



Citation: *KI v Canada Employment Insurance Commission*, 2022 SST 474

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

**Decision**

**Appellant:** K. I.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (453048) dated February 1, 2022  
(issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois  
**Type of hearing:** Videoconference  
**Hearing date:** May 3, 2022  
**Hearing participant:** Appellant  
**Decision date:** May 3, 2022  
**File number:** GE-22-726

## Decision

[1] The appeal is dismissed. The Appellant (Claimant) cannot change from extended parental benefits to standard parental benefits because parental benefits had already been paid for the same child, albeit to the other parent.

## Overview

[2] This appeal is about whether the Claimant can change from extended to standard parental benefits. She asked for the change before extended parental benefits were paid to her, but after extended parental benefits had been paid to the other parent.

[3] The Claimant had a baby in August 2021. She applied for extended parental benefits, and so did the baby's other parent, her husband.

[4] The Canada Employment Insurance Commission (Commission) paid extended parental benefits to the Claimant's husband from September 12, 2021, to October 16, 2021.<sup>1</sup>

[5] In January 2022, before parental benefits were paid to her, the Claimant asked the Commission to change her parental benefits to the standard option.

[6] The Commission refused to make the change because it had already paid extended parental benefits to the other parent with respect to the same child.

## Issue

[7] I have to decide if the Claimant can change from extended parental benefits to standard parental benefits.

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<sup>1</sup> The first payment was issued on October 8, 2021. See pages GD3-19 and GD3-20.

## Analysis

### – What the law says

[8] Parental benefits under the *Employment Insurance Act* are available to parents of newborn children.<sup>2</sup> Parental benefits can be paid to one or both parents.

[9] When a parent applies for parental benefits, they have to choose between standard and extended parental benefits.<sup>3</sup> The difference is the benefit rate and the maximum number of weeks available. Extended parental benefits can be paid for a longer period, but the parent receives less per week than they would receive under the standard option.<sup>4</sup>

[10] Parents can change their minds about which type of parental benefit they want.

[11] But after the Commission has paid parental benefits to either parent, the type of parental benefit cannot be changed.<sup>5</sup>

### – The facts

[12] There is no dispute about these facts:

- Both the Claimant and her husband, the baby's other parent, elected the extended parental benefit option.
- The Commission paid the Claimant's husband extended parental benefits before the Claimant asked the Commission to change her election.
- The Claimant asked the Commission to change her election before it paid her extended parental benefits.

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<sup>2</sup> It should be noted that to receive benefits, they have to qualify under the *Employment Insurance Act*. As qualifying for benefits isn't the issue in this appeal, I won't say more about this.

<sup>3</sup> *Employment Insurance Act*, s. 23(1.1).

<sup>4</sup> The choice of standard or extended parental made by the first parent is binding on the other parent. See section 23(1.3) of the *Employment Insurance Act*.

<sup>5</sup> Section 23(1.2) says that the election is irrevocable once benefits are paid in respect of the same child.

- The parental benefits at issue in this appeal all relate to the same child.

– **Given these facts, can the Claimant switch to standard parental benefits?**

[13] No. The Claimant's election for extended parental benefits became irrevocable with the Commission's payment of parental benefits to her husband.<sup>6</sup>

[14] Because she didn't ask for the change to standard parental benefits before the Commission paid her husband parental benefits, the law prevents her from now changing the election.

– **Can I consider the Claimant's exceptional circumstances?**

[15] No. I have no discretion to allow the Claimant to change options. The law is clear that the election is irrevocable once benefits are paid with respect to the same child. I'm not allowed to ignore the clear direction of the law.

[16] I acknowledge the Claimant's situation and her arguments, including:

- She didn't receive parental benefits before she asked for the change.
- With the global pandemic, the rising cost of goods, fuel and rent, and the lower benefit rate, she had to return to work last month.
- They couldn't have anticipated such an increase in the cost of living.
- Changing to standard parental benefits would help them meet their basic needs, and sustain their grocery budget.
- Together, she and her husband still wouldn't use the maximum 35 weeks of standard parental benefits.

[17] I understand and sympathize with the Claimant's situation. But under the law she isn't allowed to change options, no matter what her other circumstances might be.

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<sup>6</sup> Section 23(1.2) of the *Employment Insurance Act*.

## **Conclusion**

[18] I cannot change her parental benefits from the extended to standard option. They elected to receive extended parental benefits. That election became irrevocable as soon as parental benefits were paid to her husband. She is bound by the original election, even though she didn't receive her parental benefits before asking for the change.

[19] The appeal is dismissed

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section