



[TRANSLATION]

Citation: *PD v Canada Employment Insurance Commission*, 2023 SST 287

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

## Decision

**Appellant:** P. D.  
**Representative:** S. L.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (459433) dated March 24, 2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Videoconference  
**Hearing date:** February 9, 2023  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** February 10, 2023  
**File number:** GE-22-3420

## Decision

[1] The appeal is allowed. I find that the Appellant is entitled to family caregiver benefits (special benefits – critically ill adult) for the period from August 24, 2021, to December 24, 2021.<sup>1</sup>

## Overview

[2] On December 15, 2021, after previously applying for Employment Insurance (EI) sickness benefits (special benefits) on September 16, 2021, the Appellant applied for family caregiver benefits.<sup>2</sup>

[3] In his December 15, 2021, application for benefits, the Appellant indicated that the family member he was caring for or supporting was his partner.<sup>3</sup> He asked to receive 15 weeks of this type of benefit.<sup>4</sup>

[4] On January 5, 2022, the Canada Employment Insurance Commission (Commission) told him he wasn't entitled to EI family caregiver benefits for adults from September 13, 2021, because the adult for whom this type of benefit could be paid didn't meet the definition of a critically ill or injured adult under the *Employment Insurance Regulations*.<sup>5</sup>

[5] On March 24, 2022, after a reconsideration request, the Commission told him it was upholding the January 5, 2022, decision about the payment of family caregiver benefits.<sup>6</sup>

[6] The Appellant explains that the family member who is critically ill is his partner. He says she had surgery and needed support. He says that he gave the Commission a medical certificate to receive family caregiver benefits but that he didn't meet the requirements to receive this type of benefit. He explains that he had a doctor complete

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

<sup>2</sup> See GD3-3 to GD3-12 and GD3-25 to GD3-32.

<sup>3</sup> See GD3-25 to GD3-32.

<sup>4</sup> See GD3-25 to GD3-32.

<sup>5</sup> See GD3-34.

<sup>6</sup> See GD3-41 to 44.

another medical certificate for family caregiver benefits that should meet the Commission's requirements. The Appellant argues that this certificate, completed by the surgeon who performed the surgery on his partner, shows that he is entitled to family caregiver benefits from August 24, 2021. He says that this document indicates that his partner's life was at risk, that there was a change in her baseline state of health, and that she needed the care or support of one or more family members. The Appellant also says this document specifies that his partner required the care or support of one or more family members until December 24, 2021. On October 11, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. This decision is being appealed to the Tribunal.

## Issue

[7] I have to decide whether the Appellant is entitled to family caregiver benefits for adults (special benefits – critically ill adult).<sup>7</sup> To do this, I must answer the following question:

- Has a medical doctor or nurse practitioner issued a certificate stating that an adult family member of the Appellant is critically ill and requires the care or support of one or more family members, and setting out the period during which the adult requires that care or support?

## Analysis

[8] The *Employment Insurance Act* (Act) says that benefits are payable to a claimant who is a family member of a critically ill adult, to care for or support that adult, if a medical doctor or nurse practitioner has issued a certificate that does the following:

- states that the adult is critically ill and requires the care or support of one or more of their family members

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<sup>7</sup> See section 23.3 of the Act.

- sets out the period during which the adult requires that care or support<sup>8</sup>

[9] A “critically ill adult” is a person who is 18 years of age or older on the day the period referred to in section 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of illness or injury.<sup>9</sup>

**Has a medical doctor or nurse practitioner issued a certificate stating that an adult family member of the Appellant is critically ill and requires the care or support of one or more family members, and setting out the period during which the adult requires that care or support?**

[10] In this case, the evidence shows that, on October 11, 2022, the Appellant gave the Tribunal a doctor-issued medical certificate stating that an adult family member—in this case, his partner—is critically ill.<sup>10</sup>

[11] In the document entitled “Medical Certificate for Employment Insurance Family Caregiver Benefits,” completed on September 27, 2022, the doctor certified having observed, on August 24, 2021, the three medical conditions described in questions 1, 2, and 3 of that document. The doctor answered “yes” to the question whether the life of the patient, the Appellant’s partner, is at risk as a result of illness or injury (question 1). The doctor answered “yes” to the question whether there has been a change in the baseline state of health of the patient (question 2). And the same to the question whether the patient requires the care or support of one or more family members (question 3). The doctor said the patient would require the care or support of one or more family members until December 24, 2021.<sup>11</sup>

[12] On April 5, 2022, and June 28, 2022, the Appellant also sent the Commission documents describing his partner’s medical condition, which started in the spring of

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<sup>8</sup> See section 23.3(1) of the Act.

<sup>9</sup> See section 1(7) of the *Employment Insurance Regulations*.

<sup>10</sup> See the medical document entitled “Medical Certificate for Employment Insurance Family Caregiver Benefits,” completed by Dr. Marie-Ève Légaré from the Quebec City University Hospital Center (CHU de Québec – Université Laval) on September 27, 2022—GD2-13 to GD2-15.

<sup>11</sup> See GD2-13 to 15.

2021, and indicating that she had cataract surgery in both eyes on November 25, 2021.<sup>12</sup>

[13] The Appellant's testimony and statements indicate the following:

- a) A doctor advised him to stay with his partner to care for her because she had [translation] "severe cataracts" in both eyes and this was a danger to her health.<sup>13</sup>
- b) His partner's condition required surgery. She had surgery on November 25, 2021.<sup>14</sup>
- c) The surgeon who performed the surgery also advised him to stay with his partner 24 hours a day because her condition was a risk to her health.<sup>15</sup>
- d) On November 9, 2021, the Appellant gave the Commission a first medical certificate (document entitled "Medical Certificate for Employment Insurance Family Caregiver Benefits"), completed November 5, 2021. But the Commission refused it because it didn't meet the criteria for him to receive family caregiver benefits.<sup>16</sup>
- e) The Appellant points out that this medical certificate was completed by his family doctor and not by his partner's doctor. He says his partner didn't meet with this doctor until he completed the certificate.<sup>17</sup>
- f) He then provided a medical certificate, completed on September 27, 2022, from the surgeon who performed the surgery. According to the surgeon, this

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<sup>12</sup> See the documents entitled [translation] "medical prescription," issued by Dr. Marie-Ève Légaré from the Quebec City University Hospital Center (CHU de Québec – Université Laval) on April 4, 2022, and June 16, 2022, describing the Appellant's partner's medical condition since the spring of 2021, and indicating that she had cataract surgery in both eyes on November 25, 2021—GD3-45 and GD3-47.

<sup>13</sup> See GD3-35 and GD3-37.

<sup>14</sup> See GD3-35, GD3-37, and GD3-45.

<sup>15</sup> See GD3-37.

<sup>16</sup> See the medical certificate completed by a doctor on November 5, 2021—GD3-22 to GD3-24.

<sup>17</sup> See GD2-3 and 40.

certificate met the requirements set out in the Act for him to receive family caregiver benefits.<sup>18</sup>

- g) The Appellant cared for his partner until December 27, 2021. He then returned to work.<sup>19</sup>

[14] The Appellant's representative argues that it was several months before the Appellant's partner's surgeon completed a medical certificate that met the Commission's requirements, partly because she wasn't available.<sup>20</sup>

[15] The representative explains that she tried to send the September 27, 2022, medical certificate to the Commission, but was told it had to be sent to the Tribunal.

[16] The Commission, on the other hand, explains that it wasn't possible to pay the Appellant family caregiver benefits for the period from September 5, 2021, to December 24, 2021, based on the November 9, 2021, medical certificate.<sup>21</sup> The Commission says that the doctor who completed the certificate answered "no" to the question asking whether the patient's life is at risk as a result of illness or injury.<sup>22</sup>

[17] The Commission said it would assess the medical certificate the Appellant submitted in his notice of appeal<sup>23</sup> after that appeal unless the Tribunal authorized it to do so earlier.<sup>24</sup>

[18] In this case, I find that the medical certificate issued on September 27, 2022, entitles the Appellant to family caregiver benefits for the period from August 24, 2021, to December 24, 2021, inclusive.

[19] In this document, the Appellant's partner's surgeon certified that, on August 24, 2021, she observed the three medical conditions proving that the Appellant's partner

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<sup>18</sup> See GD3-13 to 15.

<sup>19</sup> See GD3-37.

<sup>20</sup> See GD2-3 and GD2-4.

<sup>21</sup> See GD3-23, GD3-24, and GD4-4.

<sup>22</sup> See GD3-23, GD3-24, and GD4-4.

<sup>23</sup> See the medical certificate completed on September 27, 2022—GD2-13 to GD2-15.

<sup>24</sup> See GD4-4.

was critically ill.<sup>25</sup> The surgeon also said the Appellant's partner would require the care or support of one or more family members until December 24, 2021.<sup>26</sup>

[20] Although the Commission said it would assess the medical certificate issued on September 27, 2022,<sup>27</sup> after the Appellant's appeal, unless the Tribunal authorized it to do so earlier,<sup>28</sup> I note that the reconsideration decision it made in this case is dated March 24, 2022.<sup>29</sup> This decision was appealed to the Tribunal on October 11, 2022.

[21] The Federal Court of Appeal tells us that, once a decision by the Commission has been appealed, that decision is no longer within its jurisdiction and any change to a decision after it has been appealed is void.<sup>30</sup>

[22] In summary, I find that the disentitlement to EI family caregiver benefits imposed on the Appellant by the Commission isn't justified in the circumstances, since he meets all the criteria to receive this type of benefit for the requested period, from August 24, 2021, to December 24, 2021.

## Conclusion

[23] I find that the Appellant is entitled to family caregiver benefits for the period from August 24, 2021, to December 24, 2021.

[24] This means that the appeal is allowed.

Normand Morin  
Member, General Division – Employment Insurance Section

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<sup>25</sup> See GD2-13 to 15.

<sup>26</sup> See GD2-13 to 15.

<sup>27</sup> See GD2-13 to 15.

<sup>28</sup> See GD4-4.

<sup>29</sup> See GD3-41 to 44.

<sup>30</sup> The Court established or reiterated this principle in *Wakelin*, A-748-98; *Poulin*, A-516-91; and *Von Findenigg*, A-737-82.