



Citation: *IS v Canada Employment Insurance Commission*, 2021 SST 270

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

Decision

Appellant: I. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (416658) dated March 15, 2021
(issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference
Hearing date: May 27, 2021
Hearing participant: Appellant
Decision date: May 31, 2021
File number: GE-21-594

Decision

[1] I. S. is the Claimant. The Canada Employment Insurance Commission (Commission) decided she could not receive Employment Insurance (EI) benefits. She is appealing this decision to the Social Security Tribunal.

[2] I am dismissing her appeal. She cannot receive EI caregiver benefits. This is because the medical certificate doesn't say that her husband is critically ill within the meaning of the law.

Overview

[3] The Claimant stopped working to care for her husband. She applied for EI benefits and gave the Commission a doctor's note. The doctor said that the Claimant's husband was sick and needed full-time care. But the doctor said that his life wasn't at risk because of his illness. The Commission refused to pay EI benefits to the Claimant because the doctor said her husband wasn't critically ill.

[4] The Commission says that it can't pay EI caregiver benefits. It says that the medical certificate doesn't describe the Claimant's husband as critically ill. It says that the note must say that his life is a risk because of his illness for him to meet the definition of a critically ill person.

[5] The Claimant disagrees with the Commission. She says that her husband was critically ill. He needed emergency surgery. He needed her full-time care for many weeks after his surgery. She says that I should look at the bigger picture and make a decision based on the seriousness of his illness.

Issue

[6] I have to decide whether the Claimant has proven her entitlement to family caregiver benefits. To make this decision, I have to decide whether the doctor's note describes her husband as critically ill.

Analysis

[7] You can receive EI benefits if you stop working because you have to care for a critically ill family member. You need a medical certificate to get these benefits. The medical certificate must say that your family member is critically ill and that they need your care or support.¹

[8] The law has a specific definition of a “critically ill” person. A person is critically ill if they meet two conditions:

- Their baseline state of health has changed significantly;
- Their life is at risk because of an illness or injury.²

[9] Your family member must meet both of these conditions if you want to receive benefits.

[10] The Commission has a medical certificate form. They usually ask you to use their form because it has space for the doctor to include all of the necessary information.

Issue 1: Does the medical certificate describe the Claimant’s husband as critically ill?

[11] The medical certificate doesn’t describe the Claimant’s husband as critically ill within the meaning of the law. This is because the doctor says that his life isn’t at risk.

[12] The Claimant argues that I should use my “common sense.” She says that her husband was seriously ill and needed her full-time care.

[13] The Commission says that it has to rely on the doctor’s note. The Commission says that the doctor’s note doesn’t describe the Claimant’s husband as critically ill because it says his life isn’t at risk.

¹ Subsection 23.3(1) of the *Employment Insurance Act*.

² Subsection 1(7) of the *Employment Insurance Regulations*.

[14] There is one medical certificate in the appeal file. On this note, the doctor answered “no” to the question asking if the patient’s life was at risk because of his illness or injury. The doctor added a note explaining that the Claimant’s husband needs full-time care. The doctor asks the Commission to consider paying caregiver benefits to the Claimant.

[15] The Claimant wrote a letter describing her husband’s condition. She said that he needed emergency surgery. He spent several days in the hospital recovering. After he came home, he still needed full-time care. The Claimant had to drive him to appointments nearly every day. He could not walk for two months.

[16] The Claimant wants me to look at all of the medical evidence. She wants me to read about her husband’s diagnosis, the surgery, the tests and the aftercare. She thinks that I should use my common sense and make my own decision about whether he was critically ill.

[17] I cannot do this. I am not a doctor. I am not a medical expert. The doctor looked at all the medical evidence and decided that the Claimant’s husband wasn’t critically ill. This is because the doctor decided that his life wasn’t at risk. I can’t override the doctor’s opinion. I can’t substitute my own interpretation of the medical evidence. I can only rely on the medical certificate.

[18] I understand that the Claimant is frustrated. She feels like the Commission is looking for reasons to deny her benefits. But I have to follow the law when I make my decision. The law says you have to have a doctor’s note that describes the patient as critically ill. The law says that a critically ill person is someone whose life is at risk because of an illness. The doctor’s note doesn’t describe the Claimant’s husband as critically ill. I can’t ignore this note and make my own medical diagnosis.

[19] The medical certificate on file says that the Claimant’s husband isn’t critically ill within the meaning of the law. This means that the Claimant hasn’t proven her entitlement to caregiver benefits.

Conclusion

[20] I am dismissing the Claimant's appeal. She hasn't proven her entitlement to caregiver benefits because she doesn't have a medical certificate that describes her husband as critically ill.

Amanda Pezzutto
Member, General Division – Employment Insurance Section