



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. G. v Canada Employment Insurance Commission*, 2019 SST 1015

Tribunal File Number: GE-19-2912

BETWEEN:

**M. G.**

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: Normand Morin

HEARD ON: September 10, 2019

DATE OF DECISION: September 13, 2019

## **DECISION**

[1] The appeal is allowed. I find that the Appellant is entitled to receive family caregiver benefits for adults (special benefits for a family member of a critically ill adult) under section 23.3 of the *Employment Insurance Act* (Act).

## **OVERVIEW**

[2] On May 17, 2019, the Appellant filed a renewal application for family caregiver benefits effective May 22, 2019. He indicated that the family member who was critically ill was his spouse. The Appellant specified that he was requesting this type of benefits for a duration of 15 weeks.<sup>1</sup>

[3] On June 14, 2019, the Respondent, the Canada Employment Insurance Commission (Commission), informed the Appellant that he was not entitled to Employment Insurance family caregiver benefits for adults as of May 13, 2019, because the medical certificate he submitted did not indicate that the adult was critically ill or injured.<sup>2</sup> In additional arguments submitted on September 11, 2019, following the hearing, the Commission granted the appeal on the issue in dispute.<sup>3</sup>

[4] The Appellant argues that his spouse required his help 24 hours a day because of her health condition. He explained that the medical certificate he submitted as part of his application for family caregiver benefits had not been correctly filled out by the doctor who examined his spouse on April 15, 2019. The Appellant indicated that he was going to revisit that doctor to have the certificate corrected or to obtain a new one. On August 12, 2019, the Appellant disputed the decision following the Commission's reconsideration of it. That decision is now being appealed to the Tribunal.

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<sup>1</sup> GD3-3 to GD3-19.

<sup>2</sup> GD3-23 and GD3-24.

<sup>3</sup> GD6-1.

## ISSUES

[5] I must determine whether the Appellant is entitled to family caregiver benefits for adults under section 23.3 of the Act.

[6] To reach that finding, I must answer the following question:

- a) Did a doctor or nurse practitioner issue a certificate stating that an adult, member of the Appellant's family, was critically ill, that she required the care or support of one or more of her family members, and that the period during which she required that care or support is specified in that document?

## ANALYSIS

[7] Section 23.3(1) of the Act specifies that benefits are payable to a claimant who is a family member of a critically ill adult and who must care for or support that adult, if a medical doctor or nurse practitioner has issued a certificate that does the following:

- a) States that the adult is a critically ill adult and requires the care or support of one or more of their family members;
- b) Sets out the period during which they require that care or support.

[8] Section 1(7) of the *Employment Insurance Regulations* (Regulations) states that a critically ill person means a person who is 18 years of age or older on the day on which the period referred to in sections 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

**Did a doctor or nurse practitioner issue a certificate stating that an adult, member of the Appellant's family, was critically ill, that she required the care or support of one or more of her family members, and that the period during which she required that care or support is specified in that document?**

[9] Yes. A certificate issued by a doctor states that an adult, member of the Appellant's family, his spouse in this case, is critically ill and requires the care or support of one or more of

her family members. The certificate also specifies the period during which the Appellant's spouse would require the care or support of one or more of her family members.<sup>4</sup>

[10] In this case, the Appellant explained that, due to her health condition (physical condition), his spouse needed his help 24 hours a day.<sup>5</sup>

[11] The Appellant's spouse has been recovering since the end of March 2019, for a period of six months.<sup>6</sup>

[12] The Appellant and his spouse met with a doctor on April 15, 2019.

[13] The Appellant then sent the Commission a document entitled [translation] "Medical Certificate for Employment Insurance Family Caregiver Benefits," completed by Dr. Jean-Philippe Bélanger from Hôpital de Montmagny [Montmagny hospital] on April 15, 2019. In that document, Dr. Bélanger responded "no" to the question asking whether the life of the patient (Appellant's spouse) was at risk as a result of illness or injury.<sup>7</sup>

[14] The Appellant met with the doctor again on August 28, 2019, so that he could complete another similar document.

[15] The Appellant sent the Tribunal a copy of the document entitled [translation] "Medical Certificate for Employment Insurance Family Caregiver Benefits," completed by Dr. Bélanger on August 28, 2019.<sup>8</sup>

[16] In that document, Dr. Bélanger confirmed that, on April 15, 2019, he observed that the Appellant's spouse satisfied the three conditions that are stated in that document: the patient's life is at risk as a result of illness or injury, there has been a significant change in the patient's baseline state of health, and the patient requires the care or support of one or more family

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<sup>4</sup> GD5-2 and GD5-3.

<sup>5</sup> GD3-25 to GD3-27.

<sup>6</sup> GD3-27.

<sup>7</sup> GD2-7 to GD2-9; GD2-11; and GD3-20 to GD3-22.

<sup>8</sup> GD5-2 and GD5-3.

members.<sup>9</sup> He noted that the Appellant's spouse is expected to require the care or support of one or more family members until July 31, 2019.<sup>10</sup>

[17] I find that, even if the doctor completed the new certificate on August 28, 2019, it only adjusted the first certificate that he had previously completed on May 15, 2019, to add the fact that the Appellant's spouse's life was at risk as a result of illness or injury.<sup>11</sup>

[18] I am of the view that, even if the new certificate was completed on August 28, 2019, the date on which the doctor assessed that the Appellant's spouse's life was at risk as a result of illness or injury remained the same, that is, April 15, 2019.

[19] I also find that the August 28, 2019, medical certificate also confirmed that the Appellant's spouse would require the care or support of one or more family members until July 31, 2019, as specified in the May 15, 2019, medical certificate.

[20] I note that in additional arguments submitted after the hearing, the Commission indicated that it was allowing the appeal on the issue in dispute after learning of the August 28, 2019, medical certificate the Appellant provided on September 3, 2019.<sup>12</sup> The Commission specified that the Appellant would be paid 12 weeks of family caregiver benefits because the medical certificate he provided indicates that the patient (Appellant's spouse) required care or support until July 31, 2019, and that his claim had been renewed on May 12, 2019.<sup>13</sup>

[21] On this point, case law indicates that, when a decision by the Commission is appealed, that decision is out of its hands and any amendment to a decision after it has been appealed is invalid.<sup>14</sup>

[22] In summary, I find that the disentitlement to family caregiver benefits for adults imposed on the Appellant as of May 13, 2019, is not justified in the circumstances since he satisfies all the eligibility criteria as of that date.

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<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> GD6-1.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Wakelin*, A-748-98; *Poulin*, A-516-91; *Von Findenigg*, A-737-82.

**CONCLUSION**

[23] I find that the Appellant is entitled to receive family caregiver benefits for adults (special benefits for a family member of a critically ill adult) under section 23.3 of the Act.

[24] The appeal is allowed.

Normand Morin  
Member, General Division – Employment Insurance Section

HEARD ON:	September 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M. G., Appellant