



Citation: *ML v Canada Employment Insurance Commission*, 2022 SST 801

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

Decision

Appellant: M. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (458273) dated February 23, 2022
(issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Teleconference

Hearing date: April 5, 2022

Hearing participant: Appellant

Decision date: April 5, 2022

File number: GE-22-822

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option.

[3] The Claimant argues that she made a mistake and actually wanted the standard benefits option. And, she has shown that she actually meant to choose that option.

Overview

[4] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."¹

[5] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays the same amount of benefits at a lower rate for up to 61 weeks. Overall the amount of money stays nearly the same, it is just stretched over a different number of weeks.

[6] Once you start receiving parental benefits, you can't change options.²

[7] On her application, the Claimant chose extended parental benefits. She confirmed at the hearing that she first received extended parental benefits in the week of February 4, 2022. But, she actually wanted standard parental benefits.

[8] The Claimant says that she always wanted to receive standard parental benefits but chose the wrong option on the application by mistake.

[9] The Canada Employment Insurance Commission (Commission) says that the Claimant made her choice and that it is too late to change it because she has already started receiving benefits.

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

² Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

[10] The Claimant disagrees. She says that she may have chosen to receive 52 weeks of extended parental benefits, but submits that was only because she was confused by the Commission's application form. She adds that she clearly wanted one year off work, because she provided a return to work date on the application. This date shows that she planned to be off work for one year.

Issue

[11] Which type of parental benefits did the Claimant actually want when she made her choice on the application?

Analysis

[12] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.³ The law says that you can't change options once the Commission starts paying parental benefits.⁴

[13] To decide which type of parental benefits the Claimant actually wanted when she made her choice on the application, I need to consider the evidence about that choice. In other words, the option the Claimant chose on her application matters, but it isn't the only thing to consider. For example, the number of weeks of benefits the Claimant wanted to receive or how long the Claimant planned to be off work might be things to consider too.

[14] Many Tribunal decisions have shown that it is important to consider all the evidence about a claimant's choice when they filled out their application.⁵ I am not bound by these decisions. In other words, I don't have to base my decision on them. But, I find them persuasive, and I am choosing to follow them.

³ Section 23(1.1) of the EI Act says that, when you make a claim for benefits under that section, you have to choose to receive benefits over a maximum of 35 or 61 weeks.

⁴ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

⁵ See *MC v Canada Employment Insurance Commission*, 2019 SST 666; *Canada Employment Insurance Commission v JH*, 2020 SST 483; *Canada Employment Insurance Commission v TB*, 2019 SST 823; *MH v Canada Employment Insurance Commission*, 2019 SST 1385; *VV v Canada Employment Insurance Commission*, 2020 SST 274; *ML v Canada Employment Insurance Commission*, 2020 SST 255; *RC v Canada Employment Insurance Commission*, 2020 SST 390.

What the Claimant meant to choose on the application

[15] The option that the Claimant meant to choose on the application when she actually filled it out is important. At that moment, did she mean to choose the standard or extended option?

The parties' arguments

[16] The Commission says that what the Claimant chose on the application tells us which option she wanted. It argues that it is too late to change options now.

[17] The Claimant testified that she read the application form, and thought she understood the different types of benefits. She noted that on the application form, she stated her last day worked was September 30, 2021, and she is expected to return to work on October 1, 2022.

[18] The Claimant agreed that the first payment of parental benefits was made to her on or about February 4, 2022. She telephoned the Commission on February 8, 2022, to ask why the benefit rate was reduced. Once the Commission agent explained the difference between standard and extended benefits, the Claimant asked to switch to standard benefits, because it was the benefit type she intended to select.

[19] The Claimant argues that she was confused between parental and maternity benefits. She testified that when she applied for EI benefits, she did not know that maternity was a separate period that paid 15 weeks of benefits. She thought she understood the difference between standard and extended parental benefits, but she realizes now that she did not understand because she made the mistake of asking for 52 weeks of extended benefits when she only wanted 52 weeks of benefits in total.

[20] I find the Claimant intended to select standard parental benefits. She completed the application for EI benefits herself. At the time she applied, she provided the dates of her planned absence from work. The dates she provided support that she planned to be off work for one year. She selected to receive 52 weeks of extended parental benefits. When she started receiving maternity benefits, she received 55% of her weekly insurable earnings. This is what she expected to receive through her maternity and parental period.

Extended parental benefits pay only 33% of weekly insurable earnings. When her maternity benefits ended, her rate decreased to the 33% provided by extended parental benefits.

[21] When the Claimant started to receive a lower benefit rate, she contacted the Commission to ask why the benefit rate changed. When the benefit types were explained to her, she realized she made a mistake. She immediately asked to change to standard benefits. The Commission agent told her it was too late to change, because she had already been paid parental benefits.

[22] The only evidence that the Claimant intended to choose extended benefits is her choice of that radio button on the application form. She testified that she intended to take one year off from work, and thought she had to choose extended benefits to be able to select 52 weeks.

Which option did the Claimant elect when she applied?

[23] I have already found that the Claimant proved she meant to choose standard parental benefits when she applied. She provided her return to work date on the application, which is one year from the date she stopped working. She also chose 52 weeks of extended benefits, which is the number that corresponds to one year. Since the Claimant did not realize maternity benefits paid a separate benefit for up to 15 weeks, she did not know that she should deduct the 15 weeks of maternity from her desired 52 weeks of leave.

[24] The Commission's application form does not state that maternity is a period of up to 15 weeks that is separate from the parental period. A question alludes to this when it asks if claimants want to receive parental benefits immediately following maternity benefits, because the negative answer states, "No, I only want to receive up to 15 weeks of maternity benefits." I find this does not clearly communicate that maternity is a separate benefit, and that the weeks of maternity should not be counted when calculating the number of weeks of parental benefits a claimant wants to claim.

[25] I find the Claimant did not understand that parental and maternity were separate benefits. When she started receiving maternity benefits at the rate of 55%, she did not know to contact the Commission and ask questions because she thought her claim was established correctly and she would continue receiving this amount of money. I find this is not a case of a claimant lacking the knowledge to answer unambiguous questions, because the difference between maternity and parental benefits and the relationship between the two benefits is not unambiguous. Further, the Claimant read the application and believed she was completing it properly when she applied.

[26] I find the Claimant relied on misleading information from the Commission when she picked extended benefits on the application form. Specifically, the Claimant based her answers on the Commission's application form, which was missing critical and timely information. Therefore, I find she elected to receive standard parental benefits. Some relief is available to applicants, like the Claimant, who can establish that the Commission misled them during the application process.⁶

Other Comments

[27] While each case is decided on its own merits, I must add that I have dealt with numerous cases of the same nature, which says nothing of how many other Tribunal members have addressed the same issue. If the application for maternity and parental EI benefits were clear and unambiguous, there would not be so many files with similar fact scenarios.

[28] While the Commission has no requirement to verify information on parental benefit application forms, and I recognize the volume of work it already deals with on a daily basis, there is evidently something amiss with this application form. When a claimant provides return to work information that shows they plan to take leave for one year, and they select 52 weeks of parental benefits in addition to 15 weeks of maternity benefits, there is clearly a misunderstanding or a mistake occurring. While a claimant could request this benefit structure, they would be choosing to receive benefits for a longer period than

⁶ See *Karval v The Attorney General of Canada*, 2021 FC 395 at paragraph 14.

they would be off work. While I cannot direct the Commission to take any particular action, I encourage it to review the body of similar cases and consider options to address inconsistencies and clarify this recurring situation.

Conclusion

[29] The Claimant chose standard parental benefits.

[30] This means that the appeal is allowed.

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