



Citation: *AP v Canada Employment Insurance Commission*, 2021 SST 398

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

Decision

Appellant: A. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (421446) dated April 19, 2021
(issued by Service Canada)

Tribunal member: Sylvie Charron

Type of hearing: Teleconference
Hearing date: May 18, 2021
Hearing participants: Appellant

Decision date: May 25, 2021
File number: GE-21-739

Decision

[1] The appeal is allowed. I find that the Appellant elected to receive standard parental employment insurance benefits.

Overview

[2] The Appellant applied for maternity and parental employment insurance (EI) benefits. She selected the extended parental benefits on the application form, but she believed that she was choosing to receive one year of total benefits. In fact, extended parental benefits pay a lower rate of benefits for up to 61 weeks, in addition to the initial 15 weeks of maternity benefits. The Appellant realized her mistake when she noticed that her first parental benefit payment was much lower than the maternity benefit payment.

[3] The Canada Employment Insurance Commission (Commission) says that since the Appellant has already been paid parental benefits, her choice of type of parental benefits is irrevocable, meaning it cannot be changed. It submits that the Appellant elected to receive extended parental benefits because she picked that option on the application form. The Appellant says that this choice was a mistake. The Appellant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

Issue

[4] What type of parental benefits did the Appellant elect to receive?

Analysis

[5] Parental benefits are to support parents while they take time off work to care for their newborn children.¹ Claimants must elect the maximum number of weeks, either 35

¹ *Employment Insurance Act* (the *Act*), section 23(1)

or 61 for which they want to receive parental benefits.² The choice (or election) of the parental benefit term cannot be changed once parental benefits are paid.³

[6] I find that the Appellant chose to receive standard parental benefits; these reasons explain why.

[7] The Appellant applied for maternity and parental EI benefits on October 22, 2020. She submitted that she held two jobs for two different employers and that her last day of work was October 15, 2020 for the first one, and October 16, 2020 for the second one. Her baby was due November 22, 2020. There was no fixed date for her return to work. At the hearing, she explained that both her employers knew that she intended to take from 12 to 14 months of maternity leave after the birth of her child, as she had discussed this with them. The baby was born on November 1, 2020.

[8] Despite her intention to take about one year off work for maternity and parental benefits, on the parental information section of the EI application form she selected to receive extended parental benefits for up to 61 weeks. She testified that while she did indicate this on the form, she did not understand the difference between maternity and parental benefits. It was not clear to her what she was choosing.

[9] The Appellant testified that she thought that she was opting for a year of benefits in total when she selected the extended option. She said that she read the application form but only realized that she made a mistake when she received the first payment of parental benefits. She did not understand that maternity and parental benefits were to cover separate periods.

[10] The Appellant filed her appeal with the Tribunal on May 4, 2021. She says that she always planned to return to work after about a year of maternity leave.

² The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is in section 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks to receive parental benefits is found in section 12(3)(b) of the *Act*, further to the choice made by a Claimant under section 23.

³ The *Act*, section 23(1.2)

[11] The Commission submits that the Appellant could read the difference between standard and extended parental benefits on the application form, therefore, she was informed; she elected extended parental benefits. She could also read on the form that the decision was irrevocable once parental benefits were paid.

[12] The Commission adds that it made the first payment of parental benefits on February 5, 2021. As the Appellant does not dispute this, I find this is a fact. The Commission's main argument is that since the Appellant has received parental benefits on February 5, 2021, her election became irrevocable on that date. The Commission adds that while the Appellant's situation may invoke sympathy, the law is clear that once the election is made and the benefits paid, the choice cannot be changed.

[13] I agree with the Commission that the *Act* is clear that once benefits are paid, an election for parental benefits cannot be changed. I disagree, however, with the Commission's determination that selection of a certain option on an application form is the only relevant information to consider when deciding which election the Appellant truly wanted to make.

[14] This issue turns on what it means to elect a benefit period. Is it only the choice made on the application form? Or does it include the individual's *intention* in making that choice? The Tribunal's Appeal Division has confirmed that I must consider all the relevant evidence to decide what type of parental benefits the Appellant likely elected to receive.⁴

[15] I find that it is more likely than not that the Appellant's intention was to elect one year of maternity and parental benefits combined, because of her testimony that she was confused about the addition of the period maternity benefits to the period of parental benefits. She wanted about a year of maternity leave; as a single parent, she says she cannot afford to be off work longer than that. I find that the Appellant was confused when she elected the extended parental benefits when what she wanted was a year off to be with her newborn.

⁴ This is found in *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823

[16] I further find that the Appellant promptly contacted the Commission for an explanation when she noticed that her parental benefits were much lower than what she had previously received as maternity benefits. It was then that she told the Commission that she had made a mistake.

[17] I also note that the Appellant has been frank about reporting to the Commission that her baby was born early, on November 1, 2020, and not on November 22, 2020 as expected. This change in confinement date inadvertently caused an overpayment imposed by the Commission; the Commission quickly reversed that decision.

[18] I find that the Appellant elected to receive standard benefits because I prefer her evidence that she was confused when she made the choice of the term of her parental benefits, as she did not know that parental benefits followed maternity benefits and she was supposed to add the two periods. Since standard parental benefits plus maternity benefits add up to about a year of benefits, which is what the Appellant wanted, it would not be reasonable to find that the Appellant intended to elect to receive extended parental benefits.

[19] The *Act* does not allow an Appellant to change their election after parental benefits have been paid.⁵ However, as I find that the Appellant did not elect to be paid extended parental benefits, there is nothing to revoke. Rather, the Appellant should be put back in a position consistent with her election of standard parental benefits.

Conclusion

[20] The appeal is allowed. I find that the Appellant elected to receive standard parental benefits.

Sylvie Charron
Member, General Division – Employment Insurance Section

⁵ *Employment Insurance Act*, subsection 23(1.2)