



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. C. v Canada Employment Insurance Commission*, 2019 SST 666

Tribunal File Number: GE-19-2212

BETWEEN:

M. C.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: June 28, 2019

DATE OF DECISION: July 9, 2019

DECISION

[1] The appeal is allowed. The Claimant did not elect to be paid standard parental benefits.

OVERVIEW

[2] The Claimant established a benefit period and was paid maternity employment insurance benefits. She contacted the Canada Employment Insurance Commission (Commission) after her child was born and the Commission advised her that she could apply for parental benefits at that time. She proceeded with the claim over the phone and told the agent that she wanted to be home with her child for at least one year. She expected to receive extended parental benefits, which pays a lower rate of benefits over a longer period of time.

[3] After she received the first payment of parental benefits, she realized the amount was higher than she expected to be paid under the extended parental benefit option. She requested a reconsideration of the Commission's decision to pay her standard parental benefits and the Commission maintained its decision because it said she had elected standard parental benefits during her telephone claim. The Claimant appeals to the Social Security Tribunal on the basis that she did not elect standard parental benefits.

ISSUES

[4] Did the Claimant elect to be paid standard parental benefits?

ANALYSIS

[5] Parental benefits are payable to a claimant to care for their newborn child.¹ A claimant has two options for parental benefit terms: the standard option to receive up to 35 weeks of benefits a benefit rate of 55% of weekly insurable earnings, or the extended option to receive up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings.²

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

² *Employment Insurance Act*, subsection 12(3)(b) and 14(1)

[6] A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be paid.³ 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.⁴

Did the Claimant elect standard parental benefits?

[7] The following facts are not in dispute. The Claimant made a claim for parental benefits by telephone on February 28, 2019. The Commission issued her first payment for standard parental benefits on March 19, 2019.

[8] The Claimant submits that she did not elect to be paid standard parental benefits. Rather, she wanted to be paid extended parental benefits and she argues the Commission made a mistake by selecting standard parental benefits for her.

[9] The Claimant stated to the Tribunal that she contacted the Commission by phone on February 28, 2019, to inquire about a child tax benefit. During this call, she reports the Commission agent advised her that it was "time to sign up for parental benefits." She said she would take care of it online but he told her that he could do it with her over the phone instead. The Claimant said that she understood before this telephone call that there were two options for parental benefit terms. She testified that she told the agent that she wanted the "long term" benefit and stated that she wanted her child to be at least one year old before he went to daycare.

[10] The Claimant said that when she received her first parental benefit payment, she realized that she was being paid at a higher rate than the extended parental benefit. She contacted the Commission and was informed she was being paid standard parental benefits. She requested a reconsideration of the Commission's decision and informed them that they had made a mistake in the type of parental benefit she was being paid.

[11] The Commission submits the Claimant elected to be paid standard parental benefits during her telephone claim on February 28, 2019. In support of its position, the Commission

³ 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.

⁴ Subsection 23(1.2) of the *Employment Insurance Act*.

provided notes of its telephone conversations with the Claimant. I will examine two of these notes in detail, as they contain information relevant to the Claimant's election of parental benefits.

[12] The notes of the conversation dated February 28, 2019, is in the form of a questionnaire with the Claimant's purported answers typed into the box at the end of several of the questions. Under the heading "Parental Benefits" there is a note instructing the agent to review the information regarding both parental benefit terms to help the claimant choose the appropriate parental benefit type. It also states that the choice between standard and extended parental benefits is irrevocable once benefits have been paid on the claim. After this information, the questionnaire states "Choose one of the following options: Standard Parental," under which the agent has written the number "30" in the statement "I wish to claim (30) weeks of standard parental benefits to care for my child(ren)." There are no answers typed into the "Extended Parental" section.

[13] The conversation dated May 8, 2019, occurred after the Claimant requested reconsideration of the Commission's decision. The notes state the Claimant was asked about her choice to receive 30 weeks of parental benefits and the Claimant responded that she selected 30 weeks because she was uncertain whether the other parent would be sharing any benefits.

[14] At the hearing, the Claimant testified that these conversation notes did not accurately reflect her statements. She did not state that she wanted standard parental benefits during the telephone conversation on February 28, 2019. She recounted that she only told the agent that she wanted the long term benefit. She also stated that she did not request 30 weeks of parental benefits in either conversation. She recalls the agent telling her that the weeks of her parental benefits could be changed but she did not state that she wanted to receive 30 weeks of benefits at any point.

[15] On July 2, 2019, I requested the Commission provide the audio recording of these two phone calls. The Commission responded on July 3, 2019, that it does not record statements provided by a claimant and so there are no audio recordings of the two conversations in question.

[16] I recognize the Commission's position is supported by the notes of the telephone conversations with the Claimant on February 28, 2019 and May 8, 2019. During these conversations, she is alleged to have elected to be paid standard parental benefits and stated that she wanted 30 weeks of parental benefits. The Commission argues that because the records note that she requested 30 weeks of parental benefits during conversations with two different agents several months apart, this confirms that she requested 30 weeks.

[17] I place little weight on the Commission's argument that the notes confirm that the Claimant wanted 30 weeks of benefits. I am not satisfied that the mere repetition in the notes that the Claimant requested 30 weeks of benefits confirms that she made that request. More importantly, however, whether the Claimant requested 30 weeks of benefits is not determinative of whether she elected to be paid standard or extended parental benefits. Either option allows the payment of any amount of weeks up to the maximum term of 35 or 61 weeks. If the Claimant had elected extended parental benefits, it is still reasonable for her to claim 30 weeks of benefits, especially if her intention was to share this parental benefit with the other parent.

[18] I note that "written evidence of oral admissions" are not necessarily accepted at face value.⁵ The Federal Court of Appeal has also found that notes taken by a Commission employee are "inherently unreliable when not approved by claimants at the time made."⁶ Ultimately, I must determine what weight, if any, I give to the record of the telephone conversations when faced with conflicting statements by the Claimant.

[19] I have considered the statements in the file against the contradictory testimony provided by the Claimant. In this case, I place greater weight on the Claimant's testimony that she did not elect the standard parental benefit option. The Claimant's testimony was given directly to the Tribunal and the Claimant answered questions in an open and straightforward manner regarding the circumstances around her election of the parental benefit term. I have found no reason to doubt the Claimant's credibility in this regard.

[20] After considering the submissions of both parties, I find the evidence weighs more heavily toward the Commission agent misinterpreting the Claimant's statements that she wanted

⁵ *Canada (Attorney General) v. Childs*, A-418-97

⁶ *Canada (Attorney General) v. Childs*, A-418-97

the “long term” benefit and that she did not want her child to be placed in daycare until he was one year old, as a choice for the standard parental benefit and recorded the Claimant’s election incorrectly. I also consider that the conversation notes were not reviewed and approved by the Claimant at the time they were made, which weakens their reliability.

[21] Based on the Claimant’s testimony and submissions, I am satisfied she did not elect to be paid standard parental benefits. I believe the Commission incorrectly interpreted her statements on February 28, 2019, and recorded her election of her maximum parental benefit term as the standard parental benefit based on that misunderstanding. Her statements to the Tribunal have been clear and consistent. She elected to be paid extended parental benefits.

[22] The Commission submits that the Claimant’s election of her parental benefit term is irrevocable once parental benefits have been paid. This is accurate. However, as the Claimant did not elect standard parental benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her initial and unwavering election of extended parental benefits.

CONCLUSION

[23] The appeal is allowed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	June 28, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	M. C., Appellant/Claimant