



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *EA c Canada Employment Insurance Commission*, 2019 SST 1762

Tribunal File Number: GE-19-982

BETWEEN:

**E. A.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Manon Sauvé

HEARD ON: March 14 and June 6, 2019

DATE OF DECISION: July 10, 2019

## **DECISION**

[1] The appeal is allowed in part.

## **OVERVIEW**

[2] E. A., the Appellant, lives in Quebec. He applied for paternity and parental benefits. The Province of Quebec itself administers the parental insurance plan, which the federal government offers as part of the Employment Insurance program.

[3] From December 10, 2017, he received paternity benefits for three weeks under the Québec Parental Insurance Plan (QPIP). Then, he received parental benefits, again under that plan, for 25 weeks.

[4] Under the QPIP, the Appellant could choose to receive the basic plan and get benefits for 32 weeks at 70% of weekly earnings. Otherwise, he could get benefits for 25 weeks at 75%. He could also get 3 weeks or 5 weeks of paternity benefits under the basic plan for a total of 35 weeks or 28 weeks, depending on his choice.

[5] The Appellant chose to receive benefits for 25 weeks of parental benefits and 3 weeks of paternity benefits.

[6] According to the *Employment Insurance Regulations* (Regulations), the Appellant received the equivalent of 35 weeks of benefits under the Employment Insurance program—the maximum period.

[7] The Appellant then applied to the Commission for Employment Insurance sickness benefits. From June 24, 2018, to October 6, 2018, he received 15 weeks of Employment Insurance sickness benefits.

[8] The Appellant also made two renewal claims for Employment Insurance family caregiver benefits.

[9] The Commission refused to pay Employment Insurance family caregiver benefits because the Appellant had received the maximum number of weeks of benefits, that is, 50 weeks. The

benefit period could not be extended. As a result, the claims for family caregiver benefits were denied.

[10] According to the Appellant, the three weeks of paternity benefits he received should not be considered weeks of parental benefits for Employment Insurance purposes. Paternity benefits are not part of the Employment Insurance program. They exist only in Quebec.

[11] According to the Commission, the benefit period should be established effective December 10, 2017, and end on October 6, 2018, which is when the Appellant had received 50 weeks of benefits. The three weeks of paternity benefits should be included in the benefit period calculation because these benefits are similar to those of parental benefits.

### **PRELIMINARY MATTER**

[12] The hearing took place on March 14, 2019. At the hearing, the Commission was not there to explain the details of the weeks of benefits that were paid to the Appellant. I adjourned the hearing to ask the Commission for these details. In addition, the Tribunal's Appeal Division had to decide a similar issue.

[13] Under section 32 of the *Social Security Tribunal Regulations*, I asked the Commission to specify why the family caregiver benefits had been denied.

[14] On March 20, 2019, the Commission provided the requested information and additional arguments. On March 28, 2019, the Appellant provided documents to add to this.

[15] The hearing resumed on June 6, 2019. Only the Appellant was present. The parties had the opportunity to present additional arguments.

### **ISSUES**

1. Should the three weeks of paternity benefits be included in the benefit period calculation?
2. Is the Appellant entitled to family caregiver benefits concerning his children?

3. Is the Appellant entitled to family [caregiver] benefits concerning his partner?

## ANALYSIS

### **Issue 1: Should the three weeks of paternity benefits be included in the benefit period calculation?**

[16] I note from the evidence on file and from the Appellant's testimony that his partner gave birth to a child. From December 10, 2017, the Appellant received three weeks of paternity leave. He then received 25 weeks of parental leave that ended on June 17, 2018.

[17] From June 24, 2018, the Appellant received 15 weeks of Employment Insurance benefits as a result of an illness.

[18] He made two family caregiver claims concerning his children and partner. The Commission denied both claims because he had completed his benefit period.

[19] According to the Commission, the claim for benefits started on December 10, 2017, when he started getting benefits for a paternity leave.

[20] According to the Appellant, the benefit period should have been extended, since the three weeks of paternity should not be taken into account in determining the benefit period because they have no equivalent in the federal system.

[21] I understand that the first issue is whether the three weeks of paternity benefits paid under the QPIP should be taken into account in calculating the benefit period under the Employment Insurance program.

[22] According to the Appellant, if the three weeks are not taken into consideration, then the benefit period is extended under section 10(13) of the *Employment Insurance Act* (Act). Therefore, the Appellant is entitled to family caregiver benefits.

[23] The federal government created a maternity leave and parental leave program for workers who contribute to the Employment Insurance program. The Province of Quebec submitted

questions to the Quebec Court of Appeal concerning the constitutionality of this system. In fact, the Province of Quebec argued that it fell under provincial jurisdiction.

[24] In *Reference re Employment Insurance Act*,<sup>1</sup> the Supreme Court of Canada found that the system fell under federal jurisdiction as part of the Employment Insurance program. Finally, parental benefits, like maternity benefits, are in pith and substance a mechanism for providing replacement income when an interruption of employment occurs as a result of the birth or arrival of a child. It can be concluded from their pith and substance that Parliament may rely on the jurisdiction assigned to it under s. 91(2A) of the *Constitution Act, 1867*. The inclusion of this type of benefits in the unemployment insurance plan is an extension of the plan that is made necessary by the equality rights of adoptive parents and natural parents.

[25] On May 21, 2004, when the legal debate was not yet over, the federal government and the government of the province of Quebec signed an agreement concerning the implementation of the QPIP.

[26] In other words, the federal government transferred the amounts set out for the maternity and parental benefits system to the Province of Quebec. In return, Quebec created its own plan, and claimants under the QPIP must not receive Employment Insurance benefits for the same period and the same purpose as those provided in the Quebec regime.<sup>2</sup>

[27] More specifically, section 76.19 of the Regulations states:

**76.19 (1)** Subject to subsection (2), the provincial benefits paid to a claimant in respect of a week in a benefit period are considered to be benefits paid in respect of a week under the Act if the claimant would have been entitled to the corresponding types of benefits under the Act, and any week in respect of which the claimant receives provincial benefits counts as a week for the purpose of calculating

(a) the overall maximum number of weeks for which benefits may be paid in a benefit period under paragraphs 12(3)(a) and (b) of the Act taken together; and

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<sup>1</sup> *Reference re Employment Insurance Act* (Can.), ss. 22 and 23, [2005] 2 SCR 669, 2005 SCC 56.

<sup>2</sup> Section 1.2.1 of the CANADA–QUEBEC FINAL AGREEMENT ON THE QUEBEC PARENTAL INSURANCE PLAN.

(b) the maximum number of weeks for which benefits may be paid under subsection 12(4) of the Act.

(1.1) A benefit period is deemed to be established when a benefit period was established under a provincial law, and it is deemed to have begun the same week as the period established under the provincial law if the claimant would have been entitled to the corresponding types of benefits under the Act in respect of the same period.

[28] In *EO*,<sup>3</sup> the Tribunal's Appeal Division found as follows:

The grammatical and ordinary sense of the words “du même genre” [“corresponding types”] that are in section 76.19 of the EI Regulations means [translation] “having common traits” or [translation] “conveying resemblance.”<sup>3</sup> [sic]

The Tribunal is of the view that examining the words “du même genre” [“corresponding types”] in their entire context, while considering the scheme and object of the EI Act, supports the conclusion that the QPIP paternity benefits correspond to the Employment Insurance benefits within the meaning of section 76.19 of the EI Regulations.

[29] However, when the Appeal Division made its decision, the Tribunal did not have before it the House of Commons Debates from when the Government of Canada was introducing new measures.

[30] The Appellant quoted two excerpts from the House of Commons Debates to show that paternity benefits are not a corresponding type of benefit, since they did not exist at the federal level before the enactment of the *Budget Implementation Act* implementing the new Employment Insurance parental sharing benefit. Thus, [translation] “these new benefits would give greater flexibility to parents by providing an additional five weeks of use-it-or-lose-it parental benefits when both parents agree to share parental leave. This use-it-or-lose-it model is already offered to parents in Quebec.”<sup>4</sup>

[31] As a result, with the changes to the Act, parents have five additional weeks with the regular plan or three weeks with the accelerated plan.

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<sup>3</sup> *Canada Employment Insurance Commission v EO*, 2019 SST 358.

<sup>4</sup> House of Commons Debates, Number 347, November 1, 2018, on page 23170 and [sic].

[32] In other words, the Employment Insurance program includes a system similar to that of Quebec concerning parental benefits, but only since the new measures were introduced.

[33] In my view, before the changes to the *Employment Insurance Act, 2018*, the two systems were not similar when the Appellant applied for paternity benefits. If the two systems had been similar, no changes would have been made to the Act.

[34] According to the *Petit Larousse*,<sup>5</sup> the word “*même*” [same] means [translation] “a mark of similarity, whole identity.” The word “*genre*” [type] means [translation] “a division based on one or more common characteristics.” In my opinion, “*même genre*” [same type] means that the whole identity is defined based on one or more common characteristics.

[35] With this in mind, the five weeks or three weeks (under the accelerated mode) the Quebec system offers are not identical to the federal system. In fact, they have no equivalent in the federal system. Also, the federal government modelled its system after that of Quebec. If they had been identical, there would have been no changes.

[36] Therefore, I find that the Appellant’s three weeks of paternity benefits should not be included in the benefit period. As a result, the benefit period starts on December 31, 2017.

**Issue 2: Is the Appellant entitled to family caregiver benefits for his children?**

[37] Section 23.2(1) of the Act allows a claimant to care for a critically ill child.

[38] Section 1(6) of the Regulations defines a critically ill child as “a person who is under 18 years of age on the day on which the period referred to in subsection 23.2(3) or 152.061(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. (*enfant gravement malade*)”

[39] To receive benefits, a certificate must state that the family member is critically ill and requires care for a specified period.

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<sup>5</sup> *Le Petit Larousse*, 2009.

[40] The Commission says that the Appellant was not entitled to Employment Insurance benefits because the benefit period was over on October 6, 2018, and because the claim was made on November 28, 2018. And because the claim did not meet the requirements of the Regulations.

[41] The Tribunal is of the view that the Appellant has failed to show that his children's lives are at risk as a result of an illness or injury, even though their baseline state of health has significantly changed and their lives are at risk.

[42] The medical certificate provided does not state that the lives of the Appellant's children are at risk as a result of an illness or injury. Therefore, on November 25, 2018, physician Roxanne Campbell answered "no" to the question, [translation] "The patients' lives are at risk as a result of illness or injury."

[43] The Tribunal notes that the definition in section 1(6) of the Regulations is clear: The patients' lives must be at risk as a result of an illness or injury. The Tribunal cannot find indirectly what it cannot find directly from the Appellant's evidence. Therefore, it has not been proven that the lives of the Appellant's children are at risk.

[44] The Tribunal understands that the rules are strict and that the Appellant finds the outcome harsh. However, the Tribunal's role is not to rewrite the Act or to interpret it in a manner contrary to its meaning.<sup>6</sup>

[45] I am of the view that the Appellant is not entitled to Employment Insurance family caregiver benefits concerning his children because he has failed to show that his children's lives were at risk.

**Issue 3: Is the Appellant entitled to family caregiver benefits concerning his partner?**

[46] Section 23. (3)[sic] of the Act allows a claimant to care for a critically ill adult family member.

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<sup>6</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.



[47] To receive benefits, a certificate must state that the family member is critically ill and requires care for a specified period.

[48] Section 1(7) of the Regulations defines a critically ill adult as “a person who is 18 years of age or older on the day on which the period referred to in subsection 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. (*adulte gravement malade*)”

[49] On December 27, 2018, the Appellant applied for family caregiver benefits. In support of his claim, he provided the Commission with a medical certificate stating that his partner’s life was at risk and that she required care. On December 20, 2018, the physician noted that the Appellant’s partner had major depression.

[50] I note that the Commission made no finding on the validity of the medical certificate. It denied the claim for benefits, since the benefit period had been over since October 6, 2019.

[51] According to the Commission, the benefit period ended on October 6, 2018. Therefore, the benefit period started on December 10, 2017. The Appellant received three weeks of paternity benefits and 25 weeks of parental benefits under the accelerated plan of the RCPQ [*sic*]. The 28 weeks correspond to 35 weeks of Employment Insurance benefits for the parental leave. That is the maximum number of weeks of benefits that the Appellant can receive. The Appellant then applied for Employment Insurance sickness benefits. He received 15 weeks of benefits, which is the maximum number of weeks.

[52] Still according to the Commission, when he applied for family caregiver benefits on December 27, 2018, he was no longer entitled to them because the benefit period had ended on October 6, 2018. According to section 12(5) of the Act, the maximum number of weeks is 50 weeks, since the Appellant received 35 weeks of parental benefits and 15 weeks of sickness benefits.

[53] According to the Appellant, the first three weeks should not be taken into account in calculating the benefit period. Therefore, the benefit period started on December 31, 2017. The Appellant received 25 weeks of parental benefits, which corresponds to 32 weeks of

Employment Insurance benefits and 15 weeks of Employment Insurance sickness benefits. In other words, the Appellant received 47 weeks of benefits during the benefit period. This means that he had not completed his benefit period when he applied for Employment Insurance family caregiver benefits. As a result, the claim for benefits was made during the benefit period, and it should be extended under section 10(3) of the Act.

[54] In my view, the claim for [Employment] Insurance family caregiver benefits was made during the benefit period. This means that the Appellant is entitled to benefits if he shows that his partner's life is at risk and that she requires care in accordance with section 1(7) of the Regulations.

**CONCLUSION**

[55] I find that the three weeks of paternity benefits are not Employment Insurance benefits within the meaning of section 79.16 of the Regulations.

[56] I find that the Appellant is not entitled to family caregiver benefits, since he has failed to show that his children's lives were at risk.

[57] I find that the Appellant is entitled to family caregiver benefits concerning his partner, since the claim was made during the benefit period. The Commission will have to determine whether the medical evidence allows the Appellant to show that his partner's life is at risk.

[58] The appeal is allowed in part.

Manon Sauvé  
Member, General Division – Employment Insurance Section

HEARD ON:	March 14, 2019 June 6, 2019
METHODS OF PROCEEDING:	Videoconference Teleconference

APPEARANCES:	E. A., Appellant Denis Poudrier, Representative for the Appellant
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