



Citation: *MP v Canada Employment Insurance Commission*, 2022 SST 1119

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

Decision

Appellant: M. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (478247) dated May 31, 2022 (issued by Service Canada)

Tribunal member: Lilian Klein
Type of hearing: Videoconference
Hearing date: September 8, 2022
Hearing participants: Appellant
Decision date: October 21, 2022
File number: GE-22-2254

Decision

[1] I am allowing the Claimant's appeal. This decision explains why.

[2] I agree with the Claimant. She is not disentitled from receiving parental benefits between September 9, 2021, and January 30, 2022.

Overview

[3] The Claimant came to Canada as a refugee. She worked in general labour. She applied for sickness benefits on October 1, 2020, due to her high-risk pregnancy.

[4] The Claimant says she was admitted to hospital after contracting COVID-19. On January 16, 2021, she was moved to the Intensive Care Unit (ICU) for an emergency Caesarean section. She then fell into a coma. On February 15, 2021, she was transferred to a rehabilitation hospital. She says she had been evicted from her home so when she was discharged from hospital on March 10, 2021, a friend took her in.

[5] While the Claimant was recovering from serious post-COVID and post-coma complications, her work permit expired on September 8, 2021. She applied for a renewal on September 24, 2021. The renewal was authorized on January 31, 2022.

[6] After 15 weeks of maternity benefits, the Claimant says the Canada Insurance Employment Commission (Commission) started to pay her extended parental benefits. But it stopped payments on September 8, 2021. This because the Commission imposed a disentitlement from receiving parental benefits from September 9, 2021, to January 30, 2022, for failing to prove availability for work and authorization to stay in Canada.

[7] The Commission says it sympathizes with the Claimant's ordeal but argues that she could have asked someone to help her renew her work permit on time.

[8] I have to decide whether disentitling the Claimant from receiving parental benefits was justified.

[9] At her hearing, the Claimant said her benefits did not resume after her work permit was renewed on January 31, 2022, so she is suffering extreme financial hardship.

The issues I must decide

[10] Was the Claimant disentitled from receiving parental benefits from September 9, 2021, to January 30, 2022, because she could not prove that she was available for work after her work permit expired?

[11] Was the Claimant disentitled from receiving parental benefits because her SIN expired?

[12] Was the Claimant disentitled from receiving parental benefits because she failed to maintain her status in Canada and was therefore not authorized to stay here?

Analysis

[13] Each of the above issues relate to the Claimant's work permit, so I will address that matter first.

[14] The Claimant's work permit expired on September 8, 2021. She applied to renew it on September 24, 2021. The permit and SIN renewed on January 31, 2022.¹ The parties do not dispute these dates and the evidence supports them, so I accept them as fact.

[15] If you apply for renewal before a work permit's expiry date but have not yet received a new permit, it is inferred (recognized) that you are still available for work.

[16] If your work permit has been cancelled or you did not renew it before the expiry date, you usually cannot be considered available for work. But this is not always the case. It is a question of the facts specific to each claimant's situation.²

[17] The Commission's reconsideration decision says it disentitled the Claimant because her work permit expired on September 8, 2021.³ In its submissions, the Commission says it disentitled her for failing to prove availability for work and authorization to stay in Canada with an expired work permit and SIN.⁴ Later in its submissions, it says claimants do not need a valid work permit to get special benefits, only authorization to stay here.⁵

¹ See GD3-28.

² See *LM v Canada Employment Insurance Commission*, 2022 SST 617.

³ See the redacted decision at GD3-36. The full version says claims procedure is no longer an issue (GD2-12).

⁴ See GD4-1, first paragraph. In this submission, the Commission says it disentitled the Claimant under sections 18, 50 and 138 of the *Employment Insurance Act* (EI Act).

⁵ See GD4-3.

Was the Claimant disentitled from receiving parental benefits because she could not prove she was available for work after her work permit expired?

[18] No. The Claimant was not disentitled from receiving parental benefits for this reason.

[19] I make this finding because the Claimant did not have to prove that she was available for work. You have to prove availability for work to get regular benefits, but this is not a requirement for special benefits such as sickness, maternity and parental benefits.⁶

[20] The Commission has not shown how the Claimant's expired work permit justified a disentitlement. It later conceded this point.⁷

[21] So, I find that the Claimant was not disentitled from receiving parental benefits for failing to prove she was available for work after her permit expired.

Was the Claimant disentitled from receiving parental benefits after her SIN expired?

[22] No. The Claimant was not disentitled from receiving parental benefits for this reason.

[23] The Commission says the Claimant's disentitlement for not proving availability for work is linked to a section of the law that deals with SINs.⁸ The Commission says while a valid SIN is not a condition to *establish* a benefit claim, you need one to *receive benefits*.⁹

[24] The Commission says the Claimant had to show three things to receive benefits. The first is that her SIN was valid during her qualifying period. The second is that she was "authorized to be in Canada." The third is that she remain in Canada.¹⁰

[25] The Commission does not dispute that the Claimant had a valid SIN in her qualifying period. This is the period when she worked enough insurable hours to qualify for EI special benefits. On this basis, the Commission paid her sickness, maternity and extended parental benefits up to September 8, 2021.¹¹ The Commission does not dispute that it made these payments so I accept this as fact.

⁶ Section 18(1)(a) of the EI Act says you must be available for work to get benefits. But sections 22 and 23 of the EI Act say you can get maternity and parental benefits "notwithstanding" (despite) section 18.

⁷ See GD4-3, first full paragraph.

⁸ S 138 of the EI Act says every person "employed in insurable employment" must have a Social Insurance Number (SIN).

⁹ See GD4-4, first full paragraph.

¹⁰ See GD4-3, second full paragraph. The Commission says this is required under section 50 of the EI Act.

¹¹ The Commission did not submit full claim or payment details. I did not request more details as I had told the Claimant I would do, since her credible sworn testimony gave me enough information to proceed.

[26] The Commission also does not dispute that the Claimant remained in Canada during her benefit period. A benefit period is when benefits are paid to qualified claimants.

[27] I therefore infer that the Commission disentitled the Claimant because she was not “authorized to be in Canada” (the second of its conditions), not because her SIN had expired.

[28] So, I find that the Claimant was not disentitled from receiving parental benefits because her SIN had expired.

Was the Claimant disentitled because she failed to maintain her status in Canada and was not therefore not authorized to stay here?

[29] No. The Claimant was not disentitled from receiving parental benefits for this reason.

[30] The Commission says the Claimant was “not entitled to receive benefits” (disentitled from receiving benefits) from September 9, 2021, to January 30, 2022, because she failed to “maintain her status” in Canada during this period.¹² The Commission says she needed to prove that she was authorized to stay here.¹³

[31] I acknowledge the Commission’s argument that the Claimant’s expired permit did not give her temporary resident status or authorize re-entry to Canada should she leave. Her expired permit did not allow her to work here either, but I have already found that she did not need to prove availability for work to receive parental benefits.

[32] As well, finding the Claimant’s stay in Canada unauthorized is solely the jurisdiction of Immigration, Refugees and Citizenship Canada (IRCC). The Commission does not dispute that it cannot decide if claimants are authorized to stay in Canada. It can only look at if claimants are available for work based on when their work permits are valid.¹⁴

[33] But the Commission still argues that benefits are not payable to those without the status to qualify them to work *or remain in* Canada.¹⁵ It cites a CUB to support this finding.¹⁶

¹² See GD4-5, first full paragraph.

¹³ See GD4-3, first full paragraph.

¹⁴ See GD4-4, third full paragraph.

¹⁵ See GD4-5, second paragraph,

¹⁶ The Commission relies on CUB 62726. I do not have to follow CUB decisions.

[34] But the fact situation in the CUB is different, so it does not support the Commission's argument. The key distinguishing feature is that the CUB is about whether a claimant with no valid work permit had *the right to apply for regular benefits*. The appeal before me deals with payment of an *already-established claim for parental benefits* where proving availability for work was not required.

[35] The Commission did not explain what section of the law it used to impose a disentitlement for not having "status" in Canada or for not being authorized to remain here. I do not know of a section of the law that requires disentitlement from receiving parental benefits for those reasons for someone in the Claimant's circumstances.

[36] Neither the Commission nor the Tribunal can impose disentitlements unless they are prescribed by law.

[37] So, I find that the Claimant was not disentitled from receiving parental benefits for having no status in Canada or for not being authorized to stay here.

Conclusion

[38] For the following reasons, I find that the Claimant is not disentitled from receiving parental benefits from September 9, 2021, to January 30, 2022:

- The Claimant did not have to prove that she was available for work by having a valid work permit during this period.
- The Claimant did not need a valid SIN to *receive* parental benefits.
- It was outside the Commission's jurisdiction to find that the Claimant had no status or authorization to stay in Canada and to disentitle her on those grounds.

[39] This means that I am allowing the Claimant's appeal.

Lilian Klein
Member, General Division – Employment Insurance Section