



Citation: *HW v Canada Employment Insurance Commission*, 2022 SST 779

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

## Decision

**Appellant:** H. W.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (445047) dated January 7, 2022 (issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Teleconference

**Hearing date:** February 16, 2022

**Hearing participants:** Appellant

**Decision date:** March 8, 2022

**File number:** GE-22-194

## Decision

[1] I am allowing the appeal. The Claimant chose standard parental benefits.

## Overview

[2] The Claimant, a school principal, applied for maternity and parental benefits. She clicked on the extended option in the parental benefit section. She says she only realized her mistake when she saw that her benefit rate had dropped and called right away to ask what had changed. She argues that she always intended to take one year of maternity leave from her job and arranged this with her employer before she gave birth.

[3] The Commission says the Claimant cannot change from the extended to the standard option because it already started paying her parental benefits.

## Post-hearing documents

[4] After the hearing, the Claimant submitted a letter requesting maternity leave until July 15, 2022, under her union's collective agreement. She also submitted daycare applications for her baby starting in September 2022. I found this evidence relevant and shared it with the Commission, but it made no further submissions.

## Issue

[5] Did the Claimant choose standard or extended parental benefits?

## Analysis

[6] 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> You can get standard parental benefits up to a maximum of 35 weeks at 55% of your normal weekly earnings. Or, you can receive extended parental benefits up to a maximum of 61 weeks at 33% of your normal weekly earnings.<sup>3</sup>

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

<sup>2</sup> Since December 2017, applicants for parental benefits choose the number of weeks they want: up to 35 weeks of standard benefits or up to 61 weeks of extended benefits (s 23(1.1) of the EI Act).

<sup>3</sup> The two options are explained in section 12(3)(b) and s 14(1) of the EI Act.

[7] The Commission's online application form sets out the two options. The form explains that once you make your choice of parental benefits option, it is irrevocable. This means that you cannot change your choice of options once payment of parental benefits begins.<sup>4</sup>

[8] I have to decide if the Claimant can receive standard parental benefits. To do this, I must decide which parental benefit option she chose when she first applied. This does not mean that I will be changing her choice of benefits. My role is to decide which option she meant to select when she completed the parental benefits application form.

**Did the Claimant choose standard or extended parental benefits?**

[9] I find that the Claimant intended to choose the standard parental option when she first applied for these benefits. She did not want extended parental benefits.

[10] The Claimant applied for her maternity and parental benefits on August 9, 2021, a month after her baby was born. On her application, she gave a return-to-work date of September 7, 2022, the date that the next school year is due to start. When asked whether she wanted standard or parental benefits, she clicked on the extended option button. She then chose 52 weeks of benefits from the drop-down menu.

[11] The Commission wrote to the Claimant on September 1, 2021, to confirm that it had approved her application for maternity and parental benefits. The letter said: "Parental benefits will begin after the maternity benefits."<sup>5</sup> The letter did not say there would be a change in the benefit rate once parental benefits began.

[12] The Claimant says she thought she had requested standard parental benefits. There is no benefit rate change with standard benefits, so she would not have expected any change to the rate.

[13] 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

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<sup>4</sup> S 23(1.2) of the EI Act.

<sup>5</sup> See GD3-31.

those benefits. The Commission says her choice of the extended option is irrevocable because it already started paying her these benefits.

[14] The Claimant says she arranged with her employer, a school board, to take a year of maternity leave, until July 15, 2022. She says her employer paid her, and will pay her, for some training during her leave until the new school year starts. This affects the dates of the weeks she was paid/will be paid EI parental benefits. But, apart from her training weeks, she can get parental benefits according to the option she meant to choose. The question is: which option was that?

[15] The Claimant says she clicked on the extended parental benefits button by mistake. She says she chose 52 weeks from the drop-down menu because she thought that included maternity and parental benefits combined; 52 weeks was the closest option to the one-year maternity leave she was taking from work.

[16] The Claimant argues that she only realized the Commission had moved her to the extended parental option when she noticed on her bank statement that her benefit rate had dropped. She says she missed the email that the Commission sent telling her to check her My Service Canada Account (MSCA) for a rate change. She says she called the Commission as soon as she saw the change in her bank account to ask what had happened.

[17] The Claimant argues that she had no reason to check her MSCA since she did not have to file biweekly reports at the time. The Commission's original decision letter said she would get parental benefits after her maternity benefits. It did not say that she should expect a change in her benefit rate once parental benefits began.

[18] I must consider all the circumstances and all the relevant evidence when deciding which parental benefit option the Claimant chose when she completed her application.<sup>6</sup> Based on this evidence, I find it more likely than not that her choice was standard benefits.

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<sup>6</sup> *Canada Employment Insurance Commission v MD*, 2020 SST 1055.

[19] The evidence that the Commission submitted is relevant but some of it is internally inconsistent.<sup>7</sup> The Attestation Certificate (certificate) shows two levels of benefit rate, but caps the total entitlement weeks at 50. That would be the usual maximum for claimants choosing the standard 35 weeks of parental benefits *after* 15 weeks of maternity benefits. It does not match the profile of someone choosing extended benefits.

[20] As well, the certificate 9 says the Claimant's benefit period started on August 8, 2021, and will end on July 31, 2022. Those dates do not match a claim for 15 weeks of maternity benefits *followed by* 52 weeks of extended benefits. That would be 67 weeks in total, over a claim duration of less than a year.

[21] Given these inconsistencies, I prefer the Claimant's evidence. I find her sworn testimony credible since she was open and consistent in her responses and her statements matched the evidence that she submitted.

[22] I find it more likely than not that someone at the Claimant's educational level would have appreciated the negative financial impact of intentionally choosing 52 weeks of extended benefits at only 33% of her weekly earnings rather than 35 weeks of standard benefits at 55% of her usual earnings.

[23] As an example, someone with weekly earnings of 1,000 who asks for 35 weeks of standard parental benefits will receive, over the course of those weeks, a total of \$19,250 ( $1000 \times 55\% = \$550 \times 35$  weeks). Someone with the same weekly earnings who asks and actually receives 52 weeks of extended parental benefits will receive a total of \$17,160 ( $1,000 \times 33\% = \$330 \times 52$  weeks).

[24] It would not make sense for the Claimant to choose less money for extended benefits over 52 weeks. Given her return-to-work date, she would not have even been able to collect all those weeks.

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<sup>7</sup> See GD3-28.

[25] I also see a clear conflict between the Claimant's apparent choice of the extended option and the plans she made with her employer before she gave birth. Her correspondence with her union proves that her maternity leave was to be one year.<sup>8</sup>

[26] I acknowledge that the Claimant's return to full-time work will take place almost two months after her one-year maternity leave ends. But that return date still does not align with a choice of 52 weeks of parental benefits. I accept her testimony that the delay is because her position as a school principal can only restart when the 2022/2023 school year begins.

[27] As well, the Claimant's daycare applications show that she applied for a space for her baby before she applied for EI maternity benefits and well before she gave birth.<sup>9</sup> This shows that she was planning for her return to work in early September 2022, not for 52 weeks of parental leave.

[28] Based on the totality of the evidence, I accept the Claimant's testimony that she clicked on the extended option by mistake. She wanted benefits to cover one year of maternity leave from her job and tried to indicate that choice on her application. I find that ticking a box was not sufficient proof of an election of extended parental benefits given that the other evidence aligns with choosing standard parental benefits.

[29] Before finding that the Claimant chose standard parental benefits, I considered recent case law from the Federal Court (Court).

[30] The claimant in *Karval* filed a claim for extended parental benefits and later wanted to change to standard benefits.<sup>10</sup> The Commission refused her request, as did the Tribunal's General and Appeal Divisions. The Court also refused her request.

[31] However, there are significant differences between *Karval* and the appeal before me. For example, Ms. Karval requested the full 61 weeks of extended benefits. This choice does not show that she believed she was requesting one year of benefits.

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<sup>8</sup> See GD5-3.

<sup>9</sup> See GD-06.

<sup>10</sup> *Karval v Attorney General of Canada*, 2021 FC 395.

[32] As well, Ms. Karval only asked to change to standard benefits six months after her extended benefits began, even though her benefit rate had dropped significantly.

[33] The Claimant in this appeal had arranged a year's maternity leave from work, which aligns with the standard benefit option. There is logic to her choice of 52 weeks since this was the length of her maternity leave from work.

[34] The evidence also shows that the Claimant in this appeal contacted the Commission just a few days after it paid her benefits at a lower rate for the first time. Her prompt response shows that getting the lower rate was an entirely different outcome from the one she had intended. She did not wait six months to call the Commission as in the *Karval* case.

[35] The law does not allow claimants to change their election from extended to standard benefits after the Commission starts paying them parental benefits. But I find it more likely than not that the Claimant chose standard parental benefits, so there is nothing to revoke. She should be put in a position consistent with her choice of standard benefits.

## **Conclusion**

[36] The Claimant chose standard parental benefits.

[37] This means that I am allowing her appeal.

Lilian Klein  
Member, General Division – Employment Insurance Section