



Citation: *LM v Canada Employment Insurance Commission*, 2023 SST 1300

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

## Decision

**Appellant:** L. M.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (550556) dated November 8, 2022 (issued by Service Canada)

---

**Tribunal member:** John Noonan

**Type of hearing:** Videoconference

**Hearing date:** March 15, 2023

**Hearing participants:** Appellant  
Appellant's Witness (Husband)

**Decision date:** April 5, 2023

**File number:** GE-22-3869

## Decision

[1] The appeal is allowed.

## Overview

[2] The Appellant, L. M., was denied her October 6, 2022 request to have her extended parental benefits converted to standard parental benefits on her claim for benefits which became effective June 6, 2021. The Commission had determined that the Appellant had opted for extended parental benefits and once benefits were paid, this decision was irrevocable. The Appellant asserts that she applied for “extended” benefits in error, she wanted standard benefits. The Tribunal must decide if the Appellant is, as per section 23 of the Employment Insurance Act (Act), eligible to receive standard parental benefits based on this claim.

## Issues

[3] Issue # 1: Is the Appellant eligible to receive parental benefits?

Issue #2 Did the Appellant receive benefits on this claim?

Issue # 3: Is the Appellant eligible to receive standard parental benefits as outlined in the legislation?

## Analysis

[4] The relevant legislative provisions are reproduced at GD-4.

[5] Subsection 23(1.2) of the Act establishes that the election between standard or extended parental benefits is irrevocable once parental benefits are paid in respect of the same child or children.

[6] Subsection 23(1.3) of the Act: (1.3) If two major attachment claimants each make a claim for benefits under this section — or one major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.05 — in respect of the same child or children, the election made under

subsection (1.1) or 152.05(1.1) by the first claimant or individual, as the case may be, to make a claim for benefits under this section or under section 152.05 is binding on both claimants or on the claimant and the individual.

### **Issue 1: Is the Appellant eligible to receive parental benefits?**

[7] Yes.

[8] The Appellant has shown, having the burden of proof to do so, that she was eligible under the Act, to receive parental benefits and, in fact, did so with the first payment being issued September 24, 2021.

[9] The Appellant opted for extended parental benefits when making her application with the assistance of the child's father on June 9, 2021.

[10] I find the Appellant here was eligible to receive benefits through either the standard parental benefit or the extended option upon application.

### **Issue 2: Did the Appellant receive benefits on this claim?**

[11] Yes

[12] I find that the first payment for extended parental benefits was issued on September 24, 2021. This payment would normally make the Appellant's choice of Standard or Extended Parental Benefits irrevocable however there are exceptions.

### **Issue 3: Is the Appellant eligible to receive standard parental benefits rather than extended benefits as outlined in the legislation?**

[13] Yes.

[14] The Appellant testified that after her return to work she did notice that benefits continued but assumed this was normal procedure.

[15] The Appellant asserts in her submissions and testimony that being paid the lower rate is causing her financial problems but I must note that the reason for the

overpayment is not the case before me, I can only rule on the option of extended or standard parental benefits.

[16] The Appellant here: testified that she (1) chose “extended option” by mistake when applying, (2) and she indicated a return to work after 52 weeks on her application.

[17] The error was made “in good faith”.

[18] At her hearing she testified that her child was born prematurely on May 29, one month before her June 29 due date. The newborn baby girl had to spend a week in the hospital after the birth.

[19] The application for maternity and parental benefits, their first such application, was completed two days after bringing the baby home, still three weeks before they expected this event, birth, to happen and they were not totally focused on the application therefore a mistake was made when they indicated the extended option. They clearly intended to avail of only 15 weeks of Maternity and 35 weeks of Paternity benefits as indicated on the application by requesting 52 weeks when the Appellant planned on returning to work after one year – 52 weeks therefore the standard option.

[20] I find, on the balance of probabilities it is likelier than not that she fully intended to apply for the standard option.

[21] Being able to collect standard benefits rather than extended benefits in an effort to allow a decrease in the overpayment which was incurred totally due to the Appellant’s failure to report her return to work is not factored into my reason to allow a change in option chosen.

[22] A recent decision from the Tribunal’s Appeal Division states that I must consider all relevant evidence regarding what kind of parental benefits the Appellant likely elected to receive. Having done so, I have found the evidence supports that the Appellant elected / chose to receive standard parental benefits.

## **Conclusion**

[23] The appeal is allowed.

John Noonan

Member, General Division – Employment Insurance Section