



Citation: *NR v Canada Employment Insurance Commission*, 2022 SST 1059

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

Decision

Claimant: N. R.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (453072) dated February 1, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: May 10, 2022

Hearing participant: Claimant

Decision date: May 13, 2022

File number: GE-22-993

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 26, 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 didn't apply for extended parental benefits. She says she is returning to work in September 2022, and now she can't afford to meet her monthly financial obligations.

Matter I have to consider first

No reconsideration decision filed

[11] The Claimant has to send the Tribunal a copy of the Commission's decision with her notice of appeal.³ She did not do so. I have a copy of the Commission's file that has this decision. So, I do not need the Claimant to send it.⁴

Issue

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

Analysis

[13] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.⁵ The law says that you can't change options once the Commission starts paying parental benefits.⁶

[14] 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.

³ Paragraph 24(1)(b) of the *Social Security Regulations* .

⁴ Paragraph 3(1)(b) of the *Social Security Regulations*.

⁵ 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.

⁶ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

[15] 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.⁷ 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

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

The parties' arguments

[17] 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.

[18] The Claimant says that there is an error in her application. She says that she should be receiving standard parental benefits since she is returning to work in September 2022.

[19] I find that the Claimant made a mistake on her application for benefits and meant to choose the standard option.

[20] In her application for benefits, the Claimant selected the extended option for payment of parental benefits. In response to the question that asked how many weeks of parental benefits she wanted to claim, the Claimant selected 61. She said that she wanted to receive parental benefits immediately after her maternity benefits, and opted not to complete reports to get her benefits. The Claimant said she did not know the date she would return to work.

⁷ 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.

[21] The Claimant's employer issued a record of employment (ROE). The ROE lists maternity as the reason it was issued. It also shows that the expected date the Claimant would return to work was unknown.

[22] According to the Commission's file, they processed the first payment of extended parental benefits on December 31, 2021. The Claimant called Service Canada on January 7, 2022 asking to have her parental benefits changed to the standard option.

[23] The Claimant insists that she selected the standard option for payment of parental benefits. In her request for reconsideration, she said there was an error in her application for benefits. In her notice of appeal, she said that she did not apply for extended parental benefits. However, at the hearing, she agreed that her application for benefits shows she selected the extended option.

[24] I asked the Claimant why she had chosen 61 weeks as the number of weeks of parental benefits she wanted to claim. She said that from what she remembered, she had first chosen the extended option and the 61 weeks, but then she realized that she would get 33% of her insurable earnings. She said she couldn't afford that, so she went back in the application and switched it back to the standard option.

[25] The Claimant testified that when she switched the option back to the standard option, she took up to the year, from September 2021 to September 2022. She said that from her understanding, she had applied for the standard parental benefits option. I asked the Claimant if, when she changed the option to the standard option, she saw a change in the number of weeks. She said that she did not.

[26] I find the Claimant's explanation of what she did when applying for maternity and parental benefits is credible. I found her testimony to be clear, straightforward and consistent with what she said to the Commission and in her notice of appeal. I also found her quick follow-up with the Commission seven days after they processed the first extended parental benefits payment is consistent with her testimony that she understood that she had applied for standard parental benefits. So I have no reason to

disbelieve that she believes she had returned to the two options in the application and successfully switched to the standard option.

[27] The Claimant testified that she has a letter from her employer that says she is expected to return to work in September 2022. She sent a copy of the letter to the Tribunal after the hearing. The letter is dated April 22, 2022. It says that as the Claimant requested in September 2021, she is taking “standard leave”, not “extended leave” and is scheduled to return to work in September 2022. This is consistent with the Claimant’s testimony that she had a conversation with her employer before going on maternity leave about her return to work in September 2022.

[28] I give a lot of weight to the letter from the Claimant’s employer. I do so because I find the employer is neutral to the outcome of this appeal. Even though the letter is dated after the Claimant filed her appeal, it is specific about the Claimant not asking for an extended period of leave, and her scheduled return to work in September 2022. The letter supports the Claimant’s statement that meant to apply for the standard option and that’s what she understood she had done. So I find that the Claimant meant to apply for standard parental benefits.

[29] 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.

[30] The Commission says that if the Claimant had accessed her MSCA before payment of parental benefits, she would have seen the reduced benefit rate. The Claimant confirmed that she has a MSCA, but she logged into her account after she got a parental benefits payment. She said that from her understanding, her benefits were not going to decrease. The Claimant testified that she thought that everything was okay, that she was getting standard parental benefits. She said that when she got less money deposited to her bank account, that’s when she saw the reduced amount.

[31] The Claimant sent a screenshot of her MSCA. She testified that the Commission is correct that if she had looked at her account before getting parental benefits, she

would have seen the reduced parental benefits. But she said that she applied for standard parental benefits, so she didn't expect to see a change. She added that the screenshot shows the end date of claim as September 10, 2022.

[32] I agree with the Commission's suggestion that the Claimant had access to information that would have shown her that her parental benefits would be reduced. However, I have already found that she meant to apply for standard parental benefits. I accept as fact that she thought she had successfully changed her initial selection to the standard option, understanding then that she couldn't afford to get only 33% of her insurable earnings. For this reason, I don't find it unreasonable that she wouldn't access her MSCA unless there was a problem with her benefits.

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

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

Conclusion

[34] The Claimant chose standard parental benefits.

[35] This means that the appeal is allowed.

Audrey Mitchell
Member, General Division – Employment Insurance Section