



[TRANSLATION]

Citation: *DR v Canada Employment Insurance Commission*, 2022 SST 870

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

Decision

Appellant: D. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (465331) dated April 6, 2022
(issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Teleconference

Hearing date: August 4, 2022

Hearing participant: Appellant

Decision date: August 9, 2022

File number: GE-22-1449

Decision

[1] The appeal is allowed.

[2] I find that the Appellant is entitled to family caregiver benefits for adults because he has shown that his mother, who he cared for and supported during her recovery, was critically ill.

Overview

[3] The Appellant applied for family caregiver benefits for adults on November 24, 2021. The Canada Employment Insurance Commission (Commission) renewed the Appellant's December 23, 2020, claim for benefits. The Appellant then provided a "Medical Certificate for Employment Insurance Family Caregiver Benefits" form, filled out by a doctor and indicating that his mother's life was at risk as a result of colorectal cancer, that she required the care or support of a family member, and that her state of health had changed significantly. The doctor indicated having observed the Appellant's mother's state of health on December 22, 2021.

[4] On April 6, 2022, the Commission told the Appellant that it hadn't changed the initial decision made on February 22, 2022. The Commission found that the Appellant wasn't entitled to Employment Insurance family caregiver benefits for adults from November 21, 2021, to December 18, 2021, because the medical certificate he provided wasn't valid for that period. It also found that the Appellant wasn't entitled to benefits after December 25, 2021, because his 52-week benefit period ended on that date.

[5] The Appellant made a new application for benefits for the period starting December 26, 2021. He said he was entitled to family caregiver benefits, and he doesn't dispute the fact that his renewal application for benefits ended December 25, 2021. However, he argues that the incorrect information he received from Service Canada Centre agents on several occasions caused unnecessary delays. Nevertheless, the Appellant is claiming benefits for the period from November 21, 2021, to December 18, 2021.

[6] On August 5, 2022, the Commission sent explanations to the Tribunal about the period from November 21, 2021, to December 18, 2021. It said that the decision was rescinded and that benefits were paid to the Appellant on April 22, 2022.

[7] I have to determine whether the Appellant is entitled to benefits while caring for or supporting his sick mother between November 21, 2021, and December 18, 2021.

Issue

[8] Did the Appellant provide a medical certificate from a doctor or nurse practitioner indicating that his mother was critically ill?

Analysis

[9] A claimant can receive benefits to care for or support a critically ill family member if a doctor or nurse practitioner has issued a medical certificate indicating that the adult is critically ill and requires the care or support of one or more of their family members.¹

[10] A critically ill adult is a person who is 18 years of age or older whose baseline state of health has significantly changed and whose life is at risk as a result of illness or injury.²

[11] The Appellant says that his mother is 85 and that she had surgery on November 17, 2021, after being diagnosed with colorectal cancer. The Appellant contacted the Service Canada Centre, and an agent told him that he could receive family caregiver benefits for adults. He requested leave from his employer, and that leave was approved as of November 21, 2021.

[12] The Appellant says that he cared for his mother from November 21, 2021, to December 18, 2021. Then, his sister took over. She had to move up her retirement.

[13] The Appellant also says that he met with the surgeon on November 6, 2021, in preparation for his mother's surgery. Because of the COVID-19 pandemic, the surgery

¹ Section 23.3 of the *Employment Insurance Act*.

² Section 1(7) of the *Employment Insurance Regulations*.

was delayed until November 17, 2021. The Appellant says that his mother developed polymyositis after her surgery and that she required even more care. For example, she fell and injured her head. He also says that, during that period, CLSC [community health care clinics] services were less accessible because of the COVID-19 pandemic.

[14] The Appellant says that he contacted the Service Canada Centre. On December 4, 2021, he asked what steps to take. But the agent he talked to failed to mention that he also had to provide an authorization form signed by his mother.

[15] Additionally, he says that the surgeon was very busy and that it wasn't easy to get a meeting with him to get the required signature. At the meeting on November 6, 2021, the surgeon told the Appellant that his mother would need care after her surgery. The Appellant says that it wasn't easy to get to the December 22, 2022 [sic], meeting required by Employment Insurance to get the form signed because his mother was in a wheelchair and it was snowing.

[16] As mentioned in the introduction, the Commission says that it rescinded its decision and that it now considers the Appellant entitled to family caregiver benefits for adults between November 21, 2021, and December 18, 2021. It says that the disentitlement decision was rescinded and that benefits were paid into the Appellant's bank account on April 22, 2022.

[17] I agree with the Commission. The facts show that the mother's surgeon observed her state of health on December 22, 2021, at a meeting after her surgery. The surgeon says that the Appellant's mother needed care and support, that her state of health had changed significantly, and that her life was at risk after surgery for colorectal cancer. This surgery took place on November 17, 2021. After that, the Appellant's mother developed myositis.

[18] It is reasonable to conclude that it is more likely than not that the Appellant's mother was critically ill from that time and that this state unlikely to last just a month. With that in mind, the delay in getting an appointment with the surgeon to meet the

requirements of the Employment Insurance form is something that has to be interpreted in light of the facts, that is, by considering the surgery date.

[19] As the Commission says, this provision of the *Employment Insurance Act* (Act) is recent. The form required by the Commission doesn't allow the doctor to indicate whether these three criteria were likely met at the time of the surgery or of the onset of the disease/complications. The date the facts are observed is, in most cases, the date of the appointment obtained to fill out the Employment Insurance form. It isn't representative of the patient's health condition from the beginning of the health complications or surgery date.

[20] On the Employment Insurance form, the doctor has to indicate the date they observed the criteria listed, even if the medical appointment happened a month after the surgery, for example.

[21] By providing a medical certificate signed by his mother's doctor, specifying that she required the care or support of a family member because her life was at risk after surgery for colorectal cancer on November 17, 2021, and that her state of health had changed significantly, the Appellant has shown that his mother was critically ill from November 17, 2021, and that she needed care from that time.

[22] I find that the Appellant's mother was critically ill within the meaning of the Act and *Employment Insurance Regulations* from the date of her surgery on November 17, 2021.

Conclusion

[23] I find that the Appellant is entitled to family caregiver benefits for adults from November 21, 2021, to December 18, 2021.

[24] The appeal is allowed.

Josée Langlois

Member, General Division – Employment Insurance Section