



Citation: *HA v Canada Employment Insurance Commission*, 2022 SST 1687

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

## Decision

**Appellant:** H. A.  
**Representative:** N. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (530199) dated September 16,  
2022 (issued by Service Canada)

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**Tribunal member:** Candace R. Salmon

**Decision date:** November 30, 2022

**File number:** GE-22-3374

## Introduction

[1] The Appellant applied for employment insurance (EI) family caregiver benefits to care for her child. To qualify for this type of benefit, the Appellant has to provide the Canada Employment Insurance Commission (Commission) with an Employment Insurance Family Caregiver Benefits form signed by a medical doctor or nurse practitioner. The form must certify that three conditions exist: the family member's life is at risk as a result of the illness or injury, there has been a significant change in the patient's baseline state of health, and the patient requires the support of one or more family members.

[2] In this case, the Appellant provided the correct form, but it did not certify that the patient's life was at risk due to the illness or injury. The Commission denied the claim because the legal requirements to receive the benefit were not met. The Appellant is appealing this decision because she believes she should be entitled to family caregiver benefits.

## Issue

[3] I must decide whether the appeal should be summarily dismissed.

## The law – Summary Dismissal

[4] I must summarily dismiss an appeal if I am satisfied that the appeal has no reasonable chance of success.<sup>1</sup>

[5] Before summarily dismissing an appeal, I must give notice in writing to the Appellant and allow the Appellant a reasonable period to make submissions.<sup>2</sup>

[6] The Appellant appealed to the Tribunal on October 13, 2022. After reviewing the file, I determined that the appeal had no reasonable chance of success. I sent a letter to the Appellant on November 2, 2022, advising that I intended to summarily dismiss the

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<sup>1</sup> See section 53(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> See section 22 of the *Social Security Tribunal Regulations*.

appeal. I provided until November 21, 2022, for the Appellant to submit any further information that may be relevant to her appeal.

[7] The Appellant did not reply to the November 2, 2022, letter. I find the requirements of the *Social Security Tribunal Regulations* have been met because the Appellant had an opportunity to make submissions.

## The law – Family Caregiver Benefits for Children

[8] Family caregiver benefits are for individuals who are, “providing care or support to a critically ill family member.” A “critically ill child” is defined as a person who is under 18 years of age, whose baseline state of health has significantly changed, and whose life is at risk as a result of an illness or injury.<sup>3</sup>

[9] To fulfill the requirements of the *Employment Insurance Act*, the Commission required a Medical Certificate for Employment Insurance Family Caregiver Benefits to be completed by the Appellant’s son’s doctor. The form requests “yes” or “no” responses to three statements:

1. The patient’s life is at risk as a result of illness or injury;
2. There has been a significant change in the baseline state of health of the patient; and
3. The patient requires the care or support of one or more family members.

To be eligible for the benefit, ***all three questions*** must be answered in the affirmative.

## Evidence

[10] The Appellant provided a copy of the Medical Certificate for Employment Insurance Family Caregiver Benefits form dated December 22, 2021.<sup>4</sup> On the form, a doctor confirmed that the Appellant’s son needs the care or support of one or more family members. However, the doctor also stated that the patient’s life was not at risk due to the

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<sup>3</sup> *Employment Insurance Regulations*, section 1(6).

<sup>4</sup> See GD3-16.

illness or injury and said he did not experience a significant change in his baseline state of health.

[11] Another version of the Medical Certificate for Employment Insurance Family Caregiver Benefits form is included in the file.<sup>5</sup> It is dated May 26, 2022. On this version, the doctor certifies that the child experienced a significant change in his baseline state of health and required the care of one or more family members. However, it maintained that the child's life was not at risk due to the illness or injury. The doctor added handwritten notes stating, "the patient had a surgery under general anesthesia with requirement to stay at home for catheter care/wound care. There not not (sic) a risk to life but the standard of care requires the parent to remain at home during the period to ensure proper recovery. Note: if there is a risk to life then a patient is not sent home to be cared for by family!!"

[12] The Appellant submits that her child required her care. She is a single mother and had to stay home to help him. She added that the doctor would not change the medical form to say the child's life was at risk, but she believed she should be entitled to benefits.

[13] The Commission submits the Appellant cannot qualify for family caregiver benefits because she did not provide a medical certificate supporting that the legal requirements for these benefits are met.

## **Analysis**

[14] My role is to decide whether the Appellant's appeal should be summarily dismissed.

[15] To summarily dismiss the appeal, the law says I must be satisfied that the appeal has no reasonable chance of success.<sup>6</sup>

[16] The issue is whether it is plain and obvious on the record that the appeal is bound to fail.

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<sup>5</sup> See GD3-23.

<sup>6</sup> See subsection 53(1) of the DESD Act.

[17] The question is **not** whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that could be presented at a hearing.<sup>7</sup>

[18] I find this appeal has no reasonable chance of success. The law requires that the critically ill child's life be at risk due to illness or injury, and this must be certified by a medical doctor or nurse practitioner. There is no flexibility in this requirement. The medical certificate shows that this element was not met, so the Appellant cannot qualify for family caregiver benefits.

[19] The *Employment Insurance Act* sets out the requirements to meet to be entitled to benefits for the care of a critically ill child. I note that while the word "critical" does not appear on the Medical Certificate for Employment Insurance Family Caregiver Benefits form, the three questions contained in the form set out the same three requirements to be met as are contained in the legislation: the patient's life is at risk as a result of illness or injury; there has been a significant change in the baseline state of health of the patient; and, the patient requires the care or support of one or more family members.

[20] I appreciate that the Appellant had to provide care for her son. Unfortunately, the law is clear that all three questions must be answered in the affirmative. In this case, the first answer is a "no." Therefore, the Appellant's appeal has no reasonable chance of success.

[21] While I sympathize with her situation, there is no flexibility for me to interpret the law in any other way than its plain meaning. The Medical Certificate for Employment Insurance Family Caregiver Benefits is vital to this type of claim. In this case, this form did not certify that the Claimant's son qualified as a critically ill child and there is no legal basis for me to allow her to receive family caregiver benefits without that certification.

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<sup>7</sup> The Tribunal explained this in *AZ v Minister of Employment and Social Development*, 2018 SST 298.

## **Conclusion**

[22] I find that the appeal has no reasonable chance of success; therefore, the appeal is summarily dismissed.

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