



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. L. v Canada Employment Insurance Commission*, 2019 SST 904

Tribunal File Number: GE-19-2054

BETWEEN:

A. L.

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'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 52 weeks. The application stated the extended parental benefit option pays a lower rate of benefits over a longer period of time. After she received her first payment, the Claimant realized her parental benefits were lower than she expected. 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 did not understand the extended benefit option would reduce her benefit payments by such a significant amount. 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 initially refused to reconsider the decision and told the Claimant she had to seek a judicial review with the Federal Court. When the Claimant did so, the court instructed her to follow the administrative process by seeking reconsideration from the Commission first. The Commission reconsidered the decision and decided it could not change the Claimant's extended parental benefits to standard parental benefits, as the choice 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 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 benefits on July 5, 2018. The Claimant chose to receive parental benefits immediately following her maternity benefits. On 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.

[7] The Claimant 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. She indicated on her claim that the child's other parent wished to claim 4 weeks of parental benefits.

[8] The Claimant stated that she noticed the decrease in her benefit payment when it was deposited into her account on October 23, 2018. She requested a reconsideration of the amount of her parental benefits on October 24, 2018. She told the Commission that she had not understood that her election of the extended parental benefit option would have such an adverse affect on her benefit payments. She said that she had only intended to claim 52 weeks of maternity and parental benefits in total, as she indicated on her application form that she was

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

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*.

returning to work after one year of leave. She asked the Commission to switch her parental benefit from extended to standard.

[9] The Claimant argued that the Commission processed her claim incorrectly based on obvious errors she made on her application form. The Claimant stated on the application form that she was returning to work on June 17, 2019, approximately one year after starting her maternity leave. Despite this, the answers she gave on the claim form indicated that she was claiming 15 weeks of maternity leave plus 52 weeks of parental leave. She states that if a person had manually processed the file they would have caught this discrepancy, as she could not claim that many weeks of benefits during her one year of leave.

[10] The Claimant also argued that the communication of the parental benefit options was misleading. She testified that she understood the description of the extended option on the application for benefits to mean that it could go as low as 33% of her weekly benefit rate, but up to a maximum amount. She believed her benefit would be pro-rated based on the number of weeks she was going to claim. She intended to claim only 37 weeks of parental benefits, with the other parent claiming 4 weeks. She stated her understanding of the benefit rate was supported by other communications from the federal government, which emphasize that the benefit offers “choice and flexibility for parents.” She provided a screenshot of an announcement of the new parental benefit options which describes the two options using the same language as the application for benefits. Underneath the description it states “the total amount of benefits paid is about the same, whether parents decide to take the standard or extended option.”

[11] The Commission submits that the statement “the total amount of benefits paid is about the same, whether the parents decided to take the standard of extended option” is based on full entitlement being paid. It does not indicate that benefits are pro-rated if fewer than the maximum number of weeks is taken.

[12] The Claimant testified that she reviewed her account on Service Canada’s website after she was approved for benefits. It showed her rate of pay as \$547 and stated that her claim would end on June 17, 2019. She understood this to mean that she would receive the same amount of weekly benefits, namely \$547, throughout her entire maternity and parental claim. She argues the

Commission failed to inform her that her parental benefit rate was different, which removed her ability to change her election before the first benefit was paid

[13] The Commission argues the Claimant elected to receive extended parental benefits and that this election is irrevocable once parental benefits are paid. The Commission submits the Claimant was issued her first payment of parental benefits on October 19, 2018, and requested to change her election from extended benefits to standard benefits on October 24, 2018. Because her request was made after the first payment of extended parental benefits, she cannot change her election to now receive standard parental benefits.

[14] The Claimant does not dispute that she elected to receive extended parental benefits and she acknowledges that she received her first payment of parental benefits on October 23, 2018. However, she argues that she should be able to modify this choice because the phrase “once benefits are paid” should be interpreted to mean once the whole amount of parental benefits have been paid under a claim, as that is how it is more normally understood. She argues the phrase is ambiguous and that it was open to Parliament to use the phrase “once the first payment is received” if that was their intended meaning. As they did not use that phrase, she believes it should be more plainly interpreted to mean “paid” in a normal sense of the word, namely the payment in full of the benefits.

[15] The Claimant argues her interpretation of “once benefits are paid” is supported by the fact that it is not possible for a claimant to catch a mistake in their election of their parental benefit option before the first benefit payment is even made, at which point the election is rendered irrevocable. She argues the Commission failed to inform her of the change in her benefit rate, so to make it irrevocable as of the first payment means she is given no opportunity to change her election based on the impact on her benefits.

[16] In support of her argument, the Claimant provided several examples of similar clauses in provincial and federal statutes, including the *Income Tax Act* which states “an income tax shall be paid as required”⁴ which she submits has been interpreted to mean paid in full. I have carefully considered her examples but do not find the definitions provided within these other

⁴ This is found at subsection 2(1) of the *Income Tax Act*

statutes persuasive to the interpretation of the phrase “once benefits are paid” in the *Employment Insurance Act*. To use the example above, the *Income Tax Act* is describing a person’s liability to pay tax based on their yearly taxable income, which is an obligation distinguishable from a person’s ongoing entitlement to employment insurance benefits.

[17] It is worth noting the phrase “once benefits are paid” is used only twice in the *Employment Insurance Act*,⁵ in nearly identical provisions, but the phrase “benefits were paid” appears in several sections. For example, paragraph 10(6)(a) provides that a benefit period can be canceled if, among 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 *Employment Insurance Act* also uses the phrase “benefits were paid.”⁷

[18] It is my view that the foregoing provisions are similar and so I find the interpretation of the phrase “benefits were paid” to be persuasive in my statutory interpretation of the phrase “once benefits are paid” to mean once any benefits have been paid.

[19] I also consider the consequences of the Claimant’s proposed interpretation. If her interpretation of the provision was applied, 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. Alternatively, 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. There would also 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 *Employment Insurance Act*, as they produce an absurd result. It is on these bases that I find the Claimant’s interpretation cannot be supported.

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

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*.

[20] The following facts are not in dispute. The Claimant elected to have a maximum of 61 weeks for which parental benefits may be paid. She was paid parental benefits as of October 23, 2018. 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.

[21] With respect to the Claimant's argument regarding the Commission's processing of claims. While I agree the Commission should strive to operate with a minimum of processing errors, I find the Commission has no legal obligation to question the Claimant's election of parental benefits. Rather, the information 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. I understand the Claimant's argument but 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.

[22] I acknowledge the unfortunate and difficult situation that this has created for the Claimant. Unfortunately 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.⁸

[23] For these reasons, I find the Claimant's election cannot be changed from extended parental 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.

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

CONCLUSION

[24] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

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