



Citation: *JM v Canada Employment Insurance Commission*, 2021 SST 945

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

Decision

Appellant: J. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (434612) dated September 22, 2021 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Videoconference

Hearing date: November 16, 2021

Hearing participant: Appellant

Decision date: November 30, 2021

File number: GE-21-2009

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option.

[3] The Claimant argues that she made a mistake, based on advice received from a Service Canada agent, and actually wanted the standard benefits option. And, she has shown that she actually meant to choose that option.

Overview

[4] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."¹

[5] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays benefits at a lower rate for up to 61 weeks.

[6] Once you start receiving parental benefits, you can't change options.²

[7] On her application, the Claimant chose extended parental benefits. She started receiving benefits at the lower rate for the week of August 15, 2021. But, she actually wanted standard parental benefits.

[8] The Claimant says that she always wanted to receive standard parental benefits but chose the wrong option because that was the advice she was given when she spoke to a Service Canada agent for assistance when completing her application for 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.

[9] The Canada Employment Insurance Commission (Commission) says that the Claimant made her choice and that it is too late to change it because she has already started receiving benefits.

[10] The Claimant disagrees and says that she made the choice of extended benefits when she was advised to do so by a Service Canada agent. When she was applying on-line for maternity and parental benefits she was asked if she wanted to renew her claim or start a new claim. She did not know what that meant so she contacted Service Canada. She spoke to a Service Canada agent who advised her to request extended benefits even though she intended to return to work prior to the end of those benefits and really wanted standard benefits.

Issue

[11] Which type of parental benefits did the Claimant actually want when she made her choice on the application?

Analysis

[12] 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

[13] 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 for me 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.

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.

[14] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant's choice when they filled out their application.⁵ I am not bound by these decisions. In other words, I don't have to base my decision on them. But, I find them persuasive, and I am choosing to follow them.

What the Claimant meant to choose on the application

[15] 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?

[16] The law is clear that the option can't be changed once you receive benefits. My decision on this issue respects this. I am not changing the Claimant's choice of benefits. I am deciding what option the Claimant **meant** to select on the form **when** she applied for benefits.

The parties' arguments

[17] The Commission says that what the Claimant chose on the application tells us which option she wanted. It says that she indicated she wanted the extended option. It argues that it is too late to change options now because she has received parental benefits for her child.

[18] The Claimant testified that her employment is project based. She will be hired by a company and will work with that company until the project is completed. The company ceases to exist once the project is completed.

[19] The Claimant said that she had been laid off from a company when her contract ended in December 2020. She applied for regular EI benefits and established a benefit

⁵ See *MC v Canada Employment Insurance Commission*, 2019 SST 666; *Canada Employment Insurance Commission v JH*, 2020 SST 483; *Canada Employment Insurance Commission v TB*, 2019 SST 823; *MH v Canada Employment Insurance Commission*, 2019 SST 1385; *VV v Canada Employment Insurance Commission*, 2020 SST 274; *ML v Canada Employment Insurance Commission*, 2020 SST 255; *RC v Canada Employment Insurance Commission*, 2020 SST 390.

period beginning on December 20, 2020. She was then paid regular EI benefits until she started work on January 8, 2021 with another company.

[20] The Claimant then worked from January 8, 2021 to April 30, 2021, when she stopped working due to the end of her contract. Her child was due to be born shortly after that date so she applied for maternity benefits on May 7, 2021.

[21] The Claimant testified that as part of the application process on May 7, 2021, she was asked if she wanted to renew her existing claim for EI benefits or did she want to start a new claim. The Claimant was not sure what that meant in terms of the benefits she could receive and so she called Service Canada for advice.

[22] The Claimant testified that during her call to Service Canada she asked the Service Canada agent how to fill out the form. They discussed the standard and extended benefit options. The Claimant explained that the project she was working on had ended and she did not have an employer to return to after her maternity and parental period. She said the agent was able to see that her current benefit period ended on December 19, 2021. The agent advised the Claimant that she should make sure to call in by December 12, 2021 to make a new claim by that date.

[23] The Claimant testified that the agent told her to select extended benefits in the May 2021 renewal application and if the Claimant did not want the extended benefits to start with her new claim in the new year, she could make that decision by December 12, 2021. The Claimant understood from that conversation that the "old" or existing claim she was on would continue as regular EI benefits and the "new" claim set to begin after December 19, 2021, would be the maternity and parental benefits claim. Whatever she got in regular EI would be deducted from her maternity and parental benefits.

[24] To her mind, the Claimant thought that the Service Canada agent's explanation meant that by selecting the extended option and 61 weeks she was bookmarking the type of parental benefits that she wanted to get in the new claim once the old claim expired.

[25] The Claimant noted that the Service Canada agent she was speaking with put her on hold a number of times to speak to other agents to get answers. She said that she asked the agent to help her count the number of weeks of each type of benefit that she would receive. But, the agent could not tell her the number of weeks of benefits she might receive. The agent said it was better to start with the old claim and select extended benefits.

[26] The Claimant said that based on the agent's advice she selected the extended option. The Claimant testified that she plans to return to work in December 2021. The 61 weeks was a back up plan. She expected to get benefits at the full rate until December 19, 2021 and then see if she could find another project to work on. If she could not find any work, she would then have the 61 weeks of benefits available at the lower rate in the new claim.

[27] The Claimant testified that she called Service Canada within days of seeing in her bank account that her benefits had dropped. The appeal file shows that the Claimant received the first parental benefit payment on August 20, 2021 and she called Service Canada on August 26, 2021.

[28] The Claimant submitted that she is also concerned about the impact on her new claim set to begin in mid-December 2021. She noted that the application for EI benefits does not state when the parental benefits would begin. She was told that she could switch prior to December 12, 2021. She said it is unfair that she will be losing out on benefits because, in this case, the agent harmed her more than helped her.

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

[29] I find that the Claimant has proven that it is more likely than not that she meant to choose standard parental benefits when she applied.

[30] The Claimant works on projects that when completed do not allow for a return to work. She must then find other work with another employer. As a result, the Claimant does not have an employer that she can negotiate a return to work date following her maternity leave. The Claimant testified that she planned to return to work soon.

[31] The Claimant found the application to be confusing and contacted Service Canada to clarify how her benefits would be structured. I accept the Claimant's evidence that the agent advised her to elect the extended option when she really wanted the standard option. I also accept the Claimant's evidence that her understanding, after speaking to the agent, was that she would receive benefits at a regular rate until her existing claim expired and that reduced benefits would be paid when the new claim started, should she need to make a new claim in December 2021. The agent, despite being aware of the end date of the Claimant's current benefit period, was not able to help the Claimant count the number of weeks of each benefit that she would receive. The Claimant contacted Service Canada within days of noticing that the amount of her benefits had dropped. This evidence tells me that the Claimant was not aware that she was electing extending parental benefits to be received during her current claim. In considering the Claimant's forthright testimony, I find it is more likely than not that she elected standard parental benefits.

[32] The law does not allow a Claimant to change their election after they have been paid parental benefits.⁶ However, as I find the Claimant did not elect extended benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her true choice of standard parental benefits.

Conclusion

[33] The Claimant chose standard parental benefits.

[34] This means that the appeal is allowed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

⁶ See section 23(1.2) of the EI Act