



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MC v Canada Employment Insurance Commission*, 2021 SST 343

Tribunal File Number: GE-21-348

BETWEEN:

M. C.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: March 18, 2021

DATE OF DECISION: March 19, 2021

DECISION

[1] The appeal is allowed. The Commission incorrectly denied the Claimant's request to change her election from extended to standard parental benefits.

OVERVIEW

[2] The Claimant left work due to complications from her pregnancy. The Commission paid her the Canada Emergency Relief Benefit instead of sickness benefits due to the pandemic. The Claimant then applied for maternity and parental benefits after the birth of her baby. She selected the extended option for parental benefits. After she started to receive parental benefits, the Claimant contacted the Commission to request to change the option she selected to the standard option. The Commission denied the Claimant's request because they had already paid her parental benefits. The Claimant argued that she was confused when she chose the option for parental benefits.

ISSUE

[3] Did the Commission correctly deny the Claimant's request to change her election from extended to standard parental benefits?

ANALYSIS

Issue: Did the Commission correctly deny the Claimant's request to change her election from extended to standard parental benefits?

[4] I find that the Commission incorrectly denied the Claimant's request to change her election from extended to standard parental benefits.

[5] Parental benefits are payable to a claimant to care for a newborn child of the claimant.¹ A claimant must elect the maximum number of weeks for which benefits can be paid.² This

¹ Subsection 23(1) of the *Employment Insurance Act*.

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

election is irrevocable once benefits are paid.³ The maximum number of weeks for which parental benefits can be paid in a benefit period is 35 or 61.⁴

[6] The Claimant testified that she had complications in her pregnancy. As a result, she was in the hospital from April 2020 until she gave birth in June 2020. In her application for employment insurance maternity and parental benefits, she indicated that she wished to receive parental benefits immediately after her maternity benefits. The Claimant selected the extended option, indicating that she wished to claim 18 weeks of parental benefits.

[7] The Claimant testified that she called Service Canada several times. She did so because of issues they had converting her CERB to maternity benefits. She added that this resulted in an overpayment of the CERB. She said that she had also called Service Canada to because she was not sure that she had selected the right option for parental benefits.

[8] I asked the Claimant if she had discussed maternity leave with her employer before leaving work. The Claimant confirmed that she had. She said that she and her employer had agreed that she would take the standard maternity leave. However, her employer would put that she would take extended leave just in case, since she was having complications in her pregnancy.

[9] I asked the Claimant why she identified 18 weeks as the number of weeks of parental benefits she wished to claim. She said that this is the number of weeks her work allows. She stated that she had discussed this with her work, and this is the number they told her to identify.

[10] I asked the Claimant how many weeks of benefits she intended to take when she completed her application for benefits, and when did she expect to go back to work. She said that she was hoping to do it for the regular time. However, she said that since her employer had recorded her return date as December 2021, she was not sure if she had to reflect the same in her application for benefits. She stated that this is her first baby, and she really does not know how things work.

[11] I reviewed the information in the application for benefits concerning parental benefits with the Claimant since she had chosen to claim 18 weeks of benefits. The Claimant again said

³ Subsection 23(1.2) of the *Employment Insurance Act*.

⁴ Paragraph 12(3)(b) of the *Employment Insurance Act*.

that she got confused when completing the application online. She stated that she thought she had to choose the extended option since that is more than what she understood to be 12 months.

[12] From her testimony, I find that the Claimant was quite confused about the options for parental benefits. I also find that she did not understand the limits of changing from one option to another. I find that her conversations with her employer added to her confusion, for example with the identification of 18 weeks.

[13] I accept as fact the Claimant's testimony that she intended to take the standard maternity leave, but her employer set her return date at December 2021 in case she had complications as she had with her pregnancy. I find that the Claimant chose the extended option to be in line with her employer setting a return date beyond 12 months. However, I find that her intention from the time she first spoke to her employer, and when she completed her application for benefits, was to receive standard parental benefits. I find that the Claimant's selection of 18 weeks of parental benefits is more consistent with payment of standard than extended parental benefits.

[14] I find that the Claimant elected to receive standard parental benefits. As a result, I find that the Commission incorrectly denied her request to change her election from extended to standard parental benefits.

CONCLUSION

[15] The appeal is allowed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	March 18, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. C., Claimant