



Citation: *PD v Canada Employment Insurance Commission*, 2022 SST 748

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

Decision

Appellant: P. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (477215) dated April 26, 2022 (issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Teleconference

Hearing date: June 16, 2022

Hearing participant: Appellant

Decision date: June 22, 2022

File number: GE-22-1689

Decision

[1] The appeal is dismissed. This means I disagree with the Claimant and find she is not entitled to employment insurance (EI) benefits.

Overview

[2] A few months ago, the Claimant took temporary kinship custody of five grandchildren. She applied for EI parental benefits because she is caring for a newborn, as well as four other children, and cannot work while doing this. The Canada Employment Insurance Commission (Commission) denied her application for EI benefits. It said that she doesn't qualify for benefits because the children were not placed with her for the purpose of adoption. The Claimant thinks she is entitled to benefits because she pays into the EI program, is caring for five children, and is trying to keep the family together.

Issue

[3] Is the Claimant entitled to receive parental benefits?

Analysis

[4] Parental benefits are intended to support you while you take time off work to care for your newborn child or a child who was placed with you for the purpose of adoption under provincial adoption laws.¹

[5] I have to decide whether the children were placed with the Claimant for the purpose of adoption under the laws of Ontario.² This is a factual determination to be made on the evidence.³

[6] The basic facts of this case are not in dispute. The Claimant and her partner have temporary kinship custody of a family member's five children. The Superior Court of Justice in Ontario issued a Plan of Care for Children confirming the Claimant and her

¹ This is set out in section 23(1) of the *Employment Insurance Act*.

² This is the Claimant's province of residence.

³ *Canada (Attorney General) v. Hunter*, 2013 FCA 12 at para. 5.

partner are responsible for the children's needs as of March 4, 2022.⁴ The Court documents specify that the Children's Aid Society removed the children from their biological parents on a temporary basis.⁵ The Claimant told the Commission that the placement of the children was an emergency order by the Courts, and was not for the purpose of adoption.

[7] The Commission submits the Claimant is not entitled to parental benefits because she has not proven that the children were placed with her for the purpose of adoption under the laws of Ontario, as is required by the law.

[8] I asked the Claimant to define kinship custody. She wasn't sure of the exact definition, but said that it wasn't adoption. She said the children will be in her care for at least six months, but it could be longer. She added that the children are adoptable and she may pursue that in the future. I asked if adopting the children was currently in process. She said that there is no option to adopt them right now, because the family and children's services department is giving time for the biological parents to address the child protection issues that caused the children to be removed. It may be that the Claimant is able to adopt the children in the future, but that is uncertain and not available at this time.

[9] The Claimant argued that the application for EI benefits says parental leave is for people who are caring for a newborn or recently adopted child.⁶ She said that one of the children was only six months old when she took custody, so she is caring for a newborn and should qualify.

[10] I appreciate why the Claimant was confused. The application for EI benefits asks claimants to choose a benefit type. One option is:

Parental benefits: you are caring for one or more newborn or newly adopted children.⁷

⁴ See GD2-10 for a letter from the family and children's services department, confirming custody and GD2-11 through GD2-17 for a copy of the Court Order. The Court Order is signed as of March 8, 2022.

⁵ See GD2-17.

⁶ See GD3-8.

⁷ See GD3-6.

This form appears to try and simplify the law. However, it is not the law. When there is a disagreement between the application form and the *Employment Insurance Act*, the Act is the document that must be followed.

[11] The Act says that:

Benefits are payable... to care for one or more *new-born children of the claimant* or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.⁸

I find the law is clear that these benefits are available to people caring for their own biologically newborn children, because the law specifies “new-born children of the claimant.”

[12] The law also says that parental benefits are payable if you are caring for a child who was placed with you for the purpose of adoption, within the guidelines set out in the province of your residence.⁹ The Federal Court of Appeal has shed some light on the meaning of this provision in the *Hunter* case.¹⁰

[13] In *Hunter*, the Federal Court of Appeal stated that Parliament has chosen broad and general terms to describe the statutory test in section 23(1) and that Parliament must have recognized that placement of a child for the purpose of adoption may arise in a variety of circumstances. The Court held that in some cases a provincial law or documentation relating to the custody of a child may provide a conclusive answer to the factual question asked by section 23(1) as to the purpose of the child’s placement.¹¹

[14] I take the *Hunter* decision to mean that the factual question to be answered is whether the placement of the children was for the purpose of adoption under the laws of Ontario. The statutory test does not require any specific documentation such as a court

⁸ Section 23(1) of the *Employment Insurance Act*.

⁹ Section 23(1) of the *Employment Insurance Act*.

¹⁰ See *Canada (Attorney General) v Hunter*, 2013 FCA 12.

¹¹ See *Canada (Attorney General) v Hunter*, 2013 FCA 12 at para. 7.

order granting permanent custody to prove this. The question has to be answered by reviewing all of the evidence.

[15] This means that not all placements of a child with a caregiver will qualify for parental benefits. There must be evidence to support a factual finding that the purpose of the placement is adoption in the legal sense (under the laws governing adoption in the province in which the claimant resides).

[16] In this case, the Claimant has clearly and consistently said that she is a temporary kinship custodian of the children. She also testified that she doesn't have the option of adopting them right now, because there is a family court process allowing time for the biological parents to address the issues that caused the children to be removed from their custody. I find the evidence supports that the children were not placed with the Claimant for the purpose of adoption under the laws governing adoption in Ontario.

[17] I recognize that the Claimant has a kinship custody arrangement, but custody is not the same thing as adoption. They are legally distinct concepts. Adoption involves the termination of existing parental rights and the legal assumption of parental rights and responsibilities by the new parent.

[18] While the distinction may not seem relevant in the daily relationship between the caregiver and the child, it is significant at law. With adoption, the child ceases to be a child of the biological parents and becomes a child of the adoptive parent. The law sets out a formal process to adopt a child.¹²

[19] I find that having custody of the children does not equate to a placement for the purpose of adoption under the laws governing adoption in Ontario. The receive parental benefits, the *Employment Insurance Act* clearly requires an intent to pursue the legal process of adoption. The law does not refer simply to "adoption," which could potentially include an arrangement similar to adoption. Rather, it qualifies the word "adoption" with the requirement that the placement must be for the purpose of adoption *under the laws of the province in which the claimant resides*. The *Hunter* case says that no specific

¹² In Ontario, the legal process for adoption is set out in the *Child, Youth and Family Services Act 2017*.

documents are required to meet this test. However, there must be sufficient evidence to make a factual finding that the purpose of the placement was for adoption under the laws of Ontario.¹³

[20] I'm unable to find that the children were placed with the Claimant for the purpose of adoption under the laws of Ontario.

[21] The Claimant submitted that she is hard working and honest, has not used the EI program in over 20 years, and did not access any pandemic benefits. She said she has paid into EI, but wouldn't if she had the choice, and doesn't understand why she can't get parental benefits when she is taking care of, "5 innocent children, saving them from being separated and put into the system." I appreciate her frustration. However, even though she contributed to the EI program, this does not automatically entitle her to receive benefits. The *Employment Insurance Act* is an insurance plan and, like other insurance plans, claimants must meet the conditions of the plan to obtain benefits.¹⁴

[22] I am sympathetic to the Claimant's distressing situation. She said that she has lost her car, and is trying not to lose her house. She said she is experiencing financial hardship, and needs to provide food, clothes, and a home for the children. Unfortunately, the law doesn't provide benefits for every situation where an individual is acting in the role of a parent. I recognize that this places individuals such as the Claimant in a difficult situation.

[23] The Claimant submitted that the "rules...need to be reviewed for people like me." I am not in a position with the power to make any changes to the law. If the Claimant wishes to pursue this argument, it is best made to legislators.

¹³ The Claimant's province of residence is Ontario.

¹⁴ *Pannu v. Canada (Attorney General)*, 2004 FCA 90 at para. 3.

Conclusion

[24] The appeal is dismissed.

Candace R. Salmon
Member, General Division – Employment Insurance Section