



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. R. v Canada Employment Insurance Commission*, 2020 SST 482

Tribunal File Number: GE-20-36

BETWEEN:

B. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: John Gillis

HEARD ON: January 17, 2020

DATE OF DECISION: January 20, 2020

DECISION

[1] I allow the Claimant's appeal. The Claimant elected to receive standard parental benefits. She then changed her election before she received parental benefits. There is insufficient evidence before me to establish that her husband received parental benefits before the Claimant changed her election. As such, the Claimant's election was not irrevocable when she changed her election.

OVERVIEW

[2] The pregnant Claimant applied for both maternity and parental employment insurance benefits. She initially applied for standard parental benefits. Before she received any parental benefits, she changed her election to receive extended parental benefits. The Claimant's husband also applied for parental employment insurance benefits. The Commission denied the Claimant's request to change her election to receive extended parental benefits. The Commission says that the Claimant's election for standard parental benefits became irrevocable as soon as the Claimant's husband was paid parental benefits. There is insufficient evidence to determine if and when he received any parental benefits.

ISSUE

[3] Can the Claimant change her election and be paid extended parental benefits instead of standard parental benefits?

ANALYSIS

[4] Claimants have two options for parental benefits. Parents can elect standard or extended parental benefits.¹ Standard parental benefits are paid for up to 35 weeks² at a benefit rate of 55% of the claimant's weekly insurable earnings.³ Extended parental benefits are paid for up to 61 weeks⁴ at a benefit rate of 33% of the claimant's weekly insurable earnings.⁵

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

² Section 12(3)(b)(i) of the *Employment Insurance Act*.

³ Section 14(1) of the *Employment Insurance Act*.

⁴ Section 12(3)(b)(ii) of the *Employment Insurance Act*.

⁵ Section 14(1) of the *Employment Insurance Act*.

[5] Claimants requesting parental benefits are required to make an election as to the maximum number of weeks for which benefits may be paid.⁶ The election is irrevocable once the claimant has made their election and parental benefits have been paid.⁷

[6] If the Commission submits evidence that a claimant made an election between standard and extended parental benefits and that parental benefits were paid, then the burden shifts to the claimant to establish that they either did not make the election or were not paid benefits. Both the Commission and the claimant must produce evidence to support their positions. A claimant can change their election if the Commission does not produce evidence that an election was made and that parental benefits were paid. A claimant can also change their election if they can prove either that they did not make an election or were not paid benefits.

There is no dispute about the Claimant's election of parental benefits

[7] The Claimant says that she originally elected to receive standard parental benefits. The Commission does not dispute this. On her application for benefits, the Claimant selected that she was applying for standard parental benefits. She said that she wanted to claim 35 weeks of parental benefits. The Commission received the Claimant's application for benefits on June 29, 2019.

[8] The Commission says that the Claimant's husband also made an election for parental benefits. The Commission says that he made this election on July 24, 2019. The Claimant admits that the father of her child, her husband, applied for benefits on July 24, 2019. The Claimant says that he applied for 5 weeks of paternal benefits as opposed to parental benefits.

[9] To support its position as to the Claimant's election, the Commission provided a copy of her application for benefits. The Commission did not provide a copy of the Claimant's husband's application for benefits. The only evidence before me to support the Commission's position that her husband elected to receive standard parental benefits is the Commission's summary of one telephone conversation they had with the Claimant. The Claimant disputes the accuracy of the Commission's summary.

⁶ Section 23(1.1) of the *Employment Insurance Act*.

⁷ Section 23(1.2) of the *Employment Insurance Act*.

[10] Regardless of any election made by her husband, the parties do not dispute that the Claimant changed her election of standard parental benefits on November 12, 2019. I find that the Claimant changed her election of parental benefits of November 12, 2019.

Did the Commission pay parental benefits before the Claimant changed her election?

[11] There is insufficient evidence before me to establish that the Claimant or her husband received parental benefits before the Claimant changed her election.

[12] The Claimant changed her parental benefits election on November 12, 2019. She says that she called the Commission on that day to change her election. Once she told the agent that she was changing her election, the agent informed her that she could not. The Commission provided the summary of that telephone conversation. While the notes do not state that the Claimant wanted to change her election, they do say that she was told that a re-election was not possible at that time. The notes are silent as to the reason for the telephone call between the Claimant and the Commission. In that the notes refer to the denial of the re-election and the Claimant's testimony, I find that she told the Commission on November 12, 2019 that she was changing her parental benefits election from standard to extended.

[13] The Claimant says that she did not receive parental benefits before she changed her election. The Claimant changed her election on November 12, 2019. The Commission provided the list of payments made to the Claimant. The Commission's evidence shows that the Claimant's first parental benefits payment was processed on November 22, 2019. I find that the Claimant did not receive any parental benefits payments before she changed her election.

[14] The Commission says that it did pay parental benefits to the Claimant's husband. It says that those benefits were paid in or around August of 2019. If the evidence supported the payment of these benefits, then the Claimant would not be able to change her parental benefits election. The only evidence before me about parental benefits paid to the Claimant's husband is the Commission's summary of its November 12, 2019 telephone conversation with the Claimant. The Claimant disputes the accuracy of these notes. In particular, the Claimant says that she and her husband believed that he was applying for 5 weeks of paternal benefits and not parental benefits.

[15] The Commission's summary of its November 12, 2019 telephone conversation with the Claimant is inaccurate. With respect to payment of parental benefits to the Claimant's husband, the Commission's summary states "received *approximately* 2.5 to 3 weeks of standard parental benefits", "began *around* the birth", and "received payments for his parental benefits in August" (italics added). The descriptions of the payment of parental benefits contained in the note are not specific. More evidence on the specific payment of parental benefits is required.

[16] The Commission did not produce evidence to support its position that parental benefits were paid before the Claimant changed her election. The Commission did not produce the Claimant's husband's application for benefits. The Commission did not produce the details of the benefits paid to the Claimant's husband. The Commission only produced both of these documents for the Claimant. The Commission could have produced redacted copies of the documents with respect to the husband's benefits.

[17] The burden is on the Commission to prove when parental benefits were paid. The Claimant disputes that parental benefits were paid to her husband. Rather, she says that he was paid paternal benefits. Even though the Claimant's understanding of the types of benefits may not be accurate, the burden remains on the Commission to prove when parental benefits were paid. As the Claimant does not admit that parental benefits were paid to her husband, the Commission must produce some proof of this issue. The Claimant's husband's redacted application for benefits and summary of payments could have been presented as evidence. There is insufficient evidence for me to make a detailed finding as to when parental benefits were paid. Such a finding is necessary as it determines if the Claimant could change her election.

[18] I find that the Commission has not established that parental benefits were paid before the Claimant changed her election.

[19] The Claimant's election of parental benefits was not irrevocable when she changed it.

CONCLUSION

[20] I find that the Claimant's election to receive standard parental benefits was not irrevocable at the time she made a re-election. This means that the appeal is allowed.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	January 17, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. R., Appellant