



Citation: *RY v Canada Employment Insurance Commission*, 2021 SST 877

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

Decision

Appellant: R. Y.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (430053) dated August 3, 2021
(issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Teleconference

Hearing date: August 31, 2021

Hearing participants: Appellant

Decision date: September 1, 2021

File number: GE-21-1420

Decision

[1] I am allowing the appeal.

[2] The Claimant has shown that she intended to choose the standard parental benefits option.

Overview

[3] When you fill out your EI parental benefits application, you need to choose between two options: the “standard option” and the “extended option.”¹

[4] 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, if you claim the maximum number of weeks of benefits. It is just stretched over a different number of weeks.

[5] Once you start receiving parental benefits, you can't change options.²

[6] On her benefits application form, the Claimant selected extended parental benefits. The Commission processed her first parental benefit payment at the lower rate on July 16, 2021.

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

[8] The Claimant disagrees and says that she always wanted to receive standard parental benefits. She says that she simply made an error by clicking on the extended option by mistake. She called the Commission as soon as she received her first payment and realized that she had made an error.

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.

Issue

[9] Which type of parental benefits did the Claimant actually want when she made her choice on the application?

Analysis

[10] 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

[11] 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.

[12] 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

[13] 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?

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.

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

[14] The Commission says that what the Claimant chose on the application tells us which option she wanted. It argues that it is too late to change options now.

[15] The Claimant says that she always intended to choose the standard benefit option. She testified that she planned to return to work in November 2021, and believed she had clicked on the standard option and 35 weeks of benefits when she applied. She did not know the exact date that she would be returning to work, so she did not put down a return to work date on her claim form.

[16] She says that it was not until she received her first parental benefit payment that she realized that she had made a mistake. The payment was processed by the Commission on July 16, 2021. Early the following week, she noticed that a lower amount had been deposited into her account.⁶ She called the Commission on July 20, 2021, to ask for the benefits to be changed to standard benefits, because of her error.

[17] The Commission says that the Claimant was informed on the application for parental benefits of the difference between standard parental benefits and extended parental benefits and she elected to receive extended parental benefits. It argues that she was also informed that the choice would be irrevocable once benefits were received. Since she has already been paid benefits, it says that she cannot now change her election to standard benefits.

[18] I must decide whether it is more likely than not that the Claimant intended to choose standard parental benefits.

[19] There are no obvious contradictions on the Claimant's application form that clearly show her intention at the time she made her claim. But the Claimant testified in a sincere and straightforward manner, and her testimony was consistent with previous statements she made to the Commission.

⁶ The Commission filed a pay history report which shows that the Claimant's first parental benefit payment for the period from July 4, 2021, to July 17, 2021, was processed on July 16, 2021. (GD3-16)

[20] I accept the Claimant's sworn testimony that she made a mistake by clicking on the "extended" option. I have put weight on the fact that she called the Commission to try to correct her mistake shortly after receiving her first payment and realizing her error. Her testimony is also consistent with the statement in her request for reconsideration that she accidentally hit extended parental benefits instead of standard benefits.

[21] The facts in this case differ from those in the recent decision of the Federal Court in *Karval*⁷. The claimant in the *Karval* case stated in her reconsideration request that she was unaware of a deadline to change her election, and did not say she had meant to make a different choice from the beginning. The Tribunal had found her explanation that she chose the wrong type of benefits not to be credible.

[22] I also accept the Claimant's testimony that she was always planning to return to work around November 2021. This evidence is consistent with the fact that she claimed regular EI benefits before her maternity and parental benefits began, and her benefit period is expected to end in December 2021.⁸

[23] I find that the Claimant always intended to choose standard parental benefits.

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

[24] I find that it is more likely than not that the Claimant has proven that she meant to choose standard parental benefits when she applied.

Conclusion

[25] The Claimant chose standard parental benefits.

[26] This means that the appeal is allowed.

Suzanne Graves

Member, General Division – Employment Insurance Section

⁷ *Karval v Canada (Attorney General)* 2021 FC 395.

⁸ According to the Claimant's pay history report at GD3-16, claimed EI regular benefits from December 13, 2020. She made a renewal claim for maternity and parental benefits effective March 28, 2021.