



Citation: *JJ v Canada Employment Insurance Commission*, 2021 SST 925

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

Decision

Appellant: J. J.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (436274) dated October 19, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas
Type of hearing: Videoconference
Hearing date: November 24, 2021
Hearing participant: Appellant
Decision date: December 6, 2021
File number: GE-21-2080

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant chose extended parental benefits.

Overview

[3] When you fill out your Employment Insurance (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.

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

[6] On her application, the Claimant chose standard parental benefits. She started receiving parental benefits at the normal rate the week of July 25, 2021.³ But, she later decided she actually wanted extended parental benefits.

[7] The Claimant says that she was unsure which parental benefits she wanted to receive but chose the standard option on the application based on the advice she received from a Service Canada agent.

[8] The Canada Employment Insurance Commission (Commission) says that the Claimant chose standard parental benefits and that it is too late to change it because she has already started receiving parental benefits.

[9] The Claimant disagrees and says that when she applied for EI benefits she contacted Service Canada. She was told by a Service Canada agent that she could apply for the standard benefits and if she wanted to change to extended benefits she

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.

³ This payment was issued on August 8, 2021 with a deposit due on August 10, 2021

just had to call Service Canada. She was not told there was a time frame for changing her benefits.

Issue

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

Analysis

[11] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.⁴ The law says that you can't change options once the Commission starts paying parental benefits.⁵

[12] 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.

[13] 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.⁶ 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.

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⁴ 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.

⁵ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

⁶ 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.

What the Claimant meant to choose on the application

[14] 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?

[15] The law is clear that the option can't be changed once you receive benefits. My decision on this issue respect this. I am not changing the Claimant's choice of benefits. I am deciding what option the Claimant meant to select on the form when she applied for benefits.

The parties' arguments

[16] The parties, that is the Commission and the Claimant, do not agree on which option the Claimant chose.

[17] The Commission says that what the Claimant chose on the application tells us which option she wanted. It says that she indicated she wanted the standard option. It argues that it is too late to change options now because she has received parental benefits for her child.

[18] The Claimant says that she should be able to change her selection. She was told by a Service Canada agent when she was applying for benefits that she could change her election by calling them.

[19] The Claimant testified that she is a person who does not make decisions lightly. In support of this statement she submitted documentation in relation to her pregnancy and also her efforts to find out about her benefits prior to taking maternity leave from her employer.

[20] The Claimant testified that she can receive a top-up to her EI benefits from her employer. The top-up is paid while she receives EI benefits. She said that she spoke to her employer's human resources department about the top-up.

[21] The Claimant submitted an email from the human resources department dated January 29, 2021, that explains the top up amount is the same total amount whether it is paid out over 35 weeks or 61 weeks of parental leave. The email estimated that if she chose 35 weeks she would receive \$934.15 weekly in EI benefits and top-up. If she chose extended benefits she would received \$535.98 weekly in EI benefits and top up. In both options, the total amount paid equals \$32,695.25. I note that the employer's estimates are simply estimates and cannot bind the Commission in any way.

[22] The Claimant testified that her employer is very flexible about the amount of maternity leave an employee can take. She said that her employer told her to apply for 18 months of leave. If she decided to come back to work earlier she could do so. She applied for 18 months of leave.

[23] The Claimant testified that she was on bed-rest prior to giving birth. She was recovering from the birth when she applied for EI benefits about a week after her child was born. She contacted Service Canada to find out what benefit would apply to her. She wanted to make sure she had it right because she was not sure if she wanted to take 12 months or 18 months. The Claimant testified the Service Canada agent told her not to worry, to apply for the standard option, it's okay as long as you let us know we can always change it. She was not given a time frame to make the change.

[24] The appeal file shows that the Claimant applied for the standard option on April 7, 2021. She indicated that she would be returning to work with her employer but that she did not know the date of her return.

[25] The appeal file has a Record of Employment (ROE) which shows the Claimant's last day for which paid was March 30, 2021. The ROE states the Claimant's expected date of recall is September 27, 2022. That is a period of 18 months.

[26] The Claimant said she knew the first parental benefit payment would be made on August 10, 2021.

[27] The Claimant said that she wanted to speak to her financial advisor to see if she could swing being off work for 18 months. She was not able to do that while she was off

on bed rest prior to the birth. Her doctor cleared her to resume normal activities in June 2021. She spoke to her financial advisor in the summer of 2021. She said that her advisor told her she could afford to take the 18 months. The Claimant contacted the Commission on October 4, 2021 to request that her parental benefits be changed from standard to extended.

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

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

[29] The Claimant testified that she was aware of the difference in the two benefits. She knew that her parental benefits would start in August 2021. She arranged with her employer to take 18 months of leave, with the knowledge that she could choose to return to work at an earlier date. The ROE supports that the employer was aware Claimant would be returning to work after 18 months of leave.

[30] The Claimant was uncertain which option to choose. She contacted Service Canada for advice. The Claimant chose the standard option on the advice of a Service Canada agent who told her she could change her selection at any time with a phone call. I accept the Claimant's evidence, given in a forthright manner, that the Service Canada agent did not give her a time frame by which she had to advise Service Canada of her decision to change her selection.

[31] I find the Claimant's testimony overwhelmingly supports that she did not truly choose standard parental benefits when she filled out her application. On the advice of the Service Canada agent, she selected standard parental benefits only as a placeholder, knowing that she could change her parental benefit type at a later date.

[32] The Claimant wanted to take 18 months off from work on maternity leave. She had arranged to return to work after 18 months. But she wanted to speak to her financial advisor before she made a final choice on the duration of her maternity leave. Once she spoke to her advisor, she contacted the Commission with her true choice of parental benefit type – the extended option. That is when the Claimant was told that it

was too late to change her parental benefit type. A deadline that she did not know existed.

[33] I find the Claimant's choice on her application doesn't reflect what she wanted for her parental benefit type. In considering the Claimant's evidence, I find it is more likely that she elected to receive extended parental benefits.

[34] The law does not allow a Claimant to change her election after she has been paid parental benefits.⁷ However, as I find the Claimant did not elect standard benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her true choice of extended parental benefits.

Conclusion

[35] The Claimant chose extended parental benefits.

[36] This means that the appeal is allowed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

⁷ See section 23(1.2) of the EI Act