



[TRANSLATION]

Citation: *CL v Canada Employment Insurance Commission*, 2021 SST 326

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: C. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (418649) dated April 12, 2021 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: June 9, 2021
Hearing participant: Appellant
Decision date: June 18, 2021
File number: GE-21-789

Decision

[1] The appeal is allowed. I find that the Appellant is entitled to Employment Insurance (EI) family caregiver benefits for adults (special benefits for a family member of a critically ill adult).¹

Overview

[2] On January 6, 2021, the Appellant applied for “family caregiver benefits.” She says that the family member who is critically ill is her spouse or common-law partner. The Appellant specifies that she asked to receive this type of benefit for 15 weeks.²

[3] On January 29, 2021, the Canada Employment Insurance Commission (Commission) told her that she was not entitled to EI family caregiver benefits for adults from December 27, 2020, because she had not provided the required documents when she made her claim—that is, the “Authorization to Release a Medical Certificate” and a medical certificate stating that the adult is critically ill or injured and that they need care or support.³

[4] On February 24, 2021, the Commission told her that she was not entitled to EI family caregiver benefits for adults from December 27, 2020, because the medical certificate she had provided did not indicate that the adult was critically ill or injured.⁴

[5] On April 12, 2021, after a reconsideration request, the Commission informed her that the February 24, 2021, decision about the payment of family caregiver benefits for adults was replaced with a new decision granting her benefits for a three-week period.⁵

[6] On April 12, 2021, in another letter to the Appellant, the Commission told her that, if her family member (Appellant’s spouse) needed additional care or support and she wanted to receive additional weeks of family caregiver benefits for adults, she had to provide another authorization and an up-to-date medical certificate with an end date

¹ See section 23.3 of the *Employment Insurance Act* (Act).

² See GD3-3 to GD3-15.

³ See GD3-16 and GD3-17.

⁴ See GD3-18.

⁵ See GD2-13, GD2-14, GD3-31, and GD3-32.

of care or support. The Commission said that, once it had received the new authorization and medical certificate, it would reassess her entitlement to this type of benefit.⁶

[7] On May 13, 2021, the Commission told the Appellant that, after assessing her claim, it had determined that she was entitled to EI family caregiver benefits for adults. It told her that payments would start on January 3, 2021, and continue for 13 weeks.⁷

[8] The Appellant argues that her spouse's doctor-surgeon completed a medical certificate for family caregiver benefits for adults after he reviewed this certificate. It is a different certificate than the one she first sent the Commission, on March 10, 2021, filled out by another doctor. The Appellant explains that the certificate filled out by her spouse's doctor-surgeon indicates that the three conditions stated in this document to entitle her to family caregiver benefits for adults have been met. The Appellant argues that the payment of family caregiver benefits for adults for a three-week period, which the Commission granted her, does not reflect the reality. On May 10, 2021, the Appellant challenged the Commission's April 12, 2021, decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[9] I have to determine whether the Appellant is entitled to family caregiver benefits for adults.⁸

[10] To do so, I must answer the following question:

- Has a doctor or nurse practitioner issued a certificate stating that an adult family member of the Appellant is critically ill and requires the care or support of one or more of their family members, and setting out the period during which the adult requires that care or support?

⁶ See GD3-33 to GD3-35.

⁷ See GD3-36 and GD3-37.

⁸ See section 23.3 of the Act.

Analysis

[11] The *Employment Insurance Act* (Act) states that benefits are payable to a claimant who is a family member of a critically ill adult, to care for or support that adult, if a medical doctor or nurse practitioner has issued a certificate that does the following:

- states that the adult is a critically ill adult and requires the care or support of one or more of their family members
- sets out the period during which the adult requires that care or support⁹

[12] A “critically ill adult” is a person who is 18 years of age or older on the day the period referred to in section 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.¹⁰

Issue 1: Has a doctor or nurse practitioner issued a certificate stating that an adult family member of the Appellant is critically ill and requires the care or support of one or more of their family members, and setting out the period during which the adult requires that care or support?

[13] In this file, the evidence shows that a certificate issued by a doctor states that an adult family member of the Appellant (her spouse) is critically ill and requires the care or support of one or more of his family members. The certificate also specifies the period during which the Appellant’s spouse required the care or support of one or more of his family members.¹¹ This is the second document of this nature that the Appellant sent the Commission.

[14] The evidence on file indicates that, on March 10, 2021, the Appellant first sent a certificate to the Commission, dated February 9, 2021.¹² On April 12, 2021, after she

⁹ See section 23.3(1) of the Act.

¹⁰ See section 1(7) of the *Employment Insurance Regulations*.

¹¹ See GD2-16 and GD2-17.

¹² See GD3-28 and GD3-29.

sent this document, the Commission granted her family caregiver benefits for adults for a three-week period.¹³

[15] The Appellant argues that the family caregiver benefits for adults that were first paid to her for a three-week period do not reflect the reality.¹⁴

[16] The Appellant explains that, after receiving two letters from the Commission, both on April 12, 2021,¹⁵ she sent it another medical certificate filled out by her spouse's doctor-surgeon.¹⁶

[17] In this document, the doctor certifies having observed in the Appellant's spouse, on December 29, 2020, the three conditions listed—that is, the following conditions: the life of the patient (the Appellant's spouse in this case) is at risk as a result of an illness or injury, the patient's baseline state of health has significantly changed, and the patient requires the care or support of one or more of his family members. The doctor answered “yes” to the question of whether the patient's life was at risk as a result of an illness or injury. He answered “yes” to the question of whether the patient's baseline state of health had significantly changed. And the same to the question of whether the patient required the care or support of one or more of his family members. The doctor also specified in this document that the Appellant's spouse should require the care or support of one or more of his family members until April 1, 2021.¹⁷

[18] The Appellant explains that it was very difficult to obtain this document duly completed by her spouse's doctor-surgeon. She stresses that she had to go to the ombudsman at the hospital where her spouse had a surgery (Montreal Heart Institute) to get the doctor to complete the certificate.

¹³ See GD2-13, GD2-14, GD3-31, and GD3-32.

¹⁴ See GD2-6.

¹⁵ See GD2-13, GD2-14, and GD3-31 to GD3-35.

¹⁶ See the document entitled “Medical Certificate for Employment Insurance Family Caregiver Benefits” filled out by Dr. Denis Bouchard from the Montreal Heart Institute on March 9, 2021—GD2-16 and GD2-17.

¹⁷ See GD2-16 and GD2-17.

[19] Even though the certificate in question is dated March 9, 2021, this document was not completed on that date because information was missing. It was duly completed after that date, even though the date written to the right of the doctor's signature is March 9, 2021. This date was not changed once the document was completed.¹⁸

[20] The Appellant says she sent the medical certificate in question to the Commission after appealing to the Tribunal on May 10, 2021.

[21] The Appellant explains that, after receiving a letter from the Commission, dated May 12, 2021, telling her that she was entitled to EI family caregiver benefits for adults,¹⁹ she received all the requested benefits.

[22] In its arguments, the Commission submits that the family caregiver benefits for adults can be paid to the Appellant from January 3, 2021, because she provided the required medical evidence, in accordance with section 23.3(1) of the Act.²⁰

[23] The Commission asks the Tribunal to allow the appeal.²¹

[24] I point out that the evidence on file indicates that the Appellant filed her notice of appeal on May 10, 2021.²²

[25] The Commission's decision finding the Appellant entitled to EI family caregiver benefits for adults from January 3, 2021, is dated May 13, 2021.²³

[26] I point out that this decision was made after the Appellant appealed to the Tribunal. However, the appeal file indicates that the Appellant's notice of appeal was sent to the Commission on May 13, 2021. I find that it is possible that the Commission

¹⁸ See GD2-16.

¹⁹ See GD3-36 and GD3-37.

²⁰ See GD4-2.

²¹ See GD4-3.

²² See GD2-1 to GD2-17.

²³ See GD3-36 and GD3-37.

made a new decision on May 13, 2021, before it received the May 10, 2021, notice of appeal.

[27] Despite this situation, the Commission's reconsideration decision is still dated April 12, 2021, and this is the decision that is under appeal.

[28] The Federal Court of Appeal tells us that, when a decision by the Commission is appealed, that decision is out of its hands, and any amendment to a decision after it has been appealed is invalid.²⁴

[29] I do however agree with the Commission's conclusion in its May 13, 2021, decision, despite the fact that this decision was made after the Appellant appealed to the Tribunal.

Conclusion

[30] I find that the Appellant is entitled to family caregiver benefits for adults.

[31] This means that the appeal is allowed.

Normand Morin

Member, General Division – Employment Insurance Section

²⁴ The Federal Court of Appeal established or reiterated this principle in the following decisions: *Wakelin*, A-748-98; *Poulin*, A-516-91; and *Von Findenigg*, A-737-82.