



Citation: *AZ v Canada Employment Insurance Commission*, 2021 SST 952

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

Decision

Appellant: A. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (430996) dated August 18, 2021
(issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Videoconference

Hearing date: September 7, 2021

Hearing participants: Appellant

Decision date: September 23, 2021

File number: GE-21-1492

Decision

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

Overview

[2] The Claimant's baby was born on June 23, 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] After getting advice from Service Canada, the two parents decided to take 40 weeks of shared parental benefits. The Commission told him he could receive five weeks of shared benefits, either at the same time as his spouse, or immediately after she completed her maternity/parental benefits claim. So, he applied for parental benefits and asked to receive five weeks of benefits, starting on June 27, 2021.

[4] The Commission refused the Claimant's request to claim parental benefits. It says he cannot receive any weeks of standard parental benefits because parental benefits are only payable within the 52-week "parental benefit window" under section 23(2) of the EI Act.

Post-hearing submissions

[5] I asked the Commission to clarify its interpretation of section 23 of the EI Act and it made additional representations. I sent the Commission's submissions to the Claimant and he made arguments in response. The Commission notified the Tribunal that it had no further representations in reply.

Issue

[6] Can the Claimant receive five weeks of shared standard parental benefits more than 52 weeks after the week of 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 by the Commission 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. The period can also be extended when a claimant’s baby is hospitalized.

[9] The law also says that 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

[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,

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.

they can receive an additional five weeks of standard parental benefits, or an additional eight weeks of extended parental benefits.⁶

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

[12] The Claimant can receive five weeks of shared parental benefits more than 52 weeks after the birth of his baby. The parental benefit 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.

The wording of the legislation is unclear

[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 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 it cannot interpret the EI Act in any way other than its plain meaning, and it has no power to amend the Act.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

[16] I agree that the EI Act must be applied as it is written. But I respectfully disagree with the Commission's argument that the wording of section 23 of the EI Act on this issue is clear.

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

⁷ The Commission's representations on this issue are at GD4-2 to 3. It relies on the Federal Court of Appeal decision in *Granger v Canada*, A-685-85.

⁸ The Commission's representations on this issue are at GD4-2.

[17] In fact, there has been a great deal of confusion over whether the parental window applies to the additional shared benefits allowed under section 23(4) of the EI Act. 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.

[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 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] In this case, the Claimant says that he and his spouse consulted two Service Canada agents before making his claim. They wanted to ensure they would meet the legislated criteria, while maximizing the amount of time they could stay home to provide childcare for their baby. They gave specific information to both agents, including the child's birthdate and the intended leave dates.¹⁰

[20] The Claimant testified that Service Canada told the couple that as long as his five-week parental benefits immediately followed, or overlapped with, his spouse's maternity and parental benefits claim he would qualify for parental benefits.

[21] When the Commission refused his claim, the Claimant followed up with Service Canada. An agent informed him that internal errors had occurred, but that the EI Act prevents payment of his parental benefits.

[22] The Claimant argues that it is inadequate for the Commission to rely on the decision in *Granger*,¹¹ a 35-year-old precedent, to support its position. He says that the Commission owes a duty of care to provide claimants with accurate information.¹²

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.

¹⁰ The Claimant's representations on this issue are at GD2-5.

¹¹ *Granger v Canada*, A-685-85.

¹² The Claimant's argument on this issue is set out in GD8-2 to 3. He relies on the decision of the BC Supreme Court in *Leroux v. Canada Revenue Agency*, 2014 BCSC 720.

[23] 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.

[24] 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. I have decided not to follow previous decisions on this issue because I think that the legislation is unclear for the following three reasons.

Conflict between the parental benefit window and the added benefits

[25] 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.

[26] The Commission argues that section 23(4) of the EI Act does not indicate when or prescribe the window for when the maximum 40 weeks of shared parental benefits can be paid.¹³ I agree. But section 23(4) also does not state that it is limited to the parental benefit window under section 23(2) of the EI Act. Given the mathematical impossibility of two parents taking all 40 weeks of standard parental benefits sequentially, I think that the two sections are in conflict.

[27] 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, 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.

¹³ The Commission's representations on this issue are at GD6-1 to 2.

[28] 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

[29] 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.”

[30] But the wording used in section 23(4) of the EI Act is very similar to the wording used in section 23(2). Section 23(4) (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.*”¹⁴ This suggests that the additional shared weeks of benefits are allowed, independent of the parental benefit window.

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

¹⁴ 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.”

Bill C-86 parental benefit provisions contain important clarifications

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

[33] 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.

[34] 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 are divided in accordance with sections 23(4) and (4.1).

[35] 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 maximum benefits are claimed, shared parental benefits must overlap.

[36] 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 an important clarification. But the government did not include any provision to clarify that the shared benefits, if taken, must overlap with the other parent.

The government's stated intent regarding the extra shared benefits

[37] Since I think that the wording of the legislation is unclear, I will consider the objects and purposes of the EI Act, as well as the stated intent of the Bill C-86 amendments to the Act.

[38] I will first consider the legislative documents relating to the legislation that allowed the additional weeks of benefits.

[39] During legislative debate on Bill C-86, the government made statements in the Legislature regarding the proposed new sections of the EI Act. I think that there are clear indications in those statements that the government intended that Bill C-86 would extend the parental benefit period by five weeks for standard parental benefits and by eight weeks for extended parental benefits.

[40] Mr. Joël Lightbound sponsored second reading of Bill C-86 on November 1, 2018.¹⁵ His statement to the Legislature, as reported in Hansard, included the following:

... the government wants to make the EI system more flexible and encourage a more balanced sharing of responsibilities, so that both parents get to spend time with their young children while pursuing careers.

To support young families and promote gender equality at work and at home, the act proposes a new EI parental sharing benefit that ***will encourage a more balanced sharing of family and work responsibilities by providing five additional weeks of benefits in cases where both parents agree to share their parental leave. This period will be extended to eight weeks if the parents opt for extended parental benefits. This optional incentive will encourage the second parent in two-parent families to share equally in parenting responsibilities. New mothers will have more flexibility to return to work sooner if they wish.*** Equitable parental leave could lead to fairer hiring practices, which would reduce conscious or unconscious discrimination against women by employers. (emphasis added)

[41] Ms. Pam Damoff also spoke in the Legislature at second reading.¹⁶ Her statements are recorded in Hansard as follows:

During our study on economic security of women, we also heard about the importance of both parents sharing parental leave to support gender equality in the home and in the workplace. The budget implementation act would implement the new employment insurance parental sharing benefit. The changes would give greater flexibility to parents by providing an additional five weeks of use-it-or-lose-it parental benefits when both parents agree to share parental leave.

¹⁵ Statement by Joel Lightbound (Parliamentary Secretary to the Minister of Finance, Lib.). Debates, 42nd Parliament, 1st Session, Edited Hansard • Number 347, Thursday, November 1, 2018.

(<https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-347/hansard#10347307>)
¹⁶ Statement by Ms. Pam Damoff (Oakville North—Burlington, Lib.). Debates, 42nd Parliament, 1st Session, Edited Hansard • Number 347, Thursday, November 1, 2018.
 (<https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-347/hansard#10347307>)

[42] I recognize that statements in the Legislature do not override the text of a statute. But these statements provide some insight into the intention of Parliament.

[43] I also note that in related provisions, Bill C-86 amended the *Canada Labour Code* to increase the aggregate amount of leave for two employees in respect of the same child or children to 86 weeks:¹⁷

Aggregate leave — maternity and parental

206.2 The aggregate amount of leave that may be taken by more than one employee under sections 206 and 206.1 in respect of the same birth shall not exceed 86 weeks, but the aggregate amount of leave that may be taken by one employee under those sections in respect of the same birth shall not exceed 78 weeks.

Legislative ambiguity should be resolved in favour of the Claimant

[44] 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.¹⁸

[45] 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.”¹⁹

[46] 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.

¹⁷ This extension appears to account for the increase in the number of weeks of extended parental benefits allowed under the EI Act.

¹⁸ *Abrahams v Attorney General of Canada* [1983] 1 S.C.R. 2 at page 1.

¹⁹ *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.

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

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

[48] I have considered the wording of section 23 of the EI Act, the legislative intent of the EI Act, and the stated intent of Bill C-86, which added the additional weeks of shared standard parental benefits.

[49] 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.

Conclusion

[50] The appeal is allowed.

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

Suzanne Graves
Member, General Division – Employment Insurance Section