



Citation: *NM v Canada Employment Insurance Commission*, 2022 SST 449

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

# **Decision**

**Appellant:** N. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (439748) dated November 19, 2021 (issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Videoconference

**Hearing date:** January 11, 2022

**Hearing participants:** Appellant

**Decision date:** January 20, 2022

**File number:** GE-21-2454

## Decision

[1] I am allowing the appeal. The Claimant chose standard parental benefits.

## Overview

[2] After giving birth, the Claimant applied for maternity and parental benefits. She clicked on the extended option in the parental benefit section. She says she only realized her mistake when she noticed that her benefit rate had dropped.

[3] The Commission says the Claimant cannot change from the extended to the standard option because it already started paying her parental benefits.

## Post-hearing documents

[4] After the hearing, the Claimant submitted proof of conversations with her employer on her return-to-work arrangements and a daycare application. I found this evidence relevant, so I shared it with the Commission. It replied that despite this evidence, it was maintaining its decision.

## Issue

[5] Did the Claimant choose standard or extended parental benefits?

## Analysis

[6] You can get parental benefits to care for one or more newborn or adopted children.<sup>1</sup>

[7] When making a claim for parental benefits, you must elect (choose) either standard parental benefits or extended parental benefits.<sup>2</sup>

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<sup>1</sup> S 23(1) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> Since December 2017, applicants for EI parental benefits must choose the maximum number of weeks that they wish to receive (s 23(1.1) of the EI Act).

[8] You can get standard parental benefits up to a maximum of 35 weeks at 55% of your normal weekly earnings. You can receive extended parental benefits up to a maximum of 61 weeks at 33% of your normal weekly earnings.<sup>3</sup>

[9] The Commission's online application form explains the two options. The form also explains that once you make your choice of parental benefit option, it is irrevocable. This means that you cannot change your choice of options once payment of parental benefits begins.<sup>4</sup>

[10] I have to decide if the Claimant can receive standard parental benefits. To do this, I must decide which parental benefit option she chose when she first applied.

**Did the Claimant choose standard or extended parental benefits?**

[11] I find that the Claimant intended to choose standard parental benefits when she applied for benefits. She did not ask to receive extended parental benefits.

[12] The Claimant applied for her maternity and parental benefits on June 20, 2021, 11 days after her baby was born. On her application, she did not list a return-to-work date. Her Record of Employment (ROE) gave no date either. When asked whether she wanted standard or parental benefits, she clicked on the extended option. She then chose 52 weeks of benefits from the drop-down menu.

[13] The Commission says the Claimant chose to receive extended parental benefits because she clicked on that option on her application and asked to receive 52 weeks of those benefits. It says her choice of the extended option is irrevocable because it has already started paying her parental benefits.

[14] The Claimant says she arranged with her employer to take a maximum of one year of maternity leave, with the option to return earlier if she wished.

[15] The Claimant says she chose 52 weeks from the drop-down menu because she thought the standard option included maternity and parental benefits combined. She

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<sup>3</sup> The two options are explained in section 12(3)(b) and s 14(1) of the EI Act.

<sup>4</sup> S 23(1.2) of the EI Act.

says she needed more weeks than the 35 she believed was on offer under the standard option because she was taking up to one year of leave from work.

[16] The Claimant says she only realized that the Commission had put her on the extended option when she noticed on her bank statement that her benefit rate had dropped. She says she called as soon as she saw this to request a correction.

[17] I must consider all the relevant evidence when deciding which parental benefit option the Claimant chose when she completed her application.<sup>5</sup> Based on this evidence, I find it more likely than not that her choice was standard benefits.

[18] I see a clear conflict between the Claimant's apparent choice of the extended option on her application and the plans she made with her employer before she gave birth to take up to a maximum of one year of leave.

[19] The following evidence supports my argument. The screenshot of her "slack chat" correspondence with her manager shows that although she was applying for 12 months of leave, she was "open to coming back earlier depending on daycares open/COVID etc."<sup>6</sup> She sent her manager this message before her baby was born.

[20] As well, the Claimant's application for daycare to start as early as eight months after she gave birth matches those plans, as communicated to her manager before she applied for maternity and parental benefits.<sup>7</sup>

[21] The Commission says those two pieces of evidence do not prove that the Claimant was only intending to take a one-year leave of absence when she first applied for benefits. It says it doubts her on this point because she gave no return-to-work date on her application. It argues that her employer gave no return date on the ROE either.

[22] I agree that firm dates would have been simpler. But I find it more likely than not that the Claimant's exact return date was unknown since this is her first baby. She says

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<sup>5</sup> *M.C. v Canada Employment Insurance Commission*, (2019) SST 666.

<sup>6</sup> See GD5-2.

<sup>7</sup> See GD5-3.

she did not know in advance how she would react to being off work for a whole year and wanted to keep open her option to return earlier. Restrictions due to COVID-19 and the availability of daycare were also hard factors to gauge in advance.

[23] In these circumstances, I find that having an upper limit for the length of her maternity leave but no fixed return date was reasonable. Having no exact return date is not enough to show that the Claimant was intending to take an extended maternity leave. Such a choice did not match the arrangements she had made with her employer.

[24] I accept the Claimant's sworn testimony as credible since she was open and consistent in her responses and her statements matched the evidence. That is why I do not agree with the Commission that she chose the extended parental option.

[25] Based on the totality of the evidence, I accept the Claimant's testimony that she clicked on the extended option by mistake. She wanted benefits to cover up to one year of maternity leave from her job and tried to indicate that choice on her application. I find that ticking a box was not sufficient proof of an election of extended parental benefits given that the other evidence aligns with choosing standard parental benefits.

[26] Before finding that the Claimant chose standard parental benefits, I considered recent case law from the Federal Court (Court).

[27] The claimant in *Karval* filed a claim for extended parental benefits and later wanted to change to standard benefits.<sup>8</sup> The Commission refused her request, as did the Tribunal's General and Appeal Divisions. The Court also refused her request.

[28] However, there are significant differences between *Karval* and the appeal before me. For example, Ms. Karval requested the full 61 weeks of extended benefits. This choice did not show that she believed she was requesting one year of benefits, which would include 35 weeks of maternity benefits.

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<sup>8</sup> *Karval v Attorney General of Canada*, 2021 FC 395.

[29] As well, Ms. Karval only asked to change to standard benefits six months after her extended benefits began, even though her benefit rate had dropped significantly.

[30] The Claimant in this appeal had arranged up to a year's maternity leave from work, which aligns with the standard benefit option. There is logic to her choice of 52 weeks—which she thought included 35 weeks of maternity benefits—since this was the maximum length of her planned leave from work.

[31] The evidence also shows that the Claimant in this appeal contacted the Commission just a few days after it paid her benefits for the first time at a lower rate. Her prompt response shows that she was alarmed by an outcome entirely different from the one she had intended. She did not wait six months to call the Commission as in the *Karval* case.

[32] The law does not allow claimants to change their election from extended to standard benefits after the Commission starts paying them parental benefits. But since I find it more likely than not that the Claimant chose standard parental benefits, there is nothing to revoke. She should be put in a position consistent with her choice of standard benefits.

## **Conclusion**

[33] The Claimant chose standard parental benefits. This means that I am allowing her appeal.

Lilian Klein  
Member, General Division – Employment Insurance Section