



Citation: *MN v Canada Employment Insurance Commission*, 2022 SST 245

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:	M. N.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated January 21, 2022 (issued by Service Canada)
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Tribunal member:	Gary Conrad
Type of hearing:	Videoconference
Hearing date:	March 23, 2022
Hearing participant:	Appellant
Decision date:	March 25, 2022
File number:	GE-22-314

Decision

[1] The appeal is dismissed.

[2] The evidence shows the Claimant selected the extended benefits 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.”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. 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 can't change options.²

[6] On her application, the Claimant chose extended parental benefits. She says this was a mistake and she always wanted standard benefits.

[7] She called the Canada Employment Insurance Commission (Commission) to try and change her benefits to standard once she saw the lower payment in her account.

[8] The Commission told the Claimant they could not change her benefit type as the law says the parental benefit type cannot be changed once she has been paid.

[9] The Claimant appealed this decision to the General Division of the Social Security Tribunal (Tribunal).

[10] She was successful. The General Division determined the Claimant had mistakenly selected extended parental benefits and had always wanted to elect standard parental benefits, and awarded her standard parental benefits.

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.

[11] The Commission appealed the General Division's decision to the Appeal Division and won. The Appeal Division overturned the initial decision of the General Division and sent it back to the General Division for reconsideration.

[12] This is how the appeal ended up in front of me.

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.³ The law says that you can't change options once the Commission starts paying parental benefits.⁴

[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 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.

What the Claimant meant to choose on the application

[16] 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?

³ 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.

⁴ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

The parties' arguments

[17] The Commission submits the evidence shows the Claimant was informed on the application for parental benefits of the difference between standard parental benefits and extended parental benefits and elected to receive extended parental benefits. The Claimant was also informed that the decision was irrevocable once parental benefits were paid.⁵

[18] The Claimant says that for her first child she picked standard parental benefits, as she only wanted to be away from work for one year. The Claimant says this fact should have clued the Commission in to the possibility she made a mistake when she selected extended benefits on the current application.

[19] The Claimant testified that she had been going through a very tough time prior to giving birth.

[20] She had fallen and broken her ankle, and the fall made her worried that harm had come to her unborn baby.

[21] Certain social situations in American had also triggered the trauma she had suffered growing up in a country racked by war. This resulted in the Claimant having mental health issues that required her to be off work on short-term leave. This was on top of the stress that came from the COVID-19 pandemic. The Claimant says she was attending counselling.

[22] The Claimant says that after all this, she was alone when trying to complete the application for benefits, as she had no family support at the time, her husband was not in the country, and she was looking after her two year old child.

[23] The Claimant says in light of all that she was going through it is not difficult to imagine she made a mistake when completing the application for benefits.

⁵ GD04-3

[24] The Claimant testified that she does not remember why she chose 52 weeks of benefits if she always wanted standard, she says it is possible she chose that number just by calculating how many weeks are in a year as she wants to be off for a year.

[25] The Claimant testified that she does not recall reading the information in the application form at all, or why she made the choices she did when she completed it.

[26] The Claimant says this entire process has been extremely frustrating for her and she wishes the Commission had bothered to even ask what was going on in her life when she was completing the application, so she could have let them know about her mental health struggles, before they bothered to deny her request to change her benefit type.

[27] The Claimant says this entire mess could have been avoided if the Commission simply had an automated process that sent out a letter, or an email, to claimants to let them know, about a month ahead of time, that on X date their maternity benefits would end and their parental benefits would start at a rate of Y.

[28] She says such a letter would have immediately clued her in that something was wrong, as the low rate of benefits would have jumped out at her.

[29] Then she could have easily called in ahead of time and corrected the mistake.

[30] The Claimant says hers in is not an isolated incident as she knows other women that have gone, or are going through, the same thing.

[31] I agree with the Claimant that this entire issue, and many others like it, could have been avoided if the Commission had simply sent some sort of automated form letter prior to the Claimant's parental benefits starting, informing her of the date they would commence and her rate of pay.

[32] However, while I agree with the Claimant on this point, I do not have the power to force the Commission to do anything in regard to changing their operational policies or practices. I can only strongly suggest they consider the Claimant's suggestion to avoid future incidents like the Claimant's.

[33] In regard to the main issue under appeal, I find the Claimant always intended to select extended parental benefits

[34] I do not doubt the Claimant was having mental health struggles, and that it was difficult to manage her pregnancy, taking care of her new born, and filling out the application for benefits, all on her own.

[35] However, the Claimant has not demonstrated that she was in such a state that she was unable to understand the information on the parental benefits application.

[36] She managed to fill out the parental application and provide all the requested information which supports she was capable of reading and understanding the information presented to her on the form.

[37] I understand the Claimant's argument that she selected 52 weeks as that would represent a year, the total time she wanted to take off of work, but the selection of the amount of weeks is not determinative of her choice of benefits.

[38] It is true that 52 weeks is neither the 35 weeks maximum of standard benefits or the 61 weeks maximum of extended benefits, but a person is not required to select the maximum amount of weeks offered. If a person wanted to take more than 35 weeks of parental benefits they would have to select extended, whether they wanted to take 61 weeks or not.

[39] So, the fact that someone chose a number less than the maximum weeks offered by extended does not mean that choice points to a mistake in their initial selection of which parental benefit they wanted.

[40] Regardless of that, there is a larger obstacle facing the Claimant in proving that her intention was always to select standard parental benefits.

[41] The parental benefits application form states there two types of benefits; standard which pays 55% of a claimant's weekly insurable earnings and extended which pays 33% of a claimant's weekly insurable earnings. This part of the form clearly explains that extended benefits will pay you significantly less than standard.

[42] Despite this information, the Claimant selected extended.

[43] I asked her why she would pick extended benefits, since the form says they pay 22% less than standard, if her concern is having to survive for an extended period of time on lower payments.

[44] The Claimant told me she could not recall reading that information.

[45] I find that explanation does not adequately explain away why the Claimant would choose extended, which is clearly stated to pay less than standard, if she always intended to select standard benefits.

[46] I note that the Federal Court has said the questions on the application are clear. The Federal Court has also said it is the responsibility of the Claimant to carefully read and attempt to understand their entitlement options and that there is no legal remedy available for failing to accurately answer unambiguous questions.⁶

[47] I find, as the form is clear how extended benefits work and that they pay less, and the Claimant chose extended, if she did it from failing to read or understand what she read, there is no remedy available for her as it is her responsibility to ensure she reads and understands what she is applying for.

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

[48] I find that the Claimant hasn't proven that she meant to choose standard parental benefits when she applied.

[49] I understand that the Claimant wants to receive standard parental benefits. But, the law is clear that the option can't be changed once you have received benefits. While I sympathize with the Claimant's situation, she asked for the change in benefits on May

⁶ *Karval v Canada (Attorney General)*, 2021 FC 395. para 14.

12, 2021,⁷ which is after she was paid benefits on May 7, 2021,⁸ and I can't change the law.⁹

Conclusion

[50] The Claimant chose extended parental benefits.

[51] This means that the appeal is dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section

⁷ GD03-22

⁸ GD03-21

⁹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.