



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. C. v Canada Employment Insurance Commission*, 2020 SST 390

Tribunal File Number: GE-20-513

BETWEEN:

R. C.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: April 1, 2020

DATE OF DECISION: April 18, 2020

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Claimant's child was born on February XX, 2018. He applied for employment insurance parental benefits on December 6, 2018 and asked for 35 weeks of parental benefits under the standard option (GD3-3 to GD3-17). However, he only received only 12 weeks of parental benefits¹ because the parental benefit window ended 52 weeks after his child was born (AD3-5).

[3] The Claimant asked the Commission to change it to the extended option so that he could receive 35 weeks (GD3-21 to GD3-23). The Commission denied his request saying that they could not switch it from the standard option to the extended option based on the law (GD3-24 to GD3-25). The Commission further submits that the parental benefit period window ended the week of February 17, 2019, which was 52 weeks after the child was born (GD7-1).

[4] The Claimant submits that the online application form does not provide sufficient information for him to make an informed choice about either the standard option or extended option (AD3-2). The Claimant says that the application form does not provide any information or sources about the parental benefit window period and that it misled him into making his initial election for standard benefits.

PRELIMINARY MATTER

[5] This case was previously summarily dismissed by the General Division of the Tribunal.² It was overturned on appeal at the Appeal Division of the Tribunal and ordered to be returned to the General Division for a merit hearing.³

¹ This includes a one-week waiting period where no parental benefits were paid.

² See *Social Security Tribunal* General Division decision GE-19-2091 dated July 2, 2019.

³ See *Social Security Tribunal* Appeal Division decision AD-19-627 dated February 5, 2020.

ISSUE

[6] Whether the Claimant's initial election for parental benefits was valid.

ANALYSIS

[7] The EI parental benefits program offers financial support for parents who are not working while they care for their newborn or newly adopted child. A claimant can pick either the standard or extended parental benefit option. Depending on which option is picked, the claimant can also pick the number of weeks they want to collect. The maximum number of weeks for the standard parental benefit option is 35 weeks and 61 weeks for the extended parental benefit option.⁴ If the standard option is selected, parental benefits are paid at a rate of 55% of the weekly insurable earnings up to a maximum amount.⁵ If the extended option is selected, parental benefits are paid at a rate of 33% of the weekly insurable earnings up to a maximum amount.⁶

[8] The parental benefit window is different depending on which option is selected. If a claimant picks the standard option, then the parental benefit window is 52 weeks from the date of the child's birth.⁷ If a claimant picks the extended option, then the parental benefit window is 78 weeks from the date of the child's birth.⁸ After a claimant picks either standard or extended parental benefit option it cannot be changed once parental benefits have been paid under either option.⁹

Was the Claimant's initial election valid?

[9] No, I find that the Claimant's initial election for standard benefits not valid for the following reasons.

[10] The Claimant's child was born on February XX, 2018. He did not apply for parental benefits immediately after the birth of his child because his wife was self-employed and was

⁴ Subsection 12(4.1)(a)(b) of the *Employment Insurance Act*; Subsection 23(1.1) of the *Employment Insurance Act*.

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

⁶ Subsection 14(1) of the *Employment Insurance Act*.

⁷ Subsection 23(2)(b) of the *Employment Insurance Act*.

⁸ Subsection 23(3.21) of the *Employment Insurance Act*.

⁹ Subsection 23(1.2) of the *Employment Insurance Act*.

looking after their child. When he child was around 10 months old, he applied for parental benefits and submitted his application on December 6, 2018.

[11] The Claimant's last day of work was November 30, 2018. He made arrangements with his employer to return to work on August 19, 2019. He included his return to work date in the application form (GD3-7).

[12] The Claimant said it was his first time applying for parental benefits. He looked at the options in the application and saw that he could pick either the standard option or extended option. Since he wanted 35 weeks of parental benefits, he picked the standard option because the application identifies that the maximum number of weeks for the standard option is 35.

[13] The Claimant received parental benefits from the week of December 2, 2018 to week of February 17, 2019 under the standard option (AD3-5). However, when he stopped receiving benefit payments, he inquired with the Commission and was told that he could not switch to the extended option because benefits had already been paid under the standard option.

[14] The Commission submits that the claimant's election for the standard option became irrevocable as of December 24, 2018 (GD4-2). The Commission also submits that the Claimant cannot receive the remainder of the 35 weeks because the parental benefit window ends when the actual date of confinement of 52 weeks has been reached (GD7-1). This 52 week period ran from the week of February 18, 2018 until February 17, 2019.

[15] The Claimant said he was not aware that the maximum parental benefit window was 52 weeks under the standard option. He argues that the parental benefit window is an important piece of information that is not provided to applicants during the application process. The only criteria in the application form is to decide between the standard or extended option and the number of weeks requested. This misled him into selecting the standard option.

[16] The application form described the standard and extended options as follows (GD3-9):

Standard option:

- The benefit rate is 55% of your weekly insurable earnings up to a maximum amount.
- Up to 35 weeks of benefits payable to one parent.
- If parental benefits are shared, up to a combined total of 40 weeks payable if the child was born or placed for the purpose of adoption on or after March 17, 2019.

Extended option:

- The benefit rate is 33% of your weekly insurable earnings up to a maximum amount.
- Up to 61 weeks of benefits payable to one parent.
- If parental benefits are shared, up to a combined total of 69 weeks payable if the child was born or placed for the purpose of adoption on or after March 17, 2019.

If parental benefits are being shared by two parents, the parental benefit option selected by the parent who first makes a claim is binding on the other parent.

To avoid an incorrect amount of benefits being paid, ensure you choose the same option as the other parent.

Once parental benefits have been paid on the claim, the choice between standard and extended parental benefits is irrevocable.

* Select the type of parental benefits you are applying for:

Standard option – up to 35 weeks of benefits at a benefit rate of 55% of your weekly insurable earnings up to a maximum amount

Extended option – up to 61 weeks of benefits at a benefit rate of 33% of your weekly insurable earnings up to a maximum amount

Parental Information

Answers to fields and questions with an asterisk (*) are mandatory.

Parental benefits are payable only to the biological, adoptive, or legally recognized parents while they are caring for their newborn or newly adopted child, up to a maximum combined total of 35 weeks.

Consequently, the 35 weeks can be paid to one parent, or shared between both parents.

* How many weeks do you wish to claim?

35

[17] The Claimant does not dispute that the election between standard or extended parental benefits is irrevocable once parental benefits are paid.¹⁰ However, he disputes the validity of his

¹⁰ Subsection 23(1.2) of the *Employment Insurance Act*.

initial election for the standard option on the basis that he was misled by the application form and unable to make an informed choice.

[18] I agree with Claimant because the application form does not provide sufficient information for any reasonable applicant in his circumstances to make an informed decision on whether to elect the standard or extended option.

[19] The Claimant could have contacted the Commission, but there was nothing leading him to question to validity of his request, or alerting him to potential issues. He followed the instructions on the application and asked for 35 weeks and his application was not denied by the Commission. The application form does not even mention the parental benefit window periods for either option, or provide anything that might trigger an applicant to review this information before they elect.

[20] The Commission made no attempts to verify or alert him to any contradictions in his application form. For example, his child was born on February XX, 2018 and his application was submitted approximately ten months later on December 6, 2019. He asked for 35 weeks of parental benefits under the standard option and provided a return to work date of August 19, 2019. If the Commission had verified or alerted him before parental benefits were paid under the standard option that the parental benefit window would end after 12 weeks of benefits, he could have made an informed choice at the time. However, he only became aware of the parental benefit window ending after parental benefits under the standard option had been paid for approximately 12 weeks.

[21] I acknowledge that it may not be possible for the Commission to capture every single detail or circumstance in a standard application form, however given the irrevocability of an election after benefits have been paid, I accept that this is a critical piece of information particularly for those applicants who might not apply immediately after the birth of their child for various reasons.

[22] In one Appeal Division decision, the case considered what was included in and left out of the application information because it misled the claimant about the choice between standard and

extended parental benefits, specifically about the different parental benefit windows. The Member determined that the election on the application form made by that claimant was invalid.¹¹

[23] Another Appeal Division decision found that a claimant cannot make a deliberate choice unless they are presented with a choice between reasonably comprehensible options. In that case, a claimant chose parental benefits that she did not mean to choose, specifically the extended option. The Member determined that the claimant’s selection was invalid from “the outset because the incompleteness, imprecision, or ambiguity of the application misled her to make a selection that was contrary to her intention and purpose”.¹²

[24] I acknowledge that Appeal Division decisions are not binding on me, but I am persuaded by these two decisions because the Claimant in this case is raising a similar argument about the validity of his initial election and the facts are substantially similar.

[25] I find that the application form misled the Claimant into selecting the standard option because it made no reference to the parental benefit window period. The Claimant could not have made an informed choice between either the standard or extended option without this critical piece of information. This means that I have determined that his initial election for standard option was invalid from the outset. The Claimant may make a new election for parental benefits.

CONCLUSION

[26] The appeal is allowed.

Solange Losier

Member, General Division - Employment Insurance Section

HEARD ON:	April 1, 2020
METHOD OF PROCEEDING:	Teleconference

¹¹ *M.W-L v Canada Employment Insurance Commission*, 2020 SSTADEI 681.

¹² *V.V.E v Canada Employment Insurance Commission*, 2020 SSTADEI 3.

APPEARANCES:	R. C., Claimant
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