



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. I. v Canada Employment Insurance Commission*, 2019 SST 1062

Tribunal File Number: GE-19-2895

BETWEEN:

**P. I.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Charlotte McQuade

HEARD ON: September 6, 2019

DATE OF DECISION: September 6, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant's election for extended parental benefits cannot be revoked once parental benefits have already been paid at the extended rate.

## **OVERVIEW**

[2] The Claimant applied for employment insurance maternity and parental benefits on March 8, 2019. In her initial application for benefits, the Claimant elected to receive the extended benefit option for benefit payments, which provides for up to 61 weeks of benefits at a benefit rate of 33% of her weekly insurable earnings up to a maximum amount. The Claimant's first payment of parental benefits was issued on July 5, 2019 for the weeks of June 23, 2019 to July 6, 2019. On July 9, 2019, when the Claimant received the first parental payment, she realized she had made an error on her application and immediately phoned the Commission to request that her benefits be converted to the standard benefit option, which provides for up to 35 weeks of benefits at a benefit rate of 55% of her weekly insurable earnings up to a maximum amount.

[3] The Claimant told the Commission that she had intended to apply for the standard benefit option but had just made a mistake in completing the online application. Her Record of Employment (ROE) reflected her intention to return to work after the 35 weeks of parental benefits had been received, stating the expected date of return as April 2, 2020. The Commission advised the Claimant that, as per the law<sup>1</sup>, because she had selected the extended parental benefit rate option in her application for benefits and had already been paid benefits at the extended rate, her election was irrevocable. She could not therefore switch to the standard benefit rate option. The Claimant appealed this decision to the Tribunal, arguing that she simply made a mistake and it was never her intention to claim the extended benefits. She argues that this mistake is resulting in financial distress. The Claimant also argues that the Commission's website information is unclear because it says you cannot change between the standard and extended parental benefit option once parental benefits have been paid, but it also says you can change the number of weeks you take as long as you do not go over the maximum for the option you chose. She

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<sup>1</sup> Subsection 23(1.2) of the *Employment Insurance Act*.

submits that she wants to make a change between the number of weeks from extended to standard and will not go over the maximum standard weeks so it is unclear to her why she cannot do that.

## **PRELIMINARY MATTERS**

[4] A videoconference hearing was scheduled for this appeal. Due to technical difficulties, the video was not available. The Claimant consented to proceeding with her hearing by way of teleconference. As such, the hearing proceeded by way of teleconference. The Claimant's mother, J. S., testified as a witness.

## **ISSUE**

[5] Can the Claimant's election for the extended parental benefit option be changed to the standard parental benefit option?

## **ANALYSIS**

[6] Parental benefits are payable to a claimant to care for their newborn child or a child placed with a claimant for the purpose of adoption. <sup>2</sup> A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be paid. <sup>3</sup> 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.<sup>4</sup>

[7] The Claimant's application for maternity and parental benefits, completed on March 8, 2019, provides that the Claimant must select between two options for parental benefits: standard or extended. The standard option is defined as allowing up to 35 weeks of benefits at a benefit rate of 55% of the weekly insurable earnings, up to a maximum amount. The extended option is 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

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<sup>2</sup> Subsection 23(1) of the *Employment Insurance Act*.

<sup>3</sup> Subsection 23(1.1) of the *Employment Insurance Act*.

<sup>4</sup> Subsection 23(1.2) of the *Employment Insurance Act*.

between standard and extended parental benefits is irrevocable once parental benefits have been paid on the claim.<sup>5</sup>

[8] The Claimant's application provides that she chose to receive parental benefits immediately following her maternity benefits. She also selected that she wanted to apply for the extended option of parental benefits and that she wanted to claim 61 weeks of parental benefits.<sup>6</sup>

[9] The Commission's payment records show that the Claimant was issued her first parental benefit payment on July 5, 2019 for the weeks of entitlement from June 23, 2019 to July 6, 2019.<sup>7</sup> The Claimant testified that she think this is correct. She did not go online to check or receive any kind of stub from the Commission saying this. However, she received her first reduced payment on July 9, 2019 by direct deposit and that was what prompted her to contact the Commission about her mistake. I find that the Claimant's first payment of parental benefits was issued on July 5, 2019.

[10] The Claimant testified that she contacted the Commission on July 9, 2019 to change her election to standard benefits. She testified that she never intended to choose the extended benefit option. It was just a mistake. Her intention was to return to work after the standard parental benefits were finished, which is reflected in her ROE that shows that she was expected to return to work on April 2, 2020.<sup>8</sup> She explained that her application for benefits was completed on March 8, 2019 and she went into labour on March 13, 2019. She was in a rush when she completed the form and did not print it. She called the Commission just to make sure she was approved but that was it. She did not get anything that she recalls in writing from the Commission saying when her parental benefits were to start. She had chosen the option to not file Claimant's reports. She is not sure if she had access to an online account she could have checked. The Claimant confirmed that her mother's name was on the application form as a third party who had helped her complete the form. She related that she had just used her mother's computer and she was sitting with her mother when the application was completed. The Claimant related she is suffering financially due to this honest mistake.

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<sup>5</sup> GD3-7.

<sup>6</sup> GD3-7.

<sup>7</sup> GD3-21 to GD3-23.

<sup>8</sup> GD3-18.

[11] The Claimant's mother testified that she was with her daughter when the application for benefits was completed. She did not recall that they read over the section about the election in any detail. The Claimant's mother says she does not understand why her daughter cannot change from extended benefits to standard benefits as the Commission's website says you can change the number of weeks you take as long as you do not go over the maximum for the option you chose. She questions why you can change the number of weeks but not the election. The Claimant's mother says it is not clear why these type of benefits are so restrictive. She also points out that the Claimant's ROE said she was returning to work on April 2, 2020 so the Commission should have realized that the application form was wrong in terms of the request for extended benefits. The Commission should have realized the application did not match up with the ROE.

[12] The Commission submits that the Claimant elected extended parental benefits and this election became irrevocable on July 5, 2019 when she was paid parental benefits on this claim.

[13] I find that the Claimant elected the extended benefit option with a maximum of 61 weeks for which parental benefits may be paid. I find she was paid parental benefits as of July 5, 2019. I find this payment of parental benefits made the election of her extended benefits to be irrevocable, such that her election could not be changed to the standard benefit option after July 5, 2019. I find that the Claimant tried to change her election on July 9, 2019 after the election had become irrevocable. I find therefore, that the Claimant is unable to change her election of extended parental benefits to standard parental benefits.

[14] I do accept the Claimant's evidence that she made an honest mistake in her election. However, a mistake in making the election does not negate the fact that an election was made. Regrettably, the Claimant did not print out or review the application in time to catch the mistake and revoke that election prior to the first payment of parental benefits on July 5, 2019.

[15] I acknowledge the Claimant's argument that the ROE reflected a return to work date of April 2, 2020. However, the information on the ROE provides that April 2, 2020 is the "expected date of recall"<sup>9</sup>. The ROE is a document prepared by the employer. While it suggests

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<sup>9</sup> GD3-18.

a date of return consistent with the ending of a standard parental benefit option, the ROE does not negate the actual election made by the Claimant in her application as it is not a document prepared by the Claimant and is not meant to specifically address the issue of the election of benefits. Because the ROE does not specifically address the election and because it only provides for an expected date of recall on the form, I cannot find the failure of the Commission to notice the fact the Claimant's election and expected return to work date were inconsistent to be of any significance.

[16] The Claimant makes the argument that she wants to change from extended to standard parental benefits and the Commission's website says that you can change the number of weeks of benefits you take as long as the maximum number of weeks are not exceeded. She questions why then she cannot switch to the standard benefit option, as she will not exceed the maximum number of weeks in that option. While the Commission's website information may not be clear, I find that I am bound by the legislation in regards to the irrevocability of the election, once parental benefits have been paid, not information on the website.

[17] I recognize that the result in this case is harsh. I have no doubt the Claimant made an honest mistake on her application and elected the extended benefit option instead of the standard benefit option. However, she still made an election. I have great sympathy for the Claimant's situation and appreciate that she is struggling financially as a result of the inability to change her election to the standard benefit option. However, I have no discretion in this matter. No matter how sympathetic the situation, I am bound to apply the legislation and cannot step outside it in the interests of compassion.<sup>10</sup>

## CONCLUSION

[18] The appeal is dismissed.

Charlotte McQuade  
Member, General Division - Employment Insurance Section

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<sup>10</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301.

HEARD ON:	September 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. I., Appellant