



Citation: *MN v Canada Employment Insurance Commission*, 2021 SST 839

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

Decision

Appellant: M. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (425563) dated June 9, 2021 (issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Videoconference

Hearing date: June 29, 2021

Hearing participant: Appellant

Decision date: July 16, 2021

File number: GE-21-969

Decision

[1] The appeal is allowed. I find the Claimant elected to receive standard parental employment insurance benefits.

Overview

[2] The Claimant applied for maternity and parental employment insurance (EI) benefits. She selected to receive extended parental benefits because she believed she was choosing to receive one year of total benefits. In fact, extended parental benefits pay a lower rate of benefits for up to 61 weeks, in addition to 15 weeks of maternity benefits. The Claimant realized she made a mistake when she noticed the parental benefit payment was much lower than the maternity benefit payment.

[3] The Canada Employment Insurance Commission (Commission) says the Claimant's choice of parental benefit term cannot be changed after the first payment of parental benefits was made. It submits she elected to receive extended benefits because she picked that option on the application form. The Claimant says she chose extended parental benefits on the form by mistake. The Claimant appeals the Commission's decision to the Social Security Tribunal (Tribunal).

Issue

[4] What type of parental benefits did the Claimant elect to receive?

Analysis

[5] Parental benefits are intended to support parents while they take time off work to care for their newborn children.¹ Claimants must elect the maximum number of weeks,

¹ *Employment Insurance Act*, section 23(1)

up to either 35 or 61, that they want to be paid parental benefits.² The election of the parental benefit term cannot be changed once parental benefits are paid.³

[6] For the following reasons, I find the Claimant elected to receive standard parental benefits.

[7] The Claimant applied for maternity and parental benefits on January 22, 2021. A claim was established as of January 3, 2021. She submitted that her last day worked was December 31, 2020, and she did not know her return to work date.

[8] At the hearing, she submitted that at the time she completed the application for EI benefits she was not sure whether she would take a full year of leave or return to work early. She submitted she did not want to put a date of return and have it be inconsistent with when she actually went back to work. She explained that she spoke to her employer prior to going off work on maternity leave, and the employer agreed to give her whatever period of leave she wanted. She added that her employer was “pretty aware” that she planned to be off for a year.

[9] Despite her intention to take only one year off work for maternity and parental leave, on the parental information section of the application form she selected to receive extended parental benefits. She testified that she must have chosen this option on the form, but submitted it was not what she intended to choose. The form also asked how many weeks of benefits she wished to claim. She picked 52 weeks from the drop-down menu.

[10] The Claimant testified that she thought she was choosing to receive 52 weeks of benefits in total when she selected to receive 52 weeks of parental benefits. She submitted that she read the application form but did not know she made a mistake until the parental benefits were paid.

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 *Employment Insurance Act*, section 23(1.2)

[11] The evidence shows that the first payment of parental benefits was deposited into the Claimant's account on May 7, 2021. At the hearing, she stated that she received it on May 11, 2021. On May 12, 2021, the Claimant contacted the Commission to inquire about the lower benefit rate. At this time, she was told she selected extended parental benefits. She testified that she did not remember selecting this benefit type, and said that she and her husband talked about EI benefits before she applied and she only planned to take up to one year off in total.

[12] The Commission advised the Claimant that it was impossible to change the parental benefit choice because she had already received a payment of parental benefits. She requested reconsideration on May 31, 2021, stating she selected 52 weeks of parental benefits because she thought it included maternity leave. She reiterated that she only wanted one year off work. The Commission upheld its decision, determining the Claimant was not able to switch her parental benefit election from extended to standard.

[13] At the hearing, the Claimant reiterated that her intention was always to take only one year off work, which is supported by her request for 52 weeks of parental leave on the application form. She stated she thought she was requesting a total amount, for maternity and parental leave, and did not realize she was requesting 52 weeks in addition to the maternity period.

[14] The Commission submits the Claimant was paid the first payment of parental benefits on May 7, 2021. The Claimant confirmed this information, stating she received the payment on May 11, 2021. The Commission submits her election was irrevocable as of May 7, 2021, so she cannot switch the type of parental benefits. I find the Claimant was paid parental benefits on May 7, 2021, because there is no evidence to the contrary.

[15] The Commission adds that, although the Claimant may have mistakenly elected to receive extended parental benefits, the law is clear and unambiguous that once the choice of election is made and any parental benefits are paid, the election cannot be

changed. Since the Claimant was paid parental benefits on May 7, 2021, it submits her election was irrevocable from that date.

[16] I agree with the Commission that the law is clear that once benefits are paid an election for parental benefits cannot be changed. I disagree, however, on its determination that selecting a certain option on an application form is the only relevant information in deciding which election the Claimant made.

[17] This issue turns on what it means to elect a benefit period. Is it only the choice on the application form? A decision from the Tribunal's Appeal Division confirms that I must consider all of the relevant evidence regarding what kind of parental benefits the Claimant likely elected to receive.⁴

[18] I must also consider the recent case law from the Federal Court. In *Karval*,⁵ the Court addressed the situation of a Claimant who appealed a similar but distinguishable situation to the Claimant's case. Ms. Karval filed a claim for extended parental benefits, and sought to change to standard benefits. The Commission refused to change the benefit election. The Tribunal denied her appeal at both the General and Appeal divisions. In that case, the evidence about which kind of parental benefits the Claimant chose was ambiguous. Like the Claimant in the current case, Ms. Karval did not provide a return to work date on her application for EI benefits and the Record of Employment listed the recall date as unknown.

[19] However, Ms. Karval chose to receive extended benefits for 61 weeks. The Tribunal member noted that there was no contradiction on the application form, because the Claimant said she did not know when she was returning to work, and also requested the maximum number of benefit weeks available. Ms. Karval also stated that she did not understand the difference between maternity and parental benefits and said she wanted the option that would give her one year of leave in total. The Claimant in the current case made the same statement, but she selected to receive only 52 weeks of extended

⁴ The Appeal Division set out that the General Division has the authority to decide what kind of parental benefits a claimant elected to receive, considering all of the relevant evidence in *Canada Employment Insurance Commission v. T.B.*, 2019 SST 823

⁵ *Karval v. The Attorney General of Canada*, 2021 FC 395

parental benefits, not the maximum of 61 weeks. The choice of 52 weeks corresponds with one year, which distinguishes the Claimant's situation from Ms. Karval's.

[20] Additionally, in *Karval*, the Claimant's benefit rate dropped from 55% of her weekly earnings to 33% of her weekly earnings in the week of September 1, 2019. She collected this lower parental benefit rate for nearly six months before contacting the Commission. The Claimant contacted the Commission the day after receiving her first extended parental payment.

[21] The preceding compares the *Karval* situation to the Claimant's case. The Court in *Karval* also made relevant comments that I want to address. It states that the questions on the EI application are not objectively confusing, and summarizes the parental benefits program.⁶ It also reproduces the **Parental Information** section of the application in its decision, before noting that Ms. Karval chose the "extended option payable over 61 weeks [and] received benefits under that option for six (6) months before seeking to convert the claim to the standard option."⁷

[22] The Court found that, "where a claimant...is not misled but merely lacks the knowledge necessary to accurately answer unambiguous questions, no legal remedies are available. Fundamentally it is the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions." The Court determined that Ms. Karval deliberately selected the extended option and failed to read the application clearly.

[23] The Court also comments that there is nothing "very confusing about the application" for parental benefits and stated that if it was "perplexing, she could have called the Commission instead of providing answers that, she now says, were inconsistent with her true intentions."⁸

[24] I appreciate the Court's comments, but find they apply differently in this case. I recognize the Court found the questions on the parental benefits section of the EI

⁶ *Karval*, at paragraph 11

⁷ *Karval*, paragraph 13

⁸ *Karval*, paragraph 16

application form were not objectively confusing; however, the Court did not address the interplay between this section and the maternity benefits section. While it may be clear that there are two types of parental benefits, standard and extended, it is evidently not clear that when counting the number of weeks one wishes to claim, maternity benefits are a separate period of time. On the application for EI benefits, it states:

*Do you want to receive parental benefits immediately after receiving maternity benefits?

- Yes, I want to receive parental benefits immediately after my maternity benefits.
- No, I only want to receive up to 15 weeks of maternity benefits.⁹

The application form does not specify that maternity benefits are a wholly separate type of benefit, and are not part of the parental benefit election.

[25] While the maternity section refers to 15 weeks of maternity benefits in the “No” option, I find it may not be obvious to a Claimant that this is independent from the parental benefits section. If a claimant chooses “yes” to the question above, they may not know that they are asking to receive up to 15 weeks of maternity benefits, because it does not state they will receive up to 15 weeks in addition to parental benefits.

[26] Further, while the question itself of “do you want to receive parental benefits immediately after receiving maternity benefits?” suggests there is some separation between benefit types, I find that this is not plain and obvious to the average person, who does not work with EI benefits on a daily basis. It may suggest a separation between benefits, but it is not clear in defining the difference such that a claimant will certainly be clear about what they have elected to receive.

[27] The Court also referred to the responsibility of a claimant to understand their entitlement options, and to ask questions if they do not understand. In this case, the Claimant thought she understood. She did not know that claiming 52 weeks of parental benefits was different from taking one year of leave. I find she could not have known her

⁹ See GD3-7

error prior to the first payment of benefits, because she did not have access to her application for benefits after it was submitted.

[28] Further, she did not understand parental and maternity were separate periods, so when she started receiving maternity benefits at the rate of 55%, she did not know to contact the Commission and ask questions, because she thought her claim was established correctly and she would continue receiving this amount of money. I find this is not a case of the Claimant lacking the knowledge to answer unambiguous questions, because the difference between maternity and parental benefits and the relationship between the two benefits is not unambiguous.

[29] There is no question that the Claimant's situation differs from *Karval*. The Claimant requested only 52 weeks of extended benefits, not the maximum of 61, and contacted the Commission immediately upon receiving parental benefits to inquire about the lower benefit rate and ask for a change to standard benefits. In *Karval*, the Claimant received months of benefits before asking to change her claim. The Court found that if she had been confused, she could have called the Commission. In the current case, the Claimant did exactly that. She contacted the Commission immediately after receiving her first payment of parental benefits and recognizing it was significantly lower than she expected it to be. For all of these reasons, I find the Claimant's situation is distinguished from *Karval*.

[30] I find it is more likely than not that the Claimant intended to elect one year of maternity and parental leave combined, because her explanation at the hearing was credible and I accept her evidence that she arranged with her employer to take only one year off work prior to leaving on maternity leave, with the option of returning to work early.

[31] I further find the Claimant thought she was claiming 52 weeks of combined maternity and parental benefits when she applied for EI benefits. I find the Claimant elected to receive standard benefits, because I prefer her evidence that when she made the choice of parental benefit terms, she believed she was selecting the entire length of her EI benefits to be 52 weeks.

[32] The law does not allow a claimant to change their election after they have been paid parental benefits.¹⁰ However, as I find the Claimant did not elect extended parental benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her election of standard parental benefits.

Additional Comments

[33] I note that when the Claimant spoke to a Commission agent on June 9, 2021, she stated that she would have addressed this problem sooner if she was sent a notification explaining when the parental benefits would start, and the rate she would be paid. She stated that this way, people would have a chance to realize they made a mistake and fix it before parental benefits were paid. The Commission agent agreed with the Claimant.

[34] While each case is independent and decided on its own merits—and this case is no different in that regard—I must add that I have personally dealt with more than 25 cases of this exact issue in 2021, which says nothing of how many other Tribunal members have addressed the same issue. If the application for maternity and parental EI benefits was clear and unambiguous, there would not be so many files with similar fact scenarios.

[35] While I cannot direct the Commission to take any particular action, I encourage it to review the body of similar cases and consider options to clarify this recurring situation.

Conclusion

[36] The appeal is allowed. I find the Claimant elected to be paid standard parental benefits.

Candace R. Salmon
Member, General Division – Employment Insurance Section

¹⁰ *Employment Insurance Act*, subsection 23(1.2)