



Citation: *RD v Canada Employment Insurance Commission*, 2021 SST 553

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

Decision

Appellant: R. D.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (421492) dated April 19, 2021
(issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Teleconference
Hearing date: May 6, 2021
Hearing participants: Appellant
Decision date: May 10, 2021
File number: GE-21-649

Decision

[1] R. D. is the Claimant. The Canada Employment Insurance Commission (the Commission) made a decision about her Employment Insurance (EI) benefits. She is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am allowing the appeal. The Claimant's election for extended parental benefits is invalid. This means the Claimant can elect to receive standard parental benefits.

Overview

[3] The Claimant applied for maternity and parental benefits. The Commission says the Claimant elected 55 weeks of extended parental benefits on her application. The Claimant asked the Commission to change her benefits to standard parental benefits. The Commission refused. They say they cannot change her benefits because they have already issued a payment. She says she made an error when completing her application.

Matters I Have to Consider First

Level of Appeal

[4] This appeal is being heard before the EI General Division because this is the first level of appeal. On April 19, 2021, the Claimant submitted an "Appeal to the Appeal Division of the Social Security Tribunal (Tribunal)." She says she is disputing the Commission's reconsideration decision denying her request to change her claim for parental benefits. I am hearing this appeal because I am a member of the EI General Division, which is the first level of appeal before the Tribunal.

Clarification of Issues

[5] The Claimant says she is not appealing the issue that she is not entitled to the \$500.00 benefit rate that became effective September 27, 2020. Specifically, she states she understands that she does not qualify for the \$500.00 weekly benefit rate. This is

because she submitted her application on September 16, 2020, before the new temporary measures came into effect.

[6] Upon further review of her appeal, the Claimant states she wishes for me to make a decision regarding her request for two weeks of “isolation pay,” prior to her September 30, 2020, scheduled “C” section. She states that due to the COVID-19 pandemic, she was required to quarantine at home for 14 days before the hospital would admit her for her scheduled surgery for a “C” section birth. She says that before applying for maternity benefits, she spoke with the Commission’s agent and asked how she could be paid “isolation pay,” but they told her to apply for maternity benefits instead.

[7] On May 6, 2021, I asked the Commission to provide submissions in response to the Claimant’s statements. I also requested that the Commission provide unredacted copies of all Supplementary Records of Claims from March 1, 2020, until April 19, 2021, not previously contained in the GD3 documents. On May 7, 2021, I received the additional submissions and documents from the Commission. I agree with the Commission’s submissions that the additional documents¹ do not relate to the issues under appeal.

[8] Further, I recognize that none of the documents show that the Claimant made a request for two weeks of isolation pay. So, I find that I do not have the jurisdiction² to determine the Claimant’s request for two weeks of isolation pay. This is because the Commission never determined the issue of isolation pay during the reconsideration process. If the Claimant wishes to pursue her request for two weeks of isolation pay, she is at liberty to discuss this with the Commission.

¹ See documents GD6-1 to GD6-14.

² Section 113 of the *Employment Insurance Act* (EI Act) states that a party who is not satisfied with the Commission’s reconsideration decision, they may appeal that decision to the Social Security Tribunal (Tribunal). This means that if the Commission did not reconsider the issue, the Claimant cannot appeal that issue to the Tribunal. Instead, the Claimant must raise the issue with the Commission first.

Issues

[9] Is the Claimant's election for extended parental benefits valid?

[10] If not, is she entitled to standard parental benefits?

Analysis

[11] Parental benefits are payable to a claimant to care for one or more of the claimant's newborn children. Parental benefits may be shared between the parents.³

[12] A claimant must choose between standard or extended parental benefits when completing their Employment Insurance (EI) application. Standard parental benefits are paid to a maximum of 35 weeks, at the regular benefit rate. Extended parental benefits are paid to a maximum of 61 weeks, at a reduced benefit rate.⁴

[13] The EI Act states that a claimant cannot change their choice, or "election," between standard and extended parental benefits once parental benefits are paid.⁵

[14] I find that the Claimant's election for extended parental benefits is invalid. Further, I find she would have elected standard parental benefits had the information on the application been clear.⁶ Therefore, the Claimant's election for extended parental benefits is invalid.

[15] The Commission states that they cannot change the Claimant's election of parental benefits. This is because they issued the first payment for extended parental benefits on January 22, 2021. She did not request a change to her parental benefits until April 7, 2021, after they had issued the first payment.

³ Subsection 23(1) of the EI Act.

⁴ Subsection 23(1.1) and subparagraphs 12(3)(b)(i) and (ii) of the EI Act.

⁵ Subsection 23(1.2) of the EI Act.

⁶ I make this finding based on a balance of probabilities. Meaning that it is more likely than not.

[16] The Commission says that the Claimant was, informed on the application for parental benefits of the difference between standard and extended parental benefits.⁷ They say that the application explains that the decision was irrevocable once parental benefits were paid. The Commission argues that in this case, the Claimant's election became irrevocable as of April 7, 2021.

[17] The Claimant disputes the Commission's submissions. She says she did not see the explanation between the two types of benefits when completing her application. She says that when completing her application she did not know that maternity benefits were separate from parental benefits. She says she selected "55" in the drop-down menu at the top of pay GD3-9, because she wanted the higher benefit rate of 55% of her normal weekly earnings.

[18] The Claimant explains that English is her second language. She says the application does not clearly explain that the 15 weeks of maternity benefits are not to be included when selecting the parental benefits.

[19] The Claimant consistently states that she wanted to make sure she applied for EI benefits correctly so she called the Commission to obtain information before completing her application. The Claimant argues that she only planned to be off work for a one-year maternity leave. This is why she listed October 1, 2021, as her return to work date on her application.⁸ She explains that her doctor scheduled to deliver her baby by "C" section but the hospital required her to self-isolate for two weeks before admitting her for the delivery. She says she tried to apply for two weeks of isolation pay but the agent told her she had to apply for maternity benefits instead.

[20] When making this decision, I am persuaded by three decisions issued by the Tribunal's Appeal Division (AD), even though they are not binding.⁹ In these decisions, the AD Members determined that the claimant's election for parental benefits was invalid. They determined that the Commission misinterpreted the claimant's choice of

⁷ See GD3-8.

⁸ See page GD3-10.

⁹ *M.L. v Canada Employment Insurance Commission*, AD-19-681; *T.B. v Canada Employment Insurance Commission*, AD-19-426; *M.H. v Canada Employment Insurance Commission*, AD-19-503.

parental benefits. In some cases, they found that the application lists an inadequate explanation of parental benefits, causing the claimant's confusion.

[21] I have the power to decide whether a claimant did in fact make a valid election for parental benefits.¹⁰ To "elect" is to make a deliberate choice between options.¹¹ When a claimant has been misled or misinformed about their options then they are not able to make a deliberate choice of one option over the other.¹²

[22] The facts of this case resemble those in *M.H. v Canada Employment Insurance Commission*.¹³ In that case, the claimant wanted to take a one-year leave so she figured that she needed the extended option. She appeared to not understand that she would receive 15 weeks of maternity benefits before her parental benefits. That claimant provided evidence on her application confirming her return to work date. The AD Member found that her answer to the one question about which type of parental benefits she was applying for, was not in line with her intentions and conflicted with other answers she provided on the same application form.

[23] The application form states that Service Canada is responsible to "give you accurate information about your claim."¹⁴ However, in this case, the information provided on the application misled the Claimant. She was not aware that by selecting "55" she was selecting the number of weeks for parental benefits and not the percentage of her benefit rate. Nor was she aware that maternity benefits were separate from parental benefits and her choice would result in an overall lower amount of benefits.

[24] I have considered the Record of Employment (ROE) evidence listing her last day worked is September 15, 2020. She then had to undergo a mandatory two-week isolation prior to her scheduled "C" section on September 30, 2020. She says she tried

¹⁰ Subsection 64(1) of the *Department of Employment and Social Development Act*.

¹¹ *M.L. v Canada Employment Insurance Commission*, AD-19-681 provided an example from *Newcorp Properties Ltd. v West Vancouver (District)*, 1989 CanLII 2908 (BCSC).

¹² *M.L. v Canada Employment Insurance Commission*, AD-19-681.

¹³ *M.H. v Canada Employment Insurance Commission*, AD-19-503.

¹⁴ See GD3-10.

to apply for isolation pay prior to her maternity benefits but was instructed to apply for maternity benefits. I have also considered the fact that she lists her return to work date as October 1, 2021, which is evidence of her choice to be on maternity leave for one year from the date of birth of September 30, 2020. She then completed the application based on the instructions provided, thinking she was asking for the higher rate of 55%.¹⁵

[25] Based on the foregoing, I find that the Claimant's election for extended parental benefits is invalid. I make this finding because the absence of clear information on the application prevents the Claimant from making a valid election for parental benefits. Accordingly, I am rescinding the Commission's decision to pay the Claimant extended parental benefits.

Conclusion

[26] The Claimant's election for extended parental benefits is invalid. This means she is entitled to elect standard parental benefits. I am allowing the appeal.

Linda Bell
Member, General Division – Employment Insurance Section

¹⁵ Subsection 50(3) of the EI Act.