



Citation: *CP v Canada Employment Insurance Commission*, 2022 SST 996

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

Decision

Claimant: C. P.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (461695) dated March 10, 2022 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: May 10, 2022

Hearing participant: Claimant

Decision date: May 12, 2022

File number: GE-22-1100

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 the week of December 5, 2021. 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.

[10] The Claimant disagrees and says that she never meant to take 18 months of maternity leave from work, and made a mistake when she completed her application for benefits. She says that her employer is expecting her back at work in August 2022.

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. They argue that it is too late to change options now.

[17] The Claimant says that she made an honest mistake when she completed her application for benefits. She says that for her, the explanation of parental benefits in the application wasn't clear.

[18] I find that the Claimant meant to choose the standard option for payment of parental benefits.

[19] In the application for benefits, the Claimant said that her baby's date of birth is August 15, 2021. She said that her last day worked was August 13, 2021, and that her return to work date is July 15, 2022. The Claimant selected the extended parental benefits option. When asked the number of weeks of parental benefits she wished to claim, she chose 52.

[20] According to the Commission's file, they processed the first of the Claimant's parental benefits payments on December 10, 2021.

[21] The Claimant testified that she was outside Canada when she got an email saying that her EI benefits had changed. She said that she went to the Commission's website on December 12, 2022, but since she was outside Canada, she couldn't contact them. When she returned to Canada, she contacted the Commission.

[22] The Claimant testified that when she left work on maternity leave, she told her employer that she would return to work around August 2022. She said that since she left work in August, she had it in mind that she would return on August 15, 2022.

[23] The Claimant's employer issued a record of employment (ROE) because the Claimant left work for maternity leave. The ROE lists September 1, 2022 as the Claimant's expected date of return to work.

[24] I asked the Claimant why she said in her application for benefits that she wanted to claim 52 weeks of parental benefits. She said that for her, 52 weeks is one year. She said that this was the part that confused her. She stated that when she read this part, she thought it was one year, not extended benefits.

[25] I found the Claimant's testimony to be clear, straightforward and honest. So I have no reason to disbelieve her when she says that the application for benefits was not clear to her. I accept as fact that she intended to take one year of maternity leave from work. Even though the return to work dates in the ROE and the Claimant's application for benefits are different, neither supports that the Claimant intended to claim extended parental benefits. Rather, they align with the Claimant's testimony that she left work in August 2021 and in her mind, she would be back approximately one year later.

[26] Based on the above, I find the Claimant's selection of extended parental benefits is in conflict with her stated intention to take one year of maternity leave. Her prompt action after learning of the reduced benefits while outside Canada, and then on her return support her testimony that she made a mistake on the application. I find that even though she selected the extended parental benefits option, she meant to receive standard parental benefits. As a result, I find that she elected to receive standard parental benefits.

[27] The Commission included an example screenshot of a My Service Canada Account (MSCA). They say that claimants can view information including upcoming extended parental benefit rate once they have begun to receive maternity benefits.

[28] The Commission didn't make submissions on the relevance of the MSCA screenshot to the Claimant's choice of parental benefits option. They may have included the screenshot to say that the Claimant had access to information that would show that her parental benefits would be less than her maternity benefits. If she had

accessed her MSCA after her maternity benefits started and saw that her parental benefits would be reduced, then she could have asked for a change before payment of parental benefits.

[29] The Claimant testified that she has a MSCA. But she said that she checked the account at first and didn't see the upcoming extended parental benefits section. She said that she didn't know that her benefits would change after three months.

[30] I don't find the screenshot of the MSCA helpful. I agree that if the Claimant had happened to check her MSCA, if she had seen the upcoming extended parental benefits, she may have had time to fix her mistake. However, I have to decide what the Claimant meant to choose for payment of parental benefits. And I have found that she meant to choose standard parental benefits.

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

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

Conclusion

[32] The Claimant chose standard parental benefits.

[33] This means that the appeal is allowed.

Audrey Mitchell

Member, General Division – Employment Insurance Section