



Citation: *TM v Canada Employment Insurance Commission*, 2022 SST 1610

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

## **Decision**

**Appellant:** T. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (462530) dated March 24, 2022 (issued by Service Canada)

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**Tribunal member:** Catherine Shaw

**Type of hearing:** Videoconference

**Hearing date:** August 30, 2022

**Hearing participant:** Appellant

**Decision date:** October 4, 2022

**File number:** GE-22-1411

## Decision

[1] The appeal is allowed in part.

[2] The Claimant cannot be paid standard parental benefits beyond the 52 weeks allowed by law. But, he can be paid extended parental benefits because he did not make a valid election when he chose standard parental benefits. His choice was based on misleading information he received from the Canada Employment Insurance Commission (Commission).

## Overview

[3] The Claimant applied for EI parental benefits in January 2022. He had contacted the Commission several times prior to applying. The Commission officers had told him that he could start his claim for parental benefits anytime before his child's first birthday, and that he could be paid standard parental benefits for up to one year after that. Based on this information, the Claimant asked for 12 weeks of standard parental benefits.

[4] But, the Claimant's child was born in February 2021. There is a 52-week "parental window", starting from the date the child is born, in which a claimant can collect standard parental benefits.<sup>1</sup> Because the Claimant applied so close to the expiry of the parental window for standard benefits, he only received 4 weeks of benefits on his claim.

[5] The Commission says the Claimant can't be paid past the end of his parental window. And his choice of standard parental benefits became irrevocable when the first payment was issued to him.

[6] The Claimant says that he didn't know about the window of time for standard parental benefits when he applied. And he chose standard parental benefits because he was misled by the information he received from the Commission.

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<sup>1</sup> See section 23(1.2) of the *Employment Insurance Act*.

## Issues

[7] Can the Claimant be paid standard parental benefits past February 19, 2022?

[8] Can the Claimant receive extended parental benefits?

## Analysis

### **Can he be paid standard parental benefits past February 19, 2022?**

[9] No. The Claimant can only be paid standard parental benefits until February 19, 2022, because this is when his parental window ends.

[10] Parental benefits are intended to support you while you take time off work to care for your newborn child.<sup>2</sup>

[11] Parental benefits can only be paid within a specified period of time, called a parental window. The parental window starts the week in which the child is born and ends 52 weeks after that week.

[12] The following facts are not in dispute:

- The Claimant's child was born on February 17, 2021.
- The Claimant applied for 12 weeks of standard parental benefits to start on January 16, 2022.

[13] The Commission says the Claimant's parental window starts the week after the child's birth and ends 52-weeks later. This means his parental window starts on February 14, 2021, and ends on February 19, 2022.

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<sup>2</sup> This is set out in section 23(1) of the EI Act

[14] The parental window can be extended in some circumstances.<sup>3</sup> The Claimant confirmed at the hearing that he did not meet any of the conditions for a longer parental window.

[15] The Claimant is only able to be paid parental benefits within the parental window. His parental window ended on February 19, 2022. So, he cannot be paid parental benefits after this date.

### **Can the Claimant receive extended parental benefits?**

[16] Yes. The Claimant didn't make a valid election for standard parental benefits. So, he can receive extended parental benefits.

[17] Claimants who ask for parental benefits must choose a parental benefit option.<sup>4</sup> There are two options for parental benefits: standard or extended.<sup>5</sup>

[18] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays benefits at a lower rate for up to 61 weeks.<sup>6</sup>

[19] Once you start receiving parental benefits, you can't change options.<sup>7</sup>

[20] When the Claimant applied for EI benefits, he had to choose between standard and extended parental benefits. He chose standard parental benefits. The form then asked how many weeks of parental benefits he wanted, and the Claimant asked for 12 weeks.<sup>8</sup>

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<sup>3</sup> The criteria for an extension to the parental window are set out in sections 23(3) and 23(3.01) of the *Employment Insurance Act*.

<sup>4</sup> See Section 23(1.1) of the Act.

<sup>5</sup> Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

<sup>6</sup> See sections 12(3)(b)(i) and 12(3)(b)(ii), as well as section 14(1) of the *Employment Insurance Act*.

<sup>7</sup> Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

<sup>8</sup> See GD3-11.

[21] The Claimant was paid his first week of standard parental benefits on January 28, 2022.<sup>9</sup> On March 3, 2022, he asked to change his election to the extended option.<sup>10</sup>

**- What kind of parental benefits did he choose?**

[22] The Claimant chose standard parental benefits.

[23] On his application, the Claimant selected the standard option. He asked for 12 weeks of benefits. He gave his last day of work as January 14, 2022, and his return to work date as April 4, 2022. This is approximately 12 weeks of leave from work.

[24] The Federal Court of Appeal has said that a claimant's election of parental benefit option is what they choose on the application form.<sup>11</sup>

[25] I find that the Claimant chose standard parental benefits because this is what he selected on his application form.

**- Was his choice of standard parental benefits valid?**

[26] The Claimant's choice of standard parental benefits was not valid. This is because he was misled by the Commission about how long he could claim standard parental benefits. Because he was misled, he wasn't able to make a valid choice between standard or extended parental benefits.

[27] The Claimant testified that he contacted the Commission several times about his application for parental benefits. In November and December 2021, he called the Commission to ask about parental benefits. He asked the Commission officers about the timing of his claim, when he should apply, and how many weeks of parental benefits he could receive. The officers told him that he could apply anytime before his child's first birthday, and that he could receive standard parental benefits for up to one year after that.

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<sup>9</sup> See GD3-33.

<sup>10</sup> See the Claimant's request for reconsideration starting on GD3-40.

<sup>11</sup> See *Canada (Attorney General) v Hull*, 2022 FCA 82.

[28] Based on this information, the Claimant decided to take a few months of parental leave from work starting in January 2022. He thought standard parental benefits were the correct choice because of his conversations with the Commission. He applied for standard parental benefits on January 16, 2022, and asked for 12 weeks of benefits.

[29] He called the Commission several days after his application. The Commission officer confirmed that his application was correct. She said that he could take more than 12 weeks off. That he could claim a full year of standard parental benefits. She said the Commission would keep that option open for him and he can extend his parental benefits later, if he wanted.

[30] A few days later, he got a letter confirming his application information. The letter included his child's birth date and that he had asked for 12 weeks of parental benefits. The Claimant called the Commission again to confirm when his benefits would end. He hadn't been paid benefits yet. The Commission officer told him that his benefits had been approved and he would be paid shortly. They confirmed that he would be paid 12 weeks of standard parental benefits.

[31] The Commission stopped paying the Claimant benefits as of February 19, 2022. The Claimant called to ask why and the Commission officer told him that it was a mistake on their end and his benefits would resume soon. When he didn't receive any further benefits, the Claimant called again and was told that his benefits had ended.

[32] The Commission says the application form informed the Claimant about the difference between standard and extended parental benefits. The form also states: "The payable period for standard parental benefits begins the week in which the child is born or placed with you for the purpose of adoption and ends 52 weeks later."

[33] At the hearing, the Claimant reiterated that he believed standard parental benefits was the correct choice because of the calls he had made to the Commission before his application. This choice was validated when he spoke to the Commission following his application, too. He had no reason to doubt this information.

[34] The Claimant said he would have chosen extended parental benefits if he had known about the 52-week parental window for the standard option. I accept his testimony on this point. The Claimant's intention to claim 12 weeks of benefits was clear on his application form. I think it's far more likely that he wanted 12 weeks of benefits, even at a reduced rate, than 4 weeks of standard parental benefits.

[35] The law says that a claimant's election of parental benefit cannot be changed once the first payment has been made. However, the Appeal Division of the Tribunal has said that if a claimant's election between standard and extended parental benefits was based on misleading information, then they can make their election again.<sup>12</sup>

[36] In a case called *Karval*, the Federal Court held that applicants need to seek information about the benefits they are applying for and ask the Commission questions if there are things they don't understand.<sup>13</sup>

[37] But, the Appeal Division has said there is a difference between people who lack the knowledge to answer clear questions and those who are misled by relying on incorrect information the Commission provides.<sup>14</sup>

[38] I find the Claimant was misled by the Commission about how many weeks of the standard parental benefit he could claim. The Commission's failure to give him critical information about the parental window misled the Claimant into selecting the standard option. This misleading information caused the Claimant to make his choice without knowing that his claim would end after only 4 weeks of EI benefits – long before his 12 week parental leave was over.

[39] For this reason, I find the Claimant's election of standard parental benefits was invalid from the beginning because the Commission misled him by giving him incorrect and insufficient information.

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<sup>12</sup> See *Canada Employment Insurance Commission v MO*, 2021 SST 435.

<sup>13</sup> See *Karval v Canada (Attorney General)*, 2021 FC 396.

<sup>14</sup> See *Canada Employment Insurance Commission v SA*, 2021 SST 406.

[40] My conclusion is further supported by the fact that the Commission failed to issue a decision letter or otherwise notify the Claimant that he would only be receiving 4 weeks of benefits on his application for 12 weeks.

[41] The Claimant said that he saw a confirmation of his approval for benefits in his My Service Canada account shortly after his application.<sup>15</sup> The information on his account gave information about the start date of his claim, the waiting period, the type of benefit (standard parental benefits), and his total insurable earnings, benefit rate, and federal tax to be deducted. It also showed that 12 weeks of parental benefits were requested. It gave the end date of his claim as January 14, 2023.

[42] There was no information on the Claimant's My Service Canada account that would have alerted him that he would only be paid 4 weeks of the 12 weeks of benefits he requested. There was no information about start and end date of his parental window, nor any indication that it may affect his entitlement to benefits.

[43] The information on the Claimant's account wasn't clear or complete enough for the Commission to communicate its decision about the Claimant's entitlement to benefits. The Commission's obligation to communicate its decision requires that it makes a clear statement of outcome. The Claimant was never provided with a decision about the number of weeks of standard parental benefits he was entitled to until after his benefits ended on February 19, 2022.

[44] The law allows a claimant to change their election prior to the first payment of parental benefits. But the Claimant wasn't given this chance. By failing to advise him of the decision about the weeks of entitlement on his claim prior to the issuance of the first payment, the Commission took this opportunity away from the Claimant. They can't now rely on the fact of the first payment to prevent him from changing his election.

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<sup>1515</sup> See GD2-17.



[45] The Appeal Division of this Tribunal has said that a Claimant can make a new election if their first election was not valid. The Claimant testified that he would choose the extended option if he could make a new choice based on the correct information.

[46] As I have found his first election was not valid, I find the Claimant can make a new election. I find his new election is for extended parental benefits.

## **Conclusion**

[47] The Claimant's parental window for standard parental benefits ended on February 19, 2022. He can't be paid standard parental benefits past that date.

[48] But, his election of standard parental benefits was not valid. This means the Claimant can make a new election, and he has elected extended parental benefits.

[49] This means the appeal is allowed in part.

Catherine Shaw  
Member, General Division – Employment Insurance Section