



Citation: *MO v Canada Employment Insurance Commission*, 2022 SST 925

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

Decision

Appellant: M. O.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (457230) dated February 17, 2022 (issued by Service Canada)

Tribunal member: Catherine Shaw
Type of hearing: Teleconference
Hearing date: April 28, 2022
Hearing participants: Appellant
Decision date: April 28, 2022
File number: GE-22-819

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 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 started receiving benefits at the lower rate in January 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 by mistake on the application.

[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.

Issue

[10] Which type of parental benefits did the Claimant actually want 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.⁴

[12] 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.

[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.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.

What the Claimant meant to choose 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 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.

[15] The Claimant applied for maternity and parental benefits in October 2021. She selected that she wanted to receive parental benefits immediately after her maternity benefits. She had the choice between standard parental benefits and extended parental benefits. She chose extended parental benefits. The form then asked how many weeks of benefits she wished to claim. She picked 52 weeks from the drop-down menu.

[16] The Claimant told the Tribunal that she had arranged with her employer to take one year off from work. So, she wanted to claim EI benefits for one year.

[17] The Claimant said she found the information on the application form unclear and confusing. On the parental benefit section of the application form, it asked her how many weeks of benefits she wished to claim. She thought that this question referred to the entire benefit term. That is why she selected the extended option and chose to receive benefits for 52 weeks. She thought this was the option that she was supposed to select for a one-year maternity leave.

[18] The Claimant received her first payment for parental benefits by January 11, 2022. This payment was for one week of maternity benefits at the higher benefit rate and one week of extended parental benefits at the lower benefit rate. She noticed her payment was lower than normal, but thought it was due to the holidays.

[19] She received her next payment on January 25, 2022. This was for two weeks of extended parental benefits at the lower benefit rate. She immediately contacted Service Canada to ask why her benefit amount had changed. They told her that she was receiving extended parental benefits. They said they couldn't switch her to the standard parental benefit option because she had already been paid.

The parties' arguments

[20] 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.

[21] The Claimant said she intended to apply for standard parental benefits. She had taken one year off from work as maternity leave. She is scheduled to return to work in September 2022. This is one-year after she gave birth to her child.

[22] The Claimant said that she chose the extended option by mistake. She selected 52 weeks of benefits because she wanted one year of benefits in total. She didn't realize the 52 weeks were referring only to the parental benefit term. It was not clear that maternity benefits were a separate 15 weeks of benefits added to the 52 weeks of parental benefits, for a total of 67 weeks. She thought she was claiming one year of maternity and parental benefits combined.

[23] I recognize that the Claimant selected the extended option on her application. However, there is conflicting evidence regarding which parental benefit term she chose. I put weight on the following factors:

- The Claimant has consistently stated that she was returning to work after one year of leave. She testified that her maternity leave started on September 18, 2021, and she is set to return to work on September 19, 2022. This supports that she wanted standard parental benefits, as she would receive her full entitlement to maternity and parental benefits before she returned to work.
- The Claimant contacted the Commission as soon as she realized that her benefit amount had changed. When she was advised that she was being paid extended parental benefits, she requested to be switched to standard parental benefits. This supports that she wanted standard parental benefits, as she didn't expect to be paid the extended parental benefit.
- The Claimant testified that she selected 52 weeks of benefits on her application because she thought it would give her one year of EI benefits total. I believe it was not her intention to claim 67 weeks of benefits in total (52 weeks of parental benefits plus 15 weeks of maternity benefits). I believe that it was the Claimant's intention to claim one year of benefits to correspond with her one year leave from work.

[24] I have also considered recent case law from the Federal Court.

[25] In *Karval*, the claimant applied for extended parental benefits and later wanted to change to standard parental benefits.⁶ The Court refused her request and found that it's the responsibility of claimants to carefully read and try to understand their entitlement options. If they are unclear or have questions, they should ask the Commission.

[26] I think there are significant differences between *Karval* and the Claimant's appeal. In *Karval*, the claimant asked for the full 61 weeks of extended parental benefits. This choice doesn't support that she believed she was requesting one year of benefits. The Claimant also asked to change to standard parental benefits six months after her extended benefits began, even though her benefit rate had dropped significantly.

[27] The Claimant's circumstances and actions are markedly different than those considered by the Court in *Karval*. The Claimant had arranged a one year maternity leave from work, which supports that she wanted the standard parental benefit option. She had a reasonable explanation for choosing 52 weeks of benefits, since this was the length of her maternity leave from work and she was confused by the questions on the application form.

[28] The Claimant also contacted Service Canada the same day that she became aware that her benefit amount had changed. Her prompt response shows that getting the lower rate was an entirely different outcome from the one that she intended. She did not wait six months to call Service Canada, as the claimant in *Karval* did.

[29] I find the evidence supports that the Claimant elected to receive standard parental benefits. I accept that she selected the extended option on her application form. But, this is the only evidence that she intended to choose extended benefits. There is a clear conflict between the Claimant's choice on the application form of extended parental benefits for 52-weeks and the plans she made with her employer before she gave birth. I find the Claimant's choice on the application form is outweighed

⁶ See *Karval v. Canada (Attorney General)*, 2021 FC 395.

by this other evidence. The Claimant's testimony and the arrangement with her employer support that she elected to receive the standard parental benefit option.

So, which option did the Claimant mean to choose when she applied?

[30] I find that the Claimant has proven that she meant to choose standard parental benefits when she applied.

[31] The law does not allow claimants to change their election from extended to standard benefits after they have been paid parental benefits. But, I find 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 parental benefits.

Catherine Shaw

Member, General Division – Employment Insurance Section