weeks for which parental benefits may be paid irrevocable. Therefore, I conclude the Claimant is not able to change the election of the maximum number of weeks for which parental benefits may be paid.

[14] With respect to the Claimant's argument that the Tribunal should correct this election as it was made in error, I find there is no provision within the employment insurance legislation or regulations which obligate the Commission or the Tribunal to correct a claimant's error. The Claimant selected the extended parental benefit option on her application for benefits and the

Commission has no legal obligation to question the Claimant's election of parental benefits. Rather, the information provided on the form explains the difference between the extended and parental benefits option. The onus is on the claimant to read the information provided and make a decision about the benefits she is seeking. While I understand the Claimant's argument, I find it cannot override the legislation in this case, which is clear that a claimant's choice between standard and parental benefits is irrevocable once benefits have been paid.

[15] I acknowledge the unfortunate and difficult situation that this has created for the Claimant, and if I had the discretion to allow her to change her election, I would certainly exercise this discretion. Unfortunately, however, there is no such discretion in the legislation to remedy the Claimant's situation, and I am bound to apply the law as it is written. I have no jurisdiction to change the law nor its application no matter how sympathetic the circumstances.⁴

[16] For these reasons, I find the Claimant's election cannot be changed from extended benefits to standard benefits because a payment of extended parental benefits was made prior to her request to change the election, and her election became irrevocable upon the payment of parental benefits.

CONCLUSION

[17] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	June 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. M., Appellant/Claimant

⁴ *Canada (Attorney General) v. Knee*, 2011 FCA 301

