



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *JH v Canada Employment Insurance Commission*, 2021 SST 293

Tribunal File Number: GE-21-251

BETWEEN:

**J. H.**

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 25, 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 was pregnant and placed off work by her doctor about a month prior to her expected due date due to complications arising from her pregnancy. She received short term disability benefits during her time off. She returned to work for a very short period and then went on maternity leave. She gave birth and, 13 days later, she applied for EI maternity benefits electing to receive parental benefits immediately after. The Claimant told her employer she would be taking 12 months of leave. When she returned to work, she received an EI benefit payment. She called Service Canada to see why she was receiving this “additional” payment. She was told that she had selected the extended parental benefit option and was entitled to 61 weeks of benefits at the reduced rate. Until the conversation with the Service Canada Agent the Claimant was not aware that there was a difference between maternity and parental benefits or that there were two options for parental benefits. She has returned to work full time and has not claimed any benefits since her return to work. The Claimant asked the Commission to convert the extended parental benefits to the standard benefits and pay her the difference. The Commission refused her request. The Claimant appeals to the Social Security Tribunal.

## **Issue**

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

## **Analysis**

[4] 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.

[5] Parental benefits are payable to a claimant to care for their newborn child.<sup>1</sup> A claimant must elect the maximum number of weeks, either 35 or 61, for which parental benefits may be

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

paid.<sup>2</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.

[6] A claimant's election cannot change once any amount of parental benefits are paid.<sup>3</sup>

[7] The Claimant testified that she discussed her maternity leave with the employer's Human Resources department and the payroll clerk. She made it clear that she would be taking 12 months of maternity leave. Towards the end of her pregnancy she developed complications that required she be placed off work. She had a month off work and thought she was well enough to return to work and worked 19 hours. The Claimant testified she gave birth and she and the baby spent a few days in hospital. The Claimant applied for EI benefits 13 days after the birth. Her pregnancy complications continued after the birth and she continues to have those complications as of the date of this hearing. She said that she filled out the application on line. Because she did not know how long her EI benefits would last she was not sure of her date of return to work. She wanted 12 months of EI benefits and she would return to work after that. She said she did not realize there was difference between maternity and parental benefits. She did not understand the form at all. She selected 52 weeks of benefits because that would be the full year she wanted to take off work.

[8] Within a few days of the end of her 12 months of leave the Claimant contacted her employer to be placed back on the schedule. She returned to work and received an EI payment. She called Service Canada to find out why an additional payment was deposited to her account. She was told the extra payment was because she selected the extended option to be off work for 18 months. The Claimant said she thought that she was paid at the rate of 75% of her earnings for the maternity benefits and 55% of her earnings for the parental benefits. She did not realize that she was receiving 33% of her earnings for the parental benefits until she returned to work and contacted Service Canada about the "additional" payment.

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<sup>2</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>3</sup> *Employment Insurance Act*, Subsection 23(1.2)

[9] The Claimant testified that the complications with her pregnancy continued after she gave birth and were present when she applied for EI benefits. She said she was not in the right state of mind when she completed the application form. She was recovering from the birth and trying to manage the continuing complications while caring for her first child. She believes that these factors may have influenced her checking the wrong box. She did check the extended option when she completed the application but thought she was filling out the paperwork correctly to reflect her 12 months of leave.

[10] The Claimant's employer completed two Records of Employment (ROE). Neither ROE was given to the Claimant. The first record of employment was issued on November 19, 2019, and reflects when the Claimant's doctor placed her off work. That ROE shows "F" as the reason for issuing. "F" is the code for maternity. The ROE also says in the comments section: Employee was on STD (Paid) until birth of child. Mat leave start Nov 18."

[11] 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 parental benefits are paid in respect of the same child or children. It says the Claimant was issued her first week of extended parental benefits on March 20, 2020. By the time the Claimant made her request to convert the parental benefits type, the Claimant had already been issued at least one week of these benefits as initially requested. The Commission says therefore it had no alternative but to refuse the Claimant's request. The Commission says in response to the Claimant's statement that she was under stress at the time of her application that, while it is empathetic to the Claimant's personal situation, the information provided to all claimants at the time of application clearly provides a distinction between the two options.

[12] 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>4</sup> The decisions have found that claimants are able to argue that the Commission misinterpreted the choice they made before they

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<sup>4</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.

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>5</sup>

[13] 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.

[14] 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 was recovering from the birth, she continued to have complications related to her pregnancy, and she was caring for her first child. She had not previously applied for maternity or parental benefits. She spoke to the payroll officer about and was told to apply on-line for benefits. She does not know anyone who has applied for these benefits. She said she did not think that she was in a right state of mind as she was completing the application.

[15] The Claimant finally stopped working on October 27, 2019. The Claimant indicated on her application for EI benefits that she wanted to receive her parental benefits immediately after her maternity benefits. On a page labeled "Maternity Information" the Claimant indicated that the expected date of her baby's birth was November 14, 2019, and the actual date of her baby's birth was November 8, 2019. 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 same page under the heading Parental Information, the form asks how many weeks do you wish to claim. The Claimant chose 52 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.

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<sup>5</sup> *Department of Employment and Social Development Act*, section 64(1)

[16] 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 was her first child and she did not have any experience in filling out EI forms for parental benefits. 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. She said that she chose 52 weeks because that equalled the 12 months she told her employer she would be taking off work. 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 15 weeks 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.

[17] The Claimant testified that it was her intention from the outset to take 12 months of leave and return to work once her EI benefits ended. She made her employer aware of her intentions and returned to work on November 17, 2020. This is consistent with her evidence that she told her employer she wanted to take 12 months leave and the information in ROE dated November 19, 2019, which stated that she started maternity leave on November 18. When the Claimant received what she believed to be an additional EI payment she contacted Service Canada right away to ask why the money was deposited to her account. It was then that she learned about the difference between maternity and parental benefits. She also learned the reason for the change in the benefit amount and the actual percentage of earnings that she received for both benefits.

[18] The Claimant’s circumstances, the confusion created by the information on the application form, the evidence of her intention to return to work within 12 months of starting her maternity leave, and contacting the Commission immediately when she received EI benefits following her return to work after 12 months’ leave 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**

[19] The appeal is allowed.

Raelene R. Thomas  
Member, General Division - Employment Insurance Section

HEARD ON:	February 25, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. H., Appellant