Citation: *AS v Canada Employment Insurance Commission*, 2022 SST 516

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

# Decision

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| **Appellant:** | A. S. |
| **Respondent:** | Canada Employment Insurance Commission |

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| **Decision under appeal:** | Canada Employment Insurance Commission reconsideration decision (443773) dated December 10, 2021 (issued by Service Canada) |

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| **Tribunal member:** | Mark Leonard |
| **Type of hearing:** | Videoconference |
| **Hearing date:** | February 2, 2022 |
| **Hearing participants:** | Appellant |
| **Decision date:** | February 8, 2022 |
| **File number:** | GE-22-113 |

## Decision

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

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

[3] The Appellant argues that she made a mistake and actually wanted the standard benefits option. She has shown that she actually meant to choose that option.

## Overview

[4] When you fill out your initial claim (application) for parental benefits, 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 the same amount of benefits at a lower rate for up to 61 weeks. Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

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

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

[8] The Appellant disagrees. On her application, the Appellant admits that she chose extended parental benefits. But, at that time she actually wanted standard parental benefits. She noticed something was not right when she started receiving benefit payments at the lower rate the week of June 27, 2021. She explains that she made a mistake due to her confusion about the options and a medical condition that affected her reasoning.

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[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.

# Matter I have to consider first

## I will accept the documents sent in after the hearing

[9] The Appellant provided post-hearing documents. She had the documents in her possession during the Hearing and spoke to them in testimony. I provided those documents to the Commission to allow them the opportunity to provide any additional representations. The Commission elected to not provide any additional submissions. I am satisfied that the documents have probative value to the issue.

# Issue

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

# Analysis

[11] 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]

[12] To decide which type of parental benefits the Appellant 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 Appellant chose on her application matters, but it isn't the only thing to consider. For example, the number of weeks of benefits the Appellant wanted to receive or how long the Appellant planned to be off work might be things to consider too.

[13] 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

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[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.
[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.

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 Appellant meant to choose on the application

[14] The option that the Appellant 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?

[15] The Appellant testified that before her child was born, she and her husband discussed what options she should take. She admitted that they disagreed on the options with her husband wanting the standard option, and the Appellant wanting the extended option. She says that they agreed that she could only take the one year off due to financial considerations.

[16] After the birth of their child, the Appellant made her initial claim for combined Maternity and Parental benefits. Examination of her claim confirms that the Appellant chose the **extended** option and selected 61 weeks as the number of weeks she wished to receive benefits. She confirmed that she intended to share benefits with her husband.

[17] The Appellant testified that when she viewed the selection box options of 35 or 61 weeks she was confused. She said that 35 weeks seemed too short. She testified that she did not consider that both the maternity benefits and parental benefits needed to be added together to reach the one-year leave and benefits. So she selected the extended and 61 weeks.

[18] She says that she was confused. She testified that she was experiencing significant challenges both before and after the birth. She provided a medical note from January 2021 that confirms that she was suffering from anxiety and stress that caused significant limitations regarding her focus, decision-making, and completing daily tasks. The Appellant stated that those limitations continued beyond the birth of her child, although she provided no additional medical information that confirms this statement.

[19] At hearing, the Appellant said that she always only intended to take one year off. In support of this assertion, she provided an email from the Human Resources Department of her Employer that confirms she requested only a one-year leave of absence. She says that her selection of the extended benefit option was an error due in part to her confusion caused by her medical condition.

[20] The Commission says that what the Appellant chose on the application tells us which option she wanted. It argues that it is too late to change options now.

[21] The Commission says that the Appellant admitted that she did not know when she applied what the best option was, so she selected the extended option. It submits that the Appellant informed them that she had forgotten what option she selected until she received her first parental benefit payment. It was only then that she questioned her choice.

[22] The Appellant testified that she first considered her options before the birth of her child and wanted to take the extended option. She testified that she made an early application before the birth and she admits she selected the extended option. She says she believed there would be time to change later if necessary. She added that after discussions with her husband, they agreed that she select the standard one-year leave option due to financial concerns.

[23] She testified that when she noticed the reduced payment amount in July 2021, she did not immediately contact the Commission because she thought it would resolve itself. After several reduced payments, the Appellant contacted the Commission in September 2021, to question the amount she was receiving.

[24] I note that in the evidence, that the Appellant contacted the Commission several times confused about the amounts of her parental benefit payments. First, she believed the problem had resolved itself, then she confirmed to the Commission that she had mistakenly identified the wrong payment as EI benefits and that the reduced benefit rate was continuing.

[25] The Appellant has shown through correspondence with her Human Resources Department that she asked for and received only a one-year leave of absence.

[26] She has shown that she was experiencing a medical condition that affected her ability to analyze the options and make a selection based on a thorough and competent examination and evaluation of the data available to make her selection.

[27] The Appellant further testified that her husband also applied for benefits as they intended to share some of the weeks. She says that the Commission issued a penalty because her husband's choice of standard benefits was not consistent with her choice of extended benefits. Neither party provided documentary evidence of the husband's initial application; however, the Appellant stated that her husband selected the standard option. There is no evidence to the contrary so I accept the Appellant's statements in this regard.

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

[28] I find the Appellant to be credible in her testimony albeit somewhat disjointed. Her recollection is consistent with documentation on file except for the statement that she made some form of early application. I can find no evidence of an early application (prior to an initial claim) for benefits before the birth wherein the Appellant selected an option.

[29] Her explanation of the discussions with her husband and agreement on the period of leave she should take is supported by the acknowledgement of her leave request by her Human Resource Department. Her initial claim and leave application were very close together in time. I am inclined to accept that the Appellant and her husband made their decision regarding the leave period before her application of benefits.

[30] So, why would she select an option that was inconsistent with her leave request?

[31] The Appellant detailed her medical concerns and the doctor's note she provided clearly denotes that her condition negatively affected her reasoning and ability to

complete daily tasks. Evidence in the file supports her claim of confusion when she contacted the Commission several times to first claiming the problem was resolved then confirming it had not.

[32] I prefer the explanation of the Appellant that she meant to select the standard option but, made an error out of confusion caused by her medical condition. This is the most plausible explanation for her choice given the discrepancy between her leave request and benefit option election.

[33] I am further swayed by the Appellant's statement that her husband chose the standard option in order to be consistent with her and their agreed intention for her to take only one year of leave from her employment.

[34] I find that the Appellant has proven that she meant to choose standard parental benefits when she applied.

## Conclusion

[35] The Appellant chose standard parental benefits.

[36] This means that the appeal is allowed.

Mark Leonard
Member, General Division – Employment Insurance Section