



Citation: *SD v Canada Employment Insurance Commission*, 2021 SST 578

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

Decision

Claimant: S. D.
Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (425059) dated June 2, 2021
(issued by Service Canada)

Tribunal member: Audrey Mitchell
Type of hearing: Teleconference
Hearing date: July 12, 2021
Hearing participant: Claimant
Decision date: July 13, 2021
File number: GE-21-1044

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option.

[3] The Claimant argues that she made a mistake and actually wanted the standard benefits option before the Commission paid her extended parental benefits. She has shown that she actually meant to choose that option before she received parental benefits.

Overview

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

[5] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays the same 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.

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

[7] On her application, the Claimant chose extended parental benefits. She started receiving benefits at the lower rate the week of April 11, 2021. But, she actually wanted standard parental benefits.

[8] The Claimant says that when she applied for benefits, she wanted to receive extended parental benefits. However, she realized a month after receiving maternity benefits that she chose the wrong option on the application.

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.

[9] The Canada Employment Insurance Commission (Commission) says that the Claimant made her choice and that it is too late to change it because she has already started receiving benefits.

[10] The Claimant disagrees and says that she chose extended parental benefits to align with what she told her employer. She told them that she would return to work in 18 months, and that if she would return in 12 months, she would let them know. She decided in January 2021 that extended parental benefits would not work for her.

Issue

[11] Which type of parental benefits did the Claimant 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 Claimant 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 Claimant chose on her application matters, but it isn't the only thing to consider. For example, the number of weeks of benefits the Claimant wanted to receive or how long the Claimant planned to be off work might be things to consider too.

[14] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant's choice when they filled out their application.⁵ I am not

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.

⁵ See *MC v Canada Employment Insurance Commission*, 2019 SST 666; *Canada Employment Insurance Commission v JH*, 2020 SST 483; *Canada Employment Insurance Commission v TB*, 2019 SST 823; *MH v Canada Employment Insurance Commission*, 2019 SST 1385; *VV v Canada Employment Insurance Commission*, 2020 SST 274; *ML v Canada Employment Insurance Commission*, 2020 SST 255; *RC v Canada Employment Insurance Commission*, 2020 SST 390.

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 Claimant meant to choose on the application

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

[16] As noted above, the law allows a Claimant to change their election, but only before any parental benefits are paid. Did the Claimant do so?

The parties' arguments

[17] The Commission says that what the Claimant chose on the application tells us which option she wanted. It argues that it is too late to change options now.

[18] The Claimant says that she selected extended parental benefits on her application for benefits as a placeholder. She did this since she told her employer that she'd be off work for 18 months. In the application for benefits, she said that she would claim 61 weeks of parental benefits.

[19] The Claimant states in her notice of appeal that a month after receiving EI parental benefits, she knew that the extended parental benefits would not be enough. I asked her about this. She referred to calling the Commission in January 2021, and not being able to get through. She sent the Tribunal a copy of her wireless phone statement showing six calls she says she made to Service Canada in January 2021.

[20] The Claimant's testimony was straightforward and clear. As a result, I find her testimony to be credible. I find that the Claimant elected in her application for benefits to receive extended parental benefits. However, I find that the statement showing six calls in January 2021 supports her testimony that she had changed her election of parental benefits one month after receiving maternity benefits. This is before any parental benefits were paid.

[21] I find that the Claimant spoke to Service Canada about electing to receive standard parental benefits after they paid her parental benefits. However, I find that she elected for standard parental benefits as of January 4, 2021, when she first tried to reach Service Canada to declare this to them. She simply could not get through to Service Canada at that time to notify them.

[22] The Claimant said that most times there was no room in Service Canada's phone queue. She also said that looking after a newborn meant she couldn't stay on the phone for long periods. I note that one of the calls lasted 118 minutes. I don't find this changes that the Claimant elected to receive standard parental benefits in January 2021 and tried unsuccessfully to inform the Commission of her election.

So, which option did the Claimant mean to choose?

[23] I find that the Claimant has proven that she meant to choose standard parental benefits before parental benefits were paid.

Conclusion

[24] The Claimant chose standard parental benefits in January 2021 before parental benefits were paid.

[25] This means that the appeal is allowed.

Audrey Mitchell

Member, General Division – Employment Insurance Section