



Citation: *RN v Canada Employment Insurance Commission*, 2021 SST 954

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

Decision

Appellant: R. N.
Representative: N. N.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (427274) dated June 29, 2021
(issued by Service Canada)

Tribunal member: Suzanne Graves
Type of hearing: Videoconference
Hearing date: July 28, 2021
Hearing participants: Appellant
Appellant's representative
Decision date: September 3, 2021
File number: GE-21-1154

Decision

[1] The appeal is allowed. This means that the Claimant can receive eight weeks of extended parental benefits.

Overview

[2] The Claimant's baby was born on November 14, 2019. On May 14, 2021, he applied for extended parental benefits. He asked for eight weeks of shared extended parental benefits, to start after his spouse had completed her benefits. He says that he got advice from the Canada Employment Insurance Commission (Commission) about the additional weeks of benefits available to him. The Commission told him he could claim eight weeks of extended benefits immediately after his spouse had completed her maternity and parental benefits claim.

[3] The Commission refused the Claimant's request to claim parental benefits. It says that the Claimant cannot receive any weeks of extended parental benefits because parental benefits are only payable within the 78-week "parental benefit window" set out in section 23 of the *Employment Insurance Act* (EI Act). The Claimant is appealing the Commission's decision to the Social Security Tribunal.

Issue

[4] Can the Claimant receive eight weeks of shared extended parental benefits more than 78 weeks after the week of the birth of his child?

Post-hearing submissions

[5] After the hearing, the Claimant sent in copies of Service Canada documents related to the issue of shared parental benefits. I sent the documents to the Commission and gave it time to reply. I also asked the Commission to clarify its interpretation of section 23 of the EI Act and it made additional representations. I sent the Commission's representations to the Claimant and gave him time to respond. He did not reply to the Commission's additional submissions.

Analysis

[6] 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, and ends after 52 weeks.²

[7] 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.

[8] 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

[9] The maximum number of weeks of parental benefits in a benefit period for an individual claimant is 35 weeks of regular parental benefits or 61 weeks of extended parental benefits, as elected by the claimant.⁴

Additional weeks of shared parental benefits

[10] 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.

[11] 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

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.

an additional eight weeks of extended parental benefits.⁶ Each claimant is still limited to an individual maximum of 35 weeks of standard parental benefits or 61 weeks of extended parental benefits.

Can the Claimant receive eight weeks of extended parental benefits, starting on May 14, 2021?

[12] I find that the Claimant can receive eight weeks of parental benefits. The parental benefit window does not apply to prevent him from receiving 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 no legislative changes have been made to the parental benefits window under sections 23(2)(b) and 10(13.01) of the EI Act.⁷ It also relies on the decision of a former Umpire in CUB 46747, which decided that a claimant did not qualify for benefits because the claimant claimed benefits more than 52 weeks after the child was placed.⁸ It says that adjudicators cannot rewrite legislation, nor interpret it in a manner that is contrary to its plain meaning.⁹

[15] I agree that the Tribunal must apply the EI Act 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. 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.

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

⁷ The Commission's additional representations on this issue are at GD10-1.

⁸ This representation is at GD4-3.

⁹ The Commission makes this representation at GD4-3 to 4. It relies on the decision of the Federal Court of Appeal in *Canada (AG) v Knee* 2011 FCA 301.

[16] If the plain meaning of section 23 of the EI Act is clear, I find it surprising that Commission agents are providing such divergent advice on this issue. In fact, the lack of clarity over the interaction between the parental window under sections 23(2) to (3.4) of the EI Act, and the additional shared benefits allowed under section 23(4) has led to a great deal of confusion.

[17] 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.¹⁰ This is, in itself, one significant indicator that the wording of the legislation is unclear.

[18] I acknowledge that in 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 decisions of the Tribunal and I have decided not to follow them because I think that the legislation is unclear. There is, as yet, no guidance from the courts or from the Tribunal's Appeal Division on this issue.

[19] The Commission 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.

[20] When extended benefits are chosen, the Commission says that the parental window is extended by up to 26 weeks, to allow for payment of extended parental benefits up to a maximum of 61 weeks of benefits. The Commission says that parental benefits, including additional shared benefits, can only be claimed up to 78 weeks after the birth or placement of a child.

[21] In this case, the Claimant planned to claim eight weeks of extended parental benefits, immediately after his spouse's maternity and parental benefits claim. The Claimant says that he took steps to clarify his entitlement with Service Canada.

¹⁰ 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.

[22] The Claimant and his spouse testified that they reviewed Service Canada documents related to claiming extended benefits before making a claim. Those documents state that shared parental benefits can be claimed at the same time or one after another.¹¹ The couple also called the Commission twice, on January 8, 2021, and February 8, 2021, to confirm any rules and restrictions that might apply to the Claimant's parental benefits claim. The Commission told them they could claim shared parental benefits one after the other.

[23] The Commission does not dispute that Service Canada told the Claimant he could take his parental benefits immediately after his spouse completed her maternity and parental benefits. But it says that miscommunication between the Commission and a claimant cannot alter the provisions and interpretation of the EI Act.¹²

[24] So, Commission agents have given conflicting advice on when claimants can make a claim for the additional shared parental benefits. But the confusion on this issue goes well beyond the issue of any verbal or written communication between the Commission and claimants. I think that the legislative provisions themselves are unclear for the following three reasons:

Conflict between the parental benefit window and the added benefits

[25] First, the Commission argues that shared benefits can be taken sequentially or concurrently. But if a 78-week parental benefit window must be met, it is not possible for two parents to take all 69 weeks of extended shared benefits sequentially, after a childbearing parent completes 15 weeks of maternity benefits. This is because 15 weeks of maternity benefits, followed by 69 weeks of shared extended parental benefits include a total of 84 weeks of benefits. This does not include any weeks allowed for a waiting period.

¹¹ See GD7-2 and GD7-5.

¹² The Commission's representation on this issue is at GD4-3. It relies on the Federal Court of Appeal decision in *Granger v Canada*, A-685-85.

[26] 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 be sure to receive them. So, I think there is a conflict between the parental window in section 23(2) of the EI Act and the additional shared benefits allowed under a combination of sections 12(4) and 23(4) of the Act.

[27] Also, I note that the Commission's representations reference section 23(3.21) of the EI Act, but include no reference to section 23(3.2) of the Act.¹³ The childbearing parent appears to be eligible under this section for an extension of the extended parental window beyond 26 weeks if they are claiming both maternity and parental benefits. This extension would be allowed on the basis that they are claiming more than one special benefit.

s.23(3.2) The period referred to in subsection (2) is extended so that benefits may be paid up to the applicable maximum number of weeks referred to in subparagraph 12(3)(b)(i) or (ii) if, during a claimant's benefit period,

- (a) regular benefits were not paid to the claimant;
- (b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (f);
- (c) the maximum total number of weeks established for those reasons is greater than 50; and
- (d) benefits were paid for the reason mentioned in paragraph 12(3)(b) but for fewer than the applicable maximum number of weeks established for that reason.

[28] So, it seems that only the non-childbearing parent would be required to take all of their extended parental benefits within a 78-week parental benefit window.¹⁴ I find it unlikely that the government would have introduced additional weeks of shared benefits only to limit the non-childbearing parent from receiving them, when they are taken sequentially. Allowing additional weeks of benefits, but requiring that the weeks overlap, does not necessarily enable a childbearing parent to return to work earlier.

¹³ The Commission's representations at GD4-5 to GD4-6 include sections 10(13.01), 12(3)(b), 23(1.1), (2), and (3.21) and section 112 of the EI Act. Its representations do not include any sections which reference the additional shared parental benefits permitted by Bill C-86.

¹⁴ I invited the Commission to make specific representations on its interpretation of section 23(3.2) but it did not directly respond to this question in its additional representations. (GD-09)

The parental benefit window refers to benefits under section 12(3)(b)

[29] Second, there is no reference to the additional weeks of benefits in sections 23(2) to (3.4) of the EI Act (the parental benefit window provisions). 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] The Commission then relies on section 23(3.21) of the EI Act, which says that the 52-week period is extended by 26 weeks where “[...] the applicable maximum number of weeks is established in subparagraph 12(3)(b)(ii) [...]” But the **additional** weeks of **shared** benefits are not permitted by section 12(3)(b) of the EI Act. Rather, they are permitted by a combination of sections 12(4)(b)(ii) and 23(4) of the Act.

[31] I also note that 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 weeks) expressly refers to the amount of shared weeks of extended parental benefits as the “*weeks of benefits payable under this section [...] up to a maximum of 69*”¹⁵ This wording suggests that the additional weeks are allowed, independent of the parental benefit window.

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

¹⁵ 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

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

[34] Section 23(4) of the EI Act says that where two major attachment claimants each make a claim for extended parental benefits, the weeks of benefits payable may be divided between them, up to a maximum of 69 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.

[35] 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).

[36] 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.

[37] 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

[38] 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.

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

[40] During legislative debate, 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.

[41] Mr. Joël Lightbound sponsored second reading of Bill C-86 on November 1, 2018.¹⁶ 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)

[42] Ms. Pam Damoff also spoke in the Legislature at second reading.¹⁷ 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.

¹⁶ 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>)

¹⁷ 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>)

[43] 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.

[44] 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:

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.

Ambiguity should be resolved in favour of the Claimant

[45] 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

[46] 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

[47] 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.

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 8 weeks of parental benefits?

[48] Yes, the Claimant can receive eight weeks of parental benefits. The EI Act allows shared parental benefits, including the additional weeks of parental benefits to be claimed sequentially when the benefits are shared between two parents.

[49] I have considered the wording 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 benefits.

[50] 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

[51] The appeal is allowed.

[52] This means that the Claimant can claim eight weeks of parental benefits, taken immediately after his spouse has completed her maternity and parental benefits.

Suzanne Graves

Member, General Division – Employment Insurance Section