



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. C. v Canada Employment Insurance Commission*, 2020 SST 516

Tribunal File Number: GE-20-1094

BETWEEN:

N. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: April 23, 2020

DATE OF DECISION: April 24, 2020

DECISION

[1] The appeal is dismissed. The Appellant (Claimant) elected extended parental benefits and she does not meet the requirements to change that election.

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 the Canada Employment Insurance Commission (Commission) starts paying you parental benefits, you cannot change your election.¹

[3] The Claimant had a baby in October 2019. A few days later, she applied for maternity and parental benefits under the *Employment Insurance Act*. Her plan was to receive benefits for a little more than a year.

[4] In her application, she chose extended parental benefits for 38 weeks. She gave a return to work date that is consistent with these selections. When the Claimant received her first payment of parental benefits, she was surprised at how much lower her parental benefits were to her maternity benefits. She immediately called the Commission to see if she could switch to standard parental benefits.

[5] The Commission told the Claimant she could not change to standard parental benefits because she had elected extended parental benefits and it had already paid her benefits under the extended option.

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

ISSUES

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

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

- a) What type of parental benefits did she choose?
- b) When did she start receiving parental benefits?
- c) When did she ask to have her extended parental benefits changed to standard parental benefits?

ANALYSIS

[8] 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 receive up to 61 weeks of benefits at a benefit rate of 33% of their weekly insurable earnings.³

What type of parental benefits did the Claimant choose?

[9] I find the Claimant elected extended parental benefits. Only extended parental benefits can be paid for more than 35 weeks. Her application for benefits shows she opted to receive extended parental benefits for 38 weeks.⁴ Her return to work date on her application for benefits is consistent with receiving more than 35 weeks of parental benefits.⁵ At the hearing, the Claimant confirmed that it was her intention to receive more than 35 weeks of parental benefits.

When did the Claimant start receiving parental benefits?

[10] I find the Claimant received her first payment of parental benefits on February 25, 2020. The Commission provided a benefit statement showing she received her first parental benefit payment on that date.⁶ The Claimant does not dispute this date.

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

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

⁴ The election is on page GD3-10 and the number of weeks is on page GD3-11.

⁵ Her date of return is shown on page GD3-8.

⁶ The benefit statement is found at page GD3-20.

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

[11] I find the Claimant asked for the change after she received her first payment. The Claimant agrees that she called the Commission on February 25, 2020, after she received her first payment. She was surprised at the amount and asked to have her extended parental benefits changed to standard parental benefits.

Can the Claimant switch to extended parental benefits?

[12] No. The Claimant's election for extended parental benefits became irrevocable when the Commission paid her the first payment of parental benefits.⁷ Since she didn't ask to change to standard parental benefits before she received parental benefits, the law prevents her from changing her election.

[13] I considered all the Claimant's arguments. She said:

- a) Since she could select the number of weeks of benefits, the Claimant thought the Commission would prorate her benefits to the number of weeks she picked. She believed she would receive benefits at a rate around 48%, just slightly less than her maternity benefit rate of 55%. If she had realized the benefit rate was 33%, she would have made a different choice. She would have returned to work earlier or stayed home without benefits for a few weeks.
- b) She only saw the notice from the Commission about the change in her benefit rate after she received her first payment.
- c) Rereading the information on the application form, she sees she misunderstood the information. However, when she applied, she was exhausted, alone, and recovering from a caesarian section. She didn't understand what she was reading.
- d) Financially, things were tight at 55%, and now with her benefits at 33%, and her self-employed husband not working because of the COVID-19 crisis, they are in a dire financial situation. It is a very stressful time for her and her family.

⁷ *Employment Insurance Act*, s 23 (1.2).

- e) By not allowing the change, she is not receiving benefits that she is entitled to, since she has paid into employment insurance.
- f) She knows she will get fewer weeks of benefits with the change to standard parental benefits.

[14] I understand and sympathize with the Claimant's position. It is likely she would have made different choices if she had had a better understanding of the benefits. However, I have to follow the law, which is clear and unambiguous. She intended to and elected to receive extended parental benefits. She received her first payment before asking to have her election changed. When the Claimant received that payment, her election became irrevocable. This means I cannot change her parental benefits from the extended to standard option.

CONCLUSION

[15] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	April 23, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. C., Appellant