



Citation: *LC v Canada Employment Insurance Commission*, 2022 SST 174

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

**Decision**

**Appellant:** L. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision dated November 1, 2021 (issued  
by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** January 6, 2022

**Hearing participant:** Appellant

**Decision date:** January 26, 2022

**File number:** GE-21-2097

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option. While the Claimant argues that she made a mistake and actually wanted the standard benefits option, she has not shown that she actually meant to choose that 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."<sup>1</sup>

[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. It is just stretched over a different number of weeks.

[5] Once you start receiving parental benefits, you cannot change options.<sup>2</sup>

[6] On her application, the Claimant chose extended parental benefits.<sup>3</sup> She started receiving benefits at the lower extended rate the week of March 19, 2021<sup>4</sup>. But, she actually wanted standard parental benefits. The Claimant says that she always wanted to receive standard parental benefits but chose the wrong option by mistake on the application.<sup>5</sup>

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<sup>1</sup> Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

<sup>2</sup> Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

<sup>3</sup> See Claimant's application for benefits at GD3-3 to GD3-19.

<sup>4</sup> See payment chart at GD3-25.

<sup>5</sup> See Claimant's notice of appeal forms at GD2-1 to GD2-3.

[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.<sup>6</sup>

## **Matters I have to consider first**

### **File history**

[8] This case previously heard at the General Division and that member allowed the appeal in favour of the Claimant.<sup>7</sup> However, it was appealed by the Commission and their appeal was allowed on the basis that there had been an error. The Appeal Division sent it back to the General Division for a new hearing.<sup>8</sup>

### **Documents sent after the hearing**

[9] At the hearing, the Claimant submitted that she was relying on other parental benefits Tribunal cases that were similar to her case. She previously submitted these cases for her hearing at the Appeal Division level.<sup>9</sup> She says that I should decide in a similar manner and allow her appeal.

[10] I explained to the Claimant that Tribunal decisions are persuasive, but they not binding on me. I also noted that Commission and Appeal Division decision had referenced a Federal Court decision called “Karval” that also dealt with parental benefits election.<sup>10</sup>

[11] I asked the Claimant if she had reviewed the Karval case in advance of the hearing and if she could make submissions on the applicability to her case. The Claimant explained that she did not have a chance to review it before the hearing and did not have a copy of the case.

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<sup>6</sup> See Commission’s submissions at GD4-1 to GD4-5; and AD3-1 to AD3-19.

<sup>7</sup> See Tribunal file GE-21-840 for general division decision dated June 8, 2021.

<sup>8</sup> See Tribunal file AD-21-213 for leave to appeal decision dated June 28, 2021 and appeal division decision dated October 29, 2021.

<sup>9</sup> The Claimant’s case submissions can be found at AD4-1 to AD4-22.

<sup>10</sup> See *Karval v Canada* (Attorney General), 2021 FC 395; see Commission’s representations at the appeal division at AD3-1 to AD3-19.

[12] The Tribunal sent the Claimant a copy of the case after the hearing and I gave her some time to review the case and respond.<sup>11</sup> The Claimant responded with her submissions about the Karval case. Her response was sent to the Commission with an opportunity to reply.<sup>12</sup> The Commission did not reply by the deadline, or as of the date of this decision.<sup>13</sup>

## Issue

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

## Analysis

[14] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>14</sup> The law says that you cannot change options once the Commission starts paying parental benefits.<sup>15</sup>

[15] 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 is not 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.

[16] 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.<sup>16</sup> I am not

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<sup>11</sup> See letter dated January 11, 2022 at RGD5-1 to RGD5-2.

<sup>12</sup> See Claimant's post hearing submissions at RGD4-1 to RGD4-7.

<sup>13</sup> See letter dated January 11, 2022 with an opportunity to reply by January 17, 2022 at RGD5-1 to RGD5-2.

<sup>14</sup> 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.

<sup>15</sup> Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

<sup>16</sup> 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.

bound by these decisions, but they can be persuasive. In other words, I do not have to base my decision on them.

### **What the Claimant meant to choose on the application**

[17] 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?

### **The Claimant's position**

[18] The Claimant applied for maternity and parental benefits on November 30, 2021.<sup>17</sup> She says that she made a mistake on her application when she picked the extended option for parental benefits. She meant to pick the standard option.

[19] The Claimant's child was born on January 18, 2021 and she explained that she always intended to take one year off work from work. However, a few months after her child was born, she confirmed with her employer on April 1, 2021 that she wanted to return to work for September 1, 2021.<sup>18</sup>

[20] The Claimant wants the Tribunal to decide that she made a mistake and actually meant to pick standard benefits. Under the extended option, she was receiving \$666.00 (net biweekly), but she wants to be paid the standard rate of \$1,008.00 (net biweekly).<sup>19</sup> She is seeking the difference in money to be retroactively paid to her.

### **The Commission's position**

[21] The Commission says that the Claimant picked the extended option according to her application. They argue that it is too late to change options. The first parental benefit payment was issued by the Commission on March 19, 2021.<sup>20</sup> They submit that she

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<sup>17</sup> See Claimant's application for benefits at GD3-3 to GD3-19.

<sup>18</sup> See Claimant's email to the employer and employer's letter at GD5-11 to GD5-13.

<sup>19</sup> See payment chart at GD3-25.

<sup>20</sup> This payment was for the period of March 14, 2021 to March 20, 2021; See payment chart at GD3-25.

was already paid under the extended option by the time she contacted them to make the switch on April 9, 2021.<sup>21</sup>

## Analysis

### The application form

[22] The Claimant testified that she reviewed and read the application several times. She made several attempts to complete the application. She explained that the application was lengthy. She would start the application and it would eventually “time out”. This meant that she had to restart it on a few occasions.

[23] The Claimant said that she remembered asking a few of her friends questions about the application, specifically about which date she should put as her last day of work in the application.<sup>22</sup> She was not sure what date she should put. She explained that she had been off on sick leave since September 2020 and had received short term disability benefits until the end of November 2020.<sup>23</sup> Around the same time, she applied for maternity and parental benefits before the baby was born because she found out that her child would have some medical issues.<sup>24</sup>

[24] The Claimant said that her husband and friends reviewed the application before it was submitted the Commission to make sure there were no errors. There is a question in the application about third party assistance, so I asked the Claimant why she had not indicated that she had received help with her application form.<sup>25</sup> She explained that she thought it meant third party assistance from a Service Canada agent, so she did not identify her husband and friends who provided her with assistance.

[25] The Claimant said that she works as a nurse and is educated, but she found the application very confusing. She explained that she read the application on multiple occasions and understood the differences between standard and extended parental

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<sup>21</sup> See supplementary record of claim dated April 9, 2021 at GD3-26.

<sup>22</sup> Her last day of work was September 9, 2020.

<sup>23</sup> See record of employment dated October 9, 2020 at GD3-20.

<sup>24</sup> See application for maternity and parental benefits made on November 30, 2020 at GD3-3 to GD3-19.

<sup>25</sup> See GD3-12 for question about third party assistance in the application.

benefits. She agreed that she saw the drop down menu boxes for both available options: standard and extended benefits. She noted that the standard option only went to a maximum of 35 weeks, so she picked the extended option because the drop down box permitted her to pick 52 weeks.<sup>26</sup> This was in line with her intention to be off work for one year.

[26] The Claimant said that she did not seek out any other information from the Service Canada website because she thought her application was correct. However, she did try calling the Commission, but did not have the time to wait on hold and could not remember the dates she tried calling.

### **The Claimant picked the extended parental benefits and it cannot be changed**

[27] I find that the application is clear and sets out the options available for parental benefits. There is an entire page in the application dedicated to information about parental benefits, specifically the standard and extended options.<sup>27</sup> There are also direct links to the website for more information.<sup>28</sup> The application also shows that maternity benefits are available for a maximum of 15 weeks.<sup>29</sup> Part of the application asked the Claimant if she wanted parental benefits to follow after maternity benefits and she said “yes”.<sup>30</sup> This should have triggered the Claimant or any other person offering assistance with her application that maternity and parental benefits were separate.

[28] The Claimant says that she did not see anything in the application that said she could not change her election. However, the application does clearly state that the parental benefit election is irrevocable once parental benefits have been paid.<sup>31</sup>

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<sup>26</sup> The maximum under the extended option is 61 weeks.

<sup>27</sup> See GD3-8 to GD3-9 of the application for benefits for parental benefits section.

<sup>28</sup> See GD3-18 for direct web link to: “*For more information on Employment Insurance Maternity and Parental Benefits*”.

<sup>29</sup> See GD3-8 of the application for benefits for maternity section.

<sup>30</sup> See GD3-8 of the application for benefits for maternity section.

<sup>31</sup> See GD3-9 of the application for benefits under the parental information section.

[29] If the Claimant was confused about any part of the application, she could have sought out other information from the website, reviewed one of the hyperlinks in the application or visited a Service Canada centre. I acknowledge that some centres were closed during the pandemic, so this option may not have been possible.

[30] Alternately, she could have waited on hold to speak to a representative before submitting her application, particularly since she found the application confusing and did not know what date she should list as her last day of work. I note that the Claimant was able to reach an agent to report when her benefit payments were reduced, so she could have called them and waited on the line to obtain the assistance she needed.

[31] The Claimant's husband and friends reviewed her application for errors. I find it unusual that none of them saw the relevant parts of the application that highlight information about maternity and parental benefits, the maximum amounts and the part that says her parental benefit election is irrevocable.

[32] I find that the Claimant made a conscious decision to pick the extended benefit option because the drop down box under the extended option allowed her to select 52 weeks. She read the application, attempted to complete it on more than one occasion, she knew the differences between standard and extended parental benefits and had family and friends review the application before it was submitted. She acknowledged making a human error in her application and I accept that it was made in good faith. However, The Claimant still has a responsibility to carefully read and understand her entitlement options.

### **Return to work date**

[33] The evidence on the Claimant's return work date is not consistent. First, there are three return to work dates in this file: January 18, 2022, March 7, 2022 and September 1, 2021.



[34] The first return to work date was listed in her application for benefits as January 18, 2022.<sup>32</sup> She filled out this application on November 30, 2021, which was before her child was born, so she said that this was just an approximate guess on her behalf. Coincidentally, her child was born on January 18, 2021. I accept that this return to work date does support that she expected to be off work for 52 weeks or one year.

[35] However, the next return to work date was listed in the record of employment issued by the employer on January 26, 2021 for her maternity leave. It identifies that her return to work date would be March 7, 2022.<sup>33</sup> I note that this return to work date appears to support that she actually picked extended benefits. It is consistent with the receipt of 15 weeks of maternity benefits and around 51 or 52 weeks parental benefits. I was not persuaded that this was entirely coincidental.

[36] I asked the Claimant if she knew why the employer had listed March 7, 2022 as the return date on her record of employment. I noted that her human resources manager was listed as a contact for further information on her record of employment. This was the same person who later wrote a letter of support for the Claimant.<sup>34</sup>

[37] The Claimant does not know why the employer put March 7, 2022 as the return to work date on her record of employment. She never followed with her employer to inquire or seek clarification about the date. She suggested that a Service Canada agent may have spoken with her employer to tell them she was taking an extended parental leave. Based on that discussion, the employer would have calculated the date.

[38] I was not persuaded by the Claimant's explanation because there was no evidence in the file that the Commission contacted the employer to notify them of her election for extended parental benefits for 52 weeks. I also find it unlikely that the Commission would contact employers to share private information without the Claimant's consent.

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<sup>32</sup> See GD3-17.

<sup>33</sup> See record of employment at GD3-22.

<sup>34</sup> See box 16 of record of employment at GD3-22 and letter from employer dated May 4, 2021 at GD5-13.

[39] The Claimant said that she always intended to return to work in one year after her child was born on January 18, 2021. However, she changed her mind a few months after her child was born and decided to return to work early because of financial reasons.

[40] To support her position, the Claimant provided a copy of an email dated April 1, 2021 with her human resources manager that confirmed her intent to return to work for September 1, 2021.<sup>35</sup> She also included a letter from her human resources manager that said the Claimant had always intended to be off for one year.<sup>36</sup>

[41] I acknowledge that there are three conflicting return to work dates, some that support she would be off for one year and another that supports she intended to be off for longer than one year.

[42] I find it more likely than not, that the Claimant's return to work date was on or around March 7, 2022 as reflected in her record of employment. This is consistent with her application for benefits and request for maternity benefits to follow by 52 weeks of parental benefits under the extended option. I preferred the initial documentation (i.e. Application for benefits; record of employment) over the other documentation in the file because I find it more reliable. In my view, it is not a simply a coincidence that the employer put March 7, 2022 which is around 51 or 52 weeks. There was no other reasonable explanation for this date.

[43] The evidence shows that the first parental benefit payment was issued by the Commission on March 19, 2021.<sup>37</sup> This means that by the time the Claimant emailed her employer on March 31, 2021, she had already received an extended parental benefit at the lower rate.<sup>38</sup> She decided to return to work much earlier than expected because she was struggling financially.

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<sup>35</sup> See email thread from March 31, 2021 and April 1, 2021 at GD5-11 to GD5-12.

<sup>36</sup> See letter from employer dated May 4, 2021 at GD5-13.

<sup>37</sup> See payment chart at GD3-25.

<sup>38</sup> See email thread from March 31, 2021 and April 1, 2021 at GD5-11 to GD5-12.

[44] I find it more likely than not, that the Claimant was already aware of the reduced parental benefit payment when she emailed her manager and that was the triggering event for her to return back to earlier than she expected, for September 1, 2021.

[45] I was not persuaded by her explanation that when she saw the reduced payment, she thought she was now being paid weekly, instead of biweekly. The Claimant had only ever received biweekly payments from the Commission. Even if that was the case, she could have called the Commission to verify sooner than she did on April 9, 2021 to verify her assumption.<sup>39</sup>

### **Other related cases**

[46] The Claimant submitted several parental benefit election cases with similar facts for consideration. As noted by the previous Appeal Division member, the Tribunal cases were all decided before the Karval decision made by the Federal Court. I am bound by Federal Court decisions.

[47] The Claimant had an opportunity to make submissions about the Karval case.<sup>40</sup> The Commission had an opportunity to provide reply submissions, but did not do so.<sup>41</sup> However, they have previously made submissions about this case at the appeal division.

[48] The Commission says that the Karval case confirms that the maternity and parental benefit scheme is not complicated to understand and that the questions that a Claimant must answer in an application for maternity benefits followed by parental benefits are not objectively confusing or lacking in information.<sup>42</sup> They submit that a Claimant's choices cannot be said to be a result of being misled by the Commission and that there are no legal remedies available where the Claimant simply lacks the necessary knowledge to complete the application.

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<sup>39</sup> See supplementary record of claim dated April 9, 2021 at GD3-26.

<sup>40</sup> The Claimant's submissions about the Karval case are at RGD4-1 to RGD4-7.

<sup>41</sup> See letter dated January 11, 2022 with an opportunity to reply by January 17, 2022 at RGD5-1 to RGD5-2.

<sup>42</sup> See Commission's submissions at the appeal division at AD3-1 to AD3-19.

[49] The Claimant argues that her case is distinguishable for many reasons and that I should not follow the Karval decision. She highlights that the person in that case had no expected return to work date, that person asked for 61 weeks of extended parental benefits and did not contact the Commission until 6 months later after the payment.

[50] I find that the Karval decision applies in this case because while there may be some factual differences, there are some similarities. For example, both Claimants asked for extended benefits and contacted the Commission after they were already paid benefits under the extended option.

[51] There was no basis for the Claimant's confusion or misunderstanding around the application. In my view, the application form provides sufficient information for the Claimant by outlining the differences between standard and parental benefits. She chose to have maternity benefits for 15 weeks and for 52 weeks of extended parental benefits to follow. As I noted above, there is evidence that supports this was her intention and choice. While I acknowledge it was a stressful period for her, she acknowledged reading the application several times and had a few review for errors before submitting it.

[52] There was no evidence that the Claimant was misled and that it caused to pick the incorrect option on the application form. In my view, she made a conscious choice and picked the extended option.

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

[53] I find that the Claimant has not proven that she meant to choose standard parental benefits when she applied. The first parental benefit payment was issued on March 19, 2021. The Claimant did not contact the Commission until April 9, 2021 to request to change it to standard benefit. This was after parental benefits had already been paid. Her election is irrevocable.<sup>43</sup>

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<sup>43</sup> See subsection 23(1.2) of the Act.

[54] I acknowledge that the Claimant wants to retroactively receive standard parental benefits. She has compassionate circumstances. However, I do not have the authority to change the law.<sup>44</sup>

## **Conclusion**

[55] The Claimant chose extended parental benefits.

[56] This means that the appeal is dismissed.

Solange Losier

Member, General Division – Employment Insurance Section

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<sup>44</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.