



Citation: *ZZ v Canada Employment Insurance Commission*, 2021 SST 610

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

# Decision

**Appellant:** Z. Z.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (418959) dated March 24, 2021  
(issued by Service Canada)

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**Tribunal member:** Candace R. Salmon

**Type of hearing:** Teleconference

**Hearing date:** May 6, 2021

**Hearing participant:** N/A

**Decision date:** May 6, 2021

**File number:** GE-21-653

## Decision

[1] The appeal is allowed. I find the Claimant elected to receive standard parental employment insurance benefits.

## Overview

[2] The Claimant applied for maternity and parental employment insurance (EI) benefits. She selected to receive extended parental benefits on the application form, but believed she was choosing to receive one year of total benefits. In fact, extended parental benefits pay a lower rate of benefits for up to 61 weeks, in addition to 15 weeks of maternity benefits. The Claimant realized she made a mistake when she noticed the parental benefit payment was much lower than the maternity benefit payment.

[3] The Canada Employment Insurance Commission (Commission) says the Claimant was already paid parental benefits, so her choice of parental benefit type cannot be changed. It submits the Claimant elected to receive extended benefits because she picked that option on the application form. The Claimant says she chose extended parental benefits by mistake. The Claimant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

## Matters I have to consider first

[4] The Claimant did not attend the hearing. She was sent the Notice of Hearing on April 22, 2021, via email. The Tribunal also called the Claimant on May 5, 2021, to remind her of her hearing and confirm attendance; unfortunately, we were not able to reach her and no response to our voicemail was received. I also asked staff to contact the Claimant today, while the hearing was in progress, to ask if she planned to attend. A voicemail was left for her, and no response was received.

[5] I may proceed in a party's absence if I am satisfied that the party received notice of the hearing.<sup>1</sup> Based on the efforts described above, I find the Claimant was notified of

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<sup>1</sup> *Social Security Tribunal Regulations*, subsection 12(1)).

the hearing. Given this, I proceeded in her absence in accordance with the *Social Security Tribunal Regulations*.

## Issue

[6] What type of parental benefits did the Claimant elect to receive?

## Analysis

[7] Parental benefits are intended to support parents while they take time off work to care for their newborn children.<sup>2</sup> Claimants must elect the maximum number of weeks, either 35 or 61, that they want to be paid parental benefits.<sup>3</sup> The election of the parental benefit term cannot be changed once parental benefits are paid.<sup>4</sup>

[8] For the following reasons, I find the Claimant elected to receive standard parental benefits.

[9] The Claimant applied for maternity and parental benefits on September 4, 2020. She submitted that her last day of work was August 15, 2020, and she would be returning to work with her employer but did not know the date. On the Request for Reconsideration, she submitted that she wanted one full year of leave and was expected to return to work in September 2021.

[10] Despite her intention to take only one year off work for maternity and parental leave, on the parental information section of the EI application form she selected to receive extended parental benefits. The form also asks how many weeks of parental benefits she wants to claim. She picked 52 weeks from the drop-down menu.

[11] When the Claimant noticed that her benefit payments decreased, she contacted the Commission. It stated that the Claimant elected to receive extended parental benefits,

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<sup>2</sup> *Employment Insurance Act*, section 23(1)

<sup>3</sup> The requirement for the claimant to elect the maximum number of weeks for which parental benefits may be paid is found in section 23(1.1) of the *Employment Insurance Act*. The maximum number of weeks for which parental benefits may be paid is found in section 12(3)(b) of the *Employment Insurance Act*, based on the choice the claimant makes under section 23.

<sup>4</sup> *Employment Insurance Act*, section 23(1.2)

which pay a lower rate for a longer period of time. It stated that this is why the Claimant received lower payments. The Claimant asked to switch to standard benefits. The Commission determined she was not able to change her benefit election from extended to standard, because she had already received at least one payment of parental benefits.

[12] On March 16, 2021, the Claimant requested reconsideration of the Commission's decision. She stated that she was not familiar with EI and only wanted one year of leave, so she asked for 52 weeks of parental benefits. She stated that she did not know maternity was a separate period that was added onto parental, and stated that her employer expects her to return to work in September 2021.

[13] The Claimant spoke to a Commission agent on March 24, 2021, who reconsidered the decision and confirmed that she could not change her benefit type to standard.

[14] The Commission submits that the Claimant was informed of the difference between standard and extended parental benefits, and elected to receive extended parental benefits. It adds that she was also informed that the decision was irrevocable once parental benefits were paid.

[15] The Commission also submits that the first payment of parental benefits was issued on January 10, 2021, and deposited into the Claimant's bank account on January 12, 2021. There is no contradictory information in evidence, so I find this as fact. The Commission argues that since the Claimant was issued parental benefits on January 10, 2021, the election became irrevocable as of that date. It adds that while the Claimant's situation may evoke sympathy, the law is clear that once the choice of election is made and benefits are paid, that choice cannot be switched.

[16] I agree with the Commission on the matter of the law being clear that once benefits are paid an election for parental benefits cannot be changed. I disagree, however, with its determination that selecting a certain option on an application form is the only relevant information in deciding which election the Claimant made.

[17] This 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* in making that choice?

A decision from the Tribunal's Appeal Division confirms that I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive.<sup>5</sup>

[18] I find it is more likely than not that the Claimant intended to elect one year of maternity and parental benefits combined, because her explanation that she thought maternity and parental were the same period and that she only wanted 52 weeks off work is credible. I also find her statement that she arranged with her employer to take only one year off work for maternity and parental leave is fact, because the evidence she provided to the Commission during reconsideration and on her Notice of Appeal, stating that she planned to return to work in September 2021, supports that finding.

[19] I further find the Claimant elected to receive standard benefits, because I prefer the evidence that when she made the choice of parental benefit terms, she believed she was selecting the entire length of her EI benefits to be one year and did not intend to be off work for longer than the 15 week maternity and 35 week parental benefit period. Since standard benefits provide up to 35 weeks of parental benefits at a higher benefit rate than extended benefits, it would not be reasonable to find the Claimant intended to elect to receive extended parental benefits.

[20] The law does not allow a claimant to change their election after they have been paid parental benefits.<sup>6</sup> However, as I find the Claimant did not elect extended parental benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her election of standard parental benefits.

## Conclusion

[21] The appeal is allowed. I find the Claimant elected to receive standard parental benefits.

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<sup>5</sup> The Appeal Division set out that the General Division has the authority to decide what kind of parental benefits a claimant elected to receive, considering all of the relevant evidence in *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823

<sup>6</sup> *Employment Insurance Act*, subsection 23(1.2)

Candace R. Salmon  
Member, General Division – Employment Insurance Section