



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. C. v Canada Employment Insurance Commission*, 2019 SST 938

Tribunal File Number: GE-19-2713

BETWEEN:

K. C.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: August 21, 2019

DATE OF DECISION: August 22, 2019

DECISION

[1] The appeal is dismissed. The Claimant cannot change her election of standard parental benefits once a payment has been made.

OVERVIEW

[2] The Claimant submitted an initial claim for benefits in which she elected 35 weeks of standard parental benefits. When her benefits stopped on May 18, 2019, the Claimant contacted the Commission and requested that her parental benefits be changed to the extended option of 61 weeks. The Commission refused to change the election because the Claimant had already received payment for standard parental benefits.

[3] The Commission maintain their decision upon reconsideration. The Claimant appeals to the Social Security Tribunal stating that the Commission's agent gave her inaccurate information when she was selecting the benefits online.

ISSUE

[4] I must determine whether the Claimant can change her election from standard to extended parental benefits once a payment has been issued.

ANALYSIS

[5] Parental benefits are payable to care for one or more children placed with a claimant for the purpose of adoption, within the parental window.¹

[6] The parental window begins with the week in which the child or children are actually placed with a claimant for the purpose of adoption and ends 52 weeks after the week in which the child or children are placed.² The parental window may only be extended in cases where a claimant elects to be paid extended parental benefits.³

¹ Subsections 23(1) and (2) of the *Employment Insurance Act (Act)*

² Paragraphs 23(2)(a) and (b) of the *Act*

³ Subsection 23(3.21) of the *Act*

[7] When making a claim for parental benefits, the claimant must choose (elect) between standard parental benefits or extended parental benefits. Standard parental benefits are paid to a maximum of 35 weeks at the regular benefit rate, within the 52-week parental window. When extended parental benefits are elected, a maximum of 61 weeks, at a reduced benefit rate are paid and the parental window is extended by 26 weeks to allow the extended benefits to be paid.⁴

[8] The law states that a claimant's election of either standard or extended parental benefits cannot be changed once a payment of parental benefits has been made.⁵

[9] In the case at hand, the Claimant states on her application for benefits that the child was placed in her care for the purpose of adoption on May 15, 2018. She filed her application for parental benefits on March 11, 2019, and elected standard parental benefits for up to 35 weeks, paid at 55% of her weekly insurable earnings. There is no evidence that disputes these facts.

[10] The Claimant testified that she did not know she could collect parental benefits when adopting a child until she saw a news report that said she could collect benefits within 18 months of her child being placed with her for adoption. She said she was confused when completing her application on line so she called the Commission and requested assistance in making her election of parental benefits.

[11] The Claimant argued that she was told that because she was applying within the 18-month period, she would get 35 weeks of benefits, until she returned to work on November 12, 2019. She argued that her online profile showed that she would be getting 35 weeks and then it suddenly changed without notice when her benefits stopped May 18, 2019.

[12] The Claimant stated that the parental window in which benefits can be paid is not clearly explained on the application or the Commission's website. She said that the website is confusing and the agent who assisted her on the telephone only referenced the 18-month parental window. She argued that the application form should clearly outline the period in which each parental option can be paid. She asserted that the Commission should be required to notify claimants

⁴ Subsection 23(1.1) and subparagraphs 12(3)(b)(i) and (ii) of the *Act*

⁵ Subsection 23(1.2) of the *Act*

when changes to the entitlement to benefits are made and provide timely information so claimants can make decisions.

[13] The Commission provided evidence of their telephone conversation with the Claimant on July 4, 2019, during which the Claimant requested that the Commission change her parental option to "extended" parental benefits so she could be paid benefits until November 23, 2019. The Commission informed the Claimant that they could not change her parental option because the law states this the election cannot be changed once a payment for parental benefits has been issued.

[14] The Commission submitted that standard parental benefits cannot be paid outside the standard parental window. In this case, the standard parental window ended May 18, 2019, which is 52 weeks after the child was placed with the Claimant for adoption. The first payment for standard parental benefits was issued to the Claimant on March 29, 2019, and the last payment was May 18, 2019, when the 52-week standard parental window ends.

[15] Although I have no authority to direct the Commission to institute changes, I commend the Claimant for suggesting that the Commission change the application for benefits. She suggested that the parental selection should explain the parental window, such as what I have listed in bold text below.

- Standard option – up to 35 weeks of benefits at a benefit rate of 55% of your weekly insurable earnings up to a maximum amount – **these benefits can only be paid within the 52-week period starting from the date the child was born or was placed for adoption.**
- Extended option – up to 61 weeks of benefits at a benefit rate of 33% of your weekly insurable earnings up to a maximum amount – **these benefits can only be paid within the 78-week period starting from the date the child was born or was placed for adoption.**

[16] It is unfortunate that the Commission's agent misinformed the Claimant about her eligibility to parental benefits. However, this does not change the *Act*, which clearly prohibits a change to the type of parental benefits chosen once a payment has been made.

[17] The law states that incorrect information which may be given by the Commission on the interpretation of the *Act*, and representations, which they may make to a claimant regarding their particular situation, cannot be upheld if they are contrary to the *Act*, even if the information turns out to be against the Claimant's interests.⁶

[18] I am quite sympathetic to the Claimant's circumstances and what may be perceived as an unjust result; however, there are no exceptions and no room for discretion in this case. As stated above, parental benefits can only be paid to a claimant within the parental window and the election of standard or extended parental benefits cannot be changed once a payment has been made. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.⁷

CONCLUSION

[19] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	August 21, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. C., Appellant (Claimant)

⁶ *Granger v. Canada (Attorney General)*, A-684-85

⁷ *Canada (Attorney General) v. Knee*, 2011 FCA 301