



Citation: *LU v Canada Employment Insurance Commission*, 2021 SST 620

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

Decision

Appellant: L. U.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (424076) dated May 19, 2021
(issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Teleconference
Hearing date: June 10, 2021
Hearing participant: Appellant

Decision date: June 11, 2021
File number: GE-21-855

Decision

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

[2] The Claimant's Employment Insurance (EI) two parental benefits applications show that she selected the extended option first, then the standard benefits option in a second application shortly afterwards.

[3] The Claimant argues that she made a mistake on the first application, and actually wanted the standard benefits option. She has shown that she actually meant to choose that option.

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] The Claimant filed two applications for maternity and parental benefits. On the first application, the Claimant chose extended parental benefits. On the second application, she chose the standard option. She started receiving benefits at the lower rate the week of April 4, 2021. But, she actually wanted standard parental benefits. She called the Commission on April 13, 2021, to ask why the benefits had been reduced and to ask that they be restored to the higher rate. The Commission said it could not do so because it had started to pay the parental benefits.

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 Claimant says that she always wanted to receive standard parental benefits but chose the wrong option by mistake on the first application, then corrected it on the second application.

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

[10] The Claimant disagrees and says that she wanted the standard option, as she needed to receive the normal rate of benefits to support herself and her two children. She planned to return to work after one year off after the birth of her child in December 2020.

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.

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 a claimant'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 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] In most cases, the claimant has filled out only one application for parental benefits. This case is complicated by the fact that the Claimant completed two applications for maternity and parental benefits. She completed both within two weeks of each other, on September 25 and October 7, 2020. The first application chose the extended option, for 61 weeks. The second chose the standard option, for 35 weeks. This case is further complicated by a conversation the Claimant had with the Commission on November 2, 2020. The Commission called her to ask whether she wanted the standard or the extended option. The notes of the conversation record the question, and the Claimant's response: "The client said that she would like extended parental for 61 weeks." Her child was born on December 20, 2020.

[17] Since there are two applications, with conflicting choices, and a verbal choice of the extended option, I will determine what the Claimant meant to choose under the next subheading.

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.

The parties' arguments

[18] The Commission says that what the Claimant said in her conversation on November 2, 2020, clearly shows that she was requesting the extended parental benefits. It argues that it is too late to change options now.

[19] The Claimant says that she wanted to have the full EI benefits for her year off. She had mistakenly chosen the extended option in her first application, but corrected that in her second application. In the telephone conversation on November 2, 2020, she said the extended option based on misinformation from the Commission agent during the phone call.

[20] I find that the Claimant chose the standard option for parental benefits.

[21] The Claimant is a single mother. She had a five-year-old, and the child born on December 20, 2020. She planned to be off work for one year from the birth of the child. She needed to receive the full 55% EI rate during that year to survive financially.

[22] The Claimant applied for maternity benefits, immediately followed by parental benefits in both her applications. She selected the extended parental benefits in her first application. She later realized that was a mistake because of the reduced benefit level for the entire 61-week period. She made her second application to correct this mistake. She selected the standard option so that she would have the full benefits for the 35-week period.

[23] In her conversation with the Commission on November 2, 2020, she did say she would like the extended option for 61 weeks. She testified that she made that choice based on her discussion with the Commission's agent. The agent told her that with the extended option, the benefit rate remained at 55% for one year from the start of maternity benefits, and would drop to 33% for the remaining weeks after the end of that year.

[24] I find the Claimant's testimony to be reliable for the following reasons. There is the old adage that actions speak louder than words. Her action in filing the second

application to claim the standard benefits supports her testimony that she needed the benefits at 55% to support herself and children. That action also supports her testimony that she realized she had made a mistake in filing for extended benefits in the first application. It also supports her testimony that she intended to claim the standard benefits, not the extended benefits, because they would pay at the 55% rate.

[25] The conversation between the Commission's agent and the Claimant on November 2, 2020 supports a finding that the Claimant chose the extended benefits. The agent's notes of the conversation record the question of which option the Claimant wanted, and the answer of the extended option. The Claimant testified that the answer was accurately recorded. But the notes make no mention of any discussion. The absence of notes of any discussion is concerning. In confirming the option, the agent should have reviewed topics such as the differences between the two options, and not being able to change the option once the claimant received the first parental benefit payment. The Claimant testified that there was a discussion about the rates of the two benefits. She testified that the agent told her that under the extended option, she would receive benefits at the 55% rate for one year from the start of maternity benefits, and benefits would drop to the 33% rate for the remaining weeks after the end of that year. She testified that she accepted the extended option on the basis that it would pay her benefits at 55% for one year, as she wanted. Having accepted the Claimant's testimony for the reasons in the last paragraph, I accept her testimony on this matter. Her statement that she would like extended benefits was based on a mistake about the rate of benefits. She did not agree to the reduced rate of 33%. She was clear in her evidence that she needed benefits at the 55% rate. The Claimant's statement in this conversation that she would like extended benefits does not change her opting for standard benefits in her second application.

[26] The Claimant did choose standard benefits at 55% for 35 weeks. Her second application for benefits on October 7, 2020, changed her option of parental benefits from extended to standard. The selection of one of those options only becomes final after parental benefits start to be paid. The Claimant's parental benefits were first paid in the week of April 4, 2021. Since the Claimant changed her election before then, that

choice stands unless changed later before parental benefits start. As discussed in the previous paragraph, the conversation on November 2, 2020, did not change the Claimant's choice to extended benefits. That "choice" was based on a mistake and was contrary to the Claimant's continuing intention to receive benefits for one year at the 55% rate and return to work after that. I also give more weight to the Claimant's written choice in her second application for benefits than I give to her verbal "choice" on November 2, 2020.

So, which option did the Claimant mean to choose when she applied?

[27] I find that the Claimant has proven that she meant to choose standard parental benefits when she applied.

Conclusion

[28] The Claimant chose standard parental benefits.

[29] This means that the appeal is allowed.

Paul Dusome
Member, General Division – Employment Insurance Section