



Citation: *WC v Canada Employment Insurance Commission*, 2023 SST 1356

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

Decision

Appellant: W. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (581822) dated April 24, 2023 (issued by Service Canada)

Tribunal member: Laura Hartsliet

Type of hearing: Videoconference

Hearing date: July 6, 2023

Hearing participants: Appellant

Decision date: July 17, 2023

File number: GE-23-1302

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant for two reasons.

[2] The Appellant cannot be successful because he can only be paid benefits during the parental benefit window which ended on January 13, 2023.

[3] The second reason the Appellant cannot be successful is he requested a change to his parental benefit selection after he received his first parental benefits payment on December 11, 2022.

Overview

[4] The Appellant's child was born on January 14, 2022. His spouse did not claim maternity or parental benefits. The Appellant applied for standard parental benefits on November 28, 2022. The Commission decided that he was entitled to receive standard parental benefits and began paying benefits to the Appellant. The Appellant stopped receiving parental benefits on January 13, 2023. The Appellant contacted the Commission on March 14, 2023, to request that he receive extended parental benefits which would allow him to receive benefits after January 13, 2023.

[5] The Canada Employment Insurance Commission (Commission) looked at the date of the child's birth and found that the Appellant could only be paid parental benefits until January 13, 2023. In other words, his parental window ended on that date and he was not entitled to any additional parental benefits after that date. The Commission also found that the Appellant was not entitled to change his selection on March 14, 2023, to the extended parental benefits option because he had already begun receiving parental benefits payments starting on December 11, 2022.

Issue

[6] Is the Appellant entitled to receive parental benefits outside the parental benefit window?

[7] Is the Appellant entitled to change his selection to extended parental benefits?

Analysis

Is the Appellant entitled to receive parental benefits outside the parental benefit window?

[8] Parental benefits can only be paid for a certain period after the date of the child's birth¹. This is referred to as the "parental benefit window". The parental benefit window for both types of parental benefits begins the week in which the child is born or placed for adoption.² The window for standard parental benefits ends 52 weeks later.³ If a claimant elects extended parental benefits, their parental window is extended by a further 26 weeks.⁴ The window periods remain the same whether or not two parents are sharing the parental benefits.

[9] The Appellant's child was born on January 14, 2022. The Appellant applied for standard parental benefits on November 28, 2022. The Appellant says that, when he applied for benefits, he understood from the Commission's paperwork and the Commission's staff that he would be entitled to receive benefits for 52 weeks from the date of his application until November 2023. The Appellant says that he has applied for EI regular benefits in the past and he received benefits for 52 weeks after his application. He understood that the benefit window for parental benefits works the same as the benefit period for EI regular benefits.

¹ The parental window starts at either the week of the child's birth or the week of the child's placement with a claimant for the purpose of adoption. This is set out in subsection 23(2) of the EI Act.

² See paragraph 23(2)(a) of the Act

³ See paragraph 23(2)(b) of the Act

⁴ See subsection 23(3.21) of the Act

[10] As outlined above, parental benefits can only be paid within a specified period of time called a parental benefit window. In this situation, as the Appellant chose to receive standard parental benefits. This means the parental benefit window ends on January 13, 2023, which is 52 weeks after the week the child was born. The Appellant cannot be paid parental benefits after January 13, 2023.

[11] I understand the Appellant's position regarding the Commission's possible miscommunication in this matter. In fact, the Appellant included a screen shot of his Service Canada Online Account which shows the "end date of claim" as "November 25, 2023".⁵ This document suggested to the Appellant that he was entitled to receive benefits until November 25, 2023, which is 52 weeks after he applied for parental benefits. He also says that he spoke with Commission staff who informed him that he would be entitled to receive parental benefits for 52 weeks after his application was filed.

[12] While I understand the Appellant's position and his frustration with the Commission's incorrect communication, the law is clear in this matter. The parental benefit window ends on January 13, 2023, and the Appellant is not entitled to receive benefits after that date. Unfortunately, there is no remedy available to the Appellant for the incorrect information he received from the Commission. A case called *Granger v. Canada Employment and Immigration Commission, A-684-85* says that "a judge is bound by the law. He cannot refuse to apply it, even on grounds of equity."⁶

[13] I recognize that the Appellant had previous experience with completing an EI application for regular benefits and he acted carefully by contacting the Commission's staff regarding his application for parental benefits and consulting his Service Canada Online Account. However, despite any advice he may have received, the law is clear that the Appellant is not entitled to receive parental benefits after January 13, 2023. For these reasons, this portion of the Appellant's appeal is dismissed.

⁵ See GD02-10

⁶ *Granger v. Canada Employment and Immigration Commission*, 1986 CanLII 3962 (FCA), [1986] 3 FC 70, para 8

Is the Appellant entitled to change his selection to extended parental benefits?

[14] The EI Act provides for parental benefits, which are paid to eligible claimants while they care for newborn or adopted children. There are two types of parental benefits:

- Standard parental benefits: The benefit rate is 55% of a claimant's weekly insurable earnings up to a maximum amount. Up to 35 weeks of benefits are payable to one parent.
- Extended parental benefits: The benefit rate is 33% of a claimant's weekly insurable earnings up to a maximum amount. Up to 61 weeks of benefits are payable to one parent.

[15] 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. Overall, the amount of money stays the same, it is just stretched over a different number of weeks. Once you start receiving parental benefits, you can not change options.⁷

[16] The Appellant began receiving parental benefits on December 11, 2022. The Appellant says he left the country in early 2023, and only found out that his benefits had ended when he returned to Canada in March 2023. This is why he contacted the Commission on March 14, 2023, to discuss changing his parental benefits to the extended option.⁸

[17] While I sympathize with the Appellant's circumstances and I understand his situation, I have to apply the law as it is written. I have no authority to make special exceptions no matter how compelling the circumstances.⁹

[18] The prevailing case law in this area is clear; individuals are **not** permitted to change their selection once they begin receiving payments for parental benefits. In fact,

⁷ Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

⁸ GD03-22

⁹ This principle is stated in *Canada (Attorney General) v. Kneé*, 2011 FCA 301

the Federal Court's recent case *Canada (Attorney General) v. Johnson*, 2023 FCA 49, addresses a situation that is very similar to the one before me.

[19] In *Johnson*, the Appellant gathered information from the Commission prior to applying for benefits and based her selection on that information. As in the situation before me, the Commission in *Johnson* gave the Appellant incorrect information and this partially led her to make a benefit selection which created financial difficulties for her.

[20] Although the Court in *Johnson* acknowledges that the Appellant likely received incorrect information from the Commission, the Court found that

Under the governing legislation, **neither the Commission nor the Social Security Tribunal has the jurisdiction to decide an election is invalid or to change an election after it is made and parental benefits have been paid**. The purposes for this restriction are explained in *Hull* at paragraphs 57 to 59. They include ensuring certainty and efficiency for the Commission once payment of parental benefits has started, and affording other parties who may be affected by the election certainty and efficiency in their planning¹⁰. [Emphasis added]

[21] In another leading case, *Canada (Attorney General) v. Variola*, 2022 FC 1402, the Court says “the choice between the two parental benefits options made by the claimant on the application form is the claimant’s election (subsection 23(1.1)) and it is **irrevocable once payments start** (subsection 23(1.2)): *Hull* at paras 46-49. [Emphasis added]”¹¹

[22] Although I sympathize with the Appellant’s situation before me, I am bound by these Federal Court cases and I am not permitted to change the law. For these reasons, I find that the Appellant is not permitted to change his selection from standard to extended parental benefits because he contacted the Commission after he began receiving parental benefits payments.

¹⁰ *Canada (Attorney General) v. Johnson*, 2023 FCA 49, para 15

¹¹ *Variola*, para 35

[23] **Conclusion**

[24] The appeal is dismissed.

Laura Hartsief
Member, General Division – Employment Insurance Section