



Citation: *GW v Canada Employment Insurance Commission*, 2022 SST 921

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

Decision

Appellant: G. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (455818) dated February 15, 2022 (issued by Service Canada)

Tribunal member: Candace R. Salmon

Type of hearing: Videoconference

Hearing date: May 3, 2022

Hearing participant: Appellant

Decision date: May 6, 2022

File number: GE-22-797

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, based on a comprehensive review of the application form, she has shown that she actually chose 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 parental benefits in the week of December 31, 2021. But, she actually wanted standard parental benefits.

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

[9] The Claimant disagrees. She says that she may have chosen to receive 52 weeks of extended parental benefits on the form, but submits that was only because she was

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

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

confused by the Commission's application form and only a few hours post-traumatic birth when she applied for benefits.

Issue

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

Analysis

[11] 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.

[12] To decide which type of parental benefits the Claimant elected 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.

[13] 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.⁴ I am not bound by these decisions; however, I find them persuasive, and I am choosing to follow them.

What the Claimant chose on the application

[14] 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?

³ Section 23(1.1) of the *Employment Insurance 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 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.

The parties' arguments

[15] 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. The Commission also notes that information about the claim was available through the online My Service Canada Account (MSCA) portal.

[16] 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 8, 2021, but she had not set a specific date for her return to work before she applied for benefits. She testified that she spoke to her employer about maternity leave before she stopped working and planned to take one year off, which she submits is reflected by the fact that she asked for 52 weeks of parental benefits.

[17] The Claimant agreed that the first payment of parental benefits was made to her on or about December 31, 2021. She stated that she waited to see if the lower rate was an error, but after she received a couple benefit payments at the lower rate, she contacted the Commission.

[18] She telephoned the Commission on January 20, 2022, to ask why the benefits were reduced. Once the Commission agent explained the difference between standard and extended benefits, the Claimant testified that she asked to switch to standard benefits, because it was the benefit type she intended to select. The Commission agent told her that her election could not be changed because parental benefits had already been paid.

[19] The Claimant testified that she was induced on September 9, 2021, and had an emergency caesarian section. She stated that the procedure caused trauma to her baby, who had bleeding in his skull and was admitted to the neonatal intensive care unit (NICU) for 10 days. Additionally, the Claimant experienced injury during the birth, but was released from the hospital on September 11, 2021. She applied for EI benefits on September 13, 2021.

[20] She states that in addition to being postpartum and physically injured herself, she was visiting her newborn baby in the NICU daily and was exhausted. She was also concerned about getting her maternity benefit documents filed. She stated that she read the application and thought she understood the forms. She added that she had to read the documents a couple times because it “wasn’t super clear,” but thought she had to choose extended benefits because standard benefits only allowed up to 35 weeks of parental benefits. She said that because she wanted 52 weeks, she thought she had to choose the option that gave her up to 61 weeks of benefits. She stated that she did not contact the Commission to ask questions because she thought she answered everything correctly.

[21] The Claimant also stated that she had not understood the difference between maternity and parental benefits. She said, “I didn’t realize when filling out the form that there was a difference between” maternity and parental benefits. She said she thought it was “all maternity leave” and didn’t know it was two separate benefits.

[22] I find the Claimant selected standard parental benefits. She completed the application for EI benefits herself. At the time she applied, she did not provide a return to work date, but she asked for 52 weeks of benefits which corresponds to one year. 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.

[23] 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.

[24] 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.

[25] The application form asks the claimant whether they want to receive parental benefits immediately following maternity benefits. The Claimant selected “yes” on the form. I asked her why she chose this option, if she did not understand the difference between maternity and parental benefits. She said she wanted one year off work. I note that in this question, the only other option was, “No, I only want to receive up to 15 weeks of maternity benefits.” I find it is reasonable to conclude that if a claimant did not understand the difference between maternity and parental benefits, they may select “yes” to this question because they want more than 15 weeks of benefits.

Which option did the Claimant elect when she applied?

[26] I have already found that the Claimant proved she chose standard parental benefits when she applied. She chose 52 weeks of extended benefits, which is the number that corresponds to one year, and testified that she arranged to take one year off work. 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.

[27] 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. The question asking if claimants want to receive parental benefits immediately following maternity benefits alludes to this, 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.

[28] 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. She

testified that she did not check her online My Service Canada Account, because she had no reason to question whether her claim was set up correctly until she received the first payment of parental benefits. 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.

Other Comments

[29] While each case is decided on its own merits, I must add that I have dealt with more than 50 cases of this exact 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.

[30] The Federal Court has dealt with this issue in a limited circumstance. I recognize that in *Karval*,⁵ the Court found the Commission's application form wasn't unclear. The Court does not appear to have considered that the form does not explain to applicants that they must subtract the number of weeks of maternity benefits from their request for parental benefits. This is why I find *Karval* is distinguished from the case at hand.

[31] While the Commission is not required 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. 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

[32] I find the Claimant chose to receive standard parental benefits.

⁵ See *Karval v The Attorney General of Canada*, 2021 FC 395.

[33] This means that the appeal is allowed.

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