



Citation: *Canada Employment Insurance Commission v LM*, 2022 SST 225

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: J. Villeneuve

Respondent: L. M.

Decision under appeal: General Division decision dated December 6, 2021
(GE-21-2090)

Tribunal member: Jude Samson

Type of hearing: Teleconference

Hearing date: April 6, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: April 6, 2022

File number: AD-21-451

Decision

[1] I am allowing the appeal and giving the decision the General Division should have given. The Canada Employment Insurance Commission (Commission) will continue paying parental benefits to the Claimant under the extended option.

Overview

[2] L. M. is the Claimant in this case. She applied for and received Employment Insurance (EI) maternity benefits, followed by parental benefits. On her application, she had to choose between two parental benefit options: standard or extended.¹

[3] On her application, the Claimant selected the extended option and claimed 61 weeks of benefits. Later, the Claimant said that her plans changed because of the COVID-19 pandemic. She was no longer sure she could take more than a year's leave from her work. So, she called the Commission to discuss her situation.²

[4] The Commission told the Claimant that it was already too late to change to the standard option because it had paid her some parental benefits just a few days before.

[5] The Claimant successfully appealed the Commission's decision to the Tribunal's General Division. The General Division found that the Claimant was confused when completing her application, especially about the total number of weeks of EI benefits that she was claiming. In all the circumstances, the General Division found it was more likely that the Claimant chose the standard option.

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

² Service Canada delivers EI programs for the Commission.

The parties agree on the outcome of the appeal

[6] At the Appeal Division hearing, the parties agreed on the outcome of the appeal. I would summarize their agreement as follows:

- The General Division based its decision on an important mistake about the facts of the case when it found that the Claimant chose the standard option.
- To the contrary, the evidence established that the Claimant had intentionally chosen the extended option. Later, her circumstances changed and she asked the Commission to switch options.³
- In addition, any confusion the Claimant might have been under about the number of weeks of benefits she was claiming was irrelevant. The Claimant would have chosen the extended option regardless.⁴
- In the circumstances, I should give the decision the General Division should have given.

I accept the proposed outcome

[7] The General Division based its decision on an important mistake about the facts of the case. As a result, I am allowing the Commission's appeal and giving the decision the General Division should have given.

[8] The Claimant chose the extended option on her application for EI benefits. Later, her circumstances changed, so she asked the Commission to switch options. By that time, however, she had already received some parental benefits. As a result, it was too late for the Claimant to change options.⁵

³ See, for example, pages GD2-5 and GD3-22 to 23.

⁴ This is because the Claimant was planning to take 15 months' leave from her work and getting EI benefits for 15 months is only available under the extended option.

⁵ See section 23(1.2) of the *EI Act*.

Conclusion

[9] The appeal is allowed.

Jude Samson
Member, Appeal Division