



Citation: *MD v Canada Employment Insurance Commission*, 2021 SST 974

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

Decision

Appellant: M. D.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (435792) dated October 12, 2021
(issued by Service Canada)

Tribunal member: Charlotte McQuade
Type of hearing: Videoconference
Hearing date: January 10, 2022
Hearing participants: Appellant
Decision date: January 12, 2021
File number: GE-21-2176

Decision

[1] The appeal is dismissed.

[2] M. D. (Claimant) has received the maximum 50 weeks of combined regular and special benefits in her benefit period. She cannot end the benefit period early to start a new benefit period for maternity and parental benefits as she does not have enough insurable hours to qualify for those benefits.

Overview

[3] The Claimant was working for two restaurants but was laid off from both due to the pandemic. She applied for Employment Insurance (EI) benefits on March 18, 2020. The Claimant received Employment Insurance Emergency Response benefits (EI ERB) from March 15, 2020 to September 26, 2020. The Commission then started a benefit period for the Claimant for EI regular benefits on September 27, 2020. The Claimant gave birth on May 30, 2021. The Claimant submitted an application for maternity benefits and 35 weeks of standard parental benefits on July 9, 2021. The application noted the other parent was claiming 5 weeks of parental benefits. The Claimant wanted the maternity benefits to start after birth but after learning that would involve a processing delay agreed to have her maternity benefits begin on June 6, 2021. The Canada Employment Insurance Commission (Commission) renewed the Claimant's existing benefit period that had begun on September 27, 2020 and paid the Claimant special benefits until the benefit period ended on September 11, 2021. The Commission says it cannot pay the Claimant any further benefits beyond September 11, 2021 as her benefit period ended on that date. The benefit period ended on September 11, 2021 because the Claimant had received the maximum combined 50 weeks of regular and special benefits that the legislation allows.

[4] The Commission also says the Claimant could not end the benefit period that began on September 27, 2020 and start a new benefit period on June 6, 2021 for

maternity and parental benefits as the Claimant had not earned the required 600 hours of insurable employment needed to qualify for maternity and parental benefits.¹

[5] The Claimant agrees she received 50 weeks of combined regular and special benefits in her benefit period that began on September 27, 2020. She also agrees she has not earned the required 600 hours of insurable employment to start a new benefit period on June 6, 2021. However, she says she called the Commission on January 11, 2021 and specifically asked whether she needed to earn a specific amount of insurable hours to collect her full entitlement to maternity and parental benefits. She says she was assured she did not. The Claimant says she relied on that information and then later was told her benefit period would end on September 11, 2021, when her baby was only three months old. The Claimant says had she been provided the correct information, she would have tried to earn the required insurable hours to allow her to start a new benefit period. She says the Commission's misinformation has caused her a great deal of stress and financial hardship.

[6] I have to decide whether the Claimant can receive more than 50 weeks of combined regular and special benefits in the benefit period that began on September 27, 2020. I also have to decide whether she has worked enough hours to qualify for a new benefit period for EI maternity and parental benefits from June 6, 2021. I have to consider as well whether the misinformation the Claimant says she received impacts the week of benefits she can receive.

Matter I have to consider first

The Claimant decided not to pursue a Charter claim

[7] The Claimant's Notice of Appeal suggested she might be trying to raise a Charter claim in her case. Charter claims are treated differently than regular appeals. On November 18, 2021 the Claimant was contacted by a navigator from the Tribunal who

¹ Section 7 of the *Employment Insurance Act* (Act) and section 93 of the *Employment Insurance Regulations* (Regulations) say that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

explained the Tribunal's Charter process to the Claimant. The Claimant was told that if she wished to pursue a Charter claim, she would have to file a Charter argument notice² with the Tribunal by December 20, 2021. The Tribunal also sent a letter explaining this requirement. The Claimant advised the Tribunal on December 17, 2021 that she did not want to pursue a Charter claim. As such, the Tribunal sent the Claimant a letter on December 20, 2021 confirming that her appeal would be returned to the regular process and no Charter claim would be considered. Accordingly, I have not considered any Charter issues as part of this appeal.

Issue

[8] I have to decide whether the Claimant can receive more than 50 weeks of combined regular and special benefits in the benefit period that began on September 27, 2020. I also have to decide whether the Claimant has worked enough hours to start a new claim for maternity and parental benefits on June 6, 2021. Finally, I have to consider whether the information the Claimant was provided by the Commission has any impact on the weeks of benefits she can receive.

Analysis

Can the Claimant receive more than 50 weeks of combined special and regular benefits in her benefit period?

[9] No. I find she cannot. The Claimant has received the maximum combined 50 weeks of special and regular benefits.

[10] Benefits are payable to a person "for each week of unemployment that falls in the benefit period".³ So, you can only be paid benefits up until your benefit period ends.

[11] A benefit period is 52 weeks in length.⁴ However, a benefit period will end earlier if a claimant has been paid the maximum number of weeks of benefits allowed in that

² This notice is required under s.20 of the *Social Security Tribunal Regulations*.

³ See section 9 of the Act.

⁴ See section 10(2) of the Act.

benefit period or if a claimant asks that the benefit period end and has enough hours of insurable employment to qualify to start a new benefit period.⁵

[12] The maximum number of weeks of maternity benefits is 15 weeks,⁶ and the maximum number of weeks of standard parental benefits in a benefit period is 35 weeks. If both parents decide to share standard parental benefits, the maximum weeks of standard parental benefits are 40.⁷

[13] When special benefits (benefits such as sickness, maternity or parental benefits) are combined with regular benefits in the same benefit period, the law says that the maximum number of combined weeks of benefits cannot exceed 50 weeks.⁸

[14] So, this means that if a claimant collects both regular and special benefits, the maximum combined weeks of benefits is 50 weeks and the benefit period will end once those 50 weeks of benefits have been paid.

[15] The Claimant applied for regular Employment Insurance (EI) benefits on March 18, 2020, after being laid off from one of her jobs on March 13, 2020 and the other job on March 14, 2020. She received EI Emergency Response Benefits (EI ERB) from March 15, 2020 to September 26, 2020 and then regular EI benefits starting on September 27, 2020. The Claimant gave birth on May 30, 2021. She reapplied for benefits on July 9, 2021, seeking 15 weeks of maternity benefits and 40 weeks of shared standard parental benefits.

[16] The Commission says that on August 14, 2020, an email was sent to claimants who received the EI ERB through Service Canada and who had provided an email address. The email informed claimants whether their claim would be automatically established or if they had to reapply for benefits. The email advised claimants that once they received their last payment for EI ERB they would need to continue completing

⁵ See section 10(8) of the Act.

⁶ See section 12(4)(a) of the Act.

⁷ See section 12(4)(b) of the Act.

⁸ See section 12(6) of the Act.

their claimant reports while the Commission determined if they qualified for EI regular benefits.

[17] The Commission says the Claimant provided her email address so she would have been sent an email advising her of how her claim would transition from EI ERB to EI regular benefits. The Commission says there was no indication of the delivery of the email failing. The Commission says the Claimant continued to complete her claimant reports after her EI ERB claim ended on September 26, 2020.

[18] The Commission says it started the Claimant's benefit period for regular EI benefits on September 27, 2020, after the end of EI ERB benefits. The Commission says in its submissions that the Claimant was then paid 36 weeks of regular benefits from September 27, 2020 to June 4, 2021.

[19] The Commission says, when the Claimant filed an application on July 9, 2021 for maternity and 40 weeks of shared standard parental benefits, it renewed the Claimant's existing benefit period. The Commission says the Claimant reached her maximum 50 weeks of combined special and regular benefits by September 11, 2021 so that is when her benefit period ended. The Commission says the Claimant cannot be paid any further benefits once the benefit period has ended.

[20] The Claimant testified that she does not dispute that she received 50 weeks of combined regular and special benefits in her benefit period. However, she is uncertain when the specific weeks of regular benefits ended and when the maternity benefits started as the Commission adjusted her claim after the fact. She thinks she received EI regular benefits until June 4, 2021 and then maternity benefits after that. She says she had asked the Commission to start her maternity benefits right after the birth but the Commission told her this would cause further delay to process and she had already been waiting a long time for the benefits, so she agreed the Commission could start her maternity benefits from June 6, 2021. The Claimant says her Service Canada online account shows that she was paid 23 weeks of regular benefits and 15 weeks of maternity benefits and 12 weeks of parental benefits. She is unsure why this is the case. However, she confirms she did receive 50 weeks of combined benefits in total.

[21] I find the Commission correctly determined the Claimant's benefit period for regular EI benefits to begin on September 27, 2020.⁹ The Claimant's interruption of earnings was on March 14, 2020. The Claimant continued to complete claimant reports after the end of her EI ERB claim on September 26, 2020. I find the Claimant's initial claim for regular EI benefits was made when she completed her first claimant report for the week beginning September 27, 2020. I find, therefore, that the Commission correctly started the benefit period for regular benefits from September 27, 2020.¹⁰

[22] I find that the Claimant's benefit period ends on September 11, 2021, prior to the 52-week period because by September 11, 2021 the Claimant had been paid the maximum 50 weeks of combined special and regular benefits.¹¹ The Commission says in its submissions that it paid the Claimant 36 weeks of regular benefits from September 27, 2020 to June 4, 2021. The Claimant thought she had received regular benefits until June 4, 2021 and maternity benefits after that. However, the payment history provided by the Commission shows, as of the final amendment on September 6, 2021, that the Claimant received 23 weeks of regular benefits, then 15 weeks of maternity benefits from March 7, 2021 and 12 weeks of parental benefits from June 20, 2021,¹² which is consistent with what the Claimant said her online account showed.

[23] It is unclear why the Commission's payment history does not reflect a start date of the Claimant maternity benefits from June 6, 2021, as she requested and instead shows a start date of March 7, 2021. Either way, it does not impact the total amount of combined weeks of regular and special benefits the Claimant can receive. So, it does not impact the outcome of this appeal. However, the Commission should clarify and correct the start date of the maternity benefits with the Claimant, if she requests that.

[24] It is not in dispute that the Claimant received both regular and special benefits. The Claimant confirmed that she received a total of 50 weeks of combined benefits from

⁹ See subsection 10(1) of the Act.

¹⁰ See subsection 10(1) of the Act which says the benefit period begins on the later of (a) the Sunday of the week in which the interruption of earnings occurs and (b) the Sunday of the week in which the initial claim for benefits is made.

¹¹ See section 10(8)(a) and section 12(6) of the Act.

¹² GD3-36 to GD3-37.

September 27, 2020 to September 11, 2021 so I am satisfied that she did receive the maximum allowed combined weeks of regular and special benefits.

[25] This means that the Claimant cannot receive any further weeks of benefits in the benefit period that began on September 27, 2020. The Claimant cannot be paid benefits for weeks of unemployment that fall outside the benefit period.¹³

[26] There is a provision in the legislation that allows the extension of a benefit period in certain circumstances where more than one type of special benefit were paid and at least one of those benefits is paid for less than the maximum number of weeks for those benefits.¹⁴ However, one of the requirements for an extension under that provision is that no regular benefits can have been paid in the benefit period. The Claimant was paid regular benefits so she cannot benefit from an extension under this provision.

Can the Claimant end her benefit period early and start a new benefit period on June 6, 2021?

[27] No. The Claimant does not have enough insurable hours in her qualifying period to start a new benefit period on June 6, 2021. So, she cannot end the September 27, 2020 benefit period early to start new benefit period on June 6, 2021.

[28] A benefit period will end if a claimant requests that the benefit period ends, makes a new initial claim for benefits and qualifies to receive benefits.¹⁵

[29] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.¹⁶ The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she qualifies for benefits.

¹³ See section 9 of the Act.

¹⁴ See section 10(13) of the Act.

¹⁵ See section 10(8)(d) of the Act.

¹⁶ See section 48 of the Act.

[30] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “**qualifying period.**”¹⁷

[31] The Commission says the Claimant needed 600 hours of insurable employment in her qualifying period to qualify for maternity and parental benefits.¹⁸

[32] The Claimant does not dispute that she required 600 hours of insurable employment to establish her claim for maternity and parental benefits on June 6, 2021. I accept that is the required number of hours.

[33] The Claimant filed a claim for maternity and parental benefits on July 9, 2021. She gave birth on May 30, 2021. She testified that she wanted the maternity benefits to begin right after the birth, but the Commission told her it would take six more weeks to process if she wanted her benefits to start from that date. Because she had already been waiting a long time for benefits, the Claimant told the Commission to start the benefits from June 6, 2021.

[34] As noted above, the hours counted are the ones the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.¹⁹

[35] However, the Commission decided that the Claimant’s qualifying period was shorter than the usual 52 weeks because the Claimant had an earlier benefit period that started on September 27, 2020. The Commission says the Claimant’s qualifying period was from September 27, 2020 to June 5, 2021.

[36] Your **benefit period** isn’t the same thing as your **qualifying period**. It is a different time frame. Your benefit period is the time when you can receive EI benefits.

[37] Your current qualifying period can’t overlap with an earlier qualifying period. The Claimant’s qualifying period would overlap with her earlier qualifying period if it went

¹⁷ See section 7 of the Act and section 93 of the Employment Insurance Regulations (EI Regulations).

¹⁸ See section 93(1) of the EI Regulations.

¹⁹ See section 8 of the Act.

back to a time before September 27, 2020. The Claimant does not dispute the Commission's determination of her qualifying period. I find the Commission has correctly established the Claimant's qualifying period to be from September 27, 2020 to June 5, 2021.²⁰

[38] The Commission decided that the Claimant had worked zero hours during her qualifying period instead of the required 600 hours.

[39] The Claimant says she does have some hours in the qualifying period between September 27, 2020 and June 5, 2021. A Record of Employment (ROE) from her employer dated October 21, 2020 shows the Claimant worked in the biweekly pay period from September 21, 2020 to October 4, 2020 earning 25.25 hours. She also worked the biweekly pay period from October 5, 2020 to October 18, 2020 earning 5.25 hours, before being laid off again.²¹ However, the Claimant agrees she does not have the required 600 hours. She testified she had no other work in the qualifying period.

[40] I find that the Claimant hasn't proven that she has enough hours to qualify for EI maternity and parental benefits from June 6, 2021 because she needs 600 or more hours, but has less than that.

[41] This means the Claimant cannot end the benefit period that started on September 27, 2020 early to start a new benefit period on June 6, 2021.

Impact of Commission's information

[42] The Claimant testified she was working at two restaurant jobs. This was her first time receiving EI benefits. The Claimant says had become pregnant and on January 11, 2021 she phoned the Commission to ask whether her unemployment would impact her ability to collect her full entitlement to maternity and parental benefits. She says she specifically the Commission's agent whether she would have to work additional hours to collect her full entitlement and was told she would not need to work additional hours.

²⁰ See section 8(1)(b) of the Act.

²¹ GD3-31.

The Claimant said she was assured that she would be okay. She has provided a transcript of the call confirming what was said.²²

[43] The Claimant testified that it was not until after her baby was born that she learned her EI was being cut short, at a time when her baby was only three months old. She says if she had been given the correct information, she would have tried to earn the required hours to start a new benefit period. She says she would have done what was necessary to have the full time home with her baby. The Claimant says that conversation with the Commission's agent changed the trajectory of everything. She says now, she is plagued with the stress of having no money coming in from the Commission. The Claimant asks that an exception be made based on the misinformation she was provided.

[44] I believe the Claimant was given misinformation from the Commission. She was assured she did not need to work any additional hours to collect the full entitlement to maternity and parental benefits. Her testimony was credible and consistent with the transcript of the call she has provided. The Claimant relied on the information she was given, as any reasonable person would. Had she been given the correct information, she may have been able to accumulate the required insurable hours. The negative impact to the Claimant is significant. I am sympathetic to the Claimant's situation. Unfortunately, however, I am unable to remedy it for her.

[45] The Federal Court of Appeal has said that misinformation by the Commission is no basis for relief from the operation of the Act. It has also said the law has to be followed even if the Commission made a mistake.²³

[46] I am bound by those rulings. This means, even if the Claimant was given incorrect information, I cannot order the Commission to pay her more than 50 weeks of combined special and regular benefits in her benefit period and I cannot order the

²² GD2-11.

²³ See *(Canada (Attorney General) v. Shaw*, 2002 FCA 325 and *Robinson v. Canada (Attorney General)*, 2013 FCA 255.

Commission to start a new benefit period, where the Claimant does not qualify to start one. In other words, I do not have any discretion to step outside the law.

Conclusion

[47] The Claimant cannot collect any further benefits beyond September 11, 2021 as that is when her benefit period ends. The Claimant also cannot establish a new benefit period from June 6, 2021 for maternity and parental benefits as she does not have the required hours of insurable employment to do so.

[48] This means that the appeal is dismissed.

Charlotte McQuade
Member, General Division – Employment Insurance Section