



Citation: *DA v Canada Employment Insurance Commission*, 2023 SST 1022

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

Decision

Appellant: D. A.
Representative: M. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (587574) dated May 25, 2023
(issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: **IN WRITING**

Decision date: June 22, 2023

File number: GE-23-1474

Decision

[1] The appeal is dismissed. This means I disagree with the Appellant.

[2] She cannot receive more weeks of sickness benefits. She has received the maximum 15 weeks allowed by the law. And the change to the law that allows sickness benefits to be paid up to 26 weeks is not retroactive, so it does not apply to her claim.

Overview

[3] The Appellant was paid 15 weeks of sickness benefits on her claim. She asked for more weeks of sickness benefits as she was still unable to work, and because the government had changed the law only two days after she applied. The law now allows up to 26 weeks of sickness benefits.

[4] The Canada Employment Insurance Commission (Commission) denied the Appellant's request. It said she couldn't be paid any more weeks of sickness benefits because the law at the time she applied said that 15 weeks is the maximum.

[5] The Commission agrees that the Employment Insurance Act (EI Act) was changed after the Appellant applied for benefits. Claimants can now be paid up to 26 weeks of sickness benefits. But, this change wasn't in force at the time the Appellant applied, so it doesn't apply to her claim.

Matter I have to consider first

[6] The Appellant asked for her hearing to be held in writing.¹ This means that I make a decision based on the written arguments and documents sent in by the parties. After the Appellant received a copy of all the parties' documents, I asked her if she wanted to submit anything else. If she wanted to send anything further, I asked her to do so by June 21, 2023.² I didn't receive anything further from the Appellant, so my decision is based on the evidence and submissions on file.

¹ See GD2-5.

² See GD5.

Issue

[7] Can the Appellant be paid more weeks of sickness benefits?

Analysis

[8] Until December 17, 2022, the law said that you could be paid up to 15 weeks of sickness benefits on your claim.

[9] On December 18, 2022, the EI Act was changed so that sickness benefits could be paid up to 26 weeks.

[10] The Appellant applied for EI sickness benefits on December 16, 2022.³ The Commission started her benefit period on December 11, 2022. She served a one-week waiting period (in other words, she wasn't paid benefits for the first week). Then she was paid her 15 weeks of sickness benefits from December 18, 2022, to April 1, 2023.⁴

[11] The Appellant asked the Commission to reconsider the decision to stop her sickness benefits after 15 weeks.⁵ She pointed out that sickness benefits were now available for up to 26 weeks and she was still unable to return to work for medical reasons.

[12] The basic facts of this case aren't in dispute. The Appellant's benefit period started on December 11, 2022. She was paid 15 weeks of sickness benefits on that claim.

[13] The Appellant is correct that Parliament did change the EI Act so that sickness benefits could be paid up to 26 weeks. But this only applies to claims with a benefit period starting on or after December 18, 2022. The change isn't retroactive to claims that started before that date.

³ See GD3-3 to GD3-16.

⁴ See GD3-22.

⁵ See GD3-23 to GD3-25.

[14] As the Appellant's benefit period started on December 11, 2022, the increase in the maximum number of weeks of EI sickness benefits doesn't apply to her claim. This means she can't be paid more weeks of sickness benefits because she has already received the maximum that was allowed under the law at the time.

[15] I understand the Appellant will be disappointed with this result. I don't doubt that her medical conditions continued past the end of her sickness benefits. Unfortunately, I am bound to apply the law as it is written. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has said:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.⁶

Conclusion

[16] The appeal is dismissed.

[17] The Appellant cannot receive more weeks of sickness benefits. She was paid the maximum 15 weeks allowed by the law. The increase in the maximum number of weeks of sickness benefits doesn't apply to her claim because it came into effect after her benefit period started.

Catherine Shaw
Member, General Division – Employment Insurance Section

⁶ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.