



Citation: *CV v Canada Employment Insurance Commission*, 2023 SST 1358

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

Decision

Appellant: C. V.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (602233) dated July 25, 2023 (issued by Service Canada)

Tribunal member: Catherine Shaw
Type of hearing: Teleconference
Hearing date: September 6, 2023
Hearing participant: Appellant
Decision date: September 6, 2023
File number: GE-23-2161

Decision

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

[2] The Appellant's appeal cannot be successful because she can't change her choice of parental benefit term once parental benefits are paid.

Overview

[3] The Appellant applied for maternity and parental benefits. There are two types of parental benefits available. Her application form shows that she chose the extended parental benefit option. But she says that her situation has changed and she needs the standard parental benefit option for financial reasons.

[4] She asked the Canada Employment Insurance Commission (Commission) to change her election from extended to standard benefits, after she had already received extended benefits.

[5] The Commission refused to make this change. The Appellant has appealed to the Tribunal because she must have made a mistake when she chose the extended option on her application form. She was unable to fix this error because the information on the confirmation page said her benefits would end after one year.

Issue

[6] Can the Appellant change her parental benefit election?

Analysis

[7] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."¹

[8] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays the same amount of benefits at a lower rate for up to 61 weeks.

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

Overall, the amount of money stays the same. It is just stretched over a different number of weeks.

[9] Once you start receiving parental benefits, you can't change options.²

[10] The Appellant's domestic partner applied for EI benefits on her behalf. On the application, her partner chose extended parental benefits for the Appellant.³ She was paid her first payment of extended parental benefits by May 14, 2023.⁴ On June 29, 2023, the Appellant asked to change her election from extended to standard parental benefits.⁵

[11] The Appellant agrees that she applied for extended parental benefits. She was in a relationship and her partner told her not to worry about the lower rate of benefits paid under the extended option. He said that he would support her.

[12] The Appellant asked her partner for financial support after she started receiving extended parental benefits. This was what he had agreed to. But, he refused to give her any support. She tried to make it work but after a few weeks, she was unable to pay her bills or feed herself on the lower rate of benefits. It was a really difficult time. She had to leave her partner because of this and other abusive behaviours. Now she really needs the higher rate of benefits paid under the standard parental option.

[13] The Commission says the Appellant made her choice and it is too late to change it because she had already started receiving benefits. It adds that the law is unambiguous that once the choice of parental benefit term is made and benefits paid, the choice cannot be changed.

² Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

³ See GD3-7.

⁴ See GD3-21 to GD3-22.

⁵ See GD3-23 to GD3-25.

[14] The Tribunal has previously overturned some cases regarding parental benefit election on appeal. But, the Federal Court and Federal Court of Appeal have now made precedent-setting decisions that direct the Tribunal's analysis of these cases.⁶

[15] Regrettably, I find the Appellant cannot be successful in this appeal. The Courts have said that the parental benefit election made on the application for EI benefits is the election and it cannot be changed after benefits are paid. And the law is clear that once parental benefits are paid on a claim, the decision between standard or extended parental benefits is irrevocable.

[16] The Appellant gave compelling testimony about the difficulty this has caused her and her family. While I recognize the huge financial impact this decision has had on the Appellant there is no provision in the law that allows me to consider that as relevant to this decision.

[17] I understand the Appellant's situation. However, there is no legal basis for me to order that she may change her election from what she selected on her application form. 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.⁷

⁶ See *Karval v Canada (Attorney General)*, 2021 FC 395; *Canada (Attorney General) v Hull*, 2022 FCA 82; and *Canada (Attorney General) v Variola*, 2022 FC 1402.

⁷ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.

Conclusion

[18] The appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section