



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. V. v Canada Employment Insurance Commission*, 2019 SST 1620

Tribunal File Number: GE-19-3589

BETWEEN:

**V. V.**

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: November 21, 2019

DATE OF DECISION: November 26, 2019

## **Decision**

[1] I am dismissing the appeal. The Claimant chose to receive extended parental benefits and she is unable to change to standard parental benefits.

## **Overview**

[2] The Claimant applied for maternity and parental benefits. She chose on her application to receive extended parental benefits. Extended parental benefits pays a lower rate of benefits over a longer period of time. When she started receiving payments, she realized her payment was lower than she expected. She told the Commission she had intended to request standard parental benefits because she was only taking one year off from work.

[3] The Commission says the Claimant's choice of parental benefit term cannot be changed after the first payment of parental benefits is made. The Claimant says she chose extended parental benefits by mistake and was unaware of the error until the benefits were paid.

## **What I must decide**

[4] I have to decide if the Claimant can receive standard parental benefits. To do this, I must see which parental benefit term she chose to receive. If she chose extended parental benefits, then I have to see if she can change that choice to standard parental benefits.

## **Reasons for my decision**

[5] Parental benefits are intended to support you while you take time off work to care for your newborn child.<sup>1</sup> You must choose (or elect) the maximum number of weeks,

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<sup>1</sup> This is set out in section 23(1) of the *Employment Insurance Act*

either 35 or 61, that you can be paid parental benefits.<sup>2</sup> Your choice of the parental benefit term cannot be changed once parental benefits are paid.<sup>3</sup>

[6] The Claimant applied for maternity and parental benefits on May 16, 2019. She chose to receive parental benefits immediately after her maternity benefits.

[7] Since December 2017, there are two options for parental benefit terms. The application form states that you must select between the standard or extended option for parental benefits. It states the standard option allows you to receive 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 allows you to receive up to 61 weeks of benefits at a benefit rate of 33% of the weekly insurable earnings, up to a maximum amount. It also states the choice between the standard and extended options is irrevocable – or cannot be changed – once benefits have been paid on the claim.

[8] The Claimant selected the extended option for parental benefits on the application form. The form then asked how many weeks she wished to claim. She responded that she wanted to claim 52 weeks.

[9] At the hearing, the Claimant said that she went through the application form quickly because this was her third maternity leave. At the time, she understood that her options were to take either one-year or eighteen months in combined maternity and parental leave. She said that she was only going to take one year off from work, so she selected the option that she thought gave her one-year of EI benefits. For this reason, she selected the extended option and said that she was claiming 52-weeks of benefits. She did

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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 section 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks for which parental benefits may be paid is found in section 12(3)(b) of the *Employment Insurance Act*, based on the choice the claimant makes under section 23.

<sup>3</sup> This is stated in section 23(1.2) of the *Employment Insurance Act*.

not realize the questions were referring only to the parental benefit term. She thought she was claiming 52-weeks of maternity and parental benefits in total.

[10] The Claimant received her first payment of the extended parental benefits on August 23, 2019. She said that she tried to call Service Canada the next day to find out why her benefit payment had decreased, but could not get through. She called several times in the next week and finally spoke to a Service Canada agent on August 30, 2019. The agent told her that she had chosen extended parental benefits on the application and that she could not change this choice because she had already received a benefit payment.

[11] The Claimant argues that she had no way of knowing she had selected the wrong parental benefit term until she received a benefit payment. She was not sent any documents by mail or e-mail confirming her choice of extended parental benefits. For this reason, she was not able to discover the error until it was too late for her to change it. She said that if her choice of parental benefit term had been provided to her in writing, that she could have caught the mistake in time.

[12] The Claimant also argues that the Commission neglected to check her application against her record of employment. She said her ROE stated that she was returning to work after one year. Given that information, it is clear that she would not have chosen the extended option, since she would be returning to work before her entitlement to benefits had run out. She argues the Commission should have picked up on this discrepancy and contacted her to confirm whether she wanted the extended parental benefit term.

[13] The Claimant says that it is unfair that she is unable to change her parental benefit term. She has paid into the EI system for years and is entitled to receive the full amount of her maternity and parental benefits. She says the legislation should allow for leniency towards claimants who make this type of error.

[14] The Commission submits that the Claimant elected to receive extended parental benefits when she selected the extended option on her application form. The Claimant

requested the claim be changed to standard parental benefits on August 30, 2019, but the Commission says the Claimant's election became irrevocable, or unable to be changed, once the first payment for parental benefits was made on August 23, 2019.

[15] I believe the Claimant intended to select the standard parental benefit option on her application form and that her selection of the extended parental benefit option was a genuine mistake. She gave detailed testimony that it was her intention to return to work in one year. She said she selected the wrong option because the application form was ambiguous and she had gone through it too quickly. She knew that she only wanted to claim benefits for one year and selected the option that she thought fit that schedule.

[16] It is clear from the Claimant's submissions that she intended to select the standard parental benefit term to correspond with her one year off work. It is also clear from the Claimant's application form that she selected the extended parental benefit term. I accept that this was a mistake on the Claimant's part and that she meant to select the standard term. Unfortunately, the way the legislation is written does not permit me to cast aside the Claimant's written election on her application form based on her intention to make a different decision.

[17] The law says that you must elect the maximum number of weeks for which parental benefits may be paid<sup>4</sup> and that your election cannot be changed once parental benefits are paid.<sup>5</sup> I find the Claimant elected to receive extended parental benefits, or up to 61 weeks of benefits, because that is what she selected on her application form.

[18] It is undisputed that the Claimant was paid parental benefits on August 23, 2019. On that date, her choice of extended parental benefits became irrevocable. She requested her parental benefit term be changed to standard parental benefits on August 30, 2019. In other words, she requested the change to her parental benefit term after she had received

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<sup>4</sup> Section 23(1.1) of the *Employment Insurance Act*.

<sup>5</sup> Section 23(1.2) of the *Employment Insurance Act*

her first payment of parental benefits. For this reason, I find she cannot change her election from extended to standard parental benefits.

[19] I recognize that this mistaken election has a large financial impact on the Claimant and her family. The circumstances presented by the Claimant to explain the mistaken election are quite understandable and it is unfortunate that a new parent can be placed in such a difficult situation based on a genuine mistake. I acknowledge the Claimant's statements that she had no means of verifying her election of the parental benefit term until the first payment of parental benefits was made. As the election became irrevocable at that point, it was too late to correct the error. Unfortunately, the law does not allow the Claimant to change her election and I am bound to apply the law as written, no matter how compassionate the circumstances.<sup>6</sup>

[20] The Claimant says the Commission should have contacted her to confirm that she wanted the extended parental benefit term because of the return-to work date on her ROE. The ROE was not provided by the Commission as part of the appeal file, but I believe the Claimant that the ROE said that she was expected to return to work in one year. She also made the point that a written confirmation of her parental benefit election would have allowed her to catch her mistaken election before she started receiving parental benefit payments.

[21] I agree that better communication may have allowed the Claimant to correct her election before it was too late. But the Commission has no legal obligation to question the Claimant's election of parental benefits. Rather, the application form explains the difference between the standard and extended options. It is up to the Claimant to read the information provided and make a decision about the benefits she is seeking. I understand the Claimant's argument but I find it cannot override the law. The law is clear that a

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<sup>6</sup> This principle is stated by the Federal Court of Appeal in *Canada (Attorney General) v. Knee*, 2011 FCA 301

claimant's choice between standard and extended benefits cannot be changed once benefits are paid.

**CONCLUSION**

[22] I am dismissing the appeal. This means the Claimant is unable to change her parental benefit term from extended to standard parental benefits.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	November 21, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	V. V., Appellant