



Citation: *BA v Canada Employment Insurance Commission*, 2021 SST 636

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

# Decision

**Appellant:** B. A.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Samaneh Frounchi

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision dated June 25, 2021 (issued by  
Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** September 23, 2021

**Hearing participants:** Appellant  
Respondent's representative

**Decision date:** October 12, 2021

**File number:** GE-21-1105

## Decision

[1] The appeal is dismissed. The Claimant's election for extended parental benefits cannot be revoked because employment insurance (EI) parental benefits have already been paid.

## Overview

[2] The Claimant gave birth to her child and applied for EI maternity and parental benefits (GD3-3 to GD3-13). She received 15 weeks of maternity benefits.<sup>1</sup> For the parental benefit option, she picked the extended benefit option and asked for 48 weeks (GD3-9 to GD3-10).

[3] The first parental benefit payment was issued on January 22, 2021 (GD3-24). A few days later, the Claimant called the Commission to amend her election for the extended benefit option to the standard benefit option (GD3-21).

[4] The Canada Employment Insurance Commission (Commission) decided that the switch to the standard benefit option could not happen because the law says that the election was irrevocable as parental benefits were already paid at the extended rate when she made the request (GD3-19; GD3-29).

## Matters I have to consider first

### **The Appeal Division sent this file back to the General Division**

[5] This file was previously heard at the General Division of the Tribunal and a decision was made.<sup>2</sup> The Commission appealed that decision to the Appeal Division of the Tribunal. The Appeal Division determined that the General Division made an error. As a result, it was returned back to the General Division for a new hearing.<sup>3</sup>

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<sup>1</sup> This is the maximum number of weeks of maternity benefits that a claimant is entitled to receive.

<sup>2</sup> See Tribunal file GE-21-387 for the General Division decision dated March 20, 2021.

<sup>3</sup> See Tribunal file AD-21-108 for the Appeal Division leave to appeal decision dated April 15, 2021 and merit decision dated June 24, 2021.

### **The parties were invited to submit any additional information before the hearing**

[6] I wrote to both parties in advance of the hearing to invite them to submit any evidence and arguments in advance of the hearing (RDG02; RGD03). The Commission responded and provided additional evidence and arguments (RGD06-1 to RGD06-26; RGD06A-1 to RGD06A-13; RGD09A-1 to RGD09A-66). A copy of the Commission's documents was emailed to the Claimant. The Claimant did not respond or provide any additional evidence and arguments in advance of the hearing.

### **The Claimant was assisted by an interpreter at the hearing**

[7] The Claimant acknowledged that she spoke some English, but it was not her first language. The Tribunal arranged for an interpreter to attend the hearing at the Claimant's request. The entire hearing was interpreted for the Claimant.

## **Issue**

[8] Can the Claimant change her election from the extended parental benefit to the standard parental benefit option?

## **Analysis**

[9] The EI parental benefits program offers financial support for parents who are not working while they care for their newborn or newly adopted child. A claimant can pick either the standard or extended parental benefit option. Depending on which option is picked, the claimant can also pick the number of weeks they want to collect, up-to a maximum amount.

[10] There are some differences depending on which parental benefit option is picked by a claimant. For example, the maximum number of weeks for the standard option is 35 weeks and the extended parental benefit option is 61 weeks.<sup>4</sup>

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<sup>4</sup> Subsection 12(4.1)(a)(b) of the *Employment Insurance Act*; Subsection 23(1.1) of the *Employment Insurance Act*.

[11] Also, parental benefits under the standard option are paid at a rate of 55% of the weekly insurable earnings up to a maximum amount.<sup>5</sup> Under the extended option, parental benefits are paid at a rate of 33% of the weekly insurable earnings up to a maximum amount.<sup>6</sup>

[12] After a claimant picks either standard or extended parental benefit option it cannot be changed by law if parental benefits have been paid under either option.<sup>7</sup>

### **Agreed Facts**

[13] The Claimant's child was born on September 9, 2020 and she applied for maternity and parental benefits on September 16, 2020.

[14] The Claimant asked for maternity benefits immediately followed by parental benefits in her application form (GD3-8).

[15] The Claimant received 15 weeks of maternity benefits from February 7, 2021 to May 22, 2021 at a rate of \$454.00 per week (GD3-24). This is the maximum number of maternity benefits she can receive.

[16] The first parental benefit payment under the extended option was issued on January 22, 2021 at a rate of \$298.00 per week (GD3-24).

### **The Claimant's election for extended parental benefits cannot be changed or revoked**

[17] I find that the Claimant cannot change her election for extended parental benefits to the standard parental benefit option for the following reasons.

[18] The Claimant completed her own application, without any third party assistance (GD3-11). I note that the Claimant works as housekeeping supervisor at hotel. She has some familiarity with the English language because she communicates with her

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<sup>5</sup> Subsection 14(1) of the *Employment Insurance Act*.

<sup>6</sup> Subsection 14(1) of the *Employment Insurance Act*.

<sup>7</sup> Subsection 23(1.2) of the *Employment Insurance Act*.

colleagues in English. The Claimant confirmed that she read the application and asked that parental benefits to follow after maternity benefits (GD3-8). She asked for 48 weeks of parental benefits under the extended option (GD3-10). In my view, the application is clear and sets out the available options for applicants (standard parental benefits or extended parental benefits). It also clearly states that ``once parental benefits have been paid for the same child, the choice between standard and extended parental benefits is irrevocable`` (GD3-9).

[19] The Claimant said that she intended to return to work in one year. I find that there was not enough evidence to support this statement. The application form provides an opportunity to identify the return to work date, but the Claimant selected the box that said she did not know her return date (GD3-7). The record of employment also identifies "unknown" under the return to work box (GD3-17). At the hearing, the Claimant confirmed that she had not formally arranged a return to work date with her employer, but expected to return in one year.

[20] The Claimant asked for 48 weeks of parental benefits because she thought it amounted to one year of benefits. She admitted that she calculated the weeks herself using a calculator. I find that the Claimant failed to take any steps to verify if her calculations or assumption were correct but instead made her choice based on her own inaccurate information. For instance, if the Claimant had contacted the Commission and verified whether 48 weeks amounted to a year, she may have been informed there are 52 weeks in one year. Alternately, she could have searched online for this information.

[21] The Commission wrote to the Claimant in advance of receiving parental benefits on October 8, 2020. The letter states that ``we have approved your maternity and parental benefits. Maternity benefits are payable for 14 weeks effective October 4, 2020. Parental benefits will begin after the maternity benefits`` (GD3-19). I find that the letter clearly communicated to the Claimant that she would first receive 14 weeks of maternity benefits and it would follow by parental benefits. I note that this was also an opportunity for the Claimant to contact the Commission and verify the number of weeks she requested for parental benefits.

[22] The evidence shows that the first parental benefit payment under the extended rate was issued on January 22, 2021 (GD3-24). The Claimant contacted the Commission on January 26, 2021 (GD3-21). This was after the payment had been issued. The law says that that an election cannot be changed after parental benefits have been paid.<sup>8</sup>

[23] I was persuaded by the Commission`s submissions because the Federal Court has considered this issue before (RGD06-1 to RGD06-26).<sup>9</sup> In that case, the court concluded that the information was clearly stated on the application form: (1) parental payments would be reduced [if she elected to receive extended parental benefits]; (2) once parental benefits were paid her election was irrevocable. Similarly, the Claimant in this case elected for extended parental benefits and this information was in her application form.

[24] I acknowledge the Claimant`s submissions that her election should be changed based on compassionate circumstances and financial hardship, but I have no authority to do this. She made the choice for extended parental benefits and I cannot change her election because parental benefits have already been paid.

## **Conclusion**

[25] The appeal is dismissed.

Solange Losier  
Member, General Division – Employment Insurance Section

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<sup>8</sup> Subsection 23(1.2) of the *Employment Insurance Act*.

<sup>9</sup> *Karval v Canada (Attorney General)*, 2021 FC 395.