



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. M. v Canada Employment Insurance Commission*, 2019 SST 729

Tribunal File Number: GE-19-2244

BETWEEN:

D. 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 25, 2019

DATE OF DECISION: July 2, 2019

DECISION

[1] The appeal is dismissed. The Claimant cannot be paid additional weeks of parental benefits because his child was born before those additional weeks were provided for by the legislation.

OVERVIEW

[2] The Claimant made an initial claim for employment insurance parental benefits. His child was born shortly before an amendment to the maximum parental benefit term came into force. This amendment provided for additional weeks of parental benefits when parents share the benefits. The Claimant requested the additional weeks of parental benefits because his child was born with health issues and he needed to stay home to provide care and assistance. The Canada Employment Insurance Commission (Commission) decided the Claimant could not be paid the additional weeks of benefits because his child was born prior to the amendment coming into force. The Claimant requests the additional weeks of parental benefits for compassionate reasons.

ISSUE

[3] Is the Claimant entitled to additional weeks of parental benefits under the amended parental benefit provision?

ANALYSIS

[4] Parental benefits are payable to a claimant to care for their newborn child.¹ Parental benefits can be shared by both parents. Before March 17, 2019, claimants could share up to 61 weeks of parental benefits.² On March 17, 2019, the maximum number of weeks that claimants could receive parental benefits was extended to 69 weeks, when parents share the benefits.³

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

² The maximum number of weeks for which parental benefits may be paid is found in paragraph 12(4)(b) of the *Employment Insurance Act*. Claimants are eligible to receive up to 35 weeks, referred to as standard parental benefits, or up to 61 weeks, referred to as extended parental benefits.

³ The amended provision is found at section 303 of the *Budget Implementation Act, 2018, No. 2*, and replaced paragraph 12(4)(b) of the *Employment Insurance Act* on March 17, 2019.

[5] The Claimant's child was born on March 11, 2019. The Claimant established a benefit period and claimed two weeks of extended parental benefits. He stated on the application for benefits that the child's other parent would be claiming 59 weeks of extended parental benefits.⁴ On March 21, 2019, he requested a reconsideration from the Commission, stating he wanted additional weeks of benefits as allowed by the parental benefit changes which took effect on March 17, 2019. The Claimant stated his child was due on March 17, 2019, but had been born early and this was the only reason he was not receiving the extra weeks of shared parental benefits.

[6] The Claimant testified that it was urgent and necessary that he take extra time off at the time of his child's birth. The child had health complications and his family required his care and assistance. He stated that his child being born early constituted exceptional circumstances, as he would otherwise be eligible for these benefits. It would help his family immensely to have the extra weeks of parental benefits.

[7] The Commission submits the Claimant is not entitled to the additional weeks of shared parental benefits because the date of birth of the child must be on or after March 17, 2019, for the new parental sharing benefit to be available.

[8] The *Budget Implementation Act, 2018, No. 2*, amended the *Employment Insurance Act's* parental benefit provisions. This provided for additional weeks of parental benefits when claimants share the benefits.⁵ These amendments came into force on March 17, 2019. The *Budget Implementation Act, 2018, No. 2*, provides a transitional provision which states that the *Employment Insurance Act*, "as it read immediately before the day on which this section comes into force, **continues to apply to a claimant for the purpose of paying benefits under section 23...** of that Act in respect of a child or children **who are, before that day, born** or placed with the claimant for the purpose of adoption" (emphasis added).

[9] In my view, the transitional provision is clear that the change to parental benefits does not apply to a child born before the provisions came into force on March 17, 2019. His child was

⁴ Extended parental benefits allow for claimants to receive up to 61 weeks of parental benefits. These 61 weeks of benefits can be shared between both parents.

⁵ Section 303 of the *Budget Implementation Act, 2018, No. 2*, replaced paragraph 12(4)(b) of the *Employment Insurance Act* on March 17, 2019.

born on March 11, 2019, and the legislation as it existed at that time determines his entitlement to parental benefits. For that reason, I find the Claimant is not entitled to the additional weeks of parental benefits provided for in the amended provision, as his child was born prior to when the provision came into force.

[10] I understand the Claimant's testimony that he had no choice but to stay home with his newborn child to provide care and assistance for his family. I truly sympathize with the Claimant's circumstances and recognize the personal and financial strain he has encountered during this sensitive time. However, I am bound by the requirements of the law and have no jurisdiction to change the law or interpret it in a manner that is contrary to its plain meaning, even in the interest of compassion.⁶

CONCLUSION

[11] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

HEARD ON:	June 25, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. M., Appellant/Claimant

⁶ *Canada (Attorney General) v. Knee*, 2011 FCA 301