



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. D. v Canada Employment Insurance Commission*, 2020 SST 426

Tribunal File Number: GE-19-4137

BETWEEN:

C. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: December 18, 2019

~~DATE OF DECISION: January 2, 2019~~

[DATE CORRIGENDUM]: January 7, 2020

DECISION

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

PRELIMINARY MATTERS

[2] Two preliminary issues arose.

[3] First, the Claimant asked for a hearing by written questions and answers. The Registry office contacted the Claimant and asked her to participate in a teleconference hearing. She accepted this form of hearing. At the end of the hearing, I gave the Claimant some additional time to submit a written statement if she was concerned that she had forgotten some of her arguments. The Claimant sent an additional statement. I considered this statement because it is relevant to the appeal.

[4] Second, I asked the Canada Employment Insurance Commission (the Commission) to send me the complete copy of the Claimant's application for maternity and parental employment insurance (EI) benefits. I also asked for a copy of the Claimant's record of employment. I considered the information because it is relevant to the appeal.

OVERVIEW

[5] The Claimant stopped work at the end of June 2019. She applied for maternity and parental EI benefits before she gave birth. On her application for benefits, she chose to receive extended parental benefits. However, the Claimant argues that the application process for maternity and parental benefits was confusing. She said that ultimately she thought that she was going to receive standard parental EI benefits. It was only when the Claimant received her first payment of parental EI benefits that she understood that she was subject to the extended EI parental benefit program. She understood that she would receive 33% of her weekly insurable earnings up to a maximum amount, instead of 55% of those earnings.

[6] The Commission argues that the Claimant's choice of extended parental benefits cannot be changed because she received her first payment of parental benefits. The Claimant says that she was led to believe that ultimately she would receive 12 months of benefits according to the

standard EI parental benefits program. The Claimant says that she cannot live on the sums she is receiving under extended parental benefits. She argues that the Commission should respect her wish to be paid according to the standard EI parental benefit program.

What I must decide

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

REASONS

[8] Since December 3, 2017, claimants have two options for parental EI benefits. Claimants can choose standard or extended parental benefits.¹

- Standard parental benefits – The Commission pays up to 35 weeks of benefits² at the rate of 55% of the claimant’s weekly earnings³.
- Extended parental benefits – The Commission pays up to 61 weeks of benefits⁴ at the rate of 33% of the claimant’s weekly earnings⁵.

[9] Once the Claimant has received parental benefits, they cannot change their election.

Issue 1: Which parental EI benefits did the Claimant choose – standard or extended?

[10] I find, on the balance of probabilities, that the Claimant chose the extended EI parental benefits.

[11] The Claimant says that she applied online from her phone. She says that the form was confusing and she was having difficulty understanding the difference between maternity and parental benefits. She says that she wanted to take 14 months off because she needed to return to work at the end of August 2020. She calculated that if she wanted 14 months of benefits, she

¹ Section 23 (1.1) of the *Employment Insurance Act* (Act)

² Section 12 (3)(b)(i) of the Act.

³ Section 14 (1) of the Act.

⁴ Section 12 (3)(b)(ii) of the Act.

⁵ Section 14 (1) of the Act.

needed 57 weeks. She says that she made a mistake and thought that her request for 57 weeks of parental benefits was inclusive of the 15 weeks she was taking for maternity benefits.

[12] When she applied, she thought that her level of benefits would be prorated between 55% and 33%. This was her understanding because she had applied for more weeks off than the standard program but fewer than the maximum number of weeks allowed under the extended program.

[13] The Claimant started to receive her maternity EI benefits. She then checked her online profile. She understood from her online profile that she was only going to receive benefits for 12 months instead of 14 months. The Claimant then decided that 12 months of benefits would be fine.

[14] It was only after the Claimant received her first payment of parental benefits that she realized that she was paid at 33% of her benefit rate for 57 weeks of parental benefits.

[15] The Claimant's statement at the hearing confirms that her original intention was to stay at home with her child from the end of June 2019 until the end of August 2020, when she would return to her job. She stated that this is a 14-month period. The Claimant's intent to ask for 14 months of benefits is confirmed by the information in the Claimant's application for benefits. She said in her application that her date of return to work was September 8, 2019.⁶ Also, the Claimant says that when she checked her online account she thought that she had done the application wrong. She came to this conclusion because the online information said that her end of claim date was June 27, 2020 (a 12-month period) instead of the 57 weeks she stated in her application.

[16] When we consider that the Claimant thought that the number of weeks of parental benefits included 15 weeks of maternity benefits, the Claimant's application for 57 weeks of benefits confirms that she wanted a total of 14 months of benefits. If we consider that the Claimant wanted a total of 57 weeks of benefits, instead of only 57 weeks of parental benefits, this means that the Claimant should have requested 42 weeks of parental benefits. However, even if the Claimant had correctly understood the difference between maternity and parental

⁶ GD8-10

benefits, she still would have had to choose the extended parental benefits program. This is because 42 weeks of benefits exceeds the limit of 35 weeks that are granted under the parental leave program.

[17] I therefore find that at the time the Claimant applied for benefits, she chose the extended parental benefits. I accept that the Claimant then later understood from her online profile that her benefits ended on June 27, 2020, and she would have only received 12 months of combined maternity and parental EI benefits. However, this does not change the choice that she made at the time of her application. If the Claimant changed her mind after she consulted her online profile, she had to confirm this change with the Commission before she was paid parental benefits.

Issue 2: Can the Claimant change her choice to standard parental EI benefits?

[18] The law says that once parental EI payments are received, the choice is final.⁷ However, recent case law from the Tribunal says that in very specific circumstances, the Tribunal has the power to make a decision about what kind of benefits the Claimant likely elected. The Tribunal can intervene when there are conflicting statements on the application that make it unclear whether the Claimant chose the extended or standard parental benefits.

[19] As stated above, there are no conflicting statements in the Claimant's application that shed confusion on the type of benefits she wanted at the time of her application. Her decision to take 14 months of benefits would have required her to take the extended benefits, regardless of her error in calculating the number of weeks of parental benefits (42 weeks vs. 57 weeks). So, her choice of benefits when she made her request was for extended parental benefits.

[20] I accept that the Claimant thought, upon looking at her online profile, that she was going to receive 12 months of benefits. The Claimant said that she did not understand that the end date on the online profile was for administrative purposes only and that it did not reflect the end date of her benefits. She said that upon seeing this end date, she considered that 12 months of benefits would be enough.

⁷ *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823; *M.H. v. Canada Employment Insurance Commission*, AD-19-503.

[21] However, this change in her choice is a departure from the information in her application. This change in her desire was not communicated to the Commission and the online information was not validated with the Commission. Therefore, the Commission had no way of knowing that the Claimant now wanted 12 months of benefits instead of 14 months.

[22] In short, this is not a case where the Commission made a mistake about the choice of a claimant. I conclude that Claimant's position changed when:

- she mistakenly thought that she would only receive 12 months of combined maternity and parental benefits;
- she discovered that her benefit rate was 33% of her weekly insurable earnings instead of a prorated amount based on the number of weeks of benefits she applied for.

[23] I sympathize with the Claimant because I understand that it makes financial sense for her to have chosen standard benefits instead of extended benefits. I also encourage the Commission to implement a clear process to assist claimants with the overall validation of their claim and benefit rate for both maternity and parental benefits.

[24] However, this is a case where the Claimant made a decision and then changed her mind without telling the Commission of the change before her parental benefits were paid. This was not a mistake but rather an election based on her incorrect understanding of the law.

[25] Therefore, I cannot intervene to change the Claimant's choice from extended to standard EI benefits.⁸ I am bound by the terms of the law that say that when the Claimant has made a choice and the Claimant has received parental benefits, they cannot change their election.

⁸ *Canada (Attorney General) v Knee*, 2011 FCA 301.

CONCLUSION

[26] The appeal is dismissed.

Christianna Scott
Member, General Division - Employment Insurance Section

HEARD ON:	December 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. D., Appellant