



Citation: *ME v Canada Employment Insurance Commission*, 2022 SST 772

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 17, 2022
(GE-22-770)

Tribunal member: Charlotte McQuade

Decision date: August 16, 2022

File number: AD-22-430

Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

Overview

[2] M. E. is the Claimant. She applied for Employment Insurance (EI) family caregiver benefits for adults. She claimed benefits from October 4, 2021, to November 12, 2021, and from January 16, 2022, to March 4, 2022, to care for her ill mother who was living in India. The Canada Employment Insurance Commission (Commission) decided the Claimant couldn't be paid these benefits, as she had not provided the required medical documentation to receive those benefits. The Claimant appealed the General Division's decision to the Tribunal.

[3] The Claimant submitted some additional medical documentation to the Commission. The Commission then decided the Claimant had provided the required medical certificate and was entitled to benefits from January 16, 2022, to February 5, 2022. However, she had to serve a one-week waiting period at the start of that period. The Commission said the Claimant's entitlement had to end on February 5, 2022, as the Claimant's mother had passed away on January 31, 2022.

[4] The General Division decided that the Claimant had not provided the required medical documentation for the period from October 4, 2021, to November 12, 2021, but she had done so for the period from January 16, 2022, to February 5, 2022. So, the General Division decided the Claimant was entitled to benefits from January 16, 2022, to February 5, 2022, but not thereafter, due to her mother's passing on January 31, 2022. The Claimant now wants to appeal the General Division's decision. However, she needs permission for her appeal to move forward.

[5] The Claimant argues that the General Division didn't follow procedural fairness and made an error of jurisdiction.

[6] I am refusing permission to appeal because I am satisfied the Claimant's appeal has no reasonable chance of success. This means the Claimant's appeal ends here.

Issue

[7] Is there an arguable case that the General Division made a reviewable error?

Analysis

[8] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal is decided.

[9] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.¹ The law says that I can only consider certain types of errors.² A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.³

[10] This is a low bar. Meeting the test for leave to be granted does not mean the appeal will necessarily succeed.

It is not arguable that the General Division made any reviewable errors

[11] It is not arguable that the General Division made any errors that would allow me to intervene in its decision.

[12] Family caregiver benefits for adults are payable to a family member of a “critically ill adult” so that they can care for that adult.

[13] For a person to be entitled to family caregiver benefits for adults, the law says a medical certificate must be provided, that certifies the adult is a “critically ill adult” and

¹ Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), says this is the test I have to apply.

² Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to proceed with an appeal. These errors are that the General Division breached natural justice, made an error of jurisdiction, made an error of law or based its decision on an important error of fact.

³ See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a “reasonable chance of success” means.

requires the care or support of one or more family members. The medical certificate must also state the period during which the adult requires that care or support.⁴

[14] A “critically ill adult” is defined in the law as a person over 18 years of age and whose “baseline state of health has significantly changed and whose life is at risk as a result of the illness or injury.”⁵

[15] The Claimant asked the Commission for family caregiver benefits from October 4, 2021, to November 12, 2021, and then from January 16, 2022, to March 4, 2022, to care for her ill mother, who lived in India.

[16] After reviewing additional medical documentation provided by the Claimant, the Commission decided that the Claimant had provided the required medical certificate and was entitled to family caregiver benefits from January 16, 2022, to February 5, 2022. She was required to serve a one-week waiting period at the start of that period. The Commission said the law required the Claimant’s entitlement to end on February 5, 2022, as the Claimant’s mother passed away on January 31, 2022.

[17] The Claimant argued before the General Division that, even though she did not provide the required medical certificate for the period from October 4, 2021, to November 12, 2021, the General Division should make an exception. She said that, due to the pandemic, she was unable to obtain the required medical documentation as doctors in India weren’t spending time with patients and she could not get the report.

[18] The Claimant also argued before the General Division that her benefits should not end on February 5, 2022, but should continue until March 4, 2022. She explained that after her mother’s unexpected passing on January 31, 2022, she was unable to return to Canada right away, as she had matters she needed to deal with.

⁴ The requirements to receive family caregiver benefits for adults are set out in section 23.3(1) of the *Employment Insurance Act* (EI Act).

⁵ See section 1(7) of the *Employment Insurance Regulations* (EI Regulations) for the definition of “critically ill adult.”

[19] The General Division decided that the Claimant was not entitled to family caregiver benefits from October 4, 2021, to November 12, 2021, as she had not provided the required medical certificate for this period. The General Division stated it did not have any authority to apply an “exception,” as the Claimant requested, as it had to apply the law.⁶

[20] The General Division also decided the Claimant was entitled to family caregiver benefits from January 16, 2022, to February 5, 2022, with payment starting after she served one-week waiting period. The General Division decided the Claimant was not entitled to benefits beyond February 5, 2022, because the Claimant’s mother passed away on January 31, 2022, and the law did not allow benefits to be paid past February 5, 2022.

[21] The Claimant says the General Division breached procedural fairness and made an error of jurisdiction when it made the decision it did.

[22] As it was not clear what the Claimant meant by this, I asked the Claimant to provide further explanation. However, the Claimant’s submissions repeat the arguments she made before the General Division about why she could not provide the required medical documentation for the period from October 4, 2021, to November 12, 2021, and why she was requesting benefits to continue after February 5, 2022.

[23] The Claimant explained that the government made many exceptions during the pandemic so she thought the General Division would consider her situation fairly. She says she appealed to the Appeal Division, expecting fairness.⁷

– **It is not arguable that the General Division breached procedural fairness**

[24] It is not arguable that the General Division breached procedural fairness.

⁶ See paragraphs 15 and 16 of the General Division decision.

⁷ See AD1-3 and AD1B-1.

[25] The Claimant disagrees with the General Division's conclusion. She finds it unfair. But procedural fairness is concerned with how the General Division conducted the proceeding, not with the conclusion it reached.

[26] I can only intervene in a question of fairness, for example if the General Division did something that might have compromised the Claimant's ability to know or respond to the case against her or if the General Division approached its decision-making in a biased or impartial way.

[27] The Claimant has not pointed to any unfairness in the way the General Division conducted its proceeding and I see no indication of any procedural unfairness from my review of the record and audio tape from the General Division hearing.

– **It is not arguable that the General Division made an error of jurisdiction**

[28] It is not arguable that the General Division made an error of jurisdiction.

[29] An error of jurisdiction means that the General Division didn't decide something it had to decide, or it decided something it didn't have the power to decide.

[30] The Claimant has not pointed to any error of that type and I see no such error. The General Division decided the issues it had to decide which was the Claimant's entitlement to family caregiver benefits for the periods she requested those benefits. The General Division did that.

[31] There is nothing in the General Division decision to suggest that the General Division decided any issue it did not have authority to decide.

– **It is not arguable that the General Division made an error of law or based its decision on an important error of fact**

[32] It is not arguable that the General Division made an error of law or based its decision about the Claimant's entitlement to family caregiver benefits on an important error of fact.

[33] The Claimant has not argued that the General Division made an error of law and I have not identified any errors of law. The General Division applied the requirements for entitlement to family caregiver benefits for adults set out in the law.

[34] Unfortunately, even if the Claimant's mother was very ill and required her care, the law requires that to be entitled to family caregiver benefits, a medical certificate containing the required information must be provided. The medical certificate must be signed by a medical doctor or nurse practitioner and state that the adult family member is critically ill (as that is defined) and requires the care or support of one or more of their family members. It must also set out the period during which the adult requires that care or support.⁸

[35] Although the Claimant provided a handwritten letter from a doctor in India dated August 14, 2021, about her mother's health and saying the Claimant's presence was important, the letter does not say that her mother's baseline state of health had significantly changed and her life was at risk as a result of the illness or injury. It also does not say the period of time for which the patient would require care and support.⁹

[36] Since the Claimant didn't provide a medical certificate containing the required information with respect to the period from October 4, 2021, to November 12, 2021, the General Division had no choice but to conclude the Claimant was not entitled to family caregiver benefits for this period.

[37] There was a provision added to the law, as part of the *Temporary Measures to Facilitate Access to Benefits* that gave the Commission the discretion to waive the requirement of the medical certificate required for family caregiver benefits. However, that provision was only in effect from September 27, 2020, to September 25, 2021.¹⁰

⁸ See section 23.3(1) of the EI Act.

⁹ See GD3-25.

¹⁰ See section 153.192(2) of the EI Act, in effect from September 27, 2020, to September 25, 2021. Section 153.196(1) provides that the Part in which section 153.192(2) is found, ceases to apply on September 25, 2021.

This means that for the period the Claimant was requesting benefits, the law required that the medical certificate be provided.

[38] As the General Division correctly decided, the General Division does not have any discretion to step outside the law and provide an exception.

[39] The General Division also understood that the Claimant's mother unexpectedly passed away on January 31, 2021, and the Claimant was not able to leave India right away. However, the General Division had to conclude that the Claimant was not entitled to family caregiver benefits beyond February 5, 2021. This is because the law says that family caregiver benefits end on the last day of the week in which the adult being cared for dies.¹¹

[40] Aside from the Claimant's arguments, I have reviewed the record and the audio recording from the General Division hearing to see if the General Division may have ignored or misinterpreted any evidence that was before it.¹² I am satisfied that the General Division did not ignore or misconstrue any evidence that would have affected the outcome in this case. So, it is not arguable that it based its decision on an important error of fact.

[41] I have sympathy for the Claimant's situation. However, she has not shown the General Division arguably made a reviewable error. So, her appeal can not go forward.

Conclusion

[42] I am refusing permission to appeal. This means that the appeal will not proceed.

Charlotte McQuade
Member, Appeal Division

¹¹ See section 23.3(3)(b)(ii) of the EI Act.

¹² The case of *Karadeolian v Canada (Attorney General)*, 2016 FC 615 recommends doing such a review.