



Citation: *TM v Canada Employment Insurance Commission*, 2021 SST 568

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

Decision

Appellant:	T. M.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (421424) dated April 20, 2021 (issued by Service Canada)
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Tribunal member:	Catherine Shaw
Type of hearing:	Teleconference
Hearing date:	May 14, 2021
Hearing participant:	Appellant
Decision date:	May 14, 2021
File number:	GE-21-703

Decision

[1] T. M. is the Claimant. I am allowing her appeal.

[2] I find the Claimant did not make a valid election for a parental benefit option.

Overview

[3] The Claimant had planned to take one year of maternity leave from work. She had someone else apply for maternity and parental EI benefits for her. I will refer to this person as the Claimant's helper. The helper wasn't familiar with parental EI benefits but knew the Claimant wanted to claim benefits for one year. The form asked how long the Claimant wanted parental benefits and the helper selected the extended benefit option and asked for 61 weeks of parental benefits.

[4] Extended parental benefits pay a lower amount of benefits over a longer period. A claimant receiving both maternity and extended parental benefits can receive up to 76-weeks, or nearly 18 months of benefits.

[5] The Claimant noticed immediately when her EI benefit payment was lower than she expected. She contacted the Canada Employment Insurance Commission (Commission) and was told that she had applied for extended parental benefits in addition to her maternity benefits.

[6] The Commission says the Claimant's choice of extended parental benefits can't be changed after the first payment of parental benefits is made. The Claimant says the helper chose extended parental benefits by mistake. Her maternity leave from work is only for one year. She is asking to be paid standard parental benefits, as that is what she intended to choose.

Issue

[7] I must decide if the Claimant can be paid standard parental benefits. To do this, I will look at whether the Claimant elected a type of parental benefits. If she did, I must look at what parental benefit type she elected to receive.

Analysis

[8] Parental benefits are intended to support you while you take time off work to care for your newborn child.¹ You must choose (or elect) the maximum number of weeks, either 35 or 61, that you can be paid parental benefits.² Your choice of the parental benefit term can't be changed once parental benefits are paid.³

[9] When you apply for parental benefits, you must choose between two different kinds of parental benefits:

- Extended parental benefits allows you to receive up to 61 weeks of benefits at the rate of 33% of your weekly earnings, up to a maximum amount.
- Standard parental benefits allows you to receive up to 35 weeks of benefits at the rate of 55% of your weekly earnings, up to a maximum amount.⁴

[10] I must look at all of the evidence when I decide which kind of parental benefits you likely elected to receive.⁵

Did the Claimant choose a type of parental benefits and, if so, which type did she choose?

[11] The Claimant had someone apply for maternity and parental benefits on her behalf. She had received EI benefits before but had always had assistance with the application. So, she asked a member of her community for help this time.

[12] The helper told the Claimant that they weren't familiar with applying for maternity and parental benefits but would submit the application for the Claimant anyway. The Claimant submitted text messages between her and the helper, in which the helper asks

¹ This is set out in section 23(1) of the *Employment Insurance Act*

² 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.

³ This is stated in section 23(1.2) of the *Employment Insurance Act*.

⁴ These options are set out in sections 12(3)(b) and 14(1) of the *Employment Insurance Act*.

⁵ The Appeal Division of the Social Security Tribunal has confirmed that the Tribunal has the authority to make a decision about which kind of parental benefits a claimant elected in the first place.

the Claimant whether she wants to receive parental benefits after her maternity benefits. When the Claimant responds positively, the helper asks the Claimant if she wants to receive a “max o (*sic*) 35 weeks? Or you could do extended for 50 weeks.” The Claimant responds by saying that she wanted one year off work.

[13] The Claimant’s helper submitted the application for the Claimant’s maternity and parental EI benefits on December 14, 2020. On the application, the helper selected that the Claimant wanted to receive parental benefits immediately after her maternity benefits. The helper had the choice between standard parental benefits and extended parental benefits. They chose extended parental benefits. The form then asked how many weeks of benefits the Claimant wished to claim. The helper picked 61 weeks from the drop-down menu.

[14] The Claimant says the helper picked the incorrect parental benefit option. Due to COVID-19 restrictions, she and the helper didn’t meet face-to-face. Instead, they communicated by text messages. She told the helper that she wanted to take one year off from work, but thinks the helper either misunderstood what she wanted or picked the wrong option because of their inexperience with maternity and parental EI benefits.

[15] The Claimant provided a signed letter from her helper. The letter states that the Claimant asked them to file her application for maternity and parental benefits. The helper says that they were unfamiliar with completing an application for maternity leave. They knew that the Claimant wanted a “normal maternity leave” but say they must have entered the wrong information.

[16] The Claimant received a reduced EI benefit payment on April 7, 2021. She didn’t understand why her benefit payment was lower. She contacted Service Canada the same day and was told that she had chosen extended parental benefits on her application form. She asked to be switched to standard parental benefits and they said that she could not change to standard parental benefits because she had already received her first payment of extended parental benefits.

[17] There is conflicting information regarding whether the Claimant made a valid election for benefits, and if she did which parental benefit type she elected to receive. I put weight on the following factors:

- The Claimant advised the helper that she was returning to work after one year of leave. This supports that she wanted standard parental benefits, as she would receive her full entitlement to maternity and parental benefits before she returned to work.
- The helper did not confirm which parental benefit option the Claimant wanted. They did not advise the Claimant of which parental benefit option they selected on the application form. And the Claimant did not receive a copy of her application for parental benefits after it was submitted.
- The Claimant immediately contacted the Commission when she realized that she was being paid at a reduced benefit amount. This supports that she wanted standard parental benefits, as she didn't expect to be paid benefits at the extended parental benefit amount.

[18] I find it is more likely that the Claimant did not make an election for the extended option in her application for parental benefits.

[19] The evidence supports that the Claimant's helper filled out the application.⁶ The Claimant relied on the helper, who had experience applying for EI benefits. However, the helper admits that they weren't familiar with the application for maternity and parental benefits.

[20] I think it is likely that the helper found the application form confusing. This is supported by the helper's selection of 76 weeks of total benefits (15 weeks of maternity in addition to 61 weeks of parental benefits) after the Claimant stated that she wanted to

⁶ I'm referring to the text messages between the Claimant and the helper in the GD07 document, the letter signed by helper in the GD08 document, and the helper's name which is listed on the Claimant's application form at GD03-11 as assisting the Claimant in completing the form.

take only one year off from work. It's also supported by the helper's stated inexperience with the maternity and parental benefit application.

[21] I find the Claimant was not given the opportunity to make an informed decision about her election between the standard or extended parental benefit options. The Claimant did not make the election on the application form and the helper selected an option that did not match the Claimant's stated intentions. So, I cannot find that the election in the application for parental benefits was valid.

[22] The law does not allow a claimant to change or revoke their election after they have been paid parental benefits. But, the Claimant did not make a valid election from the outset, so there is nothing to revoke. The Claimant should now be given the opportunity to make an election as to her parental benefit term.

Conclusion

[23] The appeal is allowed.

Catherine Shaw
Member, General Division – Employment Insurance Section