



Citation: *SR v Canada Employment Insurance Commission*, 2021 SST 440

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

Decision

Appellant: S. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (17487940) dated May 26, 2021
(issued by Service Canada)

Tribunal member: Christianna Scott

Type of hearing: Questions and answers

Decision date: July 8, 2021

File number: GE-21-895

DECISION

[1] I am dismissing the appeal. I find that the Claimant asked for and was paid extended parental care benefits. The law says that once a claimant makes their choice about the type of parental benefits they want and begins to receive those benefits, the Claimant cannot be paid the other type of benefits. So, I find that the Commission cannot pay the Claimant standard parental benefits.

Overview

[2] The Claimant left the workplace and applied for sickness benefits. In her application, she also asked the Commission to pay her maternity and parental benefits immediately after her sickness benefits since she was expecting a child. In her application, she wrote that she wanted to receive extended parental benefits during 61 weeks.

[3] The Commission paid the Claimant sickness and maternity benefits. Then, the Commission paid the Claimant her first week of parental benefits on November 22, 2020. The next day she called the Commission to find out why there was a decrease in her benefits. She asked the Commission to change her benefits from extended parental benefits to standard parental benefits.

[4] The Commission refused to make the change in the benefits from extended to standard parental benefits. The Commission said that the Claimant could not change her election because, once she made her choice and was paid benefits, the benefits cannot be changed.

Matter I have to consider first

[5] Another member of the General Division of the Social Security Tribunal (the General Division) originally heard this matter and allowed the Claimant's appeal.¹ The Commission disagreed with the General Division's decision. The Commission felt that

¹ See GE-21-221

the General Division made an error in its decision. The Commission appealed the matter before the Appeal Division of the Tribunal. The Appeal Division allowed the Commission's appeal because it decided that the General Division made an error of law in its decision.² The matter was returned to me for reconsideration without any particular instructions. The Appeal Division only remarked that the evidentiary record before the original member of the General Division was incomplete because there was no information about the parental benefits chosen by the other parent.

[6] I have reviewed the records at the original General Division and the Appeal Division. This includes listening to the recordings of the oral hearings. I have decided to deal with this appeal through questions and answers. I proceeded in this manner because:

- The *Social Security Tribunal Regulations* (Regulations) say that hearings must be conducted as informally and quickly as the circumstances and the consideration of fairness and natural justice permit.³ I therefore consider that the quickest and most thorough way of proceeding is to review the record and complete the gaps in the information through questions and answers.
- The legislator gave me a wide discretion to decide how to proceed when a matter is sent back to the General Division. In the absence of any specific instructions from the Appeal Division, I have the discretion to decide on how to proceed based on the particularities of the matter before me.⁴
- The appeal does not raise issues around the truthfulness of the Claimant's statements. So, I consider that a hearing through questions and answers is most appropriate in the situation.

[7] Unfortunately, the Claimant did not answer the questions I outlined in the notice of hearing.⁵ I am satisfied that the Claimant received the notice with the questions I

² See decision AD-21-88.

³ Section 3(1)a) of the *Social Security Tribunal Regulations*.

⁴ *R.M. and Minister of Employment and Social Development*, GP-19-1863.

⁵ See RGD01.

wanted her to answer. The notice was sent to the same email address as the one used by the Tribunal throughout her appeals before the original General Division and the Appeal Division. Also, the registry office left a voice mail message with the Claimant reminding her that a response to the notice of hearing was required by July 5, 2021.

[8] Despite these efforts, the Claimant didn't answer my questions. So, in accordance with the Regulations, I conducted the hearing without the Claimant's answers to my questions.⁶ I relied on the evidence that was already in the record.

Analysis

Facts agreed upon

[9] The Claimant left the workplace due to illness. The Commission paid her 15 weeks of sickness benefits and 15 weeks of maternity benefits. On the Claimant's application for benefits, she asked for 61 weeks of parental benefits in accordance with the extended parental benefits program.

[10] So, the Claimant and the Commission agree that the Claimant received maternity and extended parental EI benefits. They also agreed that the day after the Commission paid the Claimant her first two weeks of extended parental benefits she contacted the Commission. She wanted to change her benefits from extended benefits to standard benefits.

Issues in this appeal

[11] The Commission says that the Claimant cannot change her choice from extended parental benefits to standard parental benefits. The Commission says that this is not possible because;

- she chose extended parental benefits when she made her application; and
- she has been paid extended parental benefits.

⁶ See paragraphs 12 (1) and subsection 3(1) a) of the Regulations.

[12] The Claimant says that she did not fully understand the impact of choosing extended benefits on the amounts she would receive. She says that she has difficulty paying her bills and she cannot make ends meet if she is paid at the rate consistent with extended benefits as opposed to standard benefits.

What I have to decide

[13] Since December 3, 2017, claimants have two options for parental employment insurance (EI) benefits. Claimants can elect either standard or extended parental benefits.⁷

[14] Standard parental benefits – The Commission pays up to 35 weeks of benefits⁸ at the rate of 55% of the claimant's weekly earnings⁹.

[15] Extended parental benefits – The Commission pays up to 61 weeks of benefits¹⁰ at the rate of 33% of the claimant's weekly earnings¹¹.

[16] The law says that the election cannot be changed once parental benefits are paid.¹²

[17] Since the Claimant agrees that parental benefits were paid, I have to decide whether I have any power to grant additional parental benefits based on the Claimant's circumstances.

Issue: Can the Claimant change her election from extended to standard parental benefits?

[18] I find that the Claimant chose extended parental benefits on her application. Since the Commission paid her extended parental benefits, the law does not allow me to switch her to standard parental benefits.

⁷ Section 23 (1.1) of the Act.

⁸ Section 12 (3)(b)(i) of the Act.

⁹ Section 14 (1) of the Act.

¹⁰ Section 12 (3)(b)(ii) of the Act.

¹¹ Section 14 (1) of the Act.

¹² See section 23 (1.2) of the Act.

[19] The Commission said that the Claimant cannot change her election. The Commission argued this point because:

- The information on the Claimant's application is consistent with the choice of extended benefits;¹³
- The other parent also applied for extended benefits;¹⁴ and
- The Claimant told the Tribunal that she wanted to take the maximum amount of time away from the workplace.

[20] The Claimant argued several key points to support her request for standard benefits. She argued that:

- She misunderstood the difference between maternity and parental benefits. She thought that maternity benefits were 52 weeks and that she would be paid 55% of her wages to a maximum amount for the entire 52-week period. She then thought that from weeks 53 to 61, she would receive 33% of her weekly wages to a maximum amount.
- The circumstances have dramatically changed since she made her application. Nobody imagined that the repercussions of the COVID 19 pandemic would continue for so long. Since the circumstances changed so much, the law should be applied with compassion given the uncertain times.
- The Claimant cannot live on the amounts that she is receiving in extended parental benefits. If she remains at the current level of benefits, she will need to go back to work sooner.

[21] Unfortunately, I cannot change the Claimant's benefits from extended to standard benefits despite the difficult circumstances she is confronting.

¹³ See GD3-13.

¹⁴ RGD2-3 to RGD2-12.

[22] I find that the information on the record shows that the Claimant wanted to remain outside the workplace for as long as possible. Her statement to the Commission, her statement at the hearing before the original General Division and her husband's application are consistent with a choice of extended benefits.

[23] Also, I find that even though the Claimant was sick when she left the workplace and applied for benefits, she had the ability to make a valid choice. The Claimant did not provide any information to show that she was incapable of making the choice between the two types of parental benefits. Also, I note that the Claimant completed the application with the help of her mother and therefore was assisted.

[24] It is unfortunate that the Claimant misunderstood how much money she would receive based on the type of parental benefits. However, I can't grant benefits because she misunderstood how much she would be paid. The information in the application explains the difference between the two types of benefits and the compensation levels associate with both benefits.

[25] Certain decisions from the Appeal Division of the Tribunal have carved out narrow situations when parental benefit types have been "switch" (one benefits have been paid). In such cases, the Appeal Division concluded that the Claimant must show that the information in their EI application doesn't reflect their intention at the time of the election.¹⁵ Unfortunately, the Claimant has not met this threshold. As stated above, the evidence shows that the Claimant genuinely wanted to take as much time off as possible. This matches with the extended benefits she selected on her application.

[26] Last, the law does not allow me to change the type of parental benefits based on compassionate grounds, a claimant's need for financial support or changes to a

¹⁵ *Canada Employment Insurance Commission v. T.B.*, AD-19-429; *M.H. v. Canada Employment Insurance Commission*, AD-19-503

claimant's situation.¹⁶ I also can't allow for a change to the type of benefits because someone misunderstood the effects of their choice.

[27] Since the Claimant chose extended parental benefits and was paid these benefits according to her election, I do not have the power to switch her benefits. I have to uphold this rule despite the sympathy I have for her situation. In short, I must apply the law, which says that her choice cannot be changed once parental benefits have been paid.

Conclusion

[28] The appeal is dismissed.

Christianna Scott
Member, General Division – Employment Insurance Section

¹⁶ See the decision of *Canada (Attorney General) v. Knee*, 2011 FCA 301.