



[TRANSLATION]

Citation: *TT v Canada Employment Insurance Commission*, 2023 SST 1868

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

**Decision**

**Appellant:** T. T.  
**Representative:** B. V.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (574434) dated March 20, 2023 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** In person  
**Hearing date:** June 7, 2023  
**Hearing participants:** Appellant  
Appellant's representative  
**Decision date:** June 8, 2023  
**File number:** GE-23-1131

## Decision

[1] The appeal is allowed.

[2] The Appellant is entitled to receive sickness benefits until April 15, 2023. This means that he is entitled to receive sickness benefits for up to 26 weeks.

## Overview

[3] The Appellant applied for sickness benefits on November 8, 2022. A benefit period was established effective October 16, 2022.

[4] When the Appellant applied for benefits, 15 weeks was the maximum allowed for sickness benefits. While he was receiving benefits, the provision of the *Employment Insurance Act* (Act) that sets out the maximum number of weeks for sickness benefits was changed. On December 18, 2022, the maximum became 26 weeks.

[5] On March 20, 2023, the Commission told the Appellant that he was entitled to receive benefits for the maximum duration in place when he applied for benefits. So, it told him that he was entitled to 15 weeks of sickness benefits.

[6] The Appellant explains that he wasn't [translation] "functional" for a return to work after 15 weeks of medical leave and that he didn't know he could be sick for only 15 weeks.

[7] I have to determine whether the length of the Appellant's benefit period was correctly determined.

## Issue

[8] Was the number of weeks determined for the Appellant's benefit period calculated correctly?

## Analysis

[9] Before December 18, 2022, a claimant could get a maximum of 15 weeks of special benefits for sickness under the Act.<sup>1</sup> On December 18, 2022, the Act was changed. A claimant who is sick can get sickness benefits for up to 26 weeks.<sup>2</sup>

[10] The Appellant applied for benefits on November 8, 2022. He applied for benefits before the Act was changed. At that time, he submitted a medical certificate, dated November 2, 2022, saying that he was unable to work from October 17, 2022, to November 19, 2022.

[11] On December 11, 2022, a new medical certificate was issued extending his medical leave until January 28, 2023. On January 18, 2023, a third medical certificate was issued saying that he was unable to work until February 28, 2023. On February 27, 2023, a fourth medical certificate extended his medical leave until April 15, 2023.

[12] This means that the Appellant submitted medical certificates indicating that he was unable to work continuously between October 17, 2022, and April 15, 2023.<sup>3</sup>

[13] A medical certificate dated February 27, 2023, says that the Appellant was on medical leave because of [treatment-]resistant depression and mentions an assessment for ADHD (attention deficit disorder). The Commission doesn't dispute that he was unable to work.

[14] However, given that the maximum number of weeks for which sickness benefits could be paid was 15 when the Appellant applied for benefits, the Commission says that he can't benefit from the change to the Act on December 18, 2022. It argues that, to be entitled to additional weeks of sickness benefits, the Appellant must make a new claim for benefits and show that he accumulated 600 insurable hours of employment.

[15] The Commission says that the Appellant isn't entitled to an unlimited number of weeks of sickness benefits. It says that, under section 12(3)(c) of the Act, benefits could

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<sup>1</sup> Section 12(3)(c) of the *Employment Insurance Act* (Act).

<sup>2</sup> Section 12(3)(c) of the Act.

<sup>3</sup> GD3-18 to GD3-24.

be paid for up to 15 weeks when the Appellant applied for benefits. It argues that only claimants whose claims for benefits were made on or after December 18, 2022, can get 26 weeks of sickness benefits, since the Act wasn't changed until then.

[16] The facts show that the Appellant didn't go back to work after applying for benefits on November 8, 2022, because he was deemed unable to work another three times after the first certificate.

[17] As the Commission points out in support of *[sic]* a Federal Court of Appeal decision, the Act allowed for 15 weeks of sickness benefits. However, the Appellant's situation is unique. His benefit period overlaps with the changes to the Act. When he applied for sickness benefits on November 8, 2022, he didn't know how long he would be sick. The first medical certificate he submitted indicates an inability to work until November 19, 2022. As mentioned, he submitted additional short-term medical certificates extending the period he was unable to work until April 15, 2023.

[18] Even though the Commission says that the Appellant is entitled to only 15 weeks of benefits, the Act doesn't include transitional measures for claimants who made their claims for sickness benefits during that period.

[19] According to the Commission, the Act is clear and provides for the payment of benefits based solely on when the claim is made. However, the Appellant submitted at the same time four medical certificates extending his benefit period, and I see nothing in the Act that prevents him from getting this extension that Parliament permitted.

[20] I understand that, for the Commission, this unusual situation may present a technical challenge. However, for the Appellant, it is an opportunity to be supported during his period of illness. As he explained, he has no other support, and he even stopped working in April 2023 when his condition didn't get better. In addition, given the uniqueness of his case and the exceptional circumstances of the change to the Act, this situation doesn't set a precedent.

[21] The facts show that, on November 8, 2022, the Appellant qualified for benefits.<sup>4</sup> The Commission established a benefit period effective October 16, 2022. The Appellant didn't work between October 17, 2022, and April 15, 2023, and he successively submitted medical certificates indicating an inability to work during that period.

[22] The Act was changed during the Appellant's period of illness, but by December 18, 2022, he hadn't received more than 15 weeks of sickness benefits. His period of illness was gradual, and he submitted new medical certificates attesting to his condition after the changes in the Act.

[23] The number of weeks in the Appellant's benefit period can be up to 26 weeks. Since he submitted medical certificates indicating an inability to work until April 15, 2023, he is entitled to receive benefits until that date.

## **Conclusion**

[24] I find that the Appellant is entitled to receive sickness benefits until April 15, 2023, even though the maximum number of weeks set out in the Act was changed during his benefit period.

[25] The appeal is allowed.

Josée Langlois  
Member, General Division – Employment Insurance Section

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<sup>4</sup> Sections 7 and 9 of the Act.