



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. C. v Canada Employment Insurance Commission*, 2019 SST 1070

Tribunal File Number: GE-19-3031

BETWEEN:

**C. C.**

Appellant/Claimant

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: Catherine Shaw

HEARD ON: September 3, 2019

DATE OF DECISION: September 6, 2019

## **DECISION**

[1] I am dismissing the appeal. This means the Claimant is unable to change the election of her parental benefit term.

## **OVERVIEW**

[2] The Claimant established a benefit period for maternity and parental EI benefits. She elected on her application to receive extended parental benefits which pays a lower rate of benefits over a longer period of time. When she received her first payment, she realized the benefit rate was lower than she had anticipated and told the Commission she had intended to request standard parental benefits which pays a higher rate of benefits over a shorter period of time.

[3] I must decide whether the Claimant can change her parental benefit term from extended parental benefits to standard parental benefits. The Commission says her choice of parental benefit term cannot be changed after the first payment of parental benefits is made. The Claimant says she chose the extended option by mistake. She also informed the Commission that she would only be taking one year off from work and says the Commission failed to review her file to catch this mistake before the first payment was made. I find the law does not allow the Claimant to change the election of her parental benefit term.

## **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.<sup>1</sup> A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be

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<sup>1</sup> *Employment Insurance Act*, subsection 23(1)

paid.<sup>2</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>3</sup>

[6] The Claimant made an initial claim for maternity and parental benefits on January 15, 2019. On this application, she chose to receive parental benefits immediately following her maternity benefits. She then selected that she wanted to receive extended parental benefits and that she wanted to claim 61 weeks of parental benefits.

[7] The application form 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 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.

[8] The Commission submits the Claimant was paid parental benefits on May 26, 2019, and submitted a record of the Claimant's weekly benefits for this period. This shows the Claimant was paid a blended maternity and parental benefit payment for the two weeks commencing May 12, 2019. It says the payment was issued on May 26, 2019 and that the payment was deposited on May 28, 2019. The Claimant agrees that she received her first parental benefit payment on May 28, 2019.

[9] The Claimant stated she noticed the decrease in her benefit payments. She contacted the Commission on May 28, 2019, and was informed it was due to her election of the extended parental benefit term. The Commission told her she could not modify her parental benefit to the standard option because benefits had already been paid. She requested a reconsideration of this decision as she had mistakenly elected to receive extended parental benefits on her application

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<sup>2</sup> 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.

<sup>3</sup> Subsection 23(1.2) of the *Employment Insurance Act*.

form and was unaware of the mistake until she received her first payment. She asked the Commission to correct her election by switching her parental benefit from extended to standard.

[10] The Claimant testified that she had a formal agreement with her employer that she would return from maternity leave in one year. She submitted a personnel document from her employer which states that her maternity leave starts on January 31, 2019 and her anticipated return date is January 31, 2020. The Claimant states that her work circumstances do not allow her to extend her leave past one year. This means she will not be able to claim the total amount of the extended parental benefit, which puts her family at a financial disadvantage.

[11] At the hearing, the Claimant stated that she had contacted the Commission on March 1, 2019, to inform them of her child's birth date. During this conversation, she said the agent asked her how long she was taking off work and she replied that she would be taking one year. She says that her choice of extended parental benefits on her initial claim was the result of a simple mistake and argues the Commission had a duty to correct this mistake after she informed them that she would only be taking one year off from work in the phone call on March 1, 2019.

[12] I consider the Claimant's argument that the Commission should have corrected her election of a parental benefit term after she informed them that she would only be taking one year off from work. However, the Claimant's statement that she was taking one year off from work does not conclusively indicate that she wanted standard parental benefits rather than extended parental benefits. Parental benefits can be a shared benefit between the child's parents. As such, it is reasonable that a person may choose to receive extended parental benefits and still return to work within one year, as the other parent may be claiming the remaining weeks of parental benefits. The Claimant acknowledged that she did not request a modification of her parental benefit term during the phone call on March 1, 2019, because she was not aware that she had made an error in her election until she received the first payment on May 28, 2019.

[13] The Claimant stated that she had been put off work on doctor's orders before her maternity leave began on January 7, 2019. She said the Commission had advised her that she could potentially change her first week of maternity benefits to sickness benefits and therefore push back the start date of her parental benefits. She said this meant that she would have requested the modification to her parental benefit term on May 28, 2019, before the first payment

of parental benefits had been made. The Claimant acknowledged that she had not applied for EI sickness benefits but was advised by the Commission to send them this information in case it was a possible remedy to her situation.

[14] The Commission submitted the Claimant would not have been eligible for sickness benefits at the beginning of her benefit period because she was obliged to exhaust all sick benefits payable from her employer before applying for EI sickness benefits. Which she did from January 7, 2019 to January 31, 2019. They also said she would not have been entitled to EI sickness benefits after her maternity leave started because she would not meet the necessary requirement of being otherwise available for work.

[15] Because the Claimant has not applied for EI sickness benefits, the Commission has not made a formal decision on her entitlement to those benefits for any part of her current benefit period. Naturally, this means the Claimant has also not received a reconsideration decision on this matter. For this reason, I do not have the authority to determine whether the Claimant can be paid EI sickness benefits at the beginning of her claim. My jurisdiction is limited to decide on issues that have been reconsidered by the Commission, as the reconsideration and appeal process is set out in the *Employment Insurance Act*.<sup>4</sup> While I recognize the Commission has addressed the Claimant's argument in this regard, I am unable to decide on the Claimant's entitlement to sickness benefits as part of this appeal.

[16] I understand the Claimant's statements that she made this election by mistake and she intended to select standard parental benefits. However, it is undisputed that she selected the extended parental benefit option on her initial claim for benefits; therefore, I accept that the Claimant elected to have a maximum of 61 weeks for which parental benefits may be paid. I also accept that the Claimant was paid parental benefits as of May 28, 2019. Further, I find this payment of parental benefits made the election of her maximum number of weeks for which parental benefits may be paid irrevocable.

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<sup>4</sup> Section 113 of the *Employment Insurance Act* provides that a party who is dissatisfied with a decision of the Commission made under section 112 may appeal that decision to the Social Security Tribunal. A decision of the Commission made under section 112 is referred to as a reconsideration decision.

[17] 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.<sup>5</sup>

[18] 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.

**CONCLUSION**

[19] The Claimant cannot change her parental benefit term from extended benefits to standard benefits. This means the appeal is dismissed.

Catherine Shaw  
Member, General Division - Employment Insurance Section

HEARD ON:	September 3, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. C., Appellant

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<sup>5</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301