



Citation: *LL v Canada Employment Insurance Commission*, 2023 SST 243

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

Decision

Appellant: L. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (553233) dated October 31, 2022
(issued by Service Canada)

Tribunal member: Sylvie Charron
Type of hearing: Teleconference
Hearing date: March 6, 2023
Hearing participant: Appellant

Decision date: March 8, 2023
File number: GE-22-3729

Decision

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

[2] I have considered the parties' submissions and the recent developments in case law in the area of Employment Insurance (EI) and maternity benefits. I find that the Appellant can't succeed because she can't change her benefits election once benefits are paid.

Overview

[3] The Appellant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option for 61 weeks.¹

[4] The Appellant argues that she now faces extenuating circumstances. Her spouse's work has slowed down unexpectedly, and this has created a difficult financial situation.

[5] The Appellant asked the Canada Employment Insurance Commission (Commission) to change her election from 18 months to 12. The Commission refused. The Appellant appealed to the Tribunal.

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."²

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

¹ See GD3-9, 10

² Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

61 weeks. 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.³

[10] On her application, the Appellant chose extended parental benefits for 61 weeks. She started receiving benefits at the lower rate the week of September 16, 2022.⁴

[11] The Appellant says that her family is in dire financial straights. It would help greatly if their parental benefits were converted to 12 months instead of 18 months.⁵

[12] She also indicated that she knew that the payment amount would go down; she did not realize to what extent. Although she says that she understands the Commission's submissions in GD4, she would like the Tribunal to do something for her as she has paid for this maternity leave with her EI premiums.

[13] The Appellant suggests that the Commission show a table of what payments will look like once the application for maternity/parental benefits is submitted and approved.

[14] The Canada Employment Insurance Commission (Commission) says that the Appellant made her choice and that it is too late to change it because she has already started receiving benefits.

[15] The Commission adds that the information on the application form is clear, and the law is unambiguous that once the choice is made and benefits are paid, the choice cannot be changed.

[16] I agree with the Commission. While it may seem harsh, that is the state of the law.

[17] I find that the Appellant cannot succeed in this appeal. At the hearing, the Appellant confirmed that she had opted to receive benefits for 18 months before her

³ Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

⁴ GD3-22 to 26

⁵ GD3-28, 29

financial situation changed and it now makes more sense to revert to 12 months. She believes that she has paid into the fund, and she should have the leave that best suits her present circumstances.

[18] The problem with the Appellant's view is that the law is clear that once benefits are issued, the choice is irrevocable. While I understand that the Appellant could not predict the future and the state of the economy when she applied for benefits, there is no provision in the law that would allow me to consider these issues as relevant to this decision.

[19] As well, the Federal Court has now rendered precedent-setting decisions that direct the Tribunal's analysis in such cases. It is now very clear that once the parental benefit election is made on the application form, it cannot be changed after benefits are paid.⁶

[20] While I sympathize with the Appellant's situation, I can't change the law.⁷

Conclusion

[21] The Appellant cannot change her parental benefit election after receiving a payment of benefits.

[22] This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section

⁶ See *Karval v The Attorney General of Canada*, 2021 FC 395, *Attorney General of Canada v Hull*, 2022 FCA 82, and *Attorney General of Canada v Variola*, 2022 FC 1402

⁷ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.