



Citation: *JF v Canada Employment Insurance Commission*, 2021 SST 345

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

**Decision**

**Appellant:** J. F.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (419776) dated April 14, 2021  
(issued by Service Canada)

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**Tribunal member:** Mark Leonard  
**Type of hearing:** Teleconference  
**Hearing date:** May 5, 2021  
**Hearing participants:** J. F., Appellant  
D. F., Witness  
**Decision date:** May 7, 2021  
**File number:** GE-21-661

## Decision

[1] The appeal is allowed. This means that the Appellant truly elected to receive standard parental employment insurance (EI) benefits and not extended benefits.

## Overview

[2] The Appellant established a claim for combined pregnancy and parental benefits effective November 8, 2020. All was well while she was receiving maternity benefits. When her parental benefits began, the rate was significantly lower than what she was expecting. She contacted the Canada Employment Insurance Commission (the Commission) and they told her that she had elected the extended benefit option that resulted in a lesser benefit amount. The Commission denied her request to change her benefit option claiming it had no discretion to do so.

[3] The Appellant says that she never intended to be on the extended benefit option. She says she only wanted a maximum of 12 months of benefits after which time she intended to return to work. She says she made a mistake and did not fully understand the options when she made her selection.

## Issue

[4] Which of the two options, either standard, or extended parental EI benefits, did the Appellant elect?

## Analysis

[5] Parental benefits are payable to a claimant to care for their newborn child<sup>1</sup>. A claimant is required to *elect* between two options<sup>2</sup>. Standard benefits are for a maximum of 35 weeks with a benefit rate of 55% of insurable weekly. Extended benefits last to a maximum of 61 weeks with a benefit rate of 33% of insurable earnings. The advantage of extended benefits is that either or both parents can receive up to a total of 61 weeks

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<sup>1</sup> Subsection 23(1), *Employment Insurance Act*.

<sup>2</sup> Subsection 23(1.1) *Employment Insurance Act*.

of parental benefits albeit, at a reduced benefit rate. Once benefits are paid based on the claimant's election, that election is irrevocable<sup>3</sup>.

[6] The Appellant established her claim for both maternity and parental benefits on November 8, 2020. When she completed the on-line application, she had the choice to select between the standard and the extended parental benefits option. She selected the extended option and input 39 as the number of weeks she wished to receive benefits.

[7] At the end of her maternity benefits when her parental benefits began, her husband noticed that the electronic transfer of EI benefits to their account was far less than they were expecting. She testified that she immediately contacted the Commission. She told them that she only ever wanted the one year of benefits. She told them that pushing the button for extended benefits was an error. She asked that her option be changed from extended to standard benefits.

[8] The Commission denied her request relaying that once benefits have been paid the choice of option is irrevocable.

[9] The Appellant testified that she only ever wanted the "one year" of benefits. She said that she left work on October 30, 2020 in anticipation of the birth of their child. She noted in her initial claim for benefits that her intended return to work date would be November 22, 2021. This is a 55- week period. She says that she entered 39 weeks because she believed she had to match the total number of weeks she would be away from work.

[10] She says that the November 22, 2021 return to work date was always an approximate time. She has since confirmed that she will be returning to work November 8, 2021.

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

[11] She says that she did not fully understand the difference between the two options and made a mistake selecting extended benefits. She asserts that she always intended to return to work after one year and only expected the one year's worth of benefits. She claims that she knew that there would be a point when her benefits ended and she would not receive any more even though she might not have returned to work yet.

[12] The Appellant's husband testified that they never truly accepted the benefit payment. He says that the payment was made by direct deposit. They had no choice regarding it entering their account. He says that immediately upon noting the reduced benefit amount, they contacted the Commission to try to correct the matter, but were denied. The Commission told them that once the benefits had been "paid" it could not change the option choice. The Appellant's husband disputes this saying that if they were paid benefits by cheque, they would have contacted that Commission and requested correction before depositing it. He says that the benefits should not be considered paid just because they were direct deposited.

[13] The Commission says that subsection 23(1.2) of the *Employment Insurance Act* prohibits the changing of an election once parental benefits are paid. It says that the election became irrevocable when the first benefit payment was made on March 12, 2021, and could not be changed. This section has the effect of preventing a claimant from switching back and forth between the two options. The Commission considered the Appellant's request to change her from extended to standard parental benefits. It determined that it could not make the change because it says the Appellant selected the extended parental benefit option. It says that once the choice of election is made and benefits paid, the choice cannot be recalled.

[14] I do not agree. The real issue is not whether a choice can be changed, but whether the choice made was the true expression of the Appellant's desired option.

[15] I examined the application as completed by the Appellant. In fact, she did click the button associated with extended benefits.

[16] Under the section for “**Parental Information**” the question posed to claimants is, “*How many weeks do you wish to claim?*” The Appellant input 39 (weeks).

[17] The Appellant said that she misunderstood that selecting the extended option meant that she would be asking for more than a years worth of benefits. She was aware that her maternity and parental benefits would equal the one year, but because she had a date of return to work beyond the 52-week period, she believed she had to make the “numbers” match. The Appellant submitted that all her interactions with her employer support her expectations of returning to the workplace in a year.

[18] I find the Appellant to be credible. Her explanation during testimony was consistent with her submissions and the initial claim she made. She blames herself and says she made an error when she selected the extended benefit option even though she says that was not what she believed she was doing at the time.

[19] The Appellant should only have input 35 weeks in addition to her maternity benefits. However, it is not inconceivable that the Appellant might conclude that she must input the total number of weeks she will be absent from work and select the extended option button to match the dates while still believing she was only requesting one years worth of benefits.

[20] I believe the Appellant when she says she only wanted the 12 months or 52 weeks of benefits. In reality, while the benefit period equates to 52 weeks, the combined maternity and parental benefit periods are 15 weeks and 35 weeks respectively for a total of 50 weeks of total benefits. However, most people anecdotally refer to the period as 1 year or 12 months. This is the standard benefit option and I am satisfied this is what the Appellant was selecting. I find nothing in the testimony or submissions of either party that would lead me to another conclusion.

[21] I am further convinced that this was her intention because she immediately contacted the Commission when it was noticed her benefit rate changed. She testified that she accessed her “My Service Canada Account” at the outset of her maternity benefits and noted her benefit rate was what she was expecting. She says that there was no reference to the fact that her benefit rate would change once parental benefits began.

[22] She says that if her account had noted that there would be a change on March 12, 2021, she would have contacted the Commission to address her concerns. It was only after the benefit rate had decreased in March 2021 that she again accessed her account and noted that her benefit rate was lower.

[23] Once claimants begin their maternity and parental benefits there is no need to continue checking their account. They are not required to make reports in order to receive their benefits. Therefore, they are unaware of when changes occur until they notice a payment difference.

[24] The Appellant’s husband asserts that the Commission should not be able to use the direct deposit as support for meeting the requirements of the *Act* that benefits have been paid which invokes the freeze on making any changes. This is an interesting argument because it questions the idea of when benefits are actually paid. If they were receiving a cheque instead of direct deposit, the couple could have contacted the Commission right away and refused to negotiate the cheque. Since the funds would not actually transfer from the Commission to the Appellant, one cannot claim that the benefits have been paid. The funds are still with the Commission and not available to the Appellant to use. The Appellant could then request the change and return the original cheque while awaiting a replacement cheque in the adjusted amount.

[25] In fact, the funds did transfer to the Appellant and as such, benefits were paid. But, the argument is well taken and supports the notion that the sooner a claimant challenges such a payment, more credibility should be given to their assertions that an error has been made rather than simply a desire to change options.

[26] The Federal Court of Appeal had affirmed the principle that adjudicators cannot rewrite or interpret legislation in a manner contrary to its plain meaning<sup>4</sup>. However, at issue here is the question; what election did the Appellant truly make?

[27] I am guided by a recent decision of the Appeals Branch of the Social Security Tribunal<sup>5</sup>. The issue was not whether an election is irrevocable as prescribed by the legislation, but whether the Appellant made an election consistent with one option or the other regardless of which button was clicked.

[28] I find that when the Appellant made her initial claim she provided information consistent with electing the standard option. She clicked the radio button for the extended benefit option but all the other information she provided was consistent with electing the standard parental benefit option. It simply was not logical to input 39 weeks of extended benefits as such a reduced rate given her circumstances.

[29] I note that the Commission provides a link in the on-line benefits application to additional information on maternity and parental benefits. The problem with the link is where it is located in the application. It's found one page *after* the confirmation of information and claimant signature page. It is unlikely that claimants will access the page before making all of their selections and finalizing their application.

[30] It would be of some benefit to claimants if the parental benefits section were clarified in such a manner as to reinforce the consequences of the election they make and the additional information links placed where these decisions are made, not after the confirmation and signature page.

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<sup>4</sup> (*Canada (A.G.) v. Knee*, 2011 FCA 301)

<sup>5</sup> (*Canada Employment Insurance Commission v T. B.*, 2019 SST 823)

[31] The Commission declares that it will send all claimants a benefit statement detailing their account information and benefit rate. In recent times, most claimant's access their accounts on-line. The Commission could provide claimant's with a benefit statement that details not only what the current benefit rate will be, but also, if and when, the benefit rate will change such as in the case of extended parental benefits. Doing so would allow claimants to identify any concerns and address them with the Commission before benefits are paid.

## **Conclusion**

[32] The Appellant truly elected the standard benefit option for parental benefits, and her claim should be treated as such. This means that the appeal is allowed.

Mark Leonard  
Member, General Division – Employment Insurance Section