



Citation: *SB v Canada Employment Insurance Commission*, 2021 SST 376

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

**Decision**

**Appellant:** S. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (424181) dated May 19, 2021  
(issued by Service Canada)

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**Tribunal member:** Charlotte McQuade  
**Type of hearing:** Teleconference  
**Hearing date:** July 13, 2021  
**Hearing participants:** Appellant  
**Decision date:** July 27, 2021  
**File number:** GE-21-1042

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant elected the extended parental benefit option. However, he requested to change that election before the first payment of parental benefits was paid. So he can change his election to the standard parental benefit option.

## Overview

[3] When you fill out your EI parental benefits application, you need to choose between two options: the “standard option” and the “extended option.”<sup>1</sup>

[4] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays the same amount of benefits at a lower rate for up to 61 weeks. Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

[5] Once parental benefits have been paid, you can’t change options.<sup>2</sup>

[6] The Canada Employment Insurance Commission (Commission) says that the Claimant made his choice and that it is too late to change because he had already been paid benefits before he asked to change options. The Commission says the Claimant elected 61 weeks of extended parental benefits and was paid his first payment of parental benefits on April 29, 2021. The Commission says the Claimant asked for a change in parental benefit type on April 30, 2021 after he had already been paid parental benefits so the Claimant’s election could not be changed.

[7] The Claimant disagrees. He says he made a mistake on his application. He says he always intended to receive 36 weeks of standard parental benefits. He says he requested a change in benefits on April 30, 2021 before he received his first payment on extended parental benefits on May 3, 2021.

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<sup>1</sup> Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an “election.”

<sup>2</sup> Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once benefits are paid.

## **Matter I have to consider first**

### **The Claimant was provided with an interpreter**

[8] The Claimant requested a Gujarati speaking interpreter and the Tribunal provided an interpreter. The Claimant said he did not require full translation but would say when he required something translated. The hearing proceeded in this manner. Interpretation was provided when requested by the Claimant.

### **Issue**

[9] Which type of parental benefits did the Claimant actually want when he made his choice on the application? Can he change his election?

### **Analysis**

[10] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>3</sup> The law says that you can't change options once the Commission starts paying parental benefits.<sup>4</sup>

[11] To decide which type of parental benefits the Claimant actually wanted when he made his choice on the application, I need to consider the evidence about that choice. In other words, the option the Claimant chose on his application matters, but it isn't the only thing to consider. For example, the number of weeks of benefits the Claimant wanted to receive or how long the Claimant planned to be off work might be things to consider too.

[12] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant's choice when they filled out their application.<sup>5</sup> I am not

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<sup>3</sup> Section 23(1.1) of the EI Act says that, when you make a claim for benefits under that section, you have to choose to receive benefits over a maximum of 35 or 61 weeks.

<sup>4</sup> Section 23(1.2) of the EI Act says that the choice is irrevocable (that is, final) once you receive benefits.

<sup>5</sup> See *MC v Canada Employment Insurance Commission*, 2019 SST 666; *Canada Employment Insurance Commission v JH*, 2020 SST 483; *Canada Employment Insurance Commission v TB*, 2019 SST 823; *MH v Canada Employment Insurance Commission*, 2019 SST 1385; *VV v Canada Employment Insurance Commission*, 2020 SST 274; *ML v Canada Employment Insurance Commission*, 2020 SST 255; *RC v Canada Employment Insurance Commission*, 2020 SST 390.

bound by these decisions. In other words, I don't have to base my decision on them. But, I find them persuasive, and I am choosing to follow them.

### **What the Claimant meant to choose on the application**

[13] The option that the Claimant meant to choose on the application when he actually filled it out is important. At that moment, did he mean to choose the standard or extended option?

[14] The question is not whether the Claimant would have chosen a different option if he had understood his option better, but what option he meant to select at the time he chose the extended option. In other words, did he intend to select the standard option at the time he completed his form but mistakenly chose the extended option?

### **The parties' arguments**

[15] The Commission says that what the Claimant chose on the application tells us which option he wanted. It argues that it is too late to change options now.

[16] The Commission says the Claimant elected 61 weeks of extended parental benefits.<sup>6</sup>

[17] The Commission says that the Claimant was issued his first week of extended parental benefits on April 29, 2021. The Commission says the Claimant requested a change to standard parental benefits on April 30, 2021,<sup>7</sup> after he had already been issued at least one week of extended parental benefits.<sup>8</sup> So, the law did not permit the change.<sup>9</sup>

[18] The Claimant says he wanted 36 weeks of benefits. He says he mistakenly chose the extended option. He also says he contacted the Commission to change his election before he received his first payment of parental benefits.

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<sup>6</sup> GD3-8 and GD3-9.

<sup>7</sup> GD3-21.

<sup>8</sup> GD3-19.

<sup>9</sup> See subsection 23(1.2) of the Act.

[19] The Claimant testified that his child was born on February 9, 2021. His last day of work was March 13, 2021. His spouse did not collect EI parental benefits. He testified that he meant to apply for 36 weeks of parental benefits but mistakenly chose 61 weeks.

[20] The Claimant initially testified that it was when he received his first payment of parental benefits that he realized he had made a mistake. However, the Claimant later testified that he called the Commission on April 30, 2021 as he had not received a payment yet. He says he asked the Commission's agent what amount he was going to receive. When he was told the amount, he asked why it was that amount. He was then told about the weekly benefit rate of 33% of insurable earnings for extended benefits. The Claimant says he then asked for 36 weeks of benefits but was told he could not change the type of benefits. He said the first payment of parental benefits was not deposited into his bank account until May 3, 2021.

[21] I referred the Claimant to the explanation on the application form of the two different types of parental benefits and asked him if he had read that.<sup>10</sup> The Claimant testified that he did not read this page before he made his election. He said this was because maybe he was in a hurry. The Claimant said he did not know there were two types of parental benefits with two different weekly benefit rates at the time he made his election. He thought only 36 weeks could be claimed. The Claimant says he did not contact Service Canada before he make his election to find out about parental benefits. He found out about EI benefits as he asked someone about it and they just sent him a link to the application.

[22] I asked the Claimant to explain why he had selected 61 weeks of parental benefits.<sup>11</sup> The Claimant said he had just clicked on the 61 weeks of extended benefits. He did not know what it meant. He just wanted 36 weeks.

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<sup>10</sup> GD3-8.

[23] The Claimant also testified that two months before applying for EI benefits, he had decided that he was not going to be returning to his employer as he was intending to move to a different place. He testified that he had also decided before he applied for benefits that he wanted 36 weeks of parental benefits. He says he would have applied for another job after the 36 weeks were up. I asked the Claimant where the number of “36” weeks came from. He said this was just the number of weeks he wanted to take care of his baby.

[24] The Claimant testified that he did not understand that he was making a choice between two types of benefits. He testified that he has only been in Canada for two and a half years. He has a high school education and no formal English training. He has learned English on his own and he does not understand English “powerfully”. The Claimant explained that he did not call the Commission for help in applying for benefits because he wanted to try first. He says he did not know he had completed the application the wrong way. He thought there was only one type of benefits for 36 weeks to apply for.

### **What type of parental benefits did the Claimant elect?**

[25] I find that the Claimant elected 61 weeks of extended parental benefits.

[26] The application form describes the two types of parental benefits as follows: <sup>12</sup>

“Standard option:

- The benefit rate is 55% of your weekly insurable earnings up to a maximum amount.
- One parent can receive up to 35 weeks of benefits.
- If parents share the parental benefits, they can receive up to a combined total of 40 weeks.

Extended option:

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<sup>12</sup> GD3-8.

- The benefit rate is 33% of your weekly insurable earnings up to a maximum amount.
- One parent can receive up to 61 weeks of benefits.
- If parents share the parental benefits, they can receive up to a combined total of 69 weeks.”

[27] The form asks the Claimant to choose between the two options and advises that the election is irrevocable once parental benefits are received. The Claimant selected 61 weeks of extended parental benefits. <sup>13</sup>

[28] The Commission relies on the Claimant’s application for parental benefits as evidence that he elected extended parental benefits.

[29] I find the application form does not contain any ambiguous information as to the Claimant’s choice. The choice of 61 weeks is consistent with an election for extended parental benefits, that being the maximum amount of weeks of those benefits available. There is no obvious contradiction on the application about the return to work date and the number of weeks of benefits, given the Claimant said on the application that he would be returning to work but he did not provide a return date. There is also no contradiction with the Record of Employment (ROE). It says the expected date of recall was unknown. <sup>14</sup>

[30] The Commission’s records show that the Claimant contacted the Commission on April 30, 2021 to request amendment of the parental benefit option.

[31] The Claimant said two different things about when he realized there was a mistake in the benefits he had chosen. He initially said he learned of the mistake when he received his first payment. He later said he learned of the lower amount when he contacted the Commission on April 30, 2021 as he had not received his benefits and asked what the benefit amount would be. At that time the weekly benefit rate of 33% of

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<sup>13</sup> GD3-9.

<sup>14</sup> GD3-17.

weekly insurable earnings for extended benefits was explained to him, prompting him to request a change. I find the latter explanation to be what happened. This explanation is consistent with the Claimant's testimony that he did not actually receive his first payment until May 3, 2021.

[32] So, the Claimant's enquiry of April 30, 2021 does not support that the Claimant's initial intention to claim standard benefits. Rather, it suggests he was just learning on April 30, 2021 about the lower weekly benefit rate associated with extended parental benefits and that was what prompted his request for a change to standard parental benefits.

[33] The Claimant's testimony is that he only wanted 36 weeks of benefits at the time he completed the application. However, I do not find that testimony to be credible. The Claimant was unable to explain why he choose "61" weeks of extended parental benefits. He said he just clicked it. While he may have clicked the extended option, he still had to specifically choose a number of weeks. Further, the Claimant was not able to give a clear explanation about how he had come up with the number of 36 weeks he wanted to collect parental benefits, other than to say he decided that is how long he wanted to care for his child. I find it more likely than not that the Claimant became aware of the maximum weeks of standard parental benefits that could be claimed, after he completed his application and that his original intention was to choose 61 weeks. I find that intention to be consistent with the fact he had no specific return to work date in mind as he had decided not to return to his employer and to move.

[34] Considering the evidence as a whole, I find it more likely than not the Claimant elected 61 weeks of extended parental benefits. I find that the Claimant made this choice, being unaware of the weekly benefit rate associated with extended parental benefits. When he found out how low the rate was going to be on April 30, 2021, that prompted his request for a change of election.



## **So, which option did the Claimant mean to choose when he applied?**

[35] I find that the Claimant hasn't proven that he meant to choose standard parental benefits when he applied. He elected extended parental benefits.

## **Is the election valid?**

[36] The question is whether such election is valid, given the Claimant did not understand the rate associated with the extended parental option and did not understand there were two parental benefit options with different rates. I accept the Claimant's testimony that his English reading skills are limited, but the Claimant's explanation for mistakenly choosing extended parental benefits was not that he had not misunderstood the information on the application form in light of his language difficulties, but rather that he had not read the form as he might have been in a hurry.

[37] The Appeal Division of this Tribunal has said that an election might be invalidated where the application form contains incomplete and misleading information, to the point that an applicant was confused, misled, and unable to make an informed decision in the first place.<sup>15</sup> The Appeal Division has also said that a mistake generally should not be sufficient to invalidate an election, unless the application form somehow contributed to or was responsible in part for that applicant's mistake.<sup>16</sup>

[38] The Federal Court has reiterated this sentiment: "Where a claimant is actually misled by relying on official and incorrect information, certain legal recourse may be available under the doctrine of reasonable expectations. However, where a claimant...is not misled but merely lacks the knowledge necessary to accurately answer unambiguous questions, no legal remedies are available. Fundamentally it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions."<sup>17</sup>

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<sup>15</sup> See *K. F. v Canada Employment Insurance Commission*, 2020 SST 567.

<sup>16</sup> See *K. F. v Canada Employment Insurance Commission*, 2020 SST 567.

<sup>17</sup> See *Karval v. Attorney General of Canada*, 2021 FC 395.

[39] I cannot conclude that the Claimant was misled or did not understand the form, because his evidence was he had not read the explanation of the two different types of benefits. Whether he would have understood it or not, had he read it, is speculative because he did not read it.

[40] I find the Claimant's election cannot be invalidated. He did not fulfill his obligation to understand his options.

### **Can the Claimant change his election?**

[41] There is no dispute that the Claimant made his request to change his election on April 30, 2021 so I find as a fact that is when he made the request to change.

[42] The parties dispute when the first payment of parental benefits was made to the Claimant.

[43] The Commission says the first payment was made on April 29, 2021 for the week of March 21, 2021. The Commission does not say why it considers the date the payment was issued to be the date benefits are paid, as opposed to the date the money was deposited in the Claimant's bank.

[44] The Claimant says the date he received the money in his account is the date that benefits are paid. The Claimant says the first parental benefit was paid on May 3, 2021. He says he did not receive the direct deposit of the first payment in his bank account until May 3, 2021. He referred to his banking information in his testimony for that date.

[45] I accept the Claimant's evidence and find as a fact that the first parental benefit payment was deposited in his bank account on May 3, 2021.

[46] The Employment Insurance Benefit Statement says "Direct deposit issued on Thu 29 Apr 2021. Deposit due on Mon 3 May 2021."<sup>18</sup> This is consistent with the Claimant's information that he received the deposit in his account on May 3, 2021.

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<sup>18</sup> GD3-19.

Presumably there is some processing time on either the part of the Commission or the Claimant's bank in between the issue date and the deposit date.

[47] The law says that the election is irrevocable once benefits are "paid". The question is when are benefits "paid". Is it when the Commission issues the payment or when it is actually deposited into the Claimant's bank?

[48] I find that that benefits paid by direct deposit are paid once they are deposited in the Claimant's bank.

[49] Subsection 92(4) of the EI Regulations says what is evidence of payment of benefits for direct deposit purposes. It provides as follows:

92(4) In the absence of any evidence to the contrary, the following documents together constitute evidence of the transfer of funds to a claimant's account and the payment of benefits to the claimant:

(a) a document certified by the person acting for the Commission to be an extract from the record authorizing a direct deposit transaction, in respect of the claimant, to be directed to the financial institution where the account of the claimant is located; and

(b) a certified extract of the records of that financial institution indicating the crediting of the amount of the deposit to the account of the claimant.

[50] Since the legislature has provided a means of proving payment of benefits by way of an extract of a record from the financial institution showing the crediting of the amount to the bank account, the implication is that it is the actual deposit date which is the relevant time when benefits are considered to have been paid.

[51] Consistent with subsection 92(4) of the EI Regulations, the benefit statement says at the bottom, "When using Direct Deposit, the deposit to your financial account will serve as a record of your payment."<sup>19</sup>

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<sup>19</sup> GD3-19.

[52] I note the Commission itself seems to be adopting the interpretation that benefits are considered to have been paid once they are “received”, rather when they are issued, in its application for benefits. In that regard, the application form advises claimants that they cannot change their election once any parent has “received” parental benefits.<sup>20</sup>

[53] I find therefore that benefits paid by direct deposit are paid once they have been deposited in a claimant’s account.

[54] I accept the Claimant’s testimony, which he made having regard to his bank records, that the first extended parental benefit payment was deposited in his account on May 3, 2021. So I find the first payment of extended parental benefits was made on May 3, 2021.

[55] As the Claimant made his request to change his election on April 30, 2021, before he was paid his first extended parental benefit on May 3, 2021, he can change his election to standard parental benefits.

## **Conclusion**

[56] The Claimant chose extended parental benefits. He made his request to change his election on April 30, 2021 before the first extended parental benefit was paid to him on May 3, 2021. So, his election can be changed to standard parental benefits.

[57] This means that the appeal is allowed. The Commission is to process the Claimant’s request for change of election to standard parental benefits.

Charlotte McQuade  
Member, General Division – Employment Insurance Section

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<sup>20</sup> GD3-8.