



Citation: *RB v Canada Employment Insurance Commission*, 2021 SST 936

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: R. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (435148) dated September 29, 2021 (issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Videoconference

Hearing date: November 1, 2021

Hearing participants: Appellant

Decision date: November 8, 2021

File number: GE-21-1921

Decision

[1] The appeal is allowed. This means that the Claimant can receive seven weeks of standard parental benefits.

Overview

[2] The Claimant's baby was born on August 25, 2020. The Claimant and his spouse decided to divide the maximum number of standard parental benefits allowed under the *Employment Insurance Act* (EI Act). Since they are sharing parental benefits, the EI Act allows them to take up to five additional weeks of standard benefits.

[3] The two parents decided to take 40 weeks of shared parental benefits. The Claimant understood that he could take parental benefits, including the additional weeks of shared benefits, immediately after his spouse completed her maternity benefits, and 33 weeks of parental benefits. So, he applied for parental benefits and asked to receive seven weeks of benefits, starting on August 8, 2021.

[4] The Commission says that the Claimant cannot receive all seven weeks of parental benefits he requested because standard parental benefits are only payable within the 52-week "parental benefit window" under section 23(2) of the EI Act. It says that the Claimant's parental window ends on August 28, 2021.

[5] The Claimant received three weeks of parental benefits from August 8, 2021, to August 28, 2021. He asks to receive an additional four weeks of shared parental benefits, starting from the week of August 29, 2021. He is appealing the Commission's decision to the Social Security Tribunal.

Issue

[6] Can the Claimant receive seven weeks of standard parental benefits, including four weeks of shared parental benefits taken more than 52 weeks after the birth of his child?

Analysis

[7] Parental benefits are payable to a claimant to care for their newborn child.¹ The EI Act says that parental benefits are usually payable for each week of unemployment in the period that begins with the week in which the child is born or placed with the parent for the purpose of adoption, and ends after 52 weeks.²

[8] The 52-week period after a baby is born or placed is referred to as the “parental benefit window.” This window can be extended in certain circumstances. For example, it can be extended for 26 weeks to allow a claimant to receive extended parental benefits.

[9] When a claimant claims more than one type of special benefit, the parental benefit window is extended to allow them to claim the maximum number of special benefits allowed under the EI Act.³ The period can also be extended when a claimant’s baby is hospitalized.

[10] The maximum number of weeks of parental benefits in a benefit period for an individual claimant is 35 weeks of standard parental benefits or 61 weeks of extended parental benefits, as elected by the claimant.⁴

Additional weeks of shared parental benefits

[11] In 2018, the government passed the *Budget Implementation Act, 2018, No. 2*, which allowed additional weeks of parental benefits when those benefits are shared between two parents.⁵ I will refer to this amending legislation as Bill C-86. The new sections added by Bill C-86 say that when benefits are shared between two parents, they can receive an additional five weeks of standard parental benefits, or an additional eight weeks of extended parental benefits.⁶

¹ Section 23 of the *Employment Insurance Act* (EI Act).

² Section 23(2) of the EI Act.

³ See section 23(3.2) of the EI Act.

⁴ See section 12(3) of the EI Act.

⁵ Sections 23(4), (4.1) and (4.11) were added to the EI Act by section 304 of the *Budget Implementation Act, 2018, No. 2*, S.C. 2018, c. 27.

⁶ See sections 23(4), (4.1) and (4.11) of the EI Act.

Can the Claimant receive shared parental benefits more than 52 weeks after the birth of his baby?

[12] The Claimant can receive seven weeks of parental benefits, including four weeks of shared benefits claimed more than 52 weeks after his baby's birth. The parental window does not apply to prevent him from receiving the additional shared parental benefits allowed under section 23(4) of the EI Act. My reasons are set out below.

Is the wording of the legislation clear?

[13] I think that the wording of section 23 of the EI Act is unclear on whether the parental benefit window applies to prevent a claimant from receiving the extra shared weeks of parental benefits allowed under section 23(4) of the Act.

[14] The Claimant says he reviewed the Service Canada website before claiming benefits. Based on information available, he says he made a reasonable and logical interpretation that two parents' benefits could be taken sequentially. He argues that none of the examples of shared benefits on the government website show a situation where parents took overlapping benefits. The parties agree that the Commission didn't notify the Claimant that it would stop paying his benefits on August 28, 2021.

[15] The Commission says that the EI Act is clear. It argues that parental benefits are only payable during the parental window, which begins with the week in which the child of a claimant is born or placed with the claimant, and ends 52 weeks after that week.

[16] The Commission says that the EI Act must be interpreted in accordance with its plain meaning, and adjudicators have no power to amend the Act, even when there is miscommunication between the Commission and a claimant.⁷ It also relies on the decision of a former Umpire in CUB 46747, which held that a claimant did not qualify for benefits because they claimed benefits more than 52 weeks after the child was placed.⁸

⁷ The Commission's representations on this issue are at GD4-3. It relies on the Federal Court of Appeal decision in *Granger v Canada*, A-685-85.

⁸ The Commission's submissions regarding CUB 46747 are at GD4-3.

[17] I agree with the Commission that the EI Act must be applied as it is written, even if its online communication is confusing. But I respectfully disagree with the Commission's argument that the wording of section 23 of the EI Act on this issue is clear. In fact, there has been significant confusion over whether the parental window applies to the additional shared benefits allowed under section 23(4) of the EI Act.

[18] In a number of previous appeals before this Tribunal, claimants have stated that Commission agents told them they are entitled to claim shared parental benefits one after the other, beyond a parental window of 52 or 78 weeks.⁹ This, in itself, is one significant indicator that the wording of section 23 of the EI Act is unclear.

[19] I also note that CUB 46747 was decided before Bill C-86 was passed to add the additional shared parental benefits to the EI Act. There is, as yet, no guidance from the courts or from the Tribunal's Appeal Division on the interaction between the parental window and the additional shared benefits.

[20] I acknowledge that in most previous decisions, the Tribunal has decided that the parental window applies to claims made for additional shared parental benefits. However, I am not required to follow previous Tribunal decisions and I have decided not to follow them. I think that the legislation is unclear for the following three reasons.

Conflict between the parental benefit window and the added benefits

[21] First, the Commission argues that parental benefits must be claimed within a 52-week parental benefit window. But if a 52-week parental benefit window must be met, it is not mathematically possible for two parents to take all 40 weeks of standard shared benefits sequentially, after a childbearing parent completes 15 weeks of maternity benefits. This is because 15 weeks of maternity benefits, followed by 40 weeks of shared standard parental benefits include a total of 55 weeks of benefits. This does not include any weeks allowed for a waiting period.

⁹ Examples of such cases include: *CF v Canada Employment Insurance Commission*, 2020 SST 784, *MJ v Canada Employment Insurance Commission*, 2020 SST 1178, and *DH v Canada Employment Insurance Commission*, 2020 SST 1197.

[22] There is nothing in the EI Act that states that the extra weeks of shared parental benefits must overlap with the other parent's benefits so that the parents can receive them. The Claimant notes that none of the examples of shared benefits shown on the Service Canada website include situations in which two parents share the additional benefits by staying home and claiming benefits at the same time.

[23] So, I think that the parental window in section 23(2) of the EI Act conflicts with the additional shared benefits allowed under a combination of sections 12(4) and 23(4) of the Act.

[24] I find it unlikely that the government would have introduced additional weeks of shared benefits, only to require the shared benefits to be taken by both parents at the same time. Allowing additional weeks of benefits, but requiring that the weeks overlap, does not necessarily enable a childbearing parent to return to work earlier.

There is no reference to the additional shared parental benefits in the parental window provisions of the EI Act

[25] Second, there is no reference to the additional shared weeks of benefits in sections 23(2) to (3.4) of the EI Act (the parental benefit window provisions). It is true that section 23(2)(b) says that benefits are payable for each week of unemployment in the period "that ends 52 weeks after the week in which the child or children of the claimant are born or [...] placed with the claimant for the purpose of adoption."

[26] But the wording used in section 23(4) of the EI Act, added by Bill C-86 (which allows the additional shared weeks of benefits) expressly refers to the amount of shared weeks of parental benefits as the "*weeks of benefits payable under this section [...] up to a maximum of 40.*"¹⁰ This suggests that the additional shared weeks of benefits are

¹⁰ Section 23(4) of the EI Act says: "If two major attachment claimants each make a claim for benefits under this section — or if one major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.05 — in respect of the same child or children, the weeks of benefits payable under this section, under section 152.05 or under both those sections may be divided between them up to a maximum of 40, if the maximum number of weeks that has been elected under subsection (1.1) or 152.05(1.1) is established under subparagraph 12(3)(b)(i) or 152.14(1)(b)(i), or up to a maximum of 69, if that number of weeks is established under subparagraph

allowed, independent of the parental benefit window. This section does not state that it is subject to section 23(2) of the EI Act.

[27] So, I think that the EI Act is, at best, silent on whether the extra shared benefits are subject to the parental benefit window.

Bill C-86 parental benefit provisions contain important clarifications

[28] Third, when the additional shared benefits were added to the EI Act, Bill C-86 included important clarifications, apparently to ensure that there was no misunderstanding about a claimant's entitlement to benefits.

[29] Section 23(4) of the EI Act says that where two major attachment claimants each make a claim for standard parental benefits, the weeks of benefits payable may be divided between them, up to a maximum of 40 weeks. Section 23(4.1) adds "For greater certainty," that the total number of weeks that can be paid for the same child or children is limited to 40 weeks of standard parental benefits, or 69 weeks of extended parental benefits.

[30] Section 23(4.11) of the EI Act clarifies that the maximum number of weeks that may be paid to an individual claimant is 35 or 61 weeks, even if the number of weeks of benefits is divided in accordance with sections 23(4) and (4.1).

[31] But while Parliament was careful to emphasize any limits on the additional benefits, there is no reference in Bill C-86 to clarify that there is a "parental window" limit and that when shared benefits are claimed, those parental benefits must overlap.

[32] If Parliament had intended to limit the additional shared parental benefits allowed under section 23(4) to a 52 or 78-week parental window, I think it would have done so. This would have been a simple clarification. But the legislation does not include a provision that the shared benefits, if taken, must overlap with the other parent.

12(3)(b)(ii) or 152.14(1)(b)(ii). If they cannot agree, the weeks of benefits are to be divided in accordance with the prescribed rules."

Legislative ambiguity should be resolved in favour of the Claimant

[33] The Supreme Court of Canada has held that the Act is designed to make benefits available quickly to those unemployed persons who qualify under it and so it should be liberally interpreted to achieve that end.¹¹

[34] The Supreme Court of Canada has also held that, in the context of benefits-conferring legislation, an Act ought to be interpreted in a broad and generous manner, and that “any doubt arising from difficulties of language should be resolved in favour of the claimant.”¹²

[35] There is an apparent conflict between the parental benefit window set out in sections 23(2) to (3.4) of the EI Act, and the provisions that allow additional shared weeks of parental benefits set out in section 23(4) of the Act. Since the legislative provisions are unclear, the ambiguity caused by this conflict should be resolved in favour of the Claimant.

So, can the Claimant receive seven weeks of standard parental benefits?

[36] Yes. The Claimant can receive seven weeks of parental benefits. I find that the EI Act allows shared parental benefits, including the additional weeks of standard parental benefits, to be claimed sequentially when the benefits are shared between two parents.

[37] I have considered the wording of section 23 of the EI Act and the legislative intent of the EI Act. I do not agree with the Commission’s argument that the parental benefit window applies to prevent claimants from receiving the additional weeks of benefits allowed under section 23(4) of the EI Act, when those benefits are shared by two parents and taken one after the other.

¹¹ *Abrahams v Attorney General of Canada* [1983] 1 S.C.R. 2 at page 1.

¹² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27. See also *Hills v Canada (Attorney General)*, 1988 CanLII 67 (SCC), [1988] 1 S.C.R. 513, at p. 537.

Conclusion

[38] The appeal is allowed.

[39] This means that the Claimant can receive seven weeks of standard parental benefits, taken immediately after his spouse completed her maternity and parental benefits claim.

Suzanne Graves
Member, General Division – Employment Insurance Section