



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 737

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

## Decision

**Appellant:** A. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (444011) dated December 24, 2021 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** March 15, 2022

**Hearing participant:**

**Decision date:** March 24, 2022

**File number:** GE-22-290

## Decision

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

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

[3] The Claimant argues that she filled out the application, based on the advice received from a Service Canada agent, and actually wanted the standard benefits option. And, she has shown that she actually meant to choose that option.

## Overview

[4] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."<sup>1</sup>

[5] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays benefits at a lower rate for up to 61 weeks. Once you start receiving parental benefits, you can't change options.<sup>2</sup>

[6] On her application, the Claimant chose extended parental benefits. She started receiving benefits at the lower rate the week of July 23, 2021. But, she actually wanted standard parental benefits.

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

[8] The Claimant told the Commission that she always wanted to receive standard parental benefits. She completed the application for benefits with the help of an agent and asked for the one-year option.

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<sup>1</sup> Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

<sup>2</sup> 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**

### **The Claimant wasn't at the hearing**

[9] The Claimant wasn't at the hearing. A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.<sup>3</sup> I think that the Claimant got the notice of hearing because she gave her email address to the Tribunal as the way to communicate with her. The Claimant's appeal was acknowledged by email. The Tribunal sent her the reconsideration file, the Commission's submissions, and the notice of hearing by email. All the emails were sent to the email address she provided and none of the emails were returned as undeliverable. The Tribunal staff also spoke to the Claimant a few days before the hearing to remind her of the hearing and gave instructions on how to connect to the teleconference.

[10] On the day of the hearing, I established a teleconference at the scheduled time. At 30 minutes past the time set for the hearing, the Claimant had not appeared and I disconnected from the teleconference. As of date of writing, the Claimant has not contacted the Social Security Tribunal to explain her absence. So, the hearing took place when it was scheduled, but without the Claimant.

### **Issue**

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

### **Analysis**

[12] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.<sup>4</sup> The law says that you can't change options once the Commission starts paying parental benefits.<sup>5</sup>

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<sup>3</sup> Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

<sup>4</sup> 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.

<sup>5</sup> Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

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

[14] 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.<sup>6</sup> I am not 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 Claimant meant to choose on the application**

[15] The option that the Claimant 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?

[16] The law is clear that the option can't be changed once you receive benefits. My decision on this issue respects this. I am not changing the Claimant's choice of benefits. I am deciding what option the Claimant meant to select on the form when she applied for benefits.

### **The parties' arguments**

[17] The parties, that is the Commission and the Claimant, do not agree on which option the Claimant chose.

[18] The Commission says that what the Claimant chose on the application tells us which option she wanted. It says that she indicated she wanted the extended option. It

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<sup>6</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.

argues that it is too late to change options now because she has received parental benefits for her child.

[19] The Claimant contacted the Commission on November 20, 2021. She told the Service Canada agent that she got assistance from an agent while filing out the application, as she was not aware of the type of benefit and she asked for the one year option.<sup>7</sup>

[20] In her request for reconsideration, the Claimant wrote that she applied for standard and was on the phone with a representative to help her fill out the form in April 2021. The Claimant wrote that she “checked off standard but the application has extended.”<sup>8</sup> The Claimant wrote that she “applied for standard maternity unemployment with a representative on the phone as the form was not fully straightforward. I stated standard and checked off the option the representative told me to.” The claimant wrote that she would be returning to work in March 2022.

[21] The Claimant wrote in her appeal to the Tribunal she applied for maternity benefits with a “representative from the Ministry” in April 2021.<sup>9</sup> Her parental benefits paid are for 18 months when she must return to work in March 2022. The Claimant wrote that she was unable to take a full 18 months as her spouse’s income alone will not be able to sustain them. She wrote she “followed the instructions as guided by a representative of the Ministry” and assumed it was all taken care of.<sup>10</sup>

[22] The Claimant’s Record of Employment shows that her last day for which paid was March 31, 2021. The expected date of recall is unknown.

[23] The appeal file shows that the Claimant completed the application for benefits on May 3, 2021, which is about a month after she gave birth. The application shows that Claimant wanted to receive parental benefits after the maternity benefits. The form

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<sup>7</sup> See page GD3-21

<sup>8</sup> See page GD3-23. The Request for Reconsideration is dated November 22, 2021

<sup>9</sup> See page GD2-5. The Appeal is dated January 12, 2022

<sup>10</sup> I think the Claimant is referring to Service Canada and its agents when she uses the terms “Ministry” and “representative of the Ministry” because Service Canada and its agents are solely responsible for the administration of the Employment Insurance scheme.

shows that extended parental benefits were selected. In response to the question how many weeks do you wish to claim, 61 weeks is indicated.

**So, which option did the Claimant mean to choose when she applied?**

[24] I find that the Claimant has proven that it is more likely than not that she meant to choose standard parental benefits when she applied.

[25] The Claimant has been consistent in her statements to the Commission, her Request for Reconsideration and her appeal to the Tribunal that she wanted to have one year of benefits. The Claimant found the application for EI was not straightforward. She contacted Service Canada for advice and received assistance over the phone from an agent to complete the application. The Claimant wrote that she asked for standard benefits but the extended benefits option was checked. She wrote that she was returning to work in March 2022. That is 12 months after she gave birth. This evidence tells me the Claimant was not aware that she was electing to receive the extended option. In considering the evidence, I find it is more likely than not the Claimant elected standard parental benefits.

[26] The law does not allow a Claimant to change their election after they have been paid parental benefits.<sup>11</sup> However, as I find the Claimant did not elect extended benefits, there is nothing to revoke. Rather, the Claimant should be put back in a position consistent with her true choice of standard parental benefits.

**Conclusion**

[27] The Claimant chose standard parental benefits.

[28] This means that the appeal is allowed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>11</sup> See section 23(1.2) of the EI Act