



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *SR v Canada Employment Insurance Commission*, 2021 SST 214

Tribunal File Number: GE-21-221

BETWEEN:

**S. R.**

Appellant / Claimant

and

**Canada Employment Insurance Commission**

Respondent / Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Raelene R. Thomas

HEARD ON: February 24, 2021

DATE OF DECISION: February 26, 2021

## **Decision**

[1] The appeal is allowed. The Claimant elected to receive standard employment insurance (EI) parental benefits.

## **Overview**

[2] The Claimant applied for EI sickness, maternity and parental benefits at the same time. She had been put off work by her doctor. The date of the Claimant's application meant that she was entitled to receive the Employment Insurance Emergency Response Benefit (EI ERB) and she received that benefit for 15 weeks. The Claimant then received 15 weeks of maternity benefits. The first payment of parental benefits was made on November 22, 2020. The Claimant tried over two days to contact Service Canada to ask about the \$200 drop in benefits. When she finally spoke to a Service Canada Agent she was told she selected the extended option and that her choice could not be changed. The Commission maintained its decision on reconsideration. The Claimant disagrees with the Commission's decision, she says she did not read the application well, that the form confused her and she cannot afford the drop in benefit amount.

## **Preliminary Matters – *Shared Parental Benefits***

[3] At the hearing, the Claimant said her spouse had been advised to apply for parental benefits, which she understood would take away from her parental benefits.

[4] Starting in March 2019, a parent of a newborn is entitled to an additional five weeks of standard parental benefits, if they share parental benefits with another parent.<sup>1</sup> These benefits must be taken within 52 weeks of the child's birth.

[5] I note that nothing in my decision prevents the Claimant's spouse from applying for the unused remainder of shared standard parental benefits available to parents during the first twelve months following their child's birth.<sup>2</sup>

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<sup>1</sup> This is set out in section 23(4) of the *Employment Insurance Act*. This new section of the *Act* came into effect on March 17, 2019. It specifies that the maximum number of weeks of standard parental benefits that can be paid to a parent remains at 35 weeks, but if the other parent seeks to share parental benefits, an additional five weeks are available. This brings the total weeks to 40 weeks for shared parental benefits.

<sup>2</sup> Parents who chose to share parental benefits can access an additional five weeks of parental benefits over the standard 35 weeks of parental benefits available to one claimant. *Budget Implementation Act No. 2*. (S.C. 2018, c. 27), part IV, Division 8, section 304.

[6] I suggest that the Claimant check with Service Canada given the recent changes to the *Employment Insurance Act*. It will be the Commission's decision as to whether the Claimant's spouse is eligible for the remaining 5 weeks of standard parental benefits.

### **Issue**

[7] Did the Claimant elect to receive extended parental EI benefits?

### **Analysis**

[8] I find that, on a balance of probabilities, the Claimant did not elect extended parental EI benefits. I find it is more likely than not that she elected standard parental EI benefits.

[9] Parental benefits are payable to a claimant to care for their newborn child.<sup>3</sup> A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be paid.<sup>4</sup> The standard option provides up to 35 weeks of benefits at a benefit rate of 55% of weekly insurable earnings. The extended option provides up to 61 weeks of benefits at a benefit rate of 33% of weekly insurable earnings.

[10] A claimant's election cannot change once any amount of parental benefits are paid.<sup>5</sup>

[11] The Claimant testified that she works in a franchised restaurant. She has experienced mental illness throughout her life. In early March 2020 she found that her anxiety was increasing due to the COVID-19 pandemic, the work environment and her pregnancy. She woke up one morning and found she could not cope with going in to work. She saw her doctor the same day who put her off work indefinitely to be reassessed on a periodic basis.

[12] The Claimant testified that she completed her application for benefits on-line at her mother's house. She completed the application on Friday, March 20, 2020, having been placed off work by her doctor on Monday, March 16, 2020. She was under her doctor's care at the time she completed the application. Her mother helped her with the application. The Claimant said that she did not read the form well. She was applying for sickness benefits. She indicated that

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<sup>3</sup> *Employment Insurance Act*, subsection 23(1). This is how I refer to the legislation that applies to this appeal.

<sup>4</sup> The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is found in subsection 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks for which parental benefits may be paid is found in paragraph 12(3)(b) of the *Employment Insurance Act*, based on the election the claimant makes under section 23.

<sup>5</sup> *Employment Insurance Act*, Subsection 23(1.2)

she wanted to receive her maternity and parental benefits right after her sickness benefits. The Claimant said that when she received her benefits she got CERB instead.<sup>6</sup> She did not want CERB because it meant that she had to put money away for taxes and that was complicated for her.

[13] The Claimant said that her relationship with her boss was difficult. She had very little to do with him and mostly dealt with the regional manager. When she went on sick leave and completed the EI application she did not know when she would be returning to work. She saw that there was an option for 61 weeks of benefits. The Claimant's mother, who works for government, and the Claimant understood that if she applied for 61 weeks she would receive 52 weeks at a higher rate and then 9 weeks at a lower rate. The Claimant's mother "did the math" and figured that the Claimant would receive more money from her benefits if she chose 61 weeks. The Claimant chose the 61 weeks because of this and the fact that it would be the maximum amount of time she could be away from work.

[14] The Claimant testified that when her maternity benefits started she received less money than she had while she was receiving sickness benefits. She thought that was the only drop in her benefits and she would get that for the remaining period of her leave. When the Claimant received the first parental benefit payment the amount of benefits dropped by \$200. The Claimant testified that she tried for two days to contact someone at Service Canada. When she was able to speak to an Agent that is when she found out about the first 15 weeks being maternity benefits available to anyone who gives birth and the parental benefits kicked in after those 15 weeks. She did not know there was a difference between those benefits. She thought, based on her reading of the form and her mother's advice, that she would get the regular rate for 52 weeks and then get the lower rate for the remaining 9 weeks of the 61 weeks she selected.

[15] The Claimant testified that she and her family are experiencing financial hardship due to the reduced EI benefits and the reduced hours her spouse, who is also employed in the restaurant industry, is working. Both have been impacted by the COVID-19 pandemic.

[16] The Commission says that that subsection 23(1.2) of the *Employment Insurance Act* establishes that the election between standard or extended parental benefits is irrevocable once

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<sup>6</sup> CERB is the Canada Emergency Response Benefit. Persons who were eligible for EI benefits received the EI ERB.

parental benefits are paid in respect of the same child or children. It says the Claimant was informed on the application for EI benefits of the difference between standard parental benefits and extended parental benefits and she elected to receive extended parental benefits. It says on November 22, 2020, the first payment for parental benefits were paid, and that the Claimant's election of extended parental benefits became irrevocable as of that date.

[17] I note that subsections 23(1.1) and 23(1.2) of the *Employment Insurance Act* have the effect of preventing claimants from switching back and forth between the standard and extended parental benefit options. I am not trying to interfere with those provisions. However, although I am not bound, I am persuaded by recent decisions of the Social Security Tribunal of Canada, Appeal Division, regarding the selection of parental benefits.<sup>7</sup> The decisions have found that claimants are able to argue that the Commission misinterpreted the choice they made before they started to receive parental benefits. Specifically, confusion can arise from contradictory answers that applicants provide on their application forms. In these cases, the Commission might consider acting early to clarify the intentions of claimants. When asked, Tribunal Members have the power to look at all the relevant circumstances and decide whether a claimant did, in fact, chose the standard or extended parental benefits option.<sup>8</sup>

[18] The Commission submitted the Claimant's application for maternity and parental benefits as evidence that she elected extended parental benefits. The onus then shifts to the Claimant to show, on a balance of probabilities, that she did not elect extended benefits or has not been paid any parental benefits in respect of the same child.

[19] The Claimant's personal circumstances are relevant to her understanding of what parental benefit option she was electing to receive. The Claimant testified that she has had mental illness for her whole life. She works for a franchise restaurant. She said she was unable to cope with the stress and anxiety related to working while pregnant with COVID-19 present. She saw her doctor who placed her off work indefinitely and she applied for EI sickness benefits. When the Claimant made her application for EI benefits she was under her doctor's care. The Claimant's mother was present when the Claimant completed the application for benefits on-line. The Claimant testified that she did not read the sections of the application related to maternity

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<sup>7</sup> *T. B. v Canada Employment Insurance Commission*, AD-19-426; *M. H. v Canada Employment Insurance Commission*, AD-19-503. This is how I refer to decisions that apply to the circumstances of this appeal.

<sup>8</sup> *Department of Employment and Social Development Act*, section 64(1)

benefits and parental benefits well. Her mother advised her to select the option that gave her 61 weeks because her mother believed that meant the Claimant would get 52 weeks at the regular rate and 9 weeks at the reduced rate.

[20] The Claimant's last day of work was Sunday, March 15, 2020. She was scheduled to work but did not work on March 16, 2020. The Claimant indicated on her application for EI benefits that she was applying for sickness benefits. She was asked if she was pregnant or had given birth in the past 17 weeks. The Claimant replied yes and indicated that she would like her maternity benefits to start immediately after her illness benefits. This response option refers to maternity benefits only. The following response option, not chosen by the Claimant, refers to maternity or parental benefits in conjunction with illness benefits.

[21] On a page labeled "Maternity Information" the Claimant indicated that the expected date of her baby's birth was August 23, 2020. The form asks if the Claimant wants to receive parental benefits immediately after maternity benefits. The Claimant indicated yes. On a page titled "Parental Information" the Claimant indicated that she wanted the extended option. On the next page, which is also titled "Parental Information" the form asks how many weeks do you wish to claim. The Claimant chose 61 from the drop down menu. This section is followed by a heading "Other Parent Information" which asks for the other parent's name and social insurance number. The Claimant answered those questions and provided information about the other parent.

[22] I note that in the section under the heading "Parental Information" there is no reference to maternity (pregnancy) benefits. The form states "Parental benefits are payable only to the biological, adoptive, or legally recognized parents while they are caring for their newborn or newly adopted child." The Claimant's personal circumstances are relevant to her understanding of what she was electing. This is her first child. She did not have any experience in filling out EI forms for parental benefits. She was under a doctor's care when she completed the form. She did not understand the difference between maternity and parental benefits. She relied on her mother's advice that she would receive 52 weeks at the regular rate and 9 weeks at a reduced rate. I find that the question "How many weeks do you wish to claim" was reasonably construed by the Claimant to be asking how many weeks do you want to take off work and receive benefits. There is nothing in the question to indicate the weeks requested are for parental benefits only. Nor, is there any indication, on this page or in the question, the weeks selected

would be in addition to the 15weeks maternity benefits. There is no question on the pages of the form, as provided by the Commission, asking how many weeks of maternity and parental benefits in total that the Claimant is requesting. Given the Claimant's circumstances and the confusion created by the questions on the form, I find it credible that she made a mistake on her application.

[23] The Claimant's circumstances, the confusion created by the information on the application form, and her contacting the Commission immediately after she received the reduced amount of EI benefits are all evidence she wanted to receive standard EI parental benefits. As a result, I find that the Claimant did not want to claim extended EI parental benefits as the Commission asserts, but rather it is more likely than not that her choice was to receive standard EI parental benefits. Accordingly, I find that, on a balance of probabilities, the Claimant elected to receive her parental EI benefits according to the standard option.

**Conclusion**

[24] The appeal is allowed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	February 24, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. R., Appellant