



Citation: *BT v Canada Employment Insurance Commission*, 2021 SST 749

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

# **Decision**

**Appellant:**

B. T.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (423270) dated (issued by Service  
Canada)

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**Tribunal member:**

Lilian Klein

**Type of hearing:**

Teleconference

**Hearing date:**

June 22, 2021

**Hearing participants:**

B. T. Appellant

**Decision date:**

June 30, 2021

**File number:**

GE-21-968

## **Decision**

[1] I am allowing the appeal because I find that the Claimant's language barrier invalidated her initial choice of extended parental benefits. To complete her claim for parental benefits, she must choose again between the standard and extended options.

## **Overview**

[2] The Claimant applied for maternity and parental benefits and her claim began on October 25, 2020. She asked for 15 weeks of maternity benefits followed by 40 weeks of extended parental benefits.

[3] When the Claimant realized that her benefit rate had dropped significantly, she asked the Canada Employment Insurance Commission (Commission) to change her claim from extended to regular parental benefits.

[4] The Commission says you cannot change your mind once payment of parental benefits begins. However, it did increase the number of weeks of extended parental benefits that the Claimant could get to the maximum of 61 weeks.

[5] The Claimant says she did not understand the difference between the two parental benefits options because of her language barrier. She says she cannot manage financially on the lower payments that come with extended parental benefits. She wants to get the higher benefit rate paid over 35 weeks of standard parental benefits.

[6] The Commission has already refused her request. She now appeals the matter to the Social Security Tribunal's General Division (SST-GD). The hearing took place with the assistance of an interpreter.

## **The issue I must decide**

[7] Did the Claimant choose standard or extended parental benefits? Was her choice valid?

## Analysis

[8] After your 15 weeks of maternity benefits end, you can get parental benefits to care for one or more newborn children or adopted children.<sup>1</sup> When claiming your parental benefits, you must “elect” (choose) either standard or extended benefits.<sup>2</sup>

[9] The benefit application states that you can get standard parental benefits up to a maximum of 35 weeks at 55% of your usual weekly earnings, up to a maximum amount. This option, together with the 15 weeks of maternity benefits, covers up to one year of maternity leave.

[10] The law says you have another choice. You can receive up to a maximum of 61 weeks of extended parental benefits at 33% of your usual weekly earnings, up to a maximum amount.<sup>3</sup> This option covers up to eighteen months of parental benefits for claimants planning to take a longer leave from work.

### **Did the Claimant choose standard or extended parental benefits?**

[11] Although the Claimant clicked on the extended parental benefits option and asked for 40 weeks, she says she would not have made that choice if she had understood the difference between regular and extended parental benefits.

[12] I have to decide if the Claimant can receive standard parental benefits. To do this, I must decide which parental benefit option she chose when she first applied for benefits. I will also look at whether her original choice was valid based on the information the Commission provides for claimants with language barriers.

[13] The Claimant applied for 15 weeks of maternity benefits followed by 40 weeks of extended parental benefits. Payments of extended benefits began on February 12,

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<sup>1</sup> S 23(1) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> Since December 2017, applicants for EI parental benefits must choose the maximum number of weeks they wish to receive from two available options (s 23(1.1) of the EI Act).

<sup>3</sup> The two options are explained in s 12(3)(b) and s 14(1) of the EI Act.

2021, at a benefit rate of 33% of her weekly insurable earnings. That figure is not in dispute.

[14] The Claimant now says she wants 35 weeks of standard parental benefits at 55% of her weekly insurable earnings because she cannot make ends meet on the lower benefit rate of 33% of her earnings. She says she did not understand the instructions on the application for parental benefits due to her language barrier.

[15] The Claimant argues that she only realized her mistake when she saw that her benefit rate had dropped. When she asked the Commission to change her to standard parental benefits, the Commission told her it was too late to change her mind.

[16] The Commission says the Claimant chose to receive extended parental benefits because she clicked on that option on her application, requesting 40 weeks of those parental benefits. The Commission says her choice of the extended option is irrevocable because it had already started paying her parental benefits by the time she asked to change to the standard option. It decided to increase the number of weeks of these benefits from the 40 she requested to the maximum 61 weeks.

[17] I must consider all the relevant evidence to decide which parental benefit option the Claimant chose when she completed her benefit application. Although she clicked on the extended parental benefit option, I find that her choice was invalid. That is because of her language barrier, which was evident during the hearing.

[18] I find it more likely than not that the Claimant would have chosen standard parental benefits if she had understood the information on the online application form. That is because the standard option offered her the higher rate of benefits that she needed to manage financially.

[19] I find that the Commission did not inform the Claimant about her choice of parental benefits in language she could understand. The instructions on the application form for choosing a parental benefit option are not clear enough for claimants with a language barrier.

[20] The Tribunal's Appeal Division (AD) found that a claimant's initial choice of parental benefits was invalid because to "elect" is to make a deliberate choice between options. Given the lack of information on the application form, the claimant in that appeal could not make a deliberate choice between the two available options.<sup>4</sup>

[21] I am also guided by an AD decision that says a claimant's choice of parental benefit options is invalid if confusing or incomplete information misled the claimant into making the wrong choice. The AD says in these circumstances, the claimant must make her choice again.<sup>5</sup>

[22] I do not have to follow AD decisions but their logic guides me. The Claimant in the appeal now before me could not make a deliberate choice between her options because of her language barrier.

[23] I see no evidence that the Commission provided the relevant information either directly to the Claimant in language she could understand or on the parental benefits application form. I therefore accept that she made her initial choice after misunderstanding the available information. That means her choice of extended parental benefits is not valid.

[24] The law does not allow claimants to change their choice of parental benefits from the extended to the standard option after the Commission starts paying the extended benefits. However, guided by the AD decisions cited above, I find that the Claimant's initial choice of parental benefit options was not valid. As a result, she needs to make a new informed choice on what parental benefit term she is requesting.

## **Conclusion**

[25] I am allowing the appeal. The Claimant's choice of extended parental benefits is not valid, so she needs to make a new "election" between the two available options.

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<sup>4</sup> *M.L. v Canada Employment Insurance Commission*, 2020 SST 255. The AD member stated that the Claimant had "made an election that was misinformed, at the outset and beyond the point of irrevocability, because of the communication choices made by Service Canada and/or the Commission."

<sup>5</sup> *K. K. v Canada Employment Insurance Commission*, 2020 SST 182.

Lilian Klein

Member, General Division – Employment Insurance Section