



Citation: *Canada Employment Insurance Commission v TM*, 2021 SST 567

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Rachel Paquette  
**Respondent:** T. M.

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**Decision under appeal:** General Division decision dated May 14, 2021  
(GE-21-703)

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**Tribunal member:** Melanie Petrunia  
**Type of hearing:** Teleconference  
**Hearing date:** August 16, 2021  
**Hearing participants:** Appellant's representative  
Respondent  
**Decision date:** October 7, 2021  
**File number:** AD-21-191

## Decision

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration.

## Overview

[2] The Respondent, T. M. (Claimant) applied for maternity and parental benefits with the assistance of a member of her community (helper). Her helper completed the Claimant's application form, asking for 61 weeks of extended parental benefits.

[3] When the Appellant, the CEIC (Commission) first deposited parental benefits into the Claimant's account, the Claimant was surprised to see that the amount of her benefits had gone down. So, she contacted the Commission. It informed her that she had elected the extended parental benefit and that it was too late to change her election. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] The Claimant then appealed to the General Division of the Social Security Tribunal, which allowed her appeal. The General Division found that her election was not valid because it did not reflect her intention at the time she completed the application.

[5] The Commission is now appealing the General Division decision to the Tribunal's Appeal Division. It argues that the General Division went beyond its powers, made an error of law and based its decision on an erroneous finding of fact in allowing the appeal.

[6] I am allowing the appeal. The General Division failed to meaningfully analyze the evidence and, in doing so, made an error of law. I am sending the matter back to the General Division for reconsideration.

## Preliminary matters

### – New evidence

[7] In its written submissions, the Commission included printouts of an application for benefits, as well as screenshots from its website. These were not from the Claimant's file and were not before the General Division. At the hearing before me, the Commission's representative stated that they were no longer relying on this evidence. Given the Commission's position, I have not considered this new evidence in my decision.

### – Claimant's post-hearing submission

[8] After the hearing, the Claimant contacted the Tribunal and asked to "revoke her decision."<sup>1</sup> The Tribunal contacted the Claimant by phone and she said that she would like the Tribunal to agree with the Commission's appeal because she was concerned about how much time was passing. The Claimant did not indicate whether she agreed that there was an error made by the General Division. As the hearing had already taken place, and there is no formal agreement between the parties, I must still consider the issues on appeal.

## Issues

[9] I have focused on the following issues in this appeal:

- Did the General Division fail to analyze the evidence in a meaningful way?
- If so, what is the appropriate remedy?

## Analysis

[10] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:<sup>2</sup>

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<sup>1</sup> AD4. The Tribunal also contacted the Claimant by phone

<sup>2</sup> The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

- acted unfairly;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

## **Background**

[11] The Claimant asked a member of her community to assist in her application for maternity and parental benefits. This helper was not familiar with these applications and the Claimant was aware of this.<sup>3</sup>

[12] There are two types of parental benefits:

- Standard parental benefits – the benefit rate is 55% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits is payable to one parent.
- Extended parental benefits - the benefit rate is 33% of an applicant’s weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits is payable to one parent.

[13] When she submitted the Claimant’s application for benefits, the helper chose extended benefits. When asked how many weeks the Claimant wished to receive, the helper chose 61 weeks from the drop down menu. The helper did not confirm this with the Claimant. She sent the Claimant a copy of the application for benefits three days after it was submitted.<sup>4</sup>

[14] The Claimant received her first payment of extended benefits on April 7, 2021. She contacted the Commission because it was much less than she was expecting. She

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<sup>3</sup> General Division decision at para 12.

<sup>4</sup> GD7.

then learned that the extended benefit option was chosen and she tried to change to standard benefits. The Commission refused the Claimant's request to switch because the choice was irrevocable once she had been paid extended benefits.

[15] The General Division allowed the Claimant's appeal. It found that the Claimant did not make a valid election because she did not make the election on the application form herself and the helper did not choose the option that matched the Claimant's intentions.

### **Did the General Division fail to analyze the evidence in a meaningful way?**

[16] When applying for parental benefits, the Claimant's helper had to choose between the standard and extended options. The helper contacted the Claimant and asked her if she wanted to receive parental benefits after her maternity benefits. She also asked the Claimant if she wanted to receive a maximum of 35 weeks or extended for 50 weeks. The Claimant replied that she wanted to take one year off work.<sup>5</sup>

[17] The General Division understood that the Claimant relied on the helper's advice and assistance when she filed her application for parental benefits. It found that it was "likely that the helper found the application form confusing."<sup>6</sup>

[18] The Commission argues that the General Division failed to analyze the evidence in a meaningful way. It says that there was no evidence before the General Division that the Claimant's helper found the application form confusing. I agree with the Commission's submissions.

[19] The evidence before the General Division included the Claimant's testimony, text messages and emails between the Claimant and the helper, and a signed letter from the helper.

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<sup>5</sup> GD7-4

<sup>6</sup> General Division decision, para 20.

[20] In the text messages, the helper ask the Claimant is she wants parental benefits after maternity and if she wants 35 or 50 weeks. The Claimant indicates that she wants to take a year off. The helper then indicates that it would be 61 weeks if the other parent does not take any time and the Claimant confirms that he is just taking 2 weeks.<sup>7</sup>

[21] The Claimant's helper submitted the application for benefits on December 14, 2020. In an email exchange on December 17, 2020, the helper forwards a PDF of the application to the Claimant. She replies to the helper: "I tried to click that I confirm and agree but I can't. Are you able to do that for me?" The helper replies that she already did and the email was just so that the Claimant would know.<sup>8</sup>

[22] The General Division did not meaningfully analyze this evidence in its decision. It found that the Claimant did not make a valid election in her application for benefits. In support of this finding, the General Division notes that the helper did not confirm which option the Claimant wanted and didn't tell her which option she had chosen. The General Division also notes that the Claimant did not receive a copy of the application for benefits until after it was submitted.<sup>9</sup>

[23] The General Division did not consider the email exchange in its analysis. This exchange shows that the Claimant received a copy of the application for benefits three days after it was submitted. The Claimant states that she tried to click on it that she confirms and agrees but wasn't able to. This evidence suggests that the Claimant reviewed the application form and agreed with what was submitted. This occurred before the first payment of extended benefits and at a time when the option chosen could have been changed.

[24] I find that the General Division failed to analyze the evidence in a meaningful way by failing to consider the email exchange between the Claimant and her helper, and by finding that the helper was confused without evidence to support this finding.

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<sup>7</sup> GD7-4 to GD7-5

<sup>8</sup> GD7-1 to GD7-2

<sup>9</sup> General Division decision at para 17.

[25] The Claimant also testified that she had been confused when her helper asked in the text messages whether she wanted a maximum of 35 weeks of benefits or extended. She stated that she didn't understand what the helper was asking her and didn't know that there was two different types of benefits.<sup>10</sup> The Claimant said at the General Division hearing that after her benefit payments went down, and her request to switch was denied, she researched online and found out about the extended benefits that pay 33%.<sup>11</sup>

[26] The General Division did not ask the Claimant about her confusion at the time of the conversation with her helper. This evidence would have been relevant in determining whether she had consciously elected one parental benefit type over another. The General Division should have addressed this evidence in a meaningful manner.

### **Fixing the error**

[27] I have the authority to change the General Division decision or I can make the decision that the General Division should have made. I can also send the matter back to the General Division for it to reconsider its decision.<sup>12</sup>

[28] The Commission has asked that I make the decision that the General Division should have made and find that the Claimant elected to receive extended parental benefits and that election is irrevocable. At the hearing, the Claimant argued that the General Division did not make an error and did not take a position on the remedy. As mentioned above, after the hearing the Claimant wrote to the Tribunal asking to revoke her decision, which I took to mean the position she argued at the hearing before me.

[29] I would only make the decision if I accepted that there was evidence on every issue that I must decide, and if I accepted that both parties had a full and fair opportunity to present their case.

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<sup>10</sup> Recording of the hearing before the General Division at 13:10 to 15:15.

<sup>11</sup> Recording of the hearing before the General Division at 23:00.

<sup>12</sup> Section 59(1) of the DESD Act gives me the power to fix the General Division's errors in this way.

[30] I have found that the General Division made an error of law by failing to analyze the evidence in a meaningful way. The evidence was not clear about whether or not the Claimant reviewed the application for benefits when her helper sent it to her on December 17, 2020. The Claimant submitted the email exchange in which she indicated that she tried to click to confirm and agree with the application but she was not asked about this at the hearing.

[31] The General Division also found that it is likely that the helper was confused. The Claimant did testify to the fact that she was herself confused when her helper asked her if she wanted standard or extended benefits. The General Division did not consider whether this confusion had any effect on whether or not the Claimant consciously chose one type of benefit over the other.

[32] At the hearing before the General Division, the Claimant relied on the member to ask her relevant questions. I find that the evidence regarding whether or not the Claimant reviewed the application is relevant and the Claimant was not asked about this.

[33] I am sending the matter back to the General Division for reconsideration. I understand the Claimant's position that she wanted to revoke her position before the General Division. It is open to the Claimant to withdraw her appeal before the General Division if she wishes.

## **Conclusion**

[34] The appeal is allowed. The General Division made an error of law by failing to analyze the evidence in a meaningful manner. I am referring the matter back to the General Division for reconsideration.

Melanie Petrunia  
Member, Appeal Division