



Citation: *SA v Canada Employment Insurance Commission*, 2021 SST 407

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

**Decision**

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

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (424198) dated May 20, 2021  
(issued by Service Canada)

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**Tribunal member:** Katherine Wallocha  
**Type of hearing:** Videoconference  
**Hearing date:** June 24, 2021  
**Hearing participants:** Appellant  
**Decision date:** June 25, 2021  
**File number:** GE-21-938

## **DECISION**

[1] The appeal is allowed in part. The Claimant (S. A.) can't be paid standard parental employment insurance (EI) benefits beyond the 52 weeks allowed in the law.

[2] But the Claimant can be paid extended parental benefits. His election to receive standard parental benefits isn't valid because the Commission didn't provide the Claimant with all the information necessary to make an informed decision about a benefit he was entitled to receive.

## **OVERVIEW**

[3] The Claimant applied for parental EI benefits on February 3, 2021. He indicated that his child's birth date was March 21, 2020. He requested standard parental benefits wishing to claim 17 weeks.

[4] On April 29, 2021, the Canada Employment Insurance Commission (Commission) informed the Claimant that he was approved for six weeks of parental benefits. It was unable to pay the requested 17 weeks of EI parental benefits because of the date he made his claim. Standard parental benefits are payable within the 52-week period following the birth of his child.

[5] The Claimant requested that the Commission reconsider its decision. He stated that he made a mistake when he applied for parental benefits. He misunderstood the application process and selected the wrong option. He wished to change his claim from standard parental benefits to extended parental benefits, to align with his leave period.

[6] The Commission maintained its original decision.

[7] The Claimant appealed the Commission's decision. He stated that he was unaware that he needed to apply for the extended benefits. He was only going to be off work for four months, so he thought he needed to request standard parental leave. He said he now understands that he should have chosen the extended leave since the time he requested to be off work would pass his child's first birthday and the cut-off period.

## PRELIMINARY MATTERS

[8] The Commission identified the issue under appeal as the Claimant's parental benefits ending before he was paid the number of weeks he requested. The Commission says the 52-week parental window in which to collect standard parental benefits had closed<sup>1</sup>, preventing the payment of any more benefits.

[9] However, I find there is another issue under appeal. The Claimant requested that his parental benefits be changed from standard to extended. He raised that issue and filed a reconsideration request based on that issue. The Commission responded to that issue and provided arguments in its representations. The reconsideration decision identifies the issue as "parental benefits" and the election between standard and extended benefits would be a sub-issue under parental benefits.

[10] I find I have jurisdiction to decide the issue of whether the Claimant elected to receive standard parental benefits<sup>2</sup>.

## WHAT I MUST DECIDE

[11] There are two issues under appeal:

1. Can the Claimant be paid standard parental benefits beyond the 52-week parental window?
2. Did the Claimant elect to receive standard parental benefits?

## REASONS FOR MY DECISION

[12] Parental benefits are payable to a claimant to care for their newborn child<sup>3</sup>.

[13] When you apply for parental EI benefits, you must choose between two different kinds of parental benefits<sup>4</sup>:

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<sup>1</sup> See subsection 23(2) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See subsection 23(1.1) of the EI Act.

<sup>3</sup> See subsection 23(1) of the EI Act.

<sup>4</sup> See paragraph 12(3)(b) and subsection 14(1) of the EI Act.

- Standard parental benefits: the Commission pays up to 35 weeks of parental benefits at the rate of 55% of your weekly earnings.
- Extended parental benefits: the Commission pays up to 61 weeks of parental benefits at the rate of 33% of your weekly earnings;

[14] The parental benefit window in which standard parental benefits can be paid starts with the week the child was born, and ends 52 weeks after the week the child was born<sup>5</sup>.

[15] The parental benefit window in which extended parental benefits can be paid starts with the week the child was born and ends 78 weeks after the week the child was born<sup>6</sup>.

[16] When you choose a type of benefit, the law calls this an “election”. Once you have received a parental benefit payment, you can’t change your election<sup>7</sup>.

### **Can the Claimant be paid standard parental benefits beyond the parental window?**

[17] No, the Claimant can’t be paid standard parental benefits beyond the 52 weeks allowed in the law.

[18] The Claimant’s last day of work was January 29, 2021. He applied for parental EI benefits on February 3, 2021. The Commission established his claim on January 31, 2021, because this is the Sunday of the week in which he experienced an interruption of earnings and applied for benefits<sup>8</sup>.

[19] The Claimant’s child was born on March 21, 2020. This means the 52-week parental window ends on March 20, 2021.

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<sup>5</sup> See subsection 23(2) of the EI Act.

<sup>6</sup> See subsection 23(3.21) of the EI Act.

<sup>7</sup> See subsection 23(1.2) of the EI Act.

<sup>8</sup> See section 10 of the EI Act.

[20] The Commission says that the Claimant was entitled to receive six weeks of standard parental benefits because he reached the last week of the parental window after six weeks. The Claimant's child wasn't hospitalized, so the benefit period can't be extended.

[21] The Claimant agrees that he selected standard parental benefits. He says he was only asking for 17 weeks of parental benefits, so he thought he needed to request standard parental benefits. He now understands that he should have requested extended leave to align with his leave period because it would pass his child's first birthday and the cut-off period.

[22] I agree with both the Claimant and the Commission. The law is clear on this point. A claimant for standard parental benefits must claim those benefits within 52 weeks of the date of birth of the child. This means the Claimant can't collect standard parental benefits beyond the 52 weeks allowed in the law.

**Did the Claimant elect to receive standard parental benefits?**

[23] No, I find on the balance of probabilities that the Claimant elected to receive extended parental benefits.

[24] The Commission said that the election between standard or extended parental benefits is irrevocable once parental benefits are paid in respect of the same child. The Claimant had already been issued at least one week of these benefits as initially requested. The Commission therefore had no alternative but to refuse his request to change the option he initially selected.

[25] However, a recent decision by the Appeal Division (AD) of the Social Security Tribunal explained that while Parliament made the election of standard or extended parental benefits irrevocable, it didn't define "election", or state that a claimant's selection on the application form must be conclusively deemed to be his or her election.

[26] In the AD's view, the purpose of making the election irrevocable is to prevent claimants from changing their minds as their circumstances change and they reassess

which type of benefit would be most advantageous. Its purpose isn't to punish claimants for provable slips or objectively reasonable misunderstandings at the time that they complete their applications<sup>9</sup>.

[27] I am not required to follow the AD's guidance, but in this case, I find it applies.

[28] In his notice of appeal, the Claimant said that at the time of his application, he was unaware that he needed to apply for the extended parental leave. He was only going to be off work for four months so, in error he assumed that this was a standard leave. He was only informed after his benefits ended that he learned he had chosen the wrong type of leave. This was his first time applying for EI benefits, the other parent wasn't taking any time off work, so he thought he was well within time constraints.

[29] There is no disagreement that the Claimant wanted 17 weeks of parental benefits. He requested standard parental benefits because 17 weeks is less than the normal 35 weeks of standard benefits. He indicated his return to work date was May 31, 2021. The record of employment shows an expected date of recall of May 30, 2021. I find the Claimant's intent was to be away from work for less than 35 weeks, so chose standard parental benefits.

[30] I agree with the Commission that the election between standard and extended parental benefits were explained to the Claimant on the application form. However, critical information wasn't included in this explanation. The Claimant wasn't informed that the length of the standard parental benefits window ends 52 weeks after the week in which his child was born. This means that the Claimant was unable to make an informed decision. Therefore, his election for standard parental benefits is invalid.

[31] The Claimant told me that since he was wishing to claim less than 35 weeks, he thought he needed to apply for standard parental benefits. However, if he had known at the time of the application that he would only receive six weeks of parental benefits, he would have applied sooner, or he would have chosen the extended option.

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<sup>9</sup> See the AD decision *V.E. v. Canada Employment Insurance Commission*, AD-20-3.

[32] I recognize it is the Claimant's responsibility to understand which option he is electing. However, it is the Commission's responsibility to ensure the application form provides all the information the Claimant needs to make an informed decision. The Commission omitted crucial information from its application form, effectively misleading or misinforming the Claimant about his options. Further, the Claimant wasn't informed that he would only receive six weeks of parental benefits until after he was paid those benefits and his claim had ended.

[33] Since the overall purpose of the EI Act is to make benefits available to the unemployed, a liberal interpretation of the provisions should be favoured. Any difficulties from the language in the EI Act should be resolved in favour of the Claimant<sup>10</sup>.

[34] The Claimant selected a benefit that he didn't mean to choose. He did so because he wasn't provided with all the information he needed to make a deliberate and informed choice. The Claimant should not be punished for his selection of standard benefits when his choice was based on a reasonable interpretation of the information and instructions in the application.

[35] I find it reasonable for the Claimant to have understood that because he wanted less than 35 weeks of benefits, the standard option was the only option he could choose. He made his choice for standard parental benefits without knowing that this would cause his claim to end before he was able to collect the number of weeks he requested.

[36] As a result, I find the Claimant's election of the standard parental benefits was invalid from the outset because the application misled him to make a selection that was contrary to his needs and wishes.

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<sup>10</sup> This is explained in the Supreme Court of Canada decision *Abrahams v. Canada (Attorney General)*, 1983 Canlii 17 (SCC).

## **CONCLUSION**

[37] The Claimant's standard parental benefits can't be paid beyond the 52 weeks following the week his child was born. But the Claimant's election of standard parental benefits is invalid. This means he can be paid extended parental benefits if he so chooses. This means the decision is allowed in part.

*K. Wallocha*

Member, General Division - Employment Insurance Section