



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. P. v Canada Employment Insurance Commission*, 2020 SST 236

Tribunal File Number: GE-20-634

BETWEEN:

N. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: March 3, 2020

DATE OF DECISION: March 4, 2020

DECISION

[1] The Claimant in this case is N. P. I am dismissing her appeal because she does not meet the requirements to change her election of standard parental benefits to extended parental benefits.

OVERVIEW

[2] When you apply for parental benefits under the *Employment Insurance Act*, you have to choose or “elect” whether you receive standard or extended parental benefits. Compared to standard parental benefits, you can get more weeks of extended parental benefits but you get less money per week. After parental benefits are paid, you cannot change your election.¹

[3] The Claimant teaches kindergarten. She had her second child at the end of August 2019. She applied for parental benefits under the *Employment Insurance Act*. In her application, she chose standard parental benefits for 35 weeks. She indicated a return to work date that was consistent with her selections. After the Commission had paid her four weeks of standard parental benefits, she called the Commission to change to extended parental benefits.

[4] The Commission said it couldn’t allow the Claimant to change to extended parental benefits because she elected standard parental benefits and it had already paid her benefits under the standard option.

[5] I have to decide if the Claimant can change from standard parental benefits to extended parental benefits.

ISSUES

[6] To decide if the Claimant can change to extended parental benefits, I have to answer these questions:

- a) Did the Claimant choose standard parental benefits?

¹ *Employment Insurance Act*, s 23 (1.1) and s 23 (1.2).

- b) When did the Claimant start receiving parental benefits?
- c) When did the Claimant ask to have her standard parental benefits changed to extended parental benefits?
- d) Can the Claimant switch to extended parental benefits?

ANALYSIS

[7] Claimants claiming parental benefits have two options: standard or extended parental benefits.² If a claimant chooses standard parental benefits, they can receive up to 35 weeks of benefits at a benefit rate of 55% of their weekly insurable earnings. Claimants who choose extended parental benefits can received up to 61 weeks of benefits at a benefit rate of 33% of their weekly insurable earnings.³

Did the Claimant choose standard parental benefits?

[8] Yes. The Claimant doesn't dispute that she elected standard parental benefits. Her application for benefits shows that she opted to receive standard parental benefits for 35 weeks.⁴ Her return to work date on her application for benefits was consistent with receiving 35 weeks of parental benefits.⁵ Her application supports her testimony that she originally thought standard parental benefits were the best option for her and her family.

When did the Claimant start receiving parental benefits?

[9] The Claimant received her first payment of parental benefits on January 3, 2020. The Commission provided a list of payments made to the Claimant. The Claimant doesn't dispute that she received the payments shown on the list.⁶

When did the Claimant ask to change to extended parental benefits?

² *Employment Insurance Act*, s. 23(1.1).

³ *Employment Insurance Act*, s. 14(1).

⁴ The election is on page GD3-11 and the number of weeks is on page GD3-12.

⁵ Her date of return is shown on page GD3-7.

⁶ The payment list is found at page GD3-25.

[10] The Claimant called the Commission on January 27, 2020, to see if she could have her standard parental benefits changed to extended parental benefits.⁷ The Claimant doesn't dispute that this is when she contacted the Commission to change her election. This was after she had received payment of four weeks of standard parental benefits.

[11] The Claimant explained that nothing specific had triggered her call to the Commission. She knew she wanted to change to extended parental benefits, and didn't want to delay.

Can the Claimant switch to extended parental benefits?

[12] No. The Claimant's election for standard benefits became irrevocable when she was paid standard parental benefits.⁸ Since she didn't ask to change to extended parental benefits before she received parental benefits, the law doesn't allow her to change her election.

[13] The Claimant argued that other parents are entitled to 61 weeks of parental benefits, and the same should apply to her. She doesn't expect to receive any more money than she would have received if she had elected the extended option from the start. So, I considered whether the law meant the election was irrevocable only for parental benefits already paid, or for all parental benefits relating to that child.

[14] Section 23(1.2) of the *Employment Insurance Act* reads:

The election is irrevocable once benefits are paid under this section ... in respect of the same child or children.

[15] I find that section 23(1.2) means that once any parental benefits are paid the election for all parental benefits for that child is irrevocable. If the legislature had intended for claimants to be able to change their election midway through a benefit period, it would have provided guidance on how such a change would work, including how to calculate the remaining number of weeks and the rate of benefits for those remaining weeks. Since the legislature chose not to provide such instruction, I find the intention was for the election to become irrevocable for *all*

⁷ See supplementary record of claim at page GD3-26.

⁸ *Employment Insurance Act*, s 23 (1.2).

parental benefits relating to that child during that benefit period as soon as the first parental benefits were paid for that child.

[16] The Claimant explained that her circumstances have changed since she applied for parental benefits. While 35 weeks of standard parental benefits was the best option for her family when she applied, that is no longer the case. Teaching kindergarten is a stressful job, and she needs more time off to be in a better state of mind and have the energy needed for both her family and her classroom. She feels she needs more time off to make her return to work smoother than it was after her first child.

[17] I understand the Claimant's position. There is no reason to doubt her when she says that extended parental benefits are the best option for her, her family, and her students. Unfortunately, when she started to receive the standard parental benefits her election became irrevocable. This means that she cannot change from standard parental benefits to extended parental benefits.

CONCLUSION

[18] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	March 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. P., Appellant