



[TRANSLATION]

Citation: *DM v Canada Employment Insurance Commission*, 2023 SST 818

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

**Decision**

**Appellant:** D. M.  
**Representative:** Dominic Martineau

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (563773) dated January 27, 2023 (issued by Service Canada)

---

**Tribunal member:** Normand Morin

**Type of hearing:** Teleconference  
**Hearing date:** May 2, 2023  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** May 18, 2023  
**File number:** GE-23-422

## Decision

[1] The appeal is dismissed. I find that the Appellant isn't entitled to family caregiver benefits (special benefits – critically ill adult) from September 19, 2022.<sup>1</sup>

## Overview

[2] On June 22, 2022, the Appellant made a claim for Employment Insurance (EI) benefits (regular benefits).<sup>2</sup> A benefit period was established effective June 19, 2022.<sup>3</sup>

[3] On September 28, 2022, he sent documents to the Canada Employment Insurance Commission (Commission) to get family caregiver benefits.<sup>4</sup>

[4] On December 7, 2022, the Commission told him that he wasn't entitled to EI family caregiver benefits for adults from September 19, 2022, because the medical certificate he had given it didn't prove that the life of the patient (his partner) was at risk as a result of her illness or injury.<sup>5</sup>

[5] On January 27, 2023, after a reconsideration request, the Commission told the Appellant that it was upholding the December 7, 2022, decision about the payment of family caregiver benefits.<sup>6</sup>

[6] The Appellant explains that the family member who was critically ill is his partner. He argues that following an accident, his partner was hospitalized and had surgery. After her hospitalization, she needed care and support. The Appellant says that he claimed family caregiver benefits for the period from September 14, 2022, to November 7, 2022. He says that he should be able to get such benefits even though the medical certificate he gave the Commission didn't meet all its requirements. He argues that he had to stop working to provide his partner with the care and support she needed

---

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

<sup>2</sup> See GD3-3 to GD3-11.

<sup>3</sup> See GD3-1 and GD4-1.

<sup>4</sup> See the documents entitled "Authorization to Release a Medical Certificate for Employment Insurance Family Caregiver Benefits" and "Medical Certificate for Employment Insurance Family Caregiver Benefits"—GD3-12 to GD3-14.

<sup>5</sup> See GD3-16 and GD3-17.

<sup>6</sup> See GD3-24.

after her surgery. He argues that the concept of a “critically ill” person should be applicable to his partner so that he can get family caregiver benefits, since her life could have been at risk if he hadn’t been able to give her the care and support she needed. On February 7, 2023, 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 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:

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

---

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

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

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 the Appellant didn't provide the Commission with a certificate from a medical doctor stating that an adult family member—in this case, his partner—was critically ill.<sup>10</sup>

[11] Even though the document the Appellant submitted says that his partner required the care or support of one or more family members and sets out the period during which she required that care or support, it doesn't say that she was "critically ill" as defined in the Regulations.<sup>11</sup>

[12] In the document entitled "Medical Certificate for Employment Insurance Family Caregiver Benefits," completed on September 27, 2022, the medical doctor certified that the three medical conditions described in questions 1, 2, and 3 of that document existed as of September 14, 2022, concerning the Appellant's partner. The medical doctor answered "no" to the question whether the life of the patient, the Appellant's partner, was at risk as a result of illness or injury (question 1). The medical doctor answered "yes" to the question whether there had been a change in the baseline state of health of the patient (question 2). And the same to the question whether the patient required the care or support of one or more family members (question 3). The medical doctor indicated that the patient would require the care or support of one or more family members until November 7, 2022.<sup>12</sup>

---

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

<sup>10</sup> See the document entitled "Medical Certificate for Employment Insurance Family Caregiver Benefits," completed by Dr. Amerigo Balatri on September 27, 2022—GD3-13 and GD3-14.

<sup>11</sup> See GD3-14 and GD3-14 [*sic*]. See also section 1(7) of the Regulations.

<sup>12</sup> See GD3-14 and GD3-15.

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

- a) He should be entitled to family caregiver benefits for adults even though the medical certificate he gave the Commission didn't meet all the criteria to get such benefits.
- b) On September 13, 2022, his partner broke both her ankles falling down some stairs. She was hospitalized and had surgery.
- c) After this procedure, she could not walk. She had to use a wheelchair. She needed care and support.<sup>13</sup>
- d) When his partner was injured, the Appellant worked on a construction site about 200 kilometres from his home. He was in a boarding situation and lived near the site where he worked, from Monday to Friday. He would leave his home Sunday afternoon to go to the construction site and would go back home Friday afternoon. His work schedule was 7 a.m. to 5:30 p.m., Monday to Thursday, and 7 a.m. to noon on Fridays.
- e) Because of his partner's accident, the Appellant had to stop working to provide her with the care and support she needed.<sup>14</sup>
- f) He was the only one in his family who could care for his partner.
- g) After the Commission told him he could not get the family caregiver benefits he wanted with the medical certificate he had given it, he met again with the medical doctor who had completed the certificate. The Appellant asked him whether he could change it and answer "yes" to the question whether the life of the patient (his partner) was at risk as a result of illness or injury. The medical doctor said that he could not answer "yes" to that question, since the Appellant's partner [translation] "was not in danger of death."<sup>15</sup>

---

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

<sup>14</sup> See GD2-5.

<sup>15</sup> See GD3-22 and GD3-23.

- h) As a result, the Appellant was unable to provide the Commission with a medical certificate that could meet all the requirements set out in the Act to get family caregiver benefits.
- i) The Appellant doesn't have, through his job, wage loss insurance or a group insurance plan under which he can receive payments to care for his partner as he did. His employer-provided insurance covers only him in the event of illness or injury.

[14] The Appellant's representative argues as follows:

- a) All the circumstances that led to the Appellant's claim for family caregiver benefits have to be considered. These circumstances are clear: The Appellant works on a construction site, away from home, from Monday to Friday. Because of his partner's condition given the fractures she sustained, he had to stop working, since she needed his help with feeding, getting dressed, and personal care.
- b) In the medical certificate, the medical doctor answered "no" to the question whether the patient's life was at risk as a result of illness or injury following a relatively short reflection on her condition and her ability to feed and take care of herself.
- c) If the requirements of the Act were applied to the letter, the life of the Appellant's partner was at risk as a result of illness or injury if a family caregiver wasn't nearby to care for her (for example, feeding, dressing, and bathing). Living alone five days a week while not moving and unable to feed or support yourself independently means that your life is at risk.
- d) In good faith, the Appellant made a claim to get family caregiver benefits and to act as a family caregiver for his partner. He could not make a claim for regular or other types of EI benefits (for example, compassionate care, maternity, parental, sickness, fishing) given the circumstances that led to his claim.

- e) The Act has to be interpreted broadly and liberally to allow a claimant to get benefits, including family caregiver benefits.
- f) Interpreting the Act too narrowly would undermine its application for people of good faith like the Appellant.
- g) The Appellant should qualify as a family caregiver within the meaning of the Act. His entitlement to family caregiver benefits should be recognized.

[15] I find that the Appellant's arguments and documents can't entitle him to family caregiver benefits.

[16] To be entitled to such benefits, a claimant has to provide a medical certificate from a medical doctor or nurse practitioner stating that an adult family member of the claimant 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. Such benefits aren't payable unless these three requirements are met.<sup>16</sup>

[17] The medical certificate the Appellant submitted says that his partner required the care or support of one or more family members, and it sets out the period during which he [*sic*] required that care or support.<sup>17</sup> However, the document doesn't say that the Appellant's partner was critically ill within the meaning of the Regulations.<sup>18</sup>

[18] The Regulations say that a critically ill person is a person whose baseline state of health has significantly changed and whose life is at risk as a result of illness or injury.<sup>19</sup>

[19] The medical certificate the Appellant provided doesn't point to this conclusion.

[20] The Commission, meanwhile, explains that it wasn't possible to pay the Appellant family caregiver benefits.<sup>20</sup> It says that the requirement to provide a medical certificate

---

<sup>16</sup> See section 23.3(1) of the Act.

<sup>17</sup> See GD3-13 and GD3-14.

<sup>18</sup> See GD3-13 and GD3-14. See also section 1(7) of the Regulations.

<sup>19</sup> See section 1(7) of the Regulations.

<sup>20</sup> See GD4-3.

signed by a medical doctor or nurse practitioner and stating that an adult is critically ill is set out in the Act.<sup>21</sup>

[21] The Commission explains that, in the medical certificate it was given, the medical doctor didn't indicate that the life of the Appellant's partner was at risk as a result of her injury.<sup>22</sup> The Commission says that it has no discretion in this matter and has to deny the Appellant family caregiver benefits.<sup>23</sup>

[22] In summary, I find that the disentitlement to EI family caregiver benefits imposed on the Appellant from September 19, 2022, is justified in the circumstances, since he doesn't meet all the criteria to get such benefits.

[23] Without questioning the Appellant's good faith and the severity of the symptoms he reports to describe his partner's condition after surgery, the fact is that his medical evidence doesn't show that her life was at risk.

[24] While I wholly sympathize with the Appellant's case, as a Tribunal member, I remain bound by very clear legislative provisions that don't allow me to establish his entitlement to family caregiver benefits.

[25] The Federal Court of Appeal (Court) tells us that adjudicators, including the Tribunal, aren't permitted to rewrite legislation or to interpret it in a manner that is contrary to its plain meaning.<sup>24</sup>

## Conclusion

[26] I find that the Appellant isn't entitled to family caregiver benefits.

[27] This means that the appeal is dismissed.

Normand Morin  
Member, General Division – Employment Insurance Section

---

<sup>21</sup> See GD4-2 and GD4-3.

<sup>22</sup> See GD4-3.

<sup>23</sup> See GD4-3.

<sup>24</sup> The Court established this principle in *Knee*, 2011 FCA 301.