



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v Canada Employment Insurance Commission*, 2019 SST 1009

Tribunal File Number: GE-19-2972

BETWEEN:

J. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: September 5, 2019

DATE OF DECISION: September 10, 2019

DECISION

[1] The appeal is dismissed. This means the Claimant is not entitled to receive 35 weeks of parental benefits because the other parent received the full entitlement of 35 weeks of parental benefits. I find that the Commission exercised its discretion when they investigated a suspected misrepresentation within 72 months.¹

OVERVIEW

[2] Parental benefits are provided for caring for one (or more) newborn children of the claimant, or one (or more children) placed with the claimant for the purpose of adoption. Under the EI program, parental benefits are payable at any time during the benefit period and within the parental window. The applicable window begins the week in which the child is born or placed with the claimant for purposes for adoption and ends 52 weeks after the birth or actual placement.

[3] Payments of parental benefits are to begin with the week in which the child (or children) of the claimant are born in an effort to provide a means of financial support that allows a parent (or parents) to be away from work to provide care for the child.

[4] I must decide whether the Claimant is eligible to collect parental benefits. The Commission says that both the Claimant and her spouse received 35 weeks of parental benefits that are contrary to the law. The Claimant disagrees and states that she gave birth to twins and both parents should be entitled to each collect 35 weeks of parental benefits. She states she should not be responsible for the Commission's error to pay both parents, the benefits and this will cause financial hardship.

[5] The Claimant gave birth to twins, filed an application for special maternity benefits, and requested it to be followed by 35 weeks of parental benefits. The Claimant requested her claim to be converted to sickness benefits, which allowed the Claimant to collect 59 weeks of special benefits with 35 of those paid for parental benefits.

¹ Subsection 41.1(2) of the Employment Insurance Act

[6] The Commission performed an investigation that revealed that both her and her spouse (the other parent) collected 70 weeks of parental benefits. Following the investigation, it was agreed between the parties that her spouse would retain the 35 weeks of parental benefit entitlement. The Commission disentitled the Claimant to 35 weeks of parental benefits, which created an overpayment.

ISSUES

Is the Claimant entitled to receive 35 weeks of parental benefits?

[7] Unfortunately, the Claimant is not entitled to receive 35 weeks of parental benefits because the other parent also collected 35 weeks of parental benefits. The law is clear only a total of 35 weeks of parental benefits that can be issued.

[8] The law says that parental benefits are only payable to a major attachment claimant. A major attachment claimant as defined as a claimant who qualifies to receive benefits and has 600 or more insurable hours in her qualifying period.²

[9] The law says that parental benefits are payable during a period that begins with the week in which the child of the claimant is born or actually placed with the claimant for the purpose of adoption, and ends 52 weeks after that week.³

[10] The courts have supported the fact that the period in which care to one or more children equates to the payment of a total of 35 weeks of parental benefits. While this amount can be split between two parents in the desired quantity determined by each parent, the total payment of this entitlement cannot collectively exceed the total of 35 weeks.

[11] The Court has evaluated the determination of fairness and applicability of the legislation as it relates, to when parents of twins apply for consideration of parental benefits. The decision supported that both parents cannot benefit from 35 weeks parental benefits each, as this is contrary to the nature of the law. The maximum number of weeks for which benefits may be paid for the care of one or more newborn or adopted children because of a single pregnancy or

² Subsection 23(1) of the *Employment Insurance Act*

³ Subsection 23(2) of the *Employment Insurance Act*

placement is 35. Furthermore, evaluation and confirmation that the decision is not an infringement of the Charter Rights was identified.⁴

[12] The Claimant completed her application for EI special benefits. She indicated the date of birth was February 27, 2013. She indicated she wanted to receive her parental benefits immediately after her maternity benefits. She requested that she wanted to claim 35 weeks to care for her child(ren).

[13] The Claimant contacted the Commission to convert her claim from parental to sickness benefits and provided a medical note dated February 13, 2014. On April 8, 2014, the Commission contacted the Claimant. The Claimant advised the Commission that when she had her twins they had been hospitalized for one week after the birth. The Commission approved the conversion to sickness benefits, reactivated her claim and converted her parental benefits to reflect sickness benefits to extend her benefit period beyond 52 weeks.

[14] On March 5, 2019, the Commission conducted an investigation as it was alleged both parents collected 35 weeks of parental benefits. The Claimant told the Commission that she had delivered twins and one was born with a disability. She said that both her and her spouse had paid into EI and based on the research she had done and that she had twins they would both be able to collect parental benefits. She said she and her husband both applied because they had heard of another couple that were awarded the same benefits. She said the case was all over the news.

[15] The Claimant says that they both provided the information to the Commission and they were both approved so this was not their fault. The Commission advised the Claimant that there had been no cross match for benefits at that time. The Claimant confirmed that her spouse and she shared the same roof, but he lived in the apartment in the basement. She said that she and her spouse have different names and have separate bank accounts. She says she received her payments by direct deposit, and her spouse said first by mail and then perhaps direct deposit but he could not recall. The Claimant confirmed that her and her spouse did not share the same last name.

⁴ *Martin v Attorney General of Canada* A-243-11

[16] The Claimant says that the diagnosis of her son's disability turned their lives upside down. She says they feel disadvantaged as a family, not only because of the extra responsibilities brought on by having twins, but because one was born with a disability. She says that it was necessary for her spouse to be there to care for one of the twins while she cared for the other.

[17] The Claimant says that the situation caused stress on the marriage and she and her husband separated. She said their home is divided into two apartments and she lived in one and he lived in the other. She said that she believed, because she and the father, each were caring for a child and they were not officially living together at that time, they should both be able to claim benefits.

[18] The Claimant says that when they received the letters from the Commission saying they were approved, they believed that the law had been changed. She said she never heard the story that the decision had been overturned.

[19] The Claimant confirmed that she never specifically called and asked Service Canada if in fact, the law had changed and both parents with multiple births were eligible to collect EI parental benefits.

[20] The facts are undisputed; both parents made applications for parental benefits, and both received 35 weeks for a total of 70 weeks.

[21] I concur with the Commission and am extremely sympathetic to the Claimant's situation but I do not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Claimant.⁵

Does the Commission have the authority to re-examine a claim for employment insurance benefits.

⁵ *Canada (AG) v. Levesque*, 2001 FCA 304

[22] Yes, the Commission is allowed to re-examine a claim for benefits up to 36 months after benefits were paid or payable. And if they suspect that a claim contains inaccurate statements or false or misleading representations, that period can be extended to 72 months.⁶

[23] The Claimant says the Service Canada agent told her that there was a glitch in the system and that is why she was approved for parental benefits. She says this claim was almost seven years ago and she does not believe she should be accountable for the glitch.

[24] The evidence is undisputed the Claimant was in receipt of parental benefits through the week of February 16, 2014, the clock for the 72-month period would be applicable, from such a date forward. As the investigation assigned to the Integrity Services Branch of the Commission March 8, 2019, and the result of the investigation was communicated to the Claimant May 30, 2019, the timeframe restrictions applicable within the Act are a non-issue.

[25] I accept that there is sufficient evidence to determine that the Claimant provided inaccurate information when she completed her application requesting she receive the 35 weeks of parental benefits. I find that the information on the application clearly states, "Consequently, the 35 weeks can be paid to one parent, or shared between both parents." And the Claimant indicated, "I wish to claim 35 weeks to care for my child(ren)."

[26] I considered the Claimant's argument that she believed parents of multiple births could both collect EI parental benefits based on a news story she has heard. However, I find that it would have been reasonable for the Claimant to confirm this information with Service Canada, which she admitted she did not do. Nor was she prevented in any way from doing so.

[27] I considered the Claimant's argument that she believes it was the Commission's error that both her and her husband were allowed to collect parental benefits. She says the Commission should have caught the error sooner, not almost seven years later. She argues having to repay this large overpayment will cause great financial difficulties. She said she has five children, with her youngest, being a week old; as well, one of her children suffers a disability.

⁶ Subsection 41.1 of the Employment Insurance Act

[28] I find the situation is very unfortunate. However, there is no evidence to support that the Commission erred. The Claimant and the other parent, based on their assumption they would both qualify, applied for parental benefits and provided the information to the Commission. They and did not attempt to verify or confirm their belief that the law had changed based on the research she did, where she found an article from 2009. The information provided by the Claimant allowed her to receive employment insurance benefits that by the legislation, she was not entitled to receive and since she received the money, Service Canada's delay to identify the error sooner, does not excuse her from having to repay it.⁷

[29] It is well established that bad advice or no advice from a Commission agent does not change the law, which must be applied notwithstanding any wrong advice.⁸

[30] The Claimant says that having to repay the money will be difficult and will have financial implications for her and her family. The Claimant says that she has five children and one has a disability. She said if she has to repay the money, she hopes that she will be able to make management payments.

[31] I have no authority to grant a write-off or to agree to an arrangement, since this authority rests solely with the Commission⁹. I can only recommend to the Claimant to contact the Debt Management Call Centre (DMCC) of the Canada Revenue Agency (CRA) at 1-866-864-5823. They may be able to make other arrangements based on your individual circumstance.

CONCLUSION

[32] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

⁷ *Lanuzo v. Canada (AG)*, 2005 FCA 324

⁸ *Granger (A-684-85)*

⁹ *Michel Villeneuve (2005 FCA 440) A-191-05*

HEARD ON:	September 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. P., Appellant