



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. G. v Canada Employment Insurance Commission*, 2019 SST 1416

Tribunal File Number: GE-19-3024

BETWEEN:

**N. G.**

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: Bernadette Syverin

HEARD ON: October 29, 2019

DATE OF DECISION: November 4, 2019

## **DECISION**

[1] The appeal is allowed. The Claimant did not elect to be paid standard parental benefits.

## **OVERVIEW**

[2] The Claimant applied for parental benefits where she had to make a choice as to the number of weeks of benefits she wished to receive. The standard option provides up to 35 weeks of benefits at a benefit rate of 55% of weekly insurable earnings, on the other hand, the extended option that provides up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings. Once claimants have made their choice and the Canada Employment Insurance Commission (Commission) starts paying parental benefits, the parents cannot change from one option to the other.

[3] In this case, the Claimant's application shows that she selected the standard option, so, to receive 35 weeks of benefits. However, before she had received any benefits, the Claimant decided to opt for the extended benefit option during a conversation with an agent of the Commission. Despite that fact, the Commission decided to pay the Claimant standard parental benefits. The Claimant asked the Commission to change from the standard to the extended option, but the Commission maintained that standard benefits were paid as per the Claimant's request and that once payment is issued, the Commission cannot change from one option to the other. The Claimant appealed the Commission's decision to the Tribunal's General Division.

## **ISSUES**

[4] Can the Claimant change her election from standard to extended 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 or reversed once parental benefits are paid.<sup>3</sup>

[6] In this case, the Claimant's online application submitted on February 7, 2019, shows that she chose the standard benefit option to receive 35 weeks of benefits.<sup>4</sup> The Commission issued the first payment for standard parental benefits on March 18, 2019. The Commission states that once payment of parental benefits has started, the Claimant could no longer change from one option to the other.

**Did the Claimant elect to receive standard parental benefits?**

[7] I find that the Claimant elected to receive standard parental benefits, but that she validly changed her election before the Commission issued payment of benefits. In reaching this conclusion, I found the following evidence significant.

[8] First, the Claimant testified that, on March 7, 2019, she went to a local office of the Commission to submit her work permit and she questioned an agent of the Commission on the number of weeks of parental benefits that she would be eligible to receive. The agent told her that she elected the standard option to receive 35 weeks of benefits, but that given the date of birth of her child; under the standard option, she would only be eligible to receive two weeks of benefits. However, the agent told her that if she changes her selection to the extended parental benefit option, she would receive more weeks of benefit but at a lower benefit rate. The Claimant explained to me that she told the agent she is on a leave of absence from work until October 2019 and that she wants to change her election to the extended benefit option in order to spend more time at home with her child. The Claimant added that at the end of this conversation, she understood that the agent would change her election to reflect her wish to receive parental benefits under the extended benefit option.

[9] I accept the Claimant's testimony indicating that she changed her election because the notes on file indicate that on March 7, 2019, an agent of the Commission told the Claimant that she would only receive two weeks of benefits under the standard benefit option and that she may

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<sup>2</sup> Subsection 23(1.1) of the *Employment Insurance Act*.

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

<sup>4</sup> See GD3-10.

be entitled to six months of benefits under the extended option.<sup>5</sup> I considered the Commission's argument indicating that the note on file does not indicate that the Claimant changed her election, but the Claimant testified that prior to her meeting with the agent, she did not know how many weeks of benefits that she would be eligible to receive. Therefore, I find that it makes perfect sense that the Claimant would change her election from standard to the extended option once the agent told her she would only receive two weeks of benefits under the standard option.

[10] Further, additional notes on file indicate that on March 8, 11, 14, 2019, the Commission left a few messages for the Claimant to explain her options. In my opinion, this indicates that the Commission considered that the Claimant had not made a choice and that she still had to investigate her options and to select the one that she preferred. In addition, the notes on file also indicate that since the Claimant did not respond to messages left by the Commission, the Commission processed the claim under the standard benefit option and issued payment on March 18, 2019. Therefore, I find that the Commission's attempts to contact the Claimant is evidence that on March 7, 2019, the Claimant made her choice to receive benefits under the extended option known to the Commission's agents at a local office and another agent of the Commission was following up to confirm that she wanted to change her option.

[11] Finally, the Claimant contacted the Commission as soon as she realized that her benefits had stopped after two payments. In my view, this is a clear indication that she expected to receive benefits under the extended benefit plan because she had changed her election with the Commission's agent on March 7, 2019.

[12] I find that the majority of the evidence points to the fact that the Claimant changed her election from the standard to the extended option before the Commission issued payments. This fact is clear from the Claimant's testimony and statements to the Commission where she has consistently maintained that she changed her election on March 7, 2019, and the Commission submits that benefits were paid as of March 18, 2019. Further, the Claimant told me that her intention was to return to work in October 2019, so I find it reasonable that she would change her election on March 7, 2019, when the Commission told her that she would only get two weeks of benefits under the standard option. Lastly, the Claimant contacted the Commission as soon as she

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<sup>5</sup> See GD3-26.

noticed that her payments had stopped, and this indicates that she was expecting to receive benefits under the extended option as discussed with the Commission on March 7, 2019, that she wished to receive extended parental benefits.

[13] The Commission argues it paid the Claimant standard parental benefits because that is what the Claimant elected to receive and once the Commission issues payment; the Claimant cannot reverse her election. I find that the Commission's argument cannot stand, as it did not take into consideration the fact that before the Commission issued payment on March 18, 2019, the Claimant had already changed her election to receive benefits under the extended benefit option.

[14] For all of these reasons, I find that the Claimant has demonstrated that on March 7, 2019, she changed her election by telling the Commission that she wanted to receive parental benefits under the extended option, before benefits had been paid to her. The Commission issued payment after the Claimant had changed her election to receive extended parental benefits. Moreover, the Commission based its payment on the rate of weekly benefits for the standard parental benefits option and the Claimant only received two weeks of benefits. However, the choice belongs to the Claimant and on March 7, 2019, she elected to receive extended parental benefits; that is what she should receive.

## **CONCLUSION**

[15] I allow the appeal.

[16] The provisions giving parents two choices with respect to the maximum number of weeks of parental benefits they want to receive came into effect in December 2017. Since then, a few cases have been brought before the Tribunal where it had to decide whether a clear choice was made and whether the claimant could change their election. As stated in a decision rendered by the Appeal Division of the Tribunal, "the EI Act says that applicants for parental benefits must make an election. However, the EI Act does not specify how, precisely, that election is to be made, nor does it tell the Commission what to do if an election is unclear."<sup>6</sup> To that end, in cases where claimants change their election after having filed an application, I would suggest that the

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<sup>6</sup> AD-19-426

Commission makes sure that claimants understand the consequences of their choice by having them sign a document indicating their choice. This would put an end to the misunderstandings during telephone calls between claimants and the Commission; this would further cease misinterpretations with respect to changes made after an application for parental benefit has been filed and payments have been issued.

[17] Let us face it, welcoming a newborn is a time of adjustment, even for experienced parents and the purpose of parental benefits is to allow parents to spend time with their newborn. Therefore, I suggest that the Commission continues to find ways to improve its procedures so that parents can enjoy spending precious time with their children during their parental leave.

Bernadette Syverin

Member, General Division - Employment Insurance Section

HEARD ON:	October 29, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. G., Appellant