



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2021 SST 872

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

Decision

Appellant: M. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (437746) dated November 4,
2021 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: December 17, 2021
Hearing participant: Appellant
Decision date: December 22, 2021
File number: GE-21-2366

Decision

[1] The appeal is dismissed. I find that the Appellant is not entitled to the family caregiver benefit for adults (special benefits – critically ill adult).¹

Overview

[2] On September 15, 2021, the Appellant made a renewal claim for “family caregiver benefits.”² This claim was reactivated on September 12, 2021.³ The Appellant says that the family member who is critically ill is his spouse or common-law partner.⁴ He specifies that he is claiming four weeks of family caregiver benefits.⁵

[3] On October 5, 2021, the Canada Employment Insurance Commission (Commission) told him that he was not entitled to the Employment Insurance (EI) family caregiver benefit for adults from September 13, 2021, because the medical certificate he had submitted did not say that the adult was critically ill or injured.⁶

[4] On November 4, 2021, after a request for reconsideration, the Commission informed the Appellant that it was upholding the October 5, 2021, decision about the payment of family caregiver benefits.⁷

[5] The Appellant explains that his partner needed support after having surgery. He argues that a medical doctor completed a Medical Certificate for Employment Insurance Family Caregiver Benefits. The Appellant says that this document indicates that his partner requires the care or support of one or more family members. He explains that another medical document indicates that he was a caregiver for his partner for a month after her surgery. On November 25, 2021, Appellant challenged the Commission’s

¹ See section 23.3 of the *Employment Insurance Act (Act)*.

² See GD3-3 to GD3-17.

³ See GD3-1 and GD3-22.

⁴ See GD3-6.

⁵ See GD3-7.

⁶ See GD3-22 and GD3-23.

⁷ See GD2-8, GD3-28, GD3-29, and GD4-2.

reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[6] I have to decide whether the Appellant is entitled to the family caregiver benefit for adults (special benefits – critically ill adult).⁸

[7] To decide this, I have to answer the following question:

- Has a medical doctor or nurse practitioner issued a certificate stating that an adult family member of the Appellant is critically ill and requires the care or support of one or more family members, and setting out the period during which the adult requires that care or support?

Analysis

[8] The *Employment Insurance Act* (Act) states that benefits are payable to a claimant who is a family member of a critically ill adult, to care for or support that adult, if a medical doctor or nurse practitioner has issued a certificate that does the following:

- states that the adult is a critically ill adult and requires the care or support of one or more of their family members
- sets out the period during which the adult requires that care or support⁹

[9] A “critically ill adult” is a person who is 18 years of age or older on the day the period referred to in section 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.¹⁰

⁸ See section 23.3 of the Act.

⁹ See section 23.3(1) of the Act.

¹⁰ See section 1(7) of the *Employment Insurance Regulations* (Regulations).

Issue 1: Has a medical doctor or nurse practitioner issued a certificate stating that an adult family member of the Appellant is critically ill and requires the care or support of one or more family members, and setting out the period during which the adult requires that care or support?

[10] In this file, the evidence shows that the Appellant did not provide the Commission with a certificate from a medical doctor stating that an adult family member of the Appellant (his partner) was critically ill.¹¹ Even though the document the Appellant submitted says that his partner required the care or support of one or more family members and sets out the period during which she required that care or support, it does not say that she was “critically ill” as defined in the *Employment Insurance Regulations* (Regulations).¹²

[11] In the document entitled “Medical Certificate for Employment Insurance Family Caregiver Benefits,” completed on September 17, 2021, the medical doctor who performed surgery on the Appellant’s partner certifies that the following three conditions existed as of September 7, 2021, concerning the patient (the Appellant’s spouse): the patient’s life is at risk as a result of illness or injury, there has been a significant change in the baseline state of health of the patient, the patient requires the care or support of one or more family members. The medical doctor answered “no” to the question of whether the patient’s life was at risk as a result of illness or injury. He answered “yes” to the question of whether there had been a change in the baseline state of health of the patient. And the same to the question of whether the patient required the care or support of one or more family members. In this document, the medical doctor also indicates that the Appellant’s spouse will require the care or support of one or more family members until October 12, 2021.¹³

¹¹ See the medical certificate entitled “Medical Certificate for Employment Insurance Family Caregiver Benefits,” issued by Dr. Michel Camiré, orthopedic surgeon, and dated September 17, 2021—GD2-10, GD2-11, GD3-18, and GD3-19.

¹² See section 1(7) of the Regulations.

¹³ See the medical certificate entitled “Medical Certificate for Employment Insurance Family Caregiver Benefits,” issued by Dr. Michel Camiré, orthopedic surgeon, and dated September 17, 2021—GD2-10, GD2-11, GD3-18, and GD3-19.

[12] The Appellant's testimony and statements indicate the following:

- a) His partner had surgery on her right knee on September 7, 2021.¹⁴
- b) During the first two weeks after his partner's surgery, she was unable to get out of bed on her own. The Appellant had to help her. He also helped her get around with a walker and cane during the weeks he cared for her. The Appellant points out that he was worried that his partner might get hurt if she were home alone.¹⁵
- c) The document entitled "Medical Certificate for Employment Insurance Family Caregiver Benefits" indicates that his partner required the care or support of one or more family members. But it does not say that his partner's life was at risk.¹⁶
- d) Although his partner's life was not at risk after her surgery, she needed care and support.¹⁷ The Appellant took time off work for this reason.
- e) The medical doctor also gave the Appellant a medical document dated September 9, 2021. It indicates that he is a caregiver for his partner for one month, given her surgery.¹⁸ This document did not enable the Appellant to get family caregiver benefits.
- f) After his partner's surgery, the Appellant had several meetings with the medical doctor who had performed the surgery. On November 5, 2021, during one of those meetings, the medical doctor told the Appellant that his partner's life was not at risk after her surgery and that, if that had been the case, she would have stayed at the hospital. The medical doctor told him that she needed help at home, however.

¹⁴ See GD2-9, GD3-25, and GD3-26.

¹⁵ See GD3-24.

¹⁶ See GD2-10, GD2-11, GD3-18, and GD3-19.

¹⁷ See GD3-27.

¹⁸ See GD3-21.

g) The Appellant does not have insurance that would have allowed him to get financial support or compensation for the period he cared for his partner.

[13] In this file, I find that the Appellant's explanations and documents cannot entitle him to the family caregiver benefit for adults.

[14] To be entitled to this type of benefit, a claimant has to provide a medical certificate from a medical doctor or nurse practitioner stating that an adult family member of the claimant is critically ill and requires the care or support of one or more family members, and setting out the period during which the adult requires that care or support. Such benefits are not payable unless these three requirements are met.¹⁹

[15] The medical certificate the Appellant submitted says that his partner required the care or support of one or more family members, and it sets out the period during which she required that care or support.²⁰ However, this document does not say that the Appellant's partner was critically ill within the meaning of the Regulations.²¹

[16] The Regulations say that a critically ill person is a person whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.²²

[17] The medical certificate the Appellant provided does not point to this conclusion.

[18] While I sympathize completely with Appellant's case, as a Tribunal member, I remain bound by very clear legislative provisions, which are insufficient to establish his entitlement to family caregiver benefits.

[19] The Federal Court of Appeal tells us that adjudicators, including the Tribunal, are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.²³

¹⁹ See section 23.3(1) of the Act.

²⁰ See GD2-10, GD2-11, GD3-18, and GD3-19.

²¹ See section 1(7) of the Regulations.

²² See section 1(7) of the Regulations.

²³ The Federal Court of Appeal established this principle in *Knee*, 2011 FCA 301.

[20] In short, I find that the disenfranchisement to the EI family caregiver benefit for adults imposed on the Appellant as of September 13, 2021, is justified in the circumstances because he does not meet all the criteria to receive this type of benefit for the period claimed.

Conclusion

[21] I find that the Appellant is not entitled to the family caregiver benefit for adults.

[22] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section