



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. D. v Canada Employment Insurance Commission*, 2019 SST 1670

Tribunal File Number: GE-19-4061

BETWEEN:

D. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: December 23, 2019

DATE OF DECISION: December 30, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant is not 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 September 9, 2019, the Appellant filed a renewal claim for benefits so that, this time, she could receive family caregiver benefits. The Appellant indicated that her critically ill family member was a parent—her mother.¹

[3] On September 13, 2019, the Respondent, the Canada Employment Insurance Commission (Commission), informed the Appellant that she was not entitled to Employment Insurance family caregiver benefits for adults effective September 9, 2019, because the medical certificate that she submitted did not indicate that the adult was critically ill or injured.²

[4] The Appellant argued that her mother needed care and support after being hospitalized from July 24, 2019, to September 6, 2019, even though her mother's life was not at risk. The Appellant explained that, after examining her mother, the medical doctor stated that her mother's state of health required the care or support of one or more of her family members. On November 29, 2019, the Appellant disputed the decision following the Commission's reconsideration of it. That decision is now being appealed to the Tribunal.

ISSUES

[5] I must determine whether the Appellant is entitled to receive 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 medical doctor or nurse practitioner issue a certificate stating that an adult (a member of the Appellant's family) was critically ill, that they required the care or

¹ GD3-3 to GD3-15.

² GD3-22 or GD3-26.

support of one or more of their family members, and that the document sets out the period during which they would require that care or support?

ANALYSIS

[7] Section 23.3(1) of the Act states that benefits are payable to a family member of a critically ill adult, in order to care for or support that adult, if a medical doctor or nurse practitioner has issued a certificate that

- a) states that the adult is a critically ill adult and requires the care or support of one or more of their family members; and
- 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 section 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 medical doctor or nurse practitioner issue a certificate stating that an adult (a member of the Appellant's family) was critically ill, that they required the care or support of one or more of their family members, and that the document sets out the period during which they would require that care or support?

[9] No. The Appellant did not provide a certificate issued by a medical doctor stating that an adult (a member of the Appellant's family)—her mother in this case—was critically ill. Even though the certificate indicates that the Appellant's mother required the care or support of one or more of her family members and it sets out the period during which she would require that care or support, it does not indicate that she was critically ill.³

[10] The Appellant gave the following explanations:

³ GD3-17, GD3-18, GD3-28, and GD3-29.

- a) The Appellant explained that her mother was hospitalized at X for a period of six weeks, from July 24, 2019, to September 6, 2019, inclusive, because of severe burns on a large part of her body.⁴
- b) Even though, after examining the Appellant’s mother, the medical doctor answered no to the question asking him whether the patient’s life (the Appellant’s mother’s life) was at risk, he stated that she required care and support from her family until September 23, 2019.
- c) The Appellant argued that her mother’s state of health (example, burns, hospitalization at X’s burn unit, and rehabilitation period) and her age (75 years) should be taken into consideration.⁵
- d) The Appellant said she found it deplorable and that it did not make any sense that she was not entitled to family caregiver benefits because her mother’s life was not at risk, despite the fact that she needed care and support from her family, given her situation.
- e) The Appellant explained that she cared for and supported her mother throughout the period from September 7 to 15, 2019 (example, applying cream, helping her put on compression garments, and exercising). She indicated that she returned to work afterwards, even though her mother still needed care and support. The Appellant stated that she applied for family caregiver benefits for one week—the week of September 8 to 14, 2019.⁶

[11] The Appellant sent the Commission a document entitled [translation] “Medical Certificate for Employment Insurance Family Caregiver Benefits,” which Dr. Léo Lasalle from X completed on September 3, 2019. In that document, Dr. Lasalle answered no to the question asking him whether the patient’s life (the Appellant’s mother’s life) was at risk as a result of illness or injury. The following comment was added to this question: [translation] “Serious burn victim, TBSA [total body surface area]: 40%, on July 23, 2019.”⁷ Dr. Lasalle

⁴ GD2-3, GD3-24, and GD3-25.

⁵ GD2-3.

⁶ GD2-3 and GD3-23 to GD3-25.

⁷ GD3-17 or GD3-28.

answered yes to the question asking him whether there had been a change in the patient's baseline state of health and the same to the question asking him whether the patient required the care or support of one or more family members. Dr. Lasalle indicated that the patient would require the care or support of one or more family members until September 23, 2019.⁸

[12] In this case, I find that the Appellant's explanations and the medical certificate that she submitted cannot make her entitled to receive family caregiver benefits for adults.

[13] To be entitled to that type of benefit, a claimant must provide a medical certificate issued by a medical doctor or nurse practitioner stating that an adult (a family member of the claimant) is critically ill, that they require the care or support of one or more family members, and that the document sets out the period during which they require that care or support. These three conditions must be met for such benefits to be paid.

[14] The medical certificate that the Appellant submitted states that her mother required the care or support of one or more family members as well as the period during which she required that care or support. However, the document does not indicate that the Appellant's mother was critically ill within the meaning of section 1(7) of the Regulations. Section 1(7) of the Regulations states that a critically ill person means a person whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

[15] The medical certificate the Appellant provided does not establish this finding because the medical doctor answered no to the question asking him whether the Appellant's mother's life was at risk as a result of illness or injury.

[16] While I sympathize completely with Appellant's case, as a Tribunal member, I remain bound by very clear legislative provisions, which are insufficient to establish her entitlement to family caregiver benefits. The case law specifies that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.⁹

⁸ GD3-17, GD3-18, GD3-28, and GD3-29.

⁹ *Canada (Attorney General) v Knee*, 2011 FCA 301.

[17] In summary, I find that the disentitlement to Employment Insurance family caregiver benefits for adults imposed on the Appellant effective September 9, 2019, is justified in the circumstances because she did not meet all of the criteria to be entitled to them.

CONCLUSION

[18] I find that the Appellant is not 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.

[19] The appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

HEARD ON:	December 23, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. D., Appellant