



Citation: *RA v Canada Employment Insurance Commission*, 2022 SST 314

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** R. A.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 5, 2022  
(GE-21-2417)

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**Tribunal member:** Charlotte McQuade

**Decision date:** April 29, 2022

**File number:** AD-22-64

## Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

## Overview

[2] R. A. is the Claimant. He applied for seven weeks of family caregiver benefits to look after his mother. The Canada Employment Insurance Commission (Commission) decided the Claimant could not be paid benefits because he did not submit a medical certificate that met all the requirements necessary to receive family caregiver benefits. Specifically, the Claimant did not provide a medical certificate saying that his mother's life was at risk as a result of her illness or injury.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. He argued that, even though the medical certificates he provided did not say his mother's life was at risk, she was still "critically ill."

[4] The General Division decided that the Claimant was not entitled to family caregiver benefits. This was because the medical certificates provided did not say the Claimant's mother's life was at risk as a result of her illness or injury. The Claimant disagrees with the General Division's decision.

[5] The Claimant is now asking for permission to appeal this decision. He says the General Division made an error of law when it decided he had to provide a medical certificate certifying his mother's life was at risk as a result of her illness or injury. He also says the General Division based its decision on an important error of fact when it decided the medical certificates submitted did not certify his mother was a "critically ill adult."

[6] I am refusing permission to appeal because I am satisfied the Claimant's appeal has no reasonable chance of success. This means the Claimant's appeal ends here.

## Issues

[7] The Claimant's application to the Appeal Division raises the following issues:

- a) Is it arguable that the General Division made an error of law when it decided that the Claimant had to provide a medical certificate certifying his mother's life was at risk as a result of her illness or injury?
- b) Is it arguable that the General Division based its decision on an important error of fact when it decided the medical certificates did not certify the Claimant's mother was a "critically ill adult"?

## Analysis

[8] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal is decided.

[9] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.<sup>1</sup> The law says that I can only consider certain types of errors.<sup>2</sup> A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.<sup>3</sup>

[10] The Claimant's application for leave to the Appeal Division raises a possible error of law and a possible important error of fact. I can consider these kinds of errors.

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<sup>1</sup> Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), says this is the test I have to apply.

<sup>2</sup> Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to proceed with an appeal. These errors are that the General Division breached natural justice, made an error of jurisdiction, made an error of law or based its decision on an important error of fact.

<sup>3</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a "reasonable chance of success" means.

## **It is not arguable that the General Division made an error of law**

[11] It is not arguable that the General Division made an error of law when it decided that the Claimant had to provide a medical certificate confirming his mother's life was at risk as a result of her illness or injury.

[12] Family caregiver benefits for adults are payable to a family member of a "critically ill adult" so that they can care for that adult. However, for those benefits to be paid, the law says a medical certificate must be provided that certifies the adult is a "critically ill adult" and requires the care or support of one or more family members. The medical certificate must also state the period during which the adult requires that care or support.<sup>4</sup>

[13] A "critically ill adult" is defined in the law as a person over 18 years of age and whose "baseline state of health has significantly changed and whose life is at risk as a result of the illness or injury."<sup>5</sup> So, the medical certificate must certify that the adult's life is at risk as a result of the illness or injury.

[14] The General Division had to decide whether the Claimant had provided a medical certificate that certified all of the requirements. It is not enough for the medical certificate to certify only some of the requirements.

[15] The Claimant argued before the General Division that his mother was "critically ill," which is why he left Canada to care for her for seven weeks. His mother required care. She needed help with walking, medical appointments, cooking and cleaning. The Claimant argued that the second medical certificate he provided confirmed there had been a significant change in his mother's baseline health, which he says proves she was a "critically ill adult."

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<sup>4</sup> The requirements to receive family caregiver benefits for adults are set out in section 23.3(1) of the *Employment Insurance Act*.

<sup>5</sup> See section 1(7) of the *Employment Insurance Regulations* for the definition of "critically ill adult."

[16] The General Division understood that the Claimant's mother needed his care. However, because the medical certificates provided did not say the Claimant's mother's life was at risk as a result of illness or injury, the General Decision decided the Claimant could not be paid family caregiver benefits.<sup>6</sup>

[17] In his application to the Appeal Division, the Claimant argues that the General Division erred in law in its interpretation of "critically ill adult." He says the General Division based its decision only on the question in the medical report about whether the patient's life is at risk as a result of illness or injury. He maintains that the definition of "critically ill adult" is a person "whose baseline state of health has significantly changed" **or** "whose life is at risk as a result of an illness or injury." The Claimant argues the medical certificates he had provided show his mother met this definition.

[18] I cannot agree. The law is clear. The medical certificate must certify all the requirements set out in the law. One of those requirements is that the medical certificate must state that the Claimant's mother's life was at risk as a result of the illness or injury.

[19] Although the second medical certificate confirmed that there had been a significant change in the Claimant's mother's baseline health, neither of the medical certificates on file certified that the Claimant's mother's life "was at risk as a result of illness or injury."

[20] The General Division had no choice but to find the Claimant was not entitled to family caregiver benefits because he had not submitted a medical certificate with all the certifications required by law.

**It is not arguable the General Division based its decision on an important error of fact**

[21] It is not arguable that the General Division may have based its decision on an important error of fact when it decided the medical certificates the Claimant provided did not certify his mother was a "critically ill adult."

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<sup>6</sup> See paragraph 16 of the decision.

[22] The Claimant argues that the General Division did not consider the medical certificates, which said there was a significant change in the baseline state of health of his mother. They also said she required an operation in the hospital and needed the care and support of a family member.

[23] The General Division was aware of these facts. The General Division acknowledged that the medical certificates said the Claimant's mother's baseline state of health had changed and that she required the Claimant's help. However, the General Division found the Claimant had not provided a medical certificate that met all the requirements of the law to receive family caregiver benefits. Specifically, neither of the two medical reports certified that the Claimant's mother's life was at risk as a result of illness or injury.

[24] I have reviewed the two medical certificates on file. Neither one certifies that the Claimant's mother's life was at risk as a result of illness or injury.<sup>7</sup>

[25] The Claimant has not pointed to any evidence that the General Division overlooked or that contradicted its conclusion. Unless the Claimant had provided a medical certificate that certified his mother's life was at risk as a result of her illness or injury, the Claimant could not be paid family caregiver benefits. This is the case even if the medical certificates said the Claimant's mother's baseline state of health had changed and she required the care of a family member.

[26] I have reviewed the entire written record and listened to the recording of the hearing. I am satisfied that the General Division did not misunderstand or ignore evidence that could have an impact on the outcome of this appeal.

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<sup>7</sup> See GD3-18 and GD3-25.

[27] I sympathize with the Claimant's situation. However, neither the General Division nor the Appeal Division can step outside the law to decide the Claimant can be paid family caregiver benefits where the legal requirements to receive those benefits are not met.<sup>8</sup>

## **Conclusion**

[28] I am refusing permission to appeal is refused. This means that the appeal will not proceed.

Charlotte McQuade  
Member, Appeal Division

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<sup>8</sup> See *Canada (Attorney General) v Levesque*, 2001 FCA 304; and *Pannu v Canada (Attorney General)*, 2004 FCA 90.