



[TRANSLATION]

Citation: *DN v Canada Employment Insurance Commission*, 2021 SST 828

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

Decision

Appellant: D. N.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (419365) dated April 20, 2021 (issued by Service Canada)

Tribunal member: Manon Sauvé

Type of hearing: Teleconference
Hearing date: May 19, 2021
Hearing participant: Appellant
Decision date: May 21, 2021
File number: GE-21-716

Decision

[1] The appeal is allowed. The Claimant has shown that she chose standard parental benefits.

Overview

[2] The Claimant works in New Brunswick's health care system as a licensed practical nurse. On October 28, 2020, she stopped working because of her pregnancy. She applied to get parental benefits after her maternity leave. She indicated 44 weeks of benefits.

[3] From November 1, 2020, she received her 15 weeks of Employment Insurance (EI) maternity benefits. From February 14, 2021, she received her parental benefits. She contacted the Commission after noticing a significant reduction in her benefits. She understood that she had chosen 44 weeks of extended benefits.

[4] The Commission refused to change her election (choice) because, according to the *Employment Insurance Act* (Act), the election is irrevocable.

[5] The Claimant says she made a mistake. She would not have accepted such a large reduction in her benefits.

Issue

[6] Did the Claimant choose extended parental benefits?

Analysis

[7] When you apply for parental benefits, you have two types of benefits to choose from:

- 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 parental benefits, the law calls this an “election.” Once you have received parental benefits, you cannot change your election.²

[9] However, if the Claimant can show that she made a mistake or that there was an objectively reasonable misunderstanding, she should not be “punished” for this election.³

[10] In a recent decision, the Federal Court⁴ pointed out that a claimant is responsible for fully understanding their option and asking questions if necessary. If their election on the application is not what they meant to choose at the time, the mistake may be corrected. In every case, the facts have to be analyzed.

[11] In the Commission’s view, the Claimant’s election became irrevocable when she got the first payment for parental benefits. She had the opportunity to read the explanations, and she chose extended parental benefits. The law is clear: The election is irrevocable. The Tribunal is not permitted to rewrite the Act or to interpret it in a contrary way.⁵

[12] I understand from the Claimant’s testimony that she stopped working because of her pregnancy. She got wage loss insurance benefits from September 22, 2020, to October 28, 2020. From November 1, 2020, she got 15 weeks of EI maternity benefits. She said she wanted 44 weeks of extended parental leave [benefits].

[13] Her goal was to be on leave for a year for her child.⁶ That is also what she indicated on her application form. She had taken a few weeks of leave from her employer. She thought the 44 weeks claimed included the 15 weeks. Since the plan

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

² Section 23(1.2) of the Act.

³ *VV v Canada Employment Insurance Commission*, AD-20-3.

⁴ *Karval v Canada (Attorney General)*, 2021 FC 395.

⁵ *Canada (AG) v Knee*, 2011 FCA 301.

⁶ GD3-6.

was to leave her job for a year. So, with the four weeks of leave from her employer, she would hit her goal of being on leave for about a year.⁷

[14] I also understand from her testimony that she started getting extended parental benefits on February 14, 2021. She waited a week, thinking that her benefits would be adjusted. When she saw that her benefits were still lower, she contacted the Commission to correct the situation.

[15] In my view, the Claimant has shown that she made a mistake when completing her application for parental benefits. She wanted to be on leave for a year with the weeks of leave from her employer. But, the 44 weeks, the 15 weeks of maternity [leave], and the 4 weeks of leave from the employer amount to well over a year's leave. Financially, she could not fulfill her family responsibilities with one third of her income. She could not have made that choice.

[16] I find the Claimant's explanations plausible, and her testimony credible. The evidence on file also supports the intentions she expressed about the length of her leave.

[17] In the circumstances, I am of the view that the Claimant did not choose the option she wanted. She acted quickly when she noticed her mistake. She contacted the Commission to change her election.

Conclusion

[18] I find that the Claimant did not choose extended parental benefits. She has shown that she wanted standard benefits.

[19] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

⁷ Record of Employment at GD3-16.