



Citation: *HC v Canada Employment Insurance Commission*, 2021 SST 888

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

Decision

Appellant: H. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (435341) dated September 27, 2021 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: December 7, 2021

Hearing participant: Appellant

Decision date: December 10, 2021

File number: GE-21-2028

Decision

[1] H. C. is the Claimant. The Canada Employment Insurance Commission (Commission) made a decision about her Employment Insurance (EI) parental benefits. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. She made a clear choice to receive standard parental benefits. She didn't rely on any misinformation from the Commission when she made her choice. She asked for extended parental benefits after she already received standard parental benefits and so the law doesn't allow her to change her election.

Overview

[3] The Claimant starting collecting EI maternity benefits in January 2021. She asked for standard parental benefits on her application, and so the Commission started paying standard parental benefits for the week of April 18, 2021. At the end of August 2021, the Claimant asked the Commission to pay extended parental benefits.

[4] The Claimant says she wants extended parental benefits because her child has a medical condition. She says she needs more time to stay home with her child.

[5] The Commission says she can't change her election of parental benefits. The Commission says she had already collected several weeks of standard parental benefits when she asked to change to extended parental benefits. The Commission says the law doesn't allow her to change parental benefit type after she has already received parental benefits.

Issue

[6] Can the Claimant collect extended parental benefits?

Analysis

[7] When you apply for parental benefits, you must choose between two different kinds of parental benefits:

- Extended parental benefits. The Commission pays up to 61 weeks of benefits at the rate of 33% of your weekly earnings.
- Standard parental benefits. The Commission pays up to 35 weeks of benefits at the rate of 55% of your weekly earnings.¹

[8] When you choose a type of benefits, the law calls this an “election.” Once you have received parental benefits, you cannot change your election.²

[9] The Appeal Division gives me a two-step approach to follow when I look at appeals about parental benefits:

1. Which kind of benefits did you choose on your application? Your choice should be clear. If it isn’t clear, then I can look at all of the evidence and decide which kind of parental benefits you likely chose.
2. Was your election valid? Did you have all the information you needed to make a choice, or did the Commission give you misleading information? If you based your decision on misleading information, then you can make your election again.³

[10] I do not have to follow the Appeal Division’s guidance, but in this case, I think it is useful. I will use the two-step process to make my decision.

Which kind of parental benefits did the Claimant elect?

[11] I find that the Claimant elected (or chose) standard parental benefits.

[12] At the hearing, the Claimant said she chose standard parental benefits when she completed her application because she originally planned to take one year off work. On her notice of appeal, she also said that she chose the benefit option that would allow her to take 12 months off work. She said she wasn’t planning to take 18 months off work.

¹ Paragraph 12(3)(b) and subsection 14(1) of the *Employment Insurance Act*.

² Subsection 23(1.2) of the *Employment Insurance Act*.

³ *Canada Employment Insurance Commission v. MO.*, 2021 SST 435.

[13] There isn't any conflicting information on the Claimant's application for EI benefits. On her application, she asked for 35 weeks of standard parental benefits and she didn't give any conflicting information about her return to work plans. At the hearing, she agreed that she meant to choose standard parental benefits when she completed her application.

[14] So, I find that the Claimant made a clear election of standard parental benefits.

Did the Claimant make a valid election?

[15] I find that the Claimant made a valid election of standard parental benefits.

[16] At the hearing, I asked the Claimant to tell me what she knew about the difference between standard and extended parental benefits. The Claimant knew that standard parental benefits were for a maximum of 35 weeks and at a rate of 55% of her normal weekly earnings. She knew that extended parental benefits had a lower weekly benefit rate, but that there were more than 35 weeks.

[17] I am satisfied that the Claimant understood the difference between extended and standard parental benefits when she completed her application for EI benefits. She planned to take one year off work and she chose the parental benefit option that best matched her leave plans.

[18] She hasn't said that the Commission gave her confusing or misleading information that affected her choice of parental benefits. So, I find that the Claimant made a valid election, and that she validly chose standard parental benefits.

Can the Claimant change her election of parental benefits?

[19] I find that the Claimant can't change her election of parental benefits.

[20] The Commission gave information about the Claimant's benefits. According to the Commission's records, the Claimant received her first parental benefit payment on April 23, 2021.

[21] At the hearing, the Claimant said she agreed with the Commission's information about when her parental benefits started.

[22] According to the Commission's record of conversation, the Claimant asked for extended parental benefits on August 31, 2021. At the hearing, the Claimant agreed that she didn't ask the Commission to change her parental benefits before August 31, 2021. She agreed that this conversation was the first time she asked the Commission for the change.

[23] At the hearing, the Claimant said her child developed a medical problem after birth. The Claimant decided that she needed to stay home for longer with her child because she couldn't put her in daycare. So, she asked the Commission to change from standard to extended parental benefits.

[24] There isn't any contradictory or confusing evidence about the Claimant's request to change her parental benefits. The evidence clearly shows that the Claimant asked to change her parental benefit type several months after she started collecting standard parental benefits.

[25] Unfortunately for the Claimant, the law doesn't allow you to change your parental benefits election after you have already received parental benefits.⁴ There is no evidence suggesting that misinformation from the Commission made her make an invalid choice of parental benefits. There isn't any contradictory or confusing evidence that makes it hard to decide which kind of parental benefit she chose in the first place.

[26] So, I find that the Claimant can't change her election of parental benefits. She elected standard parental benefits and the law doesn't allow her to change to extended parental benefits.

⁴ Section 23(1.2) of the *Employment Insurance Act*.

Conclusion

[27] I am dismissing the Claimant's appeal. She can't collect extended parental benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section