



Citation: *GK v Canada Employment Insurance Commission*, 2021 SST 487

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

**Decision**

**Appellant:** G. K.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (425848) dated June 10, 2021  
(issued by Service Canada)

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**Tribunal member:** Suzanne Graves  
**Type of hearing:** Teleconference  
**Hearing date:** August 4, 2021  
**Hearing participants:** Appellant  
**Decision date:** August 6, 2021  
**File number:** GE-21-1171

## Decision

[1] The appeal is dismissed.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option. This election cannot be changed because she has already received extended parental benefits.

## 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, if the maximum number of benefits are claimed. It is just stretched over a different number of weeks.

[5] Once you start receiving parental benefits, you can't change options.<sup>2</sup>

[6] On her application, the Claimant chose extended parental benefits. She started receiving benefits at the lower rate in the week of May 2, 2021. Shortly after she began claiming extended benefits, she decided that she wanted standard parental benefits.

[7] The Canada Employment Insurance Commission (Commission) says that the Claimant made her choice and that it is too late to change it because she has already started receiving benefits.

[8] The Claimant disagrees and says that there should be some flexibility to change to standard parental benefits. She says that this was the first time she had made a maternity and parental benefits claim and she was not aware of the rules.

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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 you receive benefits.

## Issue

[9] Which type of parental benefits did the Claimant actually want when she made her choice on the application?

## 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 she made her choice on the application, I need to consider the evidence about that choice. In other words, the option the Claimant chose on her 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 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 she actually filled it out is important. At that moment, did she mean to choose the standard or extended option?

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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.

## The parties' arguments

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

[15] The Claimant's baby was born on March 20, 2021. She applied for maternity benefits and asked to receive parental benefits immediately following her maternity benefits. On her application form, she selected the extended benefits option and asked for 61 weeks of benefits.<sup>6</sup>

[16] The Claimant testified that at that time she applied for benefits, she decided that she would take 18 months off work to care for her child. So, when she completed her application form she wanted to claim extended benefits. But she did not know the rules about the deadline for making any changes. Also, English is not her first language, so she had difficulty understanding information that was provided to her.

[17] She received 15 weeks of maternity benefits,<sup>7</sup> and her benefits switched to parental benefits in the week of May 2, 2021. Her first parental benefits payment was processed on May 14, 2021.<sup>8</sup> This is not in dispute.

[18] The Claimant says that, at around the end of May 2021, her plans changed.<sup>9</sup> She realized that she needed to change her parental benefits to standard benefits so that she could return to work earlier. When she called the Commission, the agent said it was too late to make a change because she had already received benefits.

[19] The Claimant argues that it should not be a big issue to change from extended parental benefits to standard benefits. She says that the problem arose from the fact that she has limited English skills and did not know about the deadline to change her election. She argues that the system should be more flexible to allow people to change their parental benefits option since sometimes plans have to be adjusted.

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<sup>6</sup> The Claimant's parental benefits election is at GD3-9.

<sup>7</sup> The Claimant received 15 weeks of maternity benefits from January 17, to May 1, 2021 (GD3-19).

<sup>8</sup> The Commission filed a pay history report at GD3-19.

<sup>9</sup> The Claimant did not recall the exact date that she called to Commission to request the change, but said that the call was made after she had started to receive parental benefits.

[20] I find that the Claimant made a choice to elect the extended parental benefits option. I make this finding based on the information she provided in her benefits application, supported by her forthright testimony at the hearing. She later contacted the Commission to ask to change her election to standard benefits, but by that time she had already begun to receive parental benefit payments.

[21] I acknowledge the Claimant's argument that she did not understand the rules about changing her election. However, I find that she made a clear choice to claim extended benefits, and the law says that once an election is made and benefits have been received, this choice cannot be changed.<sup>10</sup>

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

[22] I find that the Claimant meant to choose extended parental benefits when she applied for benefits.

[23] I understand that the Claimant would now like receive standard parental benefits instead. But the law clearly says that the option cannot be changed once you have received benefits. While I sympathize with the Claimant's situation, I cannot change the law.<sup>11</sup>

### **Conclusion**

[24] The Claimant chose extended parental benefits.

[25] This means that the appeal is dismissed.

Suzanne Graves

Member, General Division – Employment Insurance Section

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<sup>10</sup> In *Karval v Canada (AG)* 2021 FC 395, the Federal Court considered a case where a claimant elected extended benefits on her application form and later asked to change her election to standard benefits. She said that she was confused by the application form and did not know the rules for changing her election. The Court held that the claimant had deliberately selected the extended option, and that "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>11</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.