



Citation: *IF v Canada Employment Insurance Commission*, 2021 SST 937

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

**Decision**

**Appellant:** I. F.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (436666) dated October 18, 2021  
(issued by Service Canada)

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**Tribunal member:** Suzanne Graves  
**Type of hearing:** Teleconference  
**Hearing date:** November 8, 2021  
**Hearing participant:** Appellant  
**Decision date:** November 18, 2021  
**File number:** GE-21-2016

## Decision

[1] The appeal is allowed. This means that the Claimant can receive up to five weeks of parental benefits.

## Overview

[2] The Claimant's baby was born on September 4, 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. His spouse received 15 weeks of maternity benefits, and 35 weeks of parental benefits. The Claimant stopped working and applied for five weeks of parental benefits, to start immediately after his spouse's maternity and parental claim was complete.

[4] The Commission says that the Claimant cannot receive any parental benefits 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 September 13, 2021.

[5] The Claimant says he provided all relevant information on his claim form, but received no prompts regarding any issue with his claim. He began his parental leave, and called Service Canada when he did not receive any benefits. The agent told him his file was under review. The following week he was told he would not receive parental benefits. He returned to work as soon as he knew would not get any benefits. As a result, he says he unexpectedly missed receiving any income for four weeks.

## Issue

[6] Can the Claimant receive the additional weeks of shared standard parental benefits 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.<sup>1</sup> 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.<sup>2</sup>

[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.<sup>3</sup> 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.<sup>4</sup>

### 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>1</sup> Section 23 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> Section 23(2) of the EI Act.

<sup>3</sup> See section 23(3.2) of the EI Act.

<sup>4</sup> See section 12(3) of the EI Act.

<sup>5</sup> 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.

<sup>6</sup> 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 up to five weeks of parental 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.

## **Does the EI Act clearly prevent the Claimant from receiving shared parental benefits beyond September 13, 2021?**

[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 Commission says that the EI Act clearly prevents the Commission from paying the Claimant any standard parental benefits beyond September 13, 2021.<sup>7</sup> 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.

[15] 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.<sup>8</sup> 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.<sup>9</sup>

[16] The Claimant says that he called the Commission before starting his parental leave. He was told that he had to apply when he left his job. He understood that he was eligible for five weeks of benefits. He provided all of the required information to the

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<sup>7</sup> The Commission's representations on this issue are at GD4-3. At GD4-4, it also relies on the Federal Court of Appeal decision in *Canada (AG) v Knee*, 2011 FCA 301.

<sup>8</sup> The Commission's representations on this issue are at GD4-3.

<sup>9</sup> The Commission's submissions regarding CUB 46747 are at GD4-4.

Commission in his application dated September 9, 2021. The system gave no indication of any problems with his claim, and he began his leave.

[17] When received no payments, he began calling Service Canada. Initially he was told his file was under review, and that he would soon start receiving benefits. On October 7, 2021, an agent told him he was not eligible for benefits. He returned to work on October 11, 2021, after four weeks of unpaid leave.

[18] I agree with the Commission that the EI Act must be applied as it is written. If the only issue in this case was misleading or incomplete information provided by Service Canada, I would have agreed with the Commission's position.

[19] 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.

[20] 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.<sup>10</sup> This, in itself, is one significant indicator that the wording of section 23 of the EI Act is unclear.

[21] 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.

[22] I acknowledge that in most previous decisions, the Tribunal has decided that the parental window applies to claims made for additional shared parental benefits.

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<sup>10</sup> 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.

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**

[23] 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 following a child's birth. 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.

[24] 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. 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.

[25] 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**

[26] 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."

[27] 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.*”<sup>11</sup>

[28] This suggests that the additional shared weeks of benefits are allowed, independent of the parental benefit window. This section does not state that it is subject to section 23(2) of the EI Act.

[29] So, I think that the EI Act is ambiguous, or 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**

[30] 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.

[31] 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.

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<sup>11</sup> 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 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.”

[32] 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).

[33] But while Parliament seemed 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 may have to overlap.

[34] If the government 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 additional shared benefits, if taken, must likely overlap with the other parent.

### **Legislative ambiguity should be resolved in favour of the Claimant**

[35] 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.<sup>12</sup>

[36] 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.”<sup>13</sup>

[37] 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

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<sup>12</sup> *Abrahams v Attorney General of Canada* [1983] 1 S.C.R. 2 at page 1.

<sup>13</sup> *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.



provisions are unclear, the ambiguity caused by this conflict should be resolved in favour of the Claimant.

### **So, can the Claimant receive the additional weeks of shared standard parental benefits?**

[38] Yes. The Claimant can receive up to five weeks of shared 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.

[39] 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 they make claims one after the other.

### **Conclusion**

[40] The appeal is allowed.

[41] This means that the Claimant can receive up to five 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