



Citation: *MC v Canada Employment Insurance Commission*, 2021 SST 598

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

Decision

Appellant:	M. C.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (423088) dated May 6, 2021 (issued by Service Canada)
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Tribunal member:	Sylvie Charron
Type of hearing:	Teleconference
Hearing date:	May 25, 2021
Hearing participant:	Appellant
Decision date:	May 31, 2021
File number:	GE-21-771

Decision

[1] The appeal is allowed. I agree with the Appellant. The reasons below explain why.

Overview

[2] When you fill out your EI parental benefits application, you need to choose between two options: the “standard option” and the “extended option”.¹

[3] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays the same total amount of benefits at a lower rate for up to 61 weeks. Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

[4] Once you start receiving parental benefits, you can't change options.²

[5] On her application, the Appellant chose extended parental benefits. She started receiving those benefits at the reduced rate the week of November 1, 2020. But she actually wanted standard parental benefits; she believed that she was choosing to receive one year of total benefits. She realized her mistake when she noticed that the parental benefit was much lower than the maternity benefit payment.

[6] The Appellant says that she always wanted to receive standard parental benefits but chose the wrong option by mistake on the application.

[7] The Canada Employment Insurance Commission (Commission) says that the Appellant made her choice and that it is too late to change it because she has already started receiving benefits. It submits that the Appellant elected to receive extended parental benefits because she picked that option on the application form.

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an “election”.

² Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

[8] The Appellant disagrees and says that she always wanted to be off on maternity leave for only a year. She already arranged with her employer to be back at work on July 12, 2021, which is a year after she left work on July 10, 2020. She chose 52 weeks of benefits on the drop-down menu; this mirrors her choice of being off for a year.

[9] The Appellant also says that as soon as she got the first parental payment cheque, she tried to get in touch with the Commission, but the line was either busy or she was told to call back. She made a request to change from extended to standard on February 10, 2021, but it's only on February 19, 2021, that she finally connected with a person who explained that she could not change her choice.

[10] The Appellant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

Issue

[11] Which type of parental benefits did the Appellant actually want when she made her choice on the application?

Analysis

[12] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.³ The law says that you can't change options once the Commission starts paying parental benefits.⁴

[13] To decide which type of parental benefits the Appellant actually wanted when she made her choice on the application, I need to consider the evidence about that choice. In other words, the option the Appellant chose on her application matters, but it's not the only thing to consider. For example, the number of weeks of benefits the Appellant wanted to receive or how long the Appellant planned to be off work might be things to consider too.

³ Section 23(1.1) of the EI Act says that when you make a claim for benefits under that section, you have to choose to receive benefits over a maximum of 35 or 61 weeks.

⁴ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

[14] Many Tribunal decisions have shown that it is important to consider all the evidence about an Appellant's choice when they filled out their application.⁵ I am not bound by these decisions. In other words, I don't have to base my decision on them. But I find them persuasive, and I am choosing to follow them.

What the Appellant meant to choose on the application

[15] The option that the Appellant meant to choose on the application when she actually filled it out is important. At that moment, did she mean to choose the standard of the extended option?

[16] The law is clear that the option can't be changed once you receive benefits. The Tribunal's decisions on this issue respect this. The Tribunal isn't changing the Appellant's choice of benefits. It is deciding what option the Appellant **meant** to select on the form **when** she filled it out.

[17] For the following reasons, I find that the Appellant elected to receive standard parental benefits.

[18] The Appellant applied for maternity and parental benefits on July 20, 2020. She submitted that her last day at work was July 10, 2020, and she is scheduled to return to work on July 12, 2021. This was discussed with her employer. The Appellant also indicated this date of return to work on her application form.

[19] Despite her intention to take only one year off work for maternity and parental leave, on the parental leave information section of the EI application form she selected to receive extended parental benefits. She testified that this is what she chose, but it is not what she intended to choose. The form also asks how many weeks of parental benefits she wants to claim; she picked 52 weeks from the drop-down menu.

⁵ See *MC v Canada Employment Insurance Commission*, 2019 SST 666 and *Canada Employment v JH*, 2020 SST 483. The Appeal Division of the SST has said that the General Division has the authority to decide what kind of parental benefits an Appellant has elected to receive, considering all of the relevant evidence in *Canada Employment Insurance Commission v TB*, 2019 SST 823.

[20] The Appellant testified that she thought she would get 52 weeks in total when she selected to receive 52 weeks of parental benefits. She agreed that she had read the application form but only realized that she had made a mistake when the parental benefits were first paid. She did not understand that maternity and parental benefits were separate periods. She qualifies this as “human error”.

[21] The Appellant appealed to the Tribunal on May 6, 2021. She submitted that she always planned to return to work on July 12, 2021, which is about a year after she left work on maternity leave.

[22] The Commission submits that the Appellant was made aware of the difference between standard and extended parental benefits on the application form, and chose to receive extended parental benefits. It adds that she was also informed that the decision was final once parental benefits were paid.

[23] The Commission adds that it paid the first payment of parental benefits on November 1, 2020. The Appellant agrees; I find this is a fact. The Commission says that the election she made became irrevocable as of that date. It adds that while the Appellant’s situation may evoke sympathy, the law is clear that once you make the choice and benefits are paid, that choice can no longer be changed.

[24] I agree with the Commission that the law is clear that once benefits are paid the election for parental benefits cannot be changed. I disagree, however, with the Commission’s view that selection of a certain option on an application form is the only relevant information to consider in deciding which election the Appellant truly made.

[25] The issue turns on what it means to elect a benefit period. Is it only the choice on the application form, or does it include the individual’s *intention* when making that choice?

[26] In considering all of the evidence in the file and the Appellant’s testimony at the hearing, I find it more likely than not that the Appellant intended to elect one year of maternity and parental benefits combined. I find her explanations credible that she had

intended to be off work for a year and had arranged this with her employer. The dates that the Appellant included on her application for benefits support that finding.

[27] I further find that the Appellant intended to elect to receive standard parental benefits. I prefer her evidence that when she made the choice of the parental benefits term, she believed that she was selecting the entire length of her EI benefits to be 52 weeks, as she did not intend to be off work for more than a year in total. It would not make sense in these circumstances to choose to receive less money for the longer 61-week term.

[28] The law does not allow an Appellant to change their election after the Commission has paid parental benefits.⁶ However, as I find that the Appellant did not elect extended parental benefits, there is nothing to revoke. Rather, the Appellant should be put back in a position consistent with her true choice of standard parental benefits.

Conclusion

[29] The appeal is allowed. I find that the Appellant elected to receive standard parental benefits.

Sylvie Charron
Member, General Division – Employment Insurance Section

⁶ EI Act, ss. 23(1.2)