



[TRANSLATION]

Citation: *LB v Canada Employment Insurance Commission*, 2023 SST 947

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

**Decision**

**Appellant:** L. B.  
**Representative and Witness:** B. N.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (556376) dated December 19, 2022 (issued by Service Canada)

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**Tribunal member:** Charline Bourque  
**Type of hearing:** In person  
**Hearing date:** May 9, 2023  
**Hearing participants:** Appellant  
Appellant's representative and witness  
**Decision date:** May 15, 2023  
**File number:** GE-23-752

## Decision

[1] The appeal is dismissed.

[2] The Claimant doesn't meet the requirements under the Act to receive family caregiver benefits.

## Overview

[3] The Claimant applied for the Employment Insurance (EI) family caregiver benefit for adults starting September 25, 2022. The Claimant says that she wanted to help her husband who had two consecutive accidents.

[4] Still, the Commission decided that the Claimant wasn't entitled to the family caregiver benefit for adults because the medical certificate submitted doesn't indicate that the adult is critically ill or injured.<sup>1</sup>

[5] So, I have to decide whether the Claimant is eligible to receive EI special benefits for critically ill adults.

## Issue

[6] Is the Claimant eligible for the family caregiver benefit?

## Analysis

[7] A family member of a critically ill adult who needs to care for or support them can receive EI benefits if a medical doctor or nurse practitioner issues a certificate with the following:

- It certifies that the adult is critically ill and requires the care or support of one or more of their family members.
- It specifies the period during which they require care or support.<sup>2</sup>

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<sup>1</sup> See the Commission's initial decision dated October 25, 2022 (GD3-21).

<sup>2</sup> See section 23.3(1) of *the Employment Insurance Act (Act)*.

[8] The certificate must be issued by a medical practitioner.<sup>3</sup>

[9] The *Employment Insurance Regulations* (Regulations) clarify the definition of a “critically ill adult.” It says that a critically ill adult is a person:

- 18 years of age or older
- who has had a significant change in their usual state of health
- whose life is at risk due to illness or injury<sup>4</sup>

[10] The Claimant says that she disagrees with the Commission’s decision. She says that the Commission’s website provides incorrect information because it talks about the family caregiver benefit without mentioning the person’s life being at risk. She is of the view that her partner’s condition required the assistance of a family caregiver and that is why she applied for benefits. She says that there is a difference between a critically ill person, whose life isn’t necessarily at risk, and a person who wants to assist a person whose life is at risk and is asking for compassionate care benefits.

[11] The Claimant also argues that the Commission makes no distinction between benefits for people who are critically ill and compassionate care benefits. In fact, the Commission uses the same medical certificate form for both types of benefits. Still, a person can be critically ill and require the care of a caregiver without their life being at risk.

[12] The Commission found that the family caregiver benefit for adults could not be paid from September 25, 2022, because the doctor didn’t indicate that the patient’s life was at risk because of his injury.

[13] I note that the excerpt from the website indicates that benefits are payable when a person has been found critically ill or injured or needing end-of-life care. So, the Claimant understood that she was entitled to these benefits because her husband was

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<sup>3</sup> See section 23.3(2) of the Act.

<sup>4</sup> See the definition of critically ill adult in section 1(7) of the *Employment Insurance Regulations* (Regulations).

seriously injured.<sup>5</sup> Still, even if not clearly identified, the excerpt clearly states that “[a] critically ill or injured person is someone whose baseline state of health has changed significantly because of illness or injury. As a result, their life is at risk ....”<sup>6</sup>

[14] I find that the Claimant did submit the medical certificate for the EI family caregiver benefit. The doctor answered “No” to the question, “The patient’s life is at risk as a result of illness or injury.”<sup>7</sup> The Claimant explained that the doctor could not answer the question any other way, which didn’t prevent her husband from being seriously injured and needing care because of his injuries. The doctor even amended the certificate to show the severity of the injuries.<sup>8</sup>

[15] Unfortunately, in order to receive the benefit for critically ill adults, the doctor must certify that the adult is critically ill, meaning that their life is at risk due to illness or injury.<sup>9</sup> The Act requires this and I can’t go against it.

[16] Despite my empathy for the situation of the Claimant and her partner, I have no room for discretion in interpreting this test. My role is to apply the Act and its Regulations, and I cannot change them just to please the Claimant, who is dissatisfied. The Act sets out specific criteria that a claimant must meet to be eligible for benefits, and I can’t ignore them.<sup>10</sup> It is up to Parliament to make the necessary legislative changes.

[17] So, I am of the view that the Claimant doesn’t meet the requirements to be eligible for EI benefits for a critically ill adult because the medical certificate doesn’t indicate that her partner’s life is at risk because of his injury.

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<sup>5</sup> See excerpt from Service Canada’s website (GD2-32).

<sup>6</sup> See excerpt from Service Canada’s website (GD2-33).

<sup>7</sup> See medical certificate (GD3-16).

<sup>8</sup> See the amended medical certificate (GD2-34).

<sup>9</sup> See the definition of critically ill adult in section 1(7) of the Regulations.

<sup>10</sup> See *Wegener v. Canada (Attorney General)*, 2011 FC 137; *Granger v. Commission (CEIC)* FCA #A-684-85.

## **Conclusion**

[18] The appeal is dismissed.

[19] The Claimant doesn't meet the requirements to be eligible for the EI family caregiver benefit for adults.

Charline Bourque  
Member, General Division – Employment Insurance Section