



Citation: *ME v Canada Employment Insurance Commission*, 2022 SST 773

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

Decision

Appellant (Claimant): M. E.
Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (445979) dated January 6, 2022 (issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Teleconference
Hearing date: June 16, 2022
Hearing participants: Appellant
Decision date: June 17, 2022
File number: GE-22-770

Decision

[1] The appeal is dismissed with modification.

Overview

[2] The Claimant applied for Employment Insurance (EI) Family Caregiver benefits for Adults as of October 30, 2021, from October 4, 2021, to care for her mother who was in India (GD3-5 to GD3-14).

[3] The Commission advised the Claimant that she wasn't eligible for Family Caregiver benefits from October 4, 2021, because she didn't submit an Authorization to Release a Medical Certificate.

[4] After the Claimant's request for reconsideration, the Claimant submitted two Medical Certificates for Family Caregiver benefits. However, the Commission advised the Claimant that these documents were not accompanied by Authorization to Release Medical Information and couldn't be accepted.

[5] On May 12, 2022, the Claimant submitted another document (Authorization to Release a Medical Certificate) (GD11). The Commission advised the Claimant that a window for entitlement could be established as of the week of January 9, 2022. However, the Commission explained that because the Claimant worked until January 14, 2022, she was unable to renew her claim until January 16, 2022.

[6] The Commission further explained that the Claimant was eligible for benefits for the period that the conditions were met and this was applicable for the duration of time that care for the patient was required. However, the Commission explained that the patient (the Claimant's mother) passed away on January 31, 2022. As a result, the Commission submitted that Family Caregiver benefits would end as of that particular week (inclusive).

[7] The Commission recommended a modification of the Claimant's current indefinite disentanglement starting October 4, 2021, to a definite disentanglement ending January 8, 2022. In short, the Commission submitted this would qualify the Claimant for Family Caregiver benefits from the week of January 16, 2022 (renewal week) to the week ending February 5, 2022. However, the Commission indicated that the Claimant was still required to serve her mandatory waiting period in the first week.

[8] The Claimant says she should receive Family Caregiver benefits for a longer period of time. Specifically, the Claimant argues that she should receive benefits until March 4, 2022, because her mother died unexpectedly on January 31, 2022, and she couldn't get back to Canada right away. She says it wasn't fair she couldn't receive additional benefits. The Claimant further argues that she should receive Family Caregiver benefits from October 4, 2021, to November 12, 2021, because an exception should be made due the circumstances (Covid-19) at the time.

Issue

[9] Was the Claimant eligible for Family Caregiver benefits for Adults?

Analysis

[10] Family Caregiver benefits for Adults are special benefits available to eligible claimants who take leave from work to provide care or support to an adult family member 18-years of age or older who is critically ill.

[11] Under the law, a claimant who requests Family Caregiver benefits for Adults must submit a medical certificate signed by a medical doctor or nurse practitioner that states that the adult family member is critically ill and requires the care or support of one or more of their family members; and sets out the period during which the adult requires that care or support.¹

¹ Section 23.3 of the *Employment Insurance Act*.

[12] Medical doctors and nurse practitioners are not authorized to release medical information about a patient without the patient's consent. If the patient is incapable of giving consent, the patient's legally authorized or appointed representative must do so. Failure to submit an authorization in support of the medical certificate results in the denial of Family Caregiver benefits for Adults.

Was the Claimant eligible for Family Caregiver Benefits for Adults?

[13] I find the Claimant was eligible for Family Caregiver benefits for Adults from the week of January 16, 2022 (renewal week) to the week ending February 5, 2022 (GD16). I realize the Claimant argued she should be eligible for additional weeks of benefits until March 4, 2022. However, the patient (the Claimant's mother) died on January 31, 2022, and under the law benefits must end at that point.

Additional Testimony from the Claimant

[14] I do recognize the Claimant argued that it wasn't fair she couldn't receive Family Caregiver benefits until March 4, 2022. Specifically, the Claimant argued that her mother died unexpectedly on January 31, 2022, and she couldn't get back to Canada right away. Nevertheless, I must apply the law to the evidence. In other words, I cannot ignore the law even for compassionate reasons.²

[15] I further realize the Claimant argued she should be eligible for Family Caregiver benefits from October 4, 2021, to November 12, 2021. The Claimant testified there was an issue obtaining a doctor's note in India at the time because of Covid-19. She further explained that doctors weren't spending time with patients during this period. I realize this was a difficult time for the Claimant. However, the Claimant didn't prove her entitlement to benefits for this period under the law. Specifically, the Claimant didn't provide a medical certificate signed by a medical doctor or nurse practitioner as required³ (GD4-3).

² *Knee v Canada (Attorney General)*, 2011 FCA 301.

³ Section 23.3 of the *Employment Insurance Act*.

[16] Finally, I realize the Claimant testified she was looking for “exceptions” for being eligible for Family Caregiver benefits from October 4, 2021, to November 12, 2021. Nevertheless, I have no authority to provide an exception on this matter and must apply the law as established.

Conclusion

[17] The appeal is dismissed with the modification that the Claimant would qualify for Family Caregiver benefits from the week of January 16, 2022 (renewal week) to the week ending February 5, 2022. However, the Claimant was required to serve her mandatory waiting period in the first week.

Gerry McCarthy

Member, General Division – Employment Insurance Section