



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AL v Canada Employment Insurance Commission*, 2020 SST 867

Tribunal File Number: GE-20-1903

BETWEEN:

A. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: September 25, 2020

DATE OF DECISION: September 25, 2020

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] A. L. (the “Claimant”) applied for parental benefits when his daughter was a little over 9 months old. He claimed 35 weeks of standard parental benefits but received only 10 weeks. His benefits ended after his daughter turned one year old, which is required by the *Employment Insurance Act*. The Claimant then asked for extended parental benefits instead. The Canada Employment Insurance Commission (the “Commission”) denied this request, saying the Claimant’s decision was irrevocable, as a payment of parental benefits had already been made to him. The Claimant says he specifically asked the Commission, in the process of completing his application, what type of parental benefits he should chose in his situation. He explained his daughter’s birthdate and that he was taking a one-year parental leave. He says he was told to choose standard parental benefits. He was not told that he only had a year from his daughter’s birth to collect standard parental benefits and there was nothing on the application form about the 52-week window to collect standard parental benefits.

[3] I have decided, for the reason set out below, that the Commission’s agent and the application process misled the Claimant, so his initial election of standard parental benefits was invalid. The Claimant can now make an election of the type of parental benefits he wishes to receive.

DOCUMENT REFERRED TO IN THE HEARING

[4] The Claimant testified about a screen shot he took of his online Service Canada account to provide to his employer, after having completed his application for benefits. He submitted this document after the hearing. ¹I allowed the Claimant’s testimony on this document and accepted the document into evidence, post-hearing, as it is relevant to the validity of the Claimant’s election. A copy of the document was forwarded to the Commission.

¹ G5.

ISSUES

- [5]
1. What type of parental benefits did the Claimant elect?
 2. Was that election valid?
 3. If so, can the Claimant change his election?

ANALYSIS

[6] Since December 2017, claimants must choose, or “elect,” one of two options for parental benefits.² They must chose between standard and extended parental benefits.

[7] Standard parental benefits are paid to an individual claimant for up to 35 weeks at a benefit rate of 55% of weekly insurable earnings up to a maximum amount.³ If a claimant choses to share standard parental benefits with another parent, an additional 5 weeks of benefits can be claimed.⁴ Extended parental benefits are paid to an individual claimant for up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings up to a maximum amount. If a claimant choses to share extended parental benefits with another parent, 8 additional weeks of extended parental benefits can be claimed.⁵

[8] An election for either standard or extended parental benefits cannot be changed once a parental benefit payment has been made.⁶ Parents who decide to share parental benefits must choose the same type of parental benefits.

[9] When parents are sharing parental benefits, they can receive the parental benefits at the same time or one after the other, but they must claim those benefits within the “parental benefit window”. An individual claimant can only receive parental benefits within the parental benefit

² Subsection 23(1.1) of the *Employment Insurance Act*.

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

⁴ Subparagraph 12(4)(b)(i) of the *Employment Insurance Act*.

⁵ Subparagraph 12(4)(b)(ii) of the *Employment Insurance Act*.

⁶ Subsection 23(1.2) of the *Employment Insurance Act*.

window.

[10] Parental benefits cannot be collected outside the parental benefit window.⁷

[11] The parental benefit window for *standard parental benefits* begins with the week the child is born or placed for adoption⁸ and ends 52 weeks after the week the child is born or placed for adoption.⁹

[12] The parental benefit window for *extended parental benefits* begins with the week the child is born or placed for adoption and ends 78 weeks after the week the child is born or placed for adoption.¹⁰

[13] There are very limited reasons the parental benefit window can be extended.¹¹ There is no evidence on file or provided by the Claimant that suggest any of the exceptions to extend the parental window apply to him.

What type of parental benefits did the Claimant elect?

[14] I find the Claimant elected 35 weeks of standard parental benefits.

[15] The Claimant's daughter was born on May 23, 2019.

[16] The Claimant's spouse did not collect maternity or parental benefits. The Claimant applied for parental benefits on March 5, 2020, selecting 35 weeks of parental benefits.¹²

[17] The Commission says that the Claimant elected 35 weeks of standard parental benefits.

⁷ Subsection 22(2) of the *Employment Insurance Act*.

⁸ Paragraph 23(2)(a) of the *Employment Insurance Act*.

⁹ Paragraph 23(2)(b) of the *Employment Insurance Act*.

¹⁰ Subsection 23(3.21) of the *Employment Insurance Act*.

¹¹ There is a possible extension for weeks a newborn or adopted child is hospitalized after birth (Subsection 23(3) of the *Employment Insurance Act*). Another possible extension is where a member of the Canadian Forces has the start date of their parental leave deferred or they are directed to return to duty (Subsection 23(3.01) of the *Employment Insurance Act*). There is also an extension for claimants who have collected more than one kind of special benefits (maternity benefits, parental benefits, benefits for illness or quarantine, compassionate care, and benefits to care for a critically ill adult or child), the maximum total number of weeks established for those reasons are greater than 50 weeks, and parental benefits were paid for fewer than the applicable maximum number of weeks (Subsection 23(3.2) of the *Employment Insurance Act*).

¹² GD3-8.

[18] The Claimant does not dispute he elected 35 weeks of standard parental benefits. He testified that he intended to take a year off work and he intended to select standard parental benefits. He says, however, he made this election based on information provided to him by the Commission that in his circumstances, that election would provide him with 35 weeks of standard parental benefits. Instead, he received 10 weeks. The Claimant says he was misinformed because neither the Commission's agent nor the application itself alerted him to the parental benefit window.

Was the Claimant's election of standard parental benefits valid?

[19] No. I find the Claimant did not make a valid election.

[20] The Claimant testified as to the circumstances surrounding his election of standard parental benefits. The Claimant said that this was his first time applying for EI benefits. His daughter was born May 23, 2019 but he did not seek parental benefits right away. He intended to take a year off work from March 2, 2020 and had arranged this with his employer in February 2020. The Claimant said he looked at the Service Canada website about parental benefits and he did not quite understand how it worked, because he was not taking the parental leave right after his daughter's birth. He asked his Human Resources department about this and they told him to ask the Commission. The Claimant said he started to complete his application for parental benefits in February 2020 while he was still at work. When he got to the part about choosing between standard and extended parental benefits,¹³ he did not understand the nuances between the two types of benefits so he phoned Service Canada. He asked, based on his situation, whether he should apply for standard or extended parental benefits.

[21] The Claimant said he had the EI application open while he was discussing what to do with the agent. He told the agent his daughter's birth date and the agent asked him how long a leave from work he was planning on taking. He explained he had requested a one-year leave from his workplace. He was told, since he was taking a one-year leave, to request the standard parental benefits. The agent told him that the extended benefits were only if he was taking a leave of more than 52 weeks. There was no discussion about the parental benefit window. The

¹³ G3-8.

Claimant said he chose the 35 standard parental option on the application after this conversation. He said that, had he been told to apply for extended benefits, he would have done that. The Claimant said he went home and tried to submit the application that night but it was not accepted, as he had not yet started his parental leave. The Claimant explained he started his parental leave on March 2, 2020 and then submitted the completed application on March 5, 2020.

[22] The Claimant testified that, after he submitted the application, he went to his online Service Canada account so he could take a screen shot of the approval and submit it to his employer. The Claimant said the information on the online account showed the date his benefit period started, his benefit rate, that he had requested 35 weeks of standard parental benefits and that the end date of the claim was March 6, 2021. The Claimant said everything looked as if it had been approved. He took a screen shot of this and sent to his employer.

[23] After the hearing, the Claimant provided a copy of his email of March 23, 2020 with the screen shot of his online Service Canada account. This document shows the start date of the claim as March 8, 2020, the waiting period, and that the type of benefit is standard parental benefits. The total insurable earnings, benefit rate and federal tax are also noted. The weeks of parental benefits requested are noted as 35 and 1 week of benefits is noted to have been paid. The end date of the claim is noted as March 6, 2020.¹⁴

[24] The Claimant testified that he did not realize until June that his standard parental benefits payments had been stopped, because he was looking after his infant daughter and because of the pandemic situation. The Claimant said he had not received any information, either from the initial Service Canada agent, or from any alert or notification when he was completing his application, that, because of his daughter's birth date, he could not receive 35 weeks of standard parental benefits. He also did not see this information on his online Service Canada account. He only became aware of the problem when the payment stopped.

[25] The Claimant said he contacted the Commission three times to try to find out why the payments had stopped. The first three agents all said that there must have been some kind of system error or that it had to do with reporting, and that is why he was not continuing to get his

¹⁴ GD5-2.

benefits. He was told the situation would be corrected. None of the agents said anything about a parental benefit window. When the problem was not corrected, the matter was escalated to a supervisor and that is when the Claimant was first told about the standard parental benefit window and when it closed. The supervisor said he had been given misinformation. The Claimant asked what he could do. He was told then to request extended parental benefits, which he did and to request a reconsideration. This was on July 30, 2020.

[26] The Claimant does not dispute his request for a change to extended parental benefits came after the first standard parental benefit payment was made to him on March 20, 2020. He says, however, that he should be able to elect extended parental benefits because he was misinformed by the Commission.

[27] The Commission says the Claimant was informed on the application for parental benefits of the difference between standard parental benefits and extended parental benefits and elected to receive standard parental benefits. The Claimant was also informed that the decision was irrevocable once parental benefits were paid.¹⁵

[28] The Commission also points out that its website also contains information contains information as to 52 week parental benefit window from birth.¹⁶

[29] The Commission says that the Claimant's child was born on May 23, 2019 so the parental window is from May 19, 2019 to May 23, 2020. The Claimant's benefit period began on March 8, 2020 and he was only able to collect 10 weeks of standard parental benefits, before the standard parental benefit window ended on May 23, 2020.

[30] The Commission submits further that on July 30, 2020, the Claimant requested that the claim be changed to extended parental benefits. However, the change could not be made because the Claimant's election became irrevocable on March 20, 2020, when the first standard parental benefit payment was issued for the week of March 15 to March 21, 2020.¹⁷

¹⁵ GD3-8.

¹⁶ GD3-29, GD3-36, GD3-44, GD3-48.

¹⁷ GD3-17.

[31] I agree with the Commission that the application form contains an explanation of most of the differences between extended and standard parental benefits. However, the information is incomplete. There is no explanation at all on the application form about the parental benefit window or the difference in the length of the parental benefit window for standard or extended parental benefits.

[32] I find the Claimant was misled by the Commission's agent and the application form, as he was not provided with information concerning the parental benefit window.

[33] The Claimant fulfilled his responsibility of phoning the Commission and explaining his particular circumstances, including the date of birth of his daughter and how long he intended to stay off work for parental leave. He was given specific advice in response to that information.

[34] The Commission says its website contains information about the parental benefit window and the application invites claimants to visit the website for more information on parental benefits. A link to that information on the website is provided.

[35] It is not a requirement that claimants look at the website. However, the Claimant did look at the website in advance of submitting his application and was unsure how it applied to his particular situation. He then called the Commission to ask questions about his specific situation. I accept the Claimant's credible testimony as to what he was told by the Commission's agent. The Claimant was direct and answered questions openly and his testimony is consistent with what he told the Commission. The Claimant reasonably relied on the specific advice about his situation given to him by the Commission's agent. The Claimant had no reason to question the information he had been given by the Commission's agent.

[36] Neither the Commission's agent nor the application form alerted the Claimant to the fact he would only receive 10 out of the 35 weeks of standard parental benefits, despite the fact he provided his daughter's birth date in both instances.

[37] The election was a mandatory part of the application process; the application form appeared to provide a full explanation of the two options; the Claimant followed the instructions on the form; there was no alert once he submitted the application about the apparent discrepancy between what the Claimant was seeking and the fact it was not possible to collect those weeks of

benefits, given his daughter's birth date. The claim was not denied. As well, nothing in the online account, which he looked at, after completing his application, alerted him to the fact he was only going to be paid ten weeks of benefits.

[38] I find the Claimant made an election that was misinformed at the outset because of the incomplete information provided to the Claimant on the application form and incomplete information from the Commission's agent regarding the significant issue of the parental benefit window. The missing information about the parental benefit window was critical to his election as to which type of parental benefits he was claiming.

[39] I agree with the Commission that the law provides that an election becomes irrevocable after the first parental benefit is paid. I also agree that I cannot step outside the law to allow the payment of standard parental benefit payments past the 52-week window, even if the Claimant was given misinformation.

[40] However, I adopt the approach taken in a recent decision of the Appeal Division of this tribunal¹⁸ that the effect of the misleading application process is to invalidate the Claimant's March 5, 2020 election of standard parental benefits. As the Appeal Division pointed out, to "elect" is to make a deliberate choice between options and someone who has been misled or misinformed about those options has not been able to make a deliberate choice of one over the other.¹⁹ As was said in another Appeal Division decision from this Tribunal, "A claimant's election cannot be valid unless it is at least deliberate."²⁰ Although I am not bound to follow other decisions of this Tribunal, I agree with this approach.

[41] The Claimant claimed benefits that were, from the outset, inconsistent with the details he put on the application form. He gave his daughter's birthdate, selected standard benefits at a 55% benefit rate, and claimed 35 weeks of benefits. However, given his daughter's birthdate, only 10 weeks of standard benefits were possible. I find that the Claimant's election was invalid from the outset. He was unable to make a deliberate election as he was provided with incomplete information on the application form about the parental benefit window and incomplete

¹⁸ *M.L. v. Canada Employment Insurance Commission*, 2020 SST 255 (CanLII)

¹⁹ *Newcorp Properties Ltd. v West Vancouver (District)*, 1989 CanLII 2908 (BCSC).

²⁰ *V. V. v Canada Employment Insurance Commission*, 2020 SST 274 (Can LII).

information from the Commission's representative about the parental benefit window. He was directed to select standard parental benefits without being that only 10 out of a possible 35 weeks could be paid to him. Given the incomplete and misleading information the Claimant was provided with, his election was not deliberate and therefore was not valid.

[42] As a result, I am rescinding the decision to pay standard parental benefits to the Claimant. It is now open to the Claimant to make a valid election of the type of parental benefits he is seeking in his claim.

CONCLUSION

[43] The appeal is allowed. The Claimant's election of standard parental benefits on March 5, 2020, was not valid. Accordingly, the decision to pay the Claimant standard parental benefits is rescinded. The Claimant may now make his election for parental benefits in his March 5, 2020 claim. I would request that the Commission facilitate this process by contacting the Claimant as soon as possible after receipt of this decision to confirm with the Claimant what his election is and to make efforts to process his election expeditiously.

Charlotte McQuade

Member, General Division - Employment Insurance Section

HEARD ON:	September 25, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. L., Appellant