



Citation: *LA v Canada Employment Insurance Commission*, 2023 SST 1270

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

Decision

Appellant: L. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (572299) dated February 22, 2023 (issued by Service Canada)

Tribunal member: Jillian Evans

Type of hearing: Videoconference

Hearing date: June 13, 2023

Hearing participant: Appellant

Decision date: June 23, 2023

File number: GE-23-901

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant L. A. applied for Employment Insurance (EI) critically ill child benefits, which is one of the types of benefits in a group that is often called “family caregiver benefits.” In November 2022, her thirteen-year-old son was hospitalized and diagnosed—for the first time—with Crohn’s disease. L. A. took time off from her job to care for him and requested benefits for the period of time that she was engaged in providing this care.

[3] On December 16, 2022, she applied for benefits.

[4] To be entitled to critically ill child benefits, a medical doctor or nurse practitioner has to issue a certificate that says, among other things, that the child is a “critically ill child.”¹ This means that the child’s baseline state of health has significantly changed and their life is at risk as a result of an illness or injury.² The Canada Employment Insurance Commission (Commission) provides a form for this purpose, which it calls the Employment Insurance Family Caregiver Benefits form (the FCB Form).

[5] The medical doctor who completed the form in the Appellant’s situation did not certify that the Appellant’s son’s life was at risk due to his illness. The Commission decided that the Appellant was not entitled to critically ill child benefits because he did not meet this part of the definition of critically ill child. The Appellant is appealing this decision because she believes she should be entitled to the benefits.

Issues/Issue

[6] Is the Appellant entitled to critically ill child benefits?

¹ See s. 23.2 of the *Employment Insurance Act*.

² See s. 1(6) of the *Employment Insurance Regulations* for the definition of “critically ill child.”

Analysis

[7] L. A. is not entitled to critically ill child benefits.

[8] In order to be entitled to these benefits, the child in need of care has to meet the definition of “critically ill child.” “Critically ill child” is defined in the *Employment Insurance Act* and its *Regulations* as a person who is under 18 years of age, whose baseline state of health has significantly changed, **and** whose life is at risk as a result of an illness or injury.³

[9] The Commission provides the FCB Form for a medical doctor or nurse practitioner to complete, showing that the legal requirements for the benefit are met. The Form requests “yes” or “no” responses to three statements:

- The patient’s life is at risk as a result of illness or injury;
- There has been a significant change in the baseline state of health of the patient;
and
- The patient requires the care or support of one or more family members.

[10] To be entitled to the benefit, the doctor or nurse practitioner must answer “yes” to **all three questions**.

[11] At her hearing, the Appellant explained that on November 25, 2022, her son was admitted to hospital for severe abdominal symptoms. Prior to this time, he was a healthy child with no history of illness. Her son was admitted to the hospital for several weeks during which time he was eventually diagnosed with Crohn’s disease.

[12] When he was discharged, he was sent home with a feeding tube. He was not allowed to eat for several weeks, required a great deal of care and needed close supervision. He required assistance to toilet, dress and walk.

³ *Employment Insurance Regulations*, section 1(6)

[13] L. A. further explained that her son continued to lose weight while at home and in January 2023 he needed to be re-admitted to hospital because of his deterioration. He had to stay hospitalized for another 11 days before being sent back home.

[14] On January 17, 2023, her child's doctor completed an FCB Form. She indicated that there had been a significant change to his baseline state of health and confirmed that he would need his mother's care and support until February 17, 2023.

[15] However, the doctor noted that the child's life was not at risk. Specifically, she ticked "no" on the Form and handwrote "the patient has a chronic medical illness."⁴

[16] In support of her appeal to the Tribunal, L. A. asked this same doctor to provide a medical note further explaining the circumstances of her son's illness and hospitalization. The doctor wrote that the child "was admitted to our hospital on January 9, 2023 – January 19, 2023 where his baseline had changed significantly and was diagnosed with Crohn's disease."⁵

[17] She did not indicate in the letter that the boy's life was at risk during that time.

[18] L. A. argues that focussing on the word "chronic" as the basis for denying her claim is narrow and unfair. She says that although the disease her son was diagnosed with is indeed a chronic, life-long condition, the early weeks and months after he was first diagnosed represented a new, "critical" circumstance for her son.

[19] The Appellant says that she meets the requirements for critically ill child benefits because it is clear that her son was in a critical state and she had no choice but to stay home to care for him. That fact that the cause of his new, acute condition was going to be a lifelong disease does not mean that his care needs were any less significant in these early, initial weeks. It does not mean that his day to day condition was any less "critical".

⁴ GD3-18

⁵ GD5

[20] The Commission submits the Appellant is not entitled to critically ill child benefits because her child did not meet the legal definition of “critically ill child.” While he met two of the requirements (he is under 18 and his baseline state of health had significantly changed), his doctor would not state that his life was at risk as a result of the illness. All three requirements have to be met in order to be entitled to this benefit.

[21] The Commission states that, while it has empathy for the Appellant’s circumstances and for the stressful period that her son and family went through, it does not have the flexibility or discretion to alter the law.

[22] The evidence does not support finding that L. A.’s son was a “critically ill child” as defined by the EI Regulations, and so the Commission says that the Appellant is not entitled to family caregiver benefits.

The Appellant is not entitled to critically ill child benefits

[23] To meet the legal definition of “critically ill child,” the law requires that the child’s life be at risk due to their illness. The law is also clear that this must be certified by a medical doctor or nurse practitioner. There is no flexibility in this requirement.

[24] While the word “critical” does not appear on the FCB Form, “critically ill child” is a term that is defined in the Regulations.

[25] I am not allowed to apply a different or alternative definition of “critically ill” to the circumstances of this case. The medical certificate shows that L. A.’s son did not meet the statutory definition of “critically ill child” so she cannot be entitled to critically ill child benefits.

[26] I appreciate that the Appellant had to provide care for her son. Unfortunately, the law is clear that a doctor or nurse practitioner must attest to all three of the required conditions being met. The doctor indicated that the Appellant’s son’s life was not at risk when she completed the form on January 17, 2023. She did not change or revise that opinion at any point, even when provided with the opportunity to write another letter in support of the Appellant’s appeal to this Tribunal.

[27] While I sympathize with L. A.'s situation, there is no flexibility for me to change the law to include caregiving during periods of illness that are not life-threatening. Here, the evidence did not confirm that the Appellant's son was a "critically ill child" and there is no legal basis for me to allow her to receive critically ill child benefits without a situation that meets the definition of "critically ill child."

Conclusion

[28] The appeal is dismissed.

Jillian Evans

Member, General Division – Employment Insurance Section