



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 1450

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

## Decision

**Appellant:** J. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (544155) dated March 13, 2023 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** July 11, 2023

**Hearing participant:** Appellant

**Decision date:** July 20, 2023

**File number:** GE-23-1023

## Decision

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

[2] The Appellant received six more weeks of parental benefits than she was entitled to receive. This means she must repay those six weeks of benefits.

## Overview

[3] The Appellant had a child in October 2020. Prior to her child's birth, the Appellant applied for sickness EI benefits. At the same time, she applied for maternity and parental benefits. The Appellant elected to receive 35 weeks of standard parental benefits. The Appellant's spouse later applied for standard parental benefits. He received 11 weeks of standard parental benefits immediately after the child's birth.

[4] The Appellant contacted Service Canada in May 2021 to confirm when her parental benefits would end. She told the Service Canada officer her spouse had taken 11 weeks of parental benefits. The Appellant was told her benefits would end on September 21, 2021.

[5] The Canada Employment Insurance Commission (Commission) decided in August 2022 the Appellant was not entitled to parental benefits after August 9, 2021 because those benefits were already paid to another person. This meant the Appellant had to repay six weeks of parental benefits.

[6] The Appellant does not agree. She says she notified Service Canada in May 2021 that her spouse had taken 11 weeks of parental benefits. She says it has been more than 12 months since she was paid the benefits. She did not make an error or make false or misleading statements to the Commission, she did her due diligence by calling Service Canada about her benefits, it is the Commission's error that it overpaid her parental benefits.

## **Matter I considered first**

### **I am accepting documents sent in after the hearing**

[7] At the hearing the Appellant testified she contacted Service Canada on May 20, 2021 to discuss her parental benefits. She provided a copy of her cell phone bill as proof of her call. I accepted the cell phone bill into evidence because the information contained in it is relevant to the issue of the Appellant's entitlement to parental benefits.

[8] The Commission was sent a copy of the cell phone bill. As of date of writing my decision, the Commission has not made any submission on it.

### **Issues**

[9] Did the Appellant receive parental benefits she was not entitled to receive?

[10] If so, does she have to repay those parental benefits?

### **Analysis**

[11] Parental benefits are payable to a claimant to care for their newborn child.<sup>1</sup> The maximum number of weeks of standard parental benefits that can be paid to one claimant is 35 weeks.<sup>2</sup>

[12] Both parents may "share" parental benefits to care for the same child. If they choose to share, the maximum number of weeks of standard parental benefits than can be shared is increased to 40 weeks.<sup>3</sup> Even if the weeks are shared, the maximum number of weeks of standard parental benefits than can be paid to one claimant remains at 35 weeks.<sup>4</sup>

[13] The Appellant testified she applied for sickness EI benefits prior to giving birth. Her application is dated September 3, 2020. At the same time, she applied for

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<sup>1</sup> Section 23(1), *Employment Insurance Act* (EI Act). This is how I refer to the legislation that applies to this appeal. A person who applies for EI benefits is called a "claimant." A person who appeals a decision of the Commission is called an "Appellant."

<sup>2</sup> Section 12(3)(b)(i), EI Act.

<sup>3</sup> Section 23(4), EI Act.

<sup>4</sup> Section 23(4.11), EI Act.

maternity benefits and parental benefits. Her application for EI benefits shows she applied for 35 weeks of standard parental benefits. In the application for EI benefits, under the section titled "Other Parent Information" the Appellant also provided her spouse's name and his social insurance number.

[14] The Appellant testified after she completed the application for EI benefits, she and her spouse decided he would take 11 weeks of parental benefits. She said he applied for parental benefits and, in his application, he indicated he wanted 11 weeks of parental benefits. The Appellant's spouse took the 11 weeks after the baby was born to provide support, because they did not have any family living nearby and the COVID-19 pandemic restricted travel.

[15] The Appellant testified her spouse did receive 11 weeks of parental benefits. She testified she was under the impression when her spouse applied for shared parental benefits there would be an automatic deduction from her weeks of parental benefits.

[16] The Appellant said she wanted to budget for when her benefits would end. She testified she called Service Canada in May 2021 to figure out how many weeks she had left. She gave the Service Canada officer her spouse's social insurance number and told the officer her spouse had taken 11 weeks of parental benefits. The Appellant testified the officer told her that her parental benefits were good until September 21, 2021.

[17] The Commission says the maximum number of weeks of parental benefits that can be shared between a child's parents is 40 weeks. It says in this case the child's parents collected a total of 46 weeks. The Commission says there is documentation about other issues on the Appellant's file but there is nothing to indicate the Appellant contacted it to change the parental entitlement on her claim for the other parent to also receive parental benefits.

[18] The law says the maximum number of weeks of standard parental benefits that can be shared by parents is 40 weeks.<sup>5</sup> The evidence tells me the Appellant and her spouse together received 46 weeks of benefits. The Appellant's spouse received 11 weeks of parental benefits leaving 29 weeks of parental benefits available for the Appellant to receive. The Appellant received 35 weeks of parental benefits. This means the Appellant received six weeks of parental benefits she was not entitled to receive.

[19] I accept the Appellant's testimony that she did speak to a Service Canada officer in May 2021 about her parental benefits and was given an assurance her benefits were in effect until September 21, 2021. That the Commission does not have a record of the conversation does not mean the conversation did not take place.

[20] I agree it would have been better had the Appellant been told her parental benefits would be reduced by six weeks when she spoke to a Service Canada officer in May 2021.

[21] The law says the Commission may reconsider a claim for benefits and may verify a claimant's entitlement to benefits already paid to them.<sup>6</sup> The Commission has a maximum of three years to revisit its decisions where there is no evidence of misrepresentation.<sup>7</sup>

[22] The law says a claimant (appellant) is liable to repay benefit money paid to her by the Commission to which she was not entitled.<sup>8</sup> The courts have upheld the principle that a claimant (appellant) who receives benefit money that they were not entitled to receive must repay the amount.<sup>9</sup>

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<sup>5</sup> Section 23(4), EI Act.

<sup>6</sup> See section 52 of the EI Act.

<sup>7</sup> See section 52(1) of the EI Act, specifically the law says the Commission has 36 months.

<sup>8</sup> See section 43 of the EI Act.

<sup>9</sup> See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

[23] As a result, I find the Appellant must repay the \$3,000 in parental benefits she was not entitled to receive.<sup>10</sup>

[24] The Appellant argued \$3,000 is not a small amount to repay. It will impact her financially. She did her due diligence when she contacted Service Canada to ask when her parental benefits would end. She says she told the officer her spouse had taken 11 weeks of parental benefits, yet she was assured her parental benefits would end on September 21, 2021.

[25] I note the Federal Court of Appeal has found it is obvious Commission agents have “no power to amend the [law],” so any interpretation they make of the law does not, by itself, “have the force of law.”<sup>11</sup>

[26] The Court also said any commitment the Commission’s representatives might make, “whether in good or bad faith, to act in a way other than” written in the law, is “absolutely void.” This means that even if the Appellant did receive incorrect information from the Service Canada officer, what is important is what is written in the EI Act, and whether the Appellant complied with those provisions.

[27] The Appellant argues she meets the criteria to have the debt written off by the Commission.<sup>12</sup> Specifically, she says she did not make any false or misleading representations and her benefits were received more than 12 months before the Commission notified her of the debt.

[28] I do not have the authority to write off the Appellant’s debt. I am sympathetic to the Appellant’s financial circumstances the request to repay benefits has created. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.<sup>13</sup> I

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<sup>10</sup> The weekly rate of standard parental benefits was \$500.  $\$500 \times 6 = \$3,000$ .

<sup>11</sup> *Granger v. Employment and Immigration Commission*, A-684-85.

<sup>12</sup> These criteria are in section 56 of the EI Regulations.

<sup>13</sup> *Canada (Attorney General) v. Kneé*, 2011 FCA 301.

must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[29] Nothing in my decision prevents the Appellant from seeking legal advice about her options, including continuing to pursue the action she has begun in the Federal Court, in accordance with their procedures.

## **Conclusion**

[30] The appeal is dismissed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section