



Citation: *AG v Canada Employment Insurance Commission*, 2021 SST 933

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

Decision

Appellant: A. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (436023) dated October 6, 2021
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois
Type of hearing: Videoconference
Hearing date: November 9, 2021
Hearing participants: Appellant
Decision date: December 10, 2021
File number: GE-21-1994

Decision

[1] The appeal is allowed. The Appellant (Claimant) is not disentitled from receiving benefits from May 24, 2021, to July 15, 2021. She has proven that she meets one of the exceptions to the rule that claimants can't be paid benefits while outside Canada.

Overview

[2] Generally, to receive employment insurance benefits, claimants have to be in Canada. There is an exception if you are outside Canada to have medical treatment that isn't readily or immediately available where you live in Canada.

[3] The Claimant was receiving sickness employment insurance benefits. She notified the Canada Employment Insurance Commission (Commission) that she left Canada to have medical treatment in Columbia.

[4] The Commission decided the Claimant was not entitled to benefits while she was out of Canada. The Commission says the Claimant's medical treatment was readily available in Canada.

Matter I have to consider first

Documents filed after the hearing

[5] I accepted the Commission's post-hearing submissions (GD6). Although the Claimant didn't have the benefit of seeing these before the hearing, she had time to review them afterwards, and to provide her own submissions.

[6] During the hearing, it became evident that the Claimant could have some relevant documents that she hadn't filed. I allowed her time to file those documents. I accepted them as evidence, and they were shared with the Commission. I waited to see if the Commission wanted to file a response.

Issue

[7] Was the Claimant outside Canada for medical treatment that falls within the exception?

Analysis

The rule - EI benefits aren't paid to claimants not in Canada

[8] Claimants are not entitled to receive benefits for any period, expressed in complete, whole days, when they are not in Canada.¹

[9] The Claimant left Canada on May 21, 2021, and returned on July 16, 2021. So unless she falls within an exception to the rule, she isn't entitled to benefits from May 22, 2021, to July 15, 2021.²

The exception to the rule

[10] There is an exception when claimants are outside Canada to undergo medical treatment that is not readily or immediately available where they live in Canada. The treatment has to be at a hospital, medical clinic or similar facility, accredited to provide the medical treatment.³

[11] The onus is on the Claimant to prove that she falls within the exception. She has to prove this on a balance of probabilities.

What the Claimant says

[12] The Claimant says the medical treatment she needed wasn't readily or immediately available in Canada because:

¹ See section 37 of the *Employment Insurance Act and Canada (Attorney General) v Picard*, 2014 FCA 46.

² The Claimant wouldn't be disentitled on May 21, 2021, and July 16, 2021, because she wasn't outside of Canada for those *whole* days.

³ This exception is in section 55(1)(a) of the *Employment Insurance Regulations*.

- May 2021 was the middle of the pandemic. There were backlogs, and everything was closing. Because of this, she couldn't get the treatment she needed in Canada. Not even the screening tests were available.
- The first appointment to see a specialist in Canada was at the end of July 2021. She was able to have her first appointment with a specialist in Columbia on May 18, 2021.⁴
- She says that since the screening appointments take so long, doctors and specialists in Canada say that the results could come too late.
- She tried to pay for an MRI in Canada but wasn't able to get an appointment with the documents the doctor gave her.
- Her MRI appointment was scheduled for August 2021.
- The specialist in Columbia told her that she couldn't wait more than 15 to 30 days to make a decision to remove the mass if it were cancerous. He said waiting until August for her first screening MRI was "strongly ill-advised."

What the Commission says

[13] The Commission says:

- The doctor's note says the Claimant's decision to seek medical treatment in Columbia was personal.
- The medical evidence doesn't address whether the treatment was readily available in Canada.
- The medical documents provided by the specialist do not show that the procedure had to be done within 30 days.

⁴ This was a virtual appointment.

- The treatment was available in Canada even if it would have taken longer than it took to have it done in Columbia.

The exception applies

[14] For the reasons that follow, I find the Claimant has proven it is more likely than not that:

- She had medical treatment outside of Canada
- The treatment was at a hospital, medical clinic or similar facility
- The facility was accredited to provide the medical treatment by an appropriate government authority
- The treatment was not readily or immediately available where she lives

– Medical treatment outside of Canada

[15] I find the Claimant went to Columbia to have medical treatment done. She left Canada on May 21, 2021. She had her first appointment in Columbia on May 25, 2021. This was followed by various tests, consultations, hospitalization and surgery. She returned to Canada on July 16, 2021, before she had her last follow-up appointment.

[16] The Commission says the Claimant underwent “testing,” and testing isn’t “treatment” as required under the exception. The Commission didn’t provide any authority for its statement.

[17] I don’t agree with the Commission’s position. I find that medical treatment includes testing, consultations, biopsies, hospitalization, and surgery. Testing is an integral part of any medical treatment. It is necessary to determine what other medical steps might be needed. The medical note from the Claimant’s treatment physician makes it clear that various testing was and remains necessary.⁵

⁵ The Claimant continues to require monitoring because of the high likelihood of malignancy given her type of neoplasm. See page GD5-2.

– **Treatment at a duly accredited medical clinic**

[18] I am satisfied that the Claimant's medical treatments were done at facilities accredited to provide the medical treatment. The Claimant said this was the case. I have no reason to doubt what she says. I find her testimony is reliable because her statements were genuine and in line with the documentary evidence. The medical documents are on official letterhead. The surgeon treating the Claimant is licenced to practise medicine in Canada. I find it unlikely that he would practise in unaccredited facilities outside Canada.

– **Treatment not readily or immediately available where she lives**

[19] I find the Claimant needed the treatment she received. Her treatment started with a screening MRI and an appointment with a specialist. Since the treating physician referred her to a specialist and ordered an MRI, I find that she needed this treatment.

[20] I find the medical treatment wasn't readily or immediately available in Canada.

[21] The Claimant called the specialist in Canada. She was told her appointment would be at the end of July 2021. I am satisfied that she has proven that the specialist appointment would be at the end of July 2021, at the earliest. Her statements in this matter have been consistent. Her testimony was direct and genuine. I have no reason to doubt what she said about this.

[22] The Claimant has proven that she couldn't have an MRI until August 2021. Her MRI appointment was booked for August 6, 2021.⁶ She couldn't book her own MRI in Canada because she didn't have the correct paperwork.

[23] The Claimant was in significant pain. She required morphine for the pain. Despite her efforts to get treatment earlier in Canada, and her significant pain, I am satisfied that she wasn't able to get earlier appointments.

⁶ See page GD3-24.

[24] I find that having to wait from May 2021 until the end of July 2021 just to see the specialist and until August 2021 to have the first screening MRI means that the treatment was not “readily and immediately” available where she lives in Canada.

[25] Further, there was no guarantee that the Claimant would actually have the required MRI on August 5, 2021. This is because the appointment letter says that there are “often” unforeseen circumstances that could delay the appointment.

[26] The Commission relies on the doctor’s note that says it was a personal choice for the Claimant to seek medical treatment outside Canada. I considered the letter. I find the letter means that the Claimant wasn’t referred for the treatment outside Canada – it was her decision to have it done in Columbia. This isn’t part of the test. There is nothing in the law about the Claimant having to be referred for treatment outside Canada for the exception to apply.

[27] The Commission says that there is no evidence that the treatment had to be done within 30 days. Again, this isn’t the test. The law doesn’t say that the treatment has to be required on an immediate basis. The issue is whether treatment was readily and immediately available where she lives in Canada.

[28] The Commission says that the treatment was available in Canada, even if it took longer. But the test isn’t whether the Claimant can *eventually* get the treatment – it is whether the treatment was readily and immediately available. And I find that it wasn’t.

[29] I considered the length of time the Claimant was outside Canada. I find she wasn’t outside Canada for any longer than was necessary for her to have the medical treatment. This is what I considered. Her treating doctor reported that the total time she spent in Columbia was necessary to complete the studies and make a definite diagnosis.⁷ She had complications that required a few days of hospitalization. Her last appointment was on July 11, 2021. She returned to Canada on July 16, 2021, before receiving the follow-up, which she had virtually, after she returned home. The delay

⁷ See page GD5-2.

between July 11, 2021, and July 16, 2021, was because Air Canada only had flights from there once a week.

– **No disentitlement**

[30] The Claimant meets the criteria for the exception. She has proven that she was away from Canada from May 21, 2021, to July 16, 2021, for medical treatment done at accredited medical facilities. The treatment was not readily and immediately available where she lives in Canada.

[31] Since the exception applies, the Claimant isn't disentitled from receiving benefits for the reason that she was outside Canada.

Conclusion

[32] There is no disentitlement for being outside of Canada because the Claimant has proven that she meets one of the exceptions.

[33] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section