



Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 516

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

## Decision

**Appellant:** A. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (558017) dated December 20, 2022 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** In person

**Hearing date:** January 31, 2023

**Hearing participant:** Appellant

**Decision date:** February 6, 2023

**File number:** GE-23-47

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant. The Claimant isn't entitled to receive parental benefits.

## Overview

[2] The Claimant had a baby on August 14, 2021. But she took only six weeks off work and didn't apply then for employment insurance (EI) maternity benefits. The Claimant and her husband spoke to Service Canada more than once. They decided that her husband would apply for parental benefits and the Claimant would return to work and apply for parental benefits later.

[3] The Commission told the Claimant they could not pay her parental benefits because she applied for benefits more than 52 weeks after the birth of her child. The Claimant says she applied for parental benefits when she did based on misguidance from Service Canada.

## Issue

[4] Is the Claimant entitled to receive parental benefits?

## Analysis

[5] A claimant can get parental benefits to care for a newborn child.<sup>1</sup> They must choose the maximum number of weeks of benefits.<sup>2</sup> They can get a maximum of 35 (standard option) or 61 weeks (extended option) of parental benefits.<sup>3</sup>

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

<sup>2</sup> See section 23(1.1) of the Act.

<sup>3</sup> See section 12(3)(b) of the Act.

[6] You can get parental benefits in the period that starts when a child is born and ends 52 weeks later.<sup>4</sup> This is called the parental window. This window is extended by 26 weeks where a claimant elects for the extended option for parental benefits.<sup>5</sup>

[7] Both parents can claim parental benefits for the same child. In that case, the option for parental benefits chosen by the first parent who claims benefits applies to the other parent.<sup>6</sup> Once you start receiving parental benefits, you can't change options.<sup>7</sup>

[8] I cannot make decisions outside of the law for any reason, no matter how compelling the circumstances.<sup>8</sup>

### **Is the Claimant entitled to receive parental benefits?**

[9] No, the Claimant isn't entitled to receive parental benefits. This is because she applied for the benefits outside the parental window.

[10] Before the pandemic, the Claimant was a dental hygienist working in private practice. She testified that everything shut down due to the pandemic. She then got a job as a COVID case worker, but she was pregnant at the time. The Claimant planned to take six weeks off and then go back to work to finish her contract.

[11] The Claimant said she and her husband called Service Canada to ask about EI benefits. She said Service Canada told her she couldn't take six weeks of benefits, return to work, and then claim benefits later. The officer told her that she had until February 2023 for a claim for benefits.

[12] The Claimant later got a full-time job. Her baby was born on August 14, 2021. She said based on the information she got from Service Canada, and after calling more than once to confirm what she had been told, she decided to take parental leave from her job from October 2021 to February 2023.

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<sup>4</sup> See section 23(2) of the Act.

<sup>5</sup> See section 23(3.21) of the Act.

<sup>6</sup> See section 23(1.3) of the Act.

<sup>7</sup> See section 23(1.2) of the Act.

<sup>8</sup> See *Granger v. Canada Employment and Immigration Commission*, A-684-85.

[13] The Claimant applied for parental benefits on October 12, 2022. She said she would claim 18 weeks of the standard option. She confirmed that this is the same option her husband claimed for the 10 weeks of parental benefits he got.

[14] The Commission says that the 52-week parental window was established from August 8, 2021 to August 13, 2022. This is based on the date of birth of the Claimant's baby. The Commission says the Claimant's request in October 2022 for standard parental benefits is outside the 52-week parental window.

[15] I agree with the Commission and find that based on her baby's date of birth, the Claimant applied for the standard option for parental benefits outside the 52-week parental window. I find that because her husband applied for and received 10 weeks of standard parental benefits, the option can't be changed to the extended option to extend the parental window.

[16] The Claimant expressed frustration at what she says is misinformation she got from more than one Service Canada officer. She said that one of the officers was rude and aggressive with her, prompting her husband to tell her to end the call.

[17] The Claimant acknowledged that she had made the same mistake as the Service Canada officers who gave her the information they did. But she doesn't think it is fair that she is being held accountable for the misinformation she got. She pointed to the part of application for benefits that lists Service Canada's responsibilities. One is that Service Canada is responsible to give accurate information about your claim, including how you can share parental benefits with an eligible spouse.

[18] Concerning what it calls miscommunication, the Commission says that this doesn't change the law and how it must be applied.

[19] I found the Claimant to be honest, straightforward, and articulate. So, I have no reason to doubt that she and her husband made decisions based on information they got from Service Canada. I find that the Commission's recent decision to pay her maternity benefits for the six weeks she was off work immediately after having her baby is likely an acknowledgement that something went very wrong on its end.

[20] It is unfortunate that in the current economic climate, the Claimant is effectively losing out on weeks of parental benefits that she may otherwise have been entitled to. While I sympathize with the Claimant's situation, I can't change the law.<sup>9</sup>

## **Conclusion**

[21] The Claimant applied for parental benefits outside the 52-week parental window.

[22] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section

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<sup>9</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.