



*ND v Canada Employment Insurance Commission, 2022 SST 488*

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

**Decision**

**Appellant:** N. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (452985) dated February 16, 2022  
(issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Teleconference

**Hearing date:** April 5, 2022

**Hearing participants:** Appellant

**Decision date:** May 1, 2022

**File number:** GE-22-672

## Decision

[1] I am allowing the Claimant's appeal. This decision explains why.

[2] The Claimant elected (chose) to receive extended parental benefits but the Commission did not tell her that this choice was incompatible with receiving regular benefits earlier in her benefit period. This missing information invalidates her election of the extended option since she did not make a deliberate or informed choice.

[3] The Claimant must now make a valid choice between standard and extended parental benefits.

## Overview

[4] After she was laid off, the Claimant established an initial claim for regular benefits on December 24, 2020. She got eight weeks of EI regular benefits from January 3, 2021, to February 27, 2021, and four weeks of sickness benefits from February 28, 2021, to March 27, 2021.

[5] On April 7, 2021, the Claimant applied for 15 weeks of maternity benefits and 52 weeks of extended parental benefits; she later changed the 52 weeks to 61 weeks.

[6] When you fill out your EI parental benefits application, you need to choose one of two options: the "standard option" or the "extended option."

[7] 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 total amount of benefits is the same (if you chose all 61 weeks of extended benefits). It is just stretched over a different number of weeks.

[8] The law says a claimant has to use the Commission's application form and follow its instructions to get benefits.<sup>1</sup>

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<sup>1</sup> S 50(3) of the EI Act says this.

[9] Once you start receiving parental benefits, your choice is “irrevocable” (that is, final). You cannot change options.<sup>2</sup>

[10] The Claimant received 15 weeks of maternity benefits at the higher rate. She then got 23 weeks of extended parental benefits at the lower rate, from July 11, 2021, until her benefit period ended on December 18, 2021.

[11] The Claimant says she knew her parental benefits would be at a lower rate but does not know why these benefits stopped in December 2021, after only 23 weeks. She says she should get all her parental weeks or the 23 weeks at the higher benefit rate.

[12] The Canada Employment Insurance Commission (Commission) says I should dismiss the Claimant’s appeal since parental benefit options cannot be changed once payment of these benefits begins. But it says it is willing to review her benefit rate.

## Issue

[13] When the Claimant chose extended parental benefits, was her choice valid?

## Analysis

[14] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>3</sup> The law says that you cannot change options once the Commission starts paying you parental benefits.<sup>4</sup>

[15] Many Tribunal decisions say it is important to consider all the evidence about what claimants chose when they filled out their applications.<sup>5</sup> I am not bound by these decisions. This means I do not have to base my decision on them but I can choose to follow them. So, I have considered all the circumstances of the Claimant’s benefit period.

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<sup>2</sup> S 23(1.2) of the EI Act says that the election is “irrevocable” (that is, final) once you receive benefits.

<sup>3</sup> S 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.

<sup>4</sup> S 23(1.2) of the EI Act says that the choice is irrevocable (that is, final) once you receive benefits.

<sup>5</sup> 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.

[16] I also chose to follow two decisions by the Tribunal's Appeal Division that consider whether a choice of parental benefit options was deliberate, informed and therefore valid, or whether the choice was invalidated in some way.<sup>6</sup> This issue is relevant since you cannot change your election of parental benefit options once payment of benefits begins.

### **Did the Claimant make a deliberate and informed choice?**

[17] The option the Claimant meant to choose when she filled out the application is important. At that moment, did she mean to choose standard or extended benefits?

[18] The Claimant does not dispute that she intentionally chose the extended option based on the information on the online application form. Her choice made sense since she expected to return to work in September 2022. She says when she checked with the Commission, an agent confirmed that extended benefits worked for her.

[19] The Claimant says there was no information on the application form that extended benefits was the wrong choice for claimants who had already received regular benefits.

[20] I agree with the Claimant that this information is missing from the application form. As noted above, the law says you have to follow the Commission's instructions to get benefits. So, the Claimant was under no obligation to look more information.<sup>7</sup> She did not even know that information was missing. There is no caution in the instructions that some claimants might not be able to get extended benefits.

[21] The instructions on the application form are presented as if they are complete, but they are not complete. There is no guidance for someone in the Claimant's position. Nor is her situation uncommon; this was not a case of a rare exception to a general rule.

[22] So, although the Claimant was prepared for her parental benefit rate to drop according to the instructions on the application form, she had no idea why her benefits suddenly ended. Her application had been accepted as is, with no follow-up.

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<sup>6</sup> *KK v Canada Employment Insurance Commission*, 2021 SST 182; *Canada Employment Insurance Commission v JH*, 202, SST 292.

<sup>7</sup> See above, *Canada Employment Insurance Commission v JH*, 2021 SST 292.

[23] Choosing extended benefits was not even a feasible choice for the Claimant. The system processed her application without reference to an important fact. Since she received regular benefits at the start of her benefit period, it would be impossible for her to receive 61 weeks of parental benefits before her benefit period ended.

[24] A benefit period cannot be extended to allow for full payment of extended parental benefits if regular benefits were paid first.<sup>8</sup> This important information does not appear in the Commission's instructions on the parental benefits application.

[25] The Commission submits that it is now too late to change options because it has already paid the Claimant parental benefits. But it has committed to changing the lower benefit rate for her 23 extended parental weeks to the higher rate for standard benefits.<sup>9</sup>

[26] However, I still have to consider whether the Claimant's original choice was valid or whether she needs to make a new, valid election of her parental benefits option.

### **So, was the Claimant's choice of extended benefits valid?**

[27] I find that the Claimant's election of extended parental benefits was not valid since it was not a deliberate and informed choice between two reasonable and clear options. You cannot make a deliberate and informed decision without the information you need to make that decision, especially where one of the choices is not even feasible.

### **Conclusion**

[28] Since the Claimant's choice of extended parental benefits was not valid, she must now make a new valid choice between standard and extended parental benefits.

[29] This means that I am allowing the Claimant's appeal.

Lilian Klein  
Member, General Division – Employment Insurance Section

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<sup>8</sup> S 10(13) of the EI Act.

<sup>9</sup> GD4-4. The Commission says this is like 40 weeks of extended benefits under s 12(7)(a) of the EI Act.