



Citation: *AS v Canada Employment Insurance Commission*, 2022 SST 611

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

## Decision

**Appellant:** A. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (460007) dated March 10, 2022 (issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Teleconference

**Hearing date:** June 1, 2022

**Hearing participants:** Appellant

**Decision date:** June 24, 2022

**File number:** GE-22-1261

## **Decision**

[1] I am dismissing the Claimant's appeal. The Claimant chose extended parental benefits. She cannot change to the standard option because the Canada Employment Insurance Commission (Commission) already started paying her parental benefits.

## **Overview**

[2] This appeal is about whether the Claimant can change from the extended parental option she requested to the standard option that she says she meant to request.

[3] On September 12, 2021, the Claimant applied for maternity and parental benefits. She clicked on the extended option in the parental benefit section of her application form and asked for 52 weeks of these benefits. She says she only realized her mistake when she saw in her bank account that her benefit rate had dropped. She called the Commission to try to change to standard benefits but it told her that it was too late.

[4] The Commission says the Claimant cannot switch from extended to standard parental benefits because the law does not allow you to change your choice of options once payment of parental benefits begins.

[5] The Claimant argues that she always intended to take one year of maternity leave and had arranged this with her employer before she gave birth. She says she meant to choose standard parental benefits but clicked on the wrong option by mistake because she was sleep-deprived and overwhelmed after childbirth.

## **The issue I must decide**

[6] Which parental benefit option did the Claimant choose? Can she change her mind?

## **Post-hearing documents**

[7] After the hearing, the Claimant submitted documents showing she had arranged with her employer before she gave birth to take one year of maternity leave. She also sent in proof of daycare arrangements starting a year after her baby's birth. I found this evidence relevant and shared it with the Commission, but it made no further comment.

## Analysis

[8] You can get parental benefits to care for one or more newborn or adopted children.<sup>1</sup> When making a claim for parental benefits, you must elect (choose) either standard parental benefits or extended parental benefits.<sup>2</sup>

### What does the application form for parental benefits say?

[9] The Commission's online application form tells you that you have two choices of parental benefits after your 15 weeks of maternity benefits end:

- i) one parent can get standard parental benefits up to a maximum of 35 weeks at 55% of your normal weekly earnings; or,
- ii) one parent can receive extended parental benefits up to a maximum of 61 weeks at 33% of your normal weekly earnings.<sup>3</sup>

[10] The application form then asks two questions: which parental benefit option are you applying for—standard or extended—and how many weeks do you wish to claim?

[11] The form also explains that after you choose one of the above options, your choice is irrevocable once any parent has received parental benefits. This means that you cannot change your choice of options once payment of parental benefits begins.<sup>4</sup>

### What does the Claimant say?

[12] The Claimant applied for maternity and parental benefits on September 12, 2021. Her last day of work was September 9, 2021. Her due date was in November 2021, but the baby was born a month early on October 25, 2021. She gave no return to-work date on her application but her employer documented on her Record of Employment (ROE) that she would return to work on September 14, 2022.

[13] The Claimant asked for her parental benefits to start immediately after her maternity benefits ended. She requested the extended option on the application for

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<sup>1</sup> S 23(1) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> Since December 2017, applicants choose how many weeks of parental benefits they want: up to 35 weeks of standard benefits or up to 61 weeks of extended benefits (ss 23(1.1), 12(3)(b) and 14(1) of the EI Act).

<sup>3</sup> The application form explains these two choices (GD3-7).

<sup>4</sup> S 23(1.2) of the EI Act. The application form includes this warning (GD3-7).

parental benefits. She then chose 52 weeks from the drop-down menu that indicates how many weeks of extended benefits a claimant is requesting.

[14] The Claimant argues that she meant to request standard parental benefits but clicked on the wrong button by mistake. She says she was overwhelmed and sleep-deprived when she filed her application. She has three children under the age of four, and her husband was sick at the time with COVID and had to isolate in the basement.

[15] The Claimant argues that she arranged with her employer to take one year of maternity leave, with a return-to-work date of September 14, 2022. She says she chose 52 weeks from the extended benefits drop-down menu because she thought that matched her one-year maternity leave.

[16] The Claimant says she will face financial hardship if she cannot get standard benefits, as she did for her two previous maternity leaves. On those occasions, she says she completed her parental benefits application form correctly. She argues that her family cannot manage on the reduced benefit rate of the extended option.

[17] The Claimant says she did not call the Commission or check her My Service Canada Account (MSCA) until after she saw in her bank account that her benefit rate had dropped. She says she called the Commission to flag her mistake and try to correct it.

### **What does the Commission say?**

[18] The Commission says the Claimant chose to receive extended parental benefits because she clicked on that option on her application and asked to receive 52 weeks of those benefits. The Commission says it issued her first payment for parental benefits on January 21, 2022. So, it was too late to change options when she asked to do that on February 15, 2022.

[19] The Commission argues that all the Claimant's information about the parental benefit option she requested was available in her MSCA. The Commission says she would have seen the message in her MSCA about an upcoming reduction to her benefit rate.

[20] The Commission says the Claimant's choice of extended benefits is irrevocable since it already started paying her parental benefits. This means that she cannot change her choice of options.

### **Which parental benefit option did the Claimant choose?**

[21] Based on the evidence, I accept that the Claimant intended to choose standard benefits. But I find that she chose the extended benefit option instead.

[22] I make this finding because the option the Claimant chose on her application form does not match her other evidence. This evidence shows that she arranged before she gave birth for one year of maternity leave from work.<sup>5</sup> She also applied for a daycare space starting on September 14, 2022, to cover her planned return-to-work date.<sup>6</sup>

[23] The Tribunal's General Division and Appeal Decision have sometimes allowed appeals based on the parental benefit option claimants intended to choose, rather than what they actually chose.<sup>7</sup>

[24] However, the courts have since reaffirmed that if you make a mistake, the law does not allow you to change your choice of options once payment of parental benefits begins.<sup>8</sup> The courts say that claimants have a responsibility to read their options carefully, ask the Commission for help if needed and check that their choice of options is the one they want.

[25] The Claimant did not ask anyone for help with her application.<sup>9</sup> Her husband was unavailable since he was sick with COVID. She did not check her MSCA. She did not contact the Commission until after she noticed that her benefit rate had dropped.

[26] If the Claimant had checked her MSCA at any time during her 15 weeks of maternity benefits, she could have caught her mistake earlier. She would have seen the notification of the upcoming change to her benefit rate and still been able to change options.

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<sup>5</sup> See GD5-3.

<sup>6</sup> See GD5-2.

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

<sup>8</sup> The only exception might be if you were misled. See *Karval v Attorney General of Canada*, 2021 FC 395; *Attorney General of Canada v Hull*, 2022 FCA 82; *Canada (Attorney General) v De Leon*, 2022 FC 527.

<sup>9</sup> See GD3-13.

## **Can the Claimant change her choice of parental benefit options?**

[27] After considering the facts, the evidence and the law, I find that the Claimant cannot change her choice of parental benefits from the extended to the standard option.

[28] I make this finding because the law does not allow you to change your choice of options after the Commission starts paying you parental benefits.<sup>10</sup>

[29] I truly sympathize with the Claimant but I cannot reverse engineer a decision to allow her to change her parental benefit option.<sup>11</sup> I cannot rewrite the law.<sup>12</sup>

[30] The decisions from the courts are binding on the Tribunal and I must follow them.

[31] As with other insurance plans, you must meet the rules of the EI plan to get your benefits.<sup>13</sup> The Claimant did not follow these rules: she missed the deadline to change her choice of parental benefit options. Unfortunately, I cannot change these rules, even in the Claimant's difficult financial circumstances.

## **Conclusion**

[32] The Claimant chose extended parental benefits. Payment of these benefits began before she asked the Commission to change to standard parental benefits.

[33] This means that I have to dismiss the Claimant's appeal. She cannot change her parental benefit option.

Lilian Klein

Member, General Division – Employment Insurance Section

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<sup>10</sup> S 23(1.2) of the EI Act.

<sup>11</sup> *Attorney General of Canada v Hull*, 2022 FCA 82.

<sup>12</sup> *Canada (Attorney General) v Knee*, 2011-11-02.

<sup>13</sup> *Pannu v Canada (Attorney General)*, 2004 FCA 90.