



[TRANSLATION]

Citation: *MG and JL v Canada Employment Insurance Commission*, 2022 SST 1785

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

Decision

Appellants:

M. G.
J. L.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decisions (484461 and 484443) dated
June 2, 2022 (issued by Service Canada)

Tribunal member:

Charline Bourque

Type of hearing:

Teleconference

Hearing date:

August 18, 2022

Hearing participant:

J. L.

Decision date:

September 14, 2022

File numbers:

GE-22-2281
GE-22-2282

Decision

[1] The appeal is allowed.

[2] The Claimants' Employment Insurance (EI) parental benefits applications show that they selected the standard benefits option.

Overview

[3] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."¹

[4] 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.

[5] Once you start receiving parental benefits, you can't change options.²

[6] On her application, J. L. chose extended parental benefits,³ while M. G. chose standard parental benefits.⁴ J. L. started receiving benefits at the lower rate the week of April 30, 2021, while M. G. started receiving parental benefits on October 3, 2021. But, they actually wanted standard parental benefits.

[7] The Claimants say that they always wanted to receive standard parental benefits, but J. L. chose the wrong option by mistake on her application.

[8] The Canada Employment Insurance Commission (Commission) says that the Claimants made their choice and that it is too late to change it because they have 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.

³ See J. L.'s application for benefits (GE-22-2282/GD3-9).

⁴ See M. G.'s application for benefits (GE-22-2281/GD3-12).

[9] The Claimants disagree and say that J. L.'s choice was due to the confusion caused by the information she had gotten from her employer. She says that despite various communications with her employer, it suggested choosing the extended option. The fact is that she was scheduled to go back to work after 52 weeks. This means that they are being penalized several thousands of dollars when they have an extra child to care for and they always intended to get standard benefits for one year, like they did when their other children were born.

Matters I have to consider first

The appeals were joined at the hearing

[10] The Claimants applied for parental benefits after the birth of their child. Their files (GE-22-2281 and GE-22-22282 [*sic*]) were joined at the hearing to hold a joint hearing because their appeals raise questions of law or fact related to the same issue and because no injustice is likely to be caused to any party.

M. G. wasn't at the hearing

[11] A hearing can go ahead without the claimant. In this case, J. L. was at the hearing and wanted to present her case. She said that she and M. G. were partners and that she was aware of the situation in each file because the files were connected.

[12] M. G. forwarded an authorization allowing J. L. to represent him at the hearing.⁵ So, the hearing took place as scheduled.

Issue

[13] Which type of parental benefits did the Claimants actually want when they made their choice on the application?

⁵ See M. G.'s email (GE-22-2281/GD5).

Analysis

[14] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.⁶ The law says that you can't change options once the Commission starts paying parental benefits.⁷

[15] To decide which type of parental benefits the Claimants actually wanted when they made their choice on their applications, I need to consider the evidence about that choice. In other words, the option the Claimants chose on their applications matters, but it isn't the only thing to consider. For example, the number of weeks of benefits the Claimants wanted to receive or how long the Claimants planned to be off work might be things to consider too.

[16] 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.⁸ 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 Claimants meant to choose when they applied

[17] The option that the Claimants meant to choose when they filled out their applications is important. At that moment, did they mean to choose the standard or extended option?

[18] J. L.'s application for benefits shows that she selected the extended parental benefits option. But she indicated that she wanted to claim 52 weeks of benefits.⁹

⁶ 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.

⁷ Section 23(1.2) of the EI Act says that the choice is irrevocable (that is, final) once you receive benefits.

⁸ 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; and *RC v Canada Employment Insurance Commission*, 2020 SST 390.

⁹ See J. L.'s application for benefits (GE-22-2282/GD3-9).

[19] M. G.'s application for benefits shows that he selected the standard parental benefits option for a period of 11 weeks.¹⁰

The parties' arguments

[20] The Commission says that what the Claimants chose when they applied tells us which option they wanted. It argues that it is too late to change options now.

[21] The Commission also says that J. L. applied for parental benefits first, so her choice applies to the other parent.

[22] J. L. says that there was confusion between the choice she made and the information she got from her employer. She says that after changes were made to the collective agreement, her employer explained to her that she was entitled to extended leave. So, despite email communications where she asked the employer whether she should choose this option, it didn't set her straight. Yet, from the beginning of her leave, she had a scheduled return-to-work date, and her leave was supposed to last only 52 weeks.

[23] She says that based on the information she got from her employer, "extended" meant that she could be off work for longer than the 12 months she had gotten in the past. She didn't think that it referred to the type of benefits or to the amount of benefits she was going to receive. So, based on the words her employer had used, she ticked the box for extended benefits, not knowing that her employer's documents were related to the length of her leave, not the type of EI benefits.

[24] J. L. provided emails between her and her employer. In those communications, she put a question mark after the word "extended."¹¹ J. L. explained the confusion with her employer and the words it had used because of the collective agreement.

[25] J. L. indicated that she wanted to be off work for 52 weeks. She says it was the total length of her leave. Her maternity leave started on December 26, 2020, and she

¹⁰ See M. G.'s application for benefits (GE-22-2281/GD3-12).

¹¹ See the emails between J. L. and her employer (GD5).

was going to go back to work on January 3, 2022.¹² I note that the Commission didn't check with her despite this information.

[26] J. L. also says that her partner selected the standard option, as he had done for their other children.

[27] Lastly, J. L. says that she was the victim of EI fraud. It took several months to settle her file. She didn't know the amounts she was receiving from EI. In addition, I am of the view that it would have been difficult for her to verify whether she was in fact getting the amounts of benefits she was expecting.

[28] I find that J. L. clearly intended to get standard parental benefits. Her communications with her employer show that the language it used and the wording of its collective agreement are what made her select the extended option when she clearly intended to receive standard benefits to get a total of 52 weeks of maternity and parental leave.

[29] J. L. indicated that she would be off work for 52 weeks, and she provided a date of return [that was] 52 weeks after the start of her maternity leave. On his application for benefits, M. G. selected the standard option. Lastly, J. L. was the victim of fraud, and it was difficult for her to verify the amounts received because of the investigation and the resulting delays.

So, which option did the Claimants mean to choose when they applied?

[30] I find that the Claimants have proven that they meant to choose standard parental benefits when they applied.

Conclusion

[31] The Claimants chose standard parental benefits.

¹² On her EI application, J. L. indicated that her date of return was January 3, 2022 (GE-22-2182 [sic] /GD3-6).

[32] This means that the appeal is allowed.

Charline Bourque
Member, General Division – Employment Insurance Section