



Citation: *Canada Employment Insurance Commission v PM*, 2023 SST 1738

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Angèle Fricker

Respondent: P. M.

Decision under appeal: General Division decision dated August 11, 2023
(GE-23-1604)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference

Hearing date: December 1, 2023

Hearing participants: Appellant's representative
Respondent

Decision date: December 4, 2023

File number: AD-23-811

Decision

[1] The appeal is allowed. The General Division decision is rescinded. The Claimant elected to received extended parental benefits and was entitled to receive 52 weeks of parental benefits.

Overview

[2] The Respondent, P. M. (Claimant), applied for and received employment insurance (EI) regular benefits. A benefit period was established effective October 17, 2021, and she received regular benefits until February 19, 2022.

[3] On March 14, 2022, the Claimant applied for maternity and parental benefits. On the application, she chose extended parental benefits and said that she wanted to receive 15 weeks of maternity benefits, followed by 61 weeks of extended parental benefits.

[4] The Claimant only received 30 weeks of extended parental benefits. She was told that she could not receive benefits after October 2, 2022, because her benefit period had ended. The Claimant then asked to change her election to standard parental benefits.

[5] The Appellant, the Canada Employment Insurance Commission (Commission), refused the Claimant's request. It said that she could not change her election because parental benefits had already been paid to her.

[6] The Claimant successfully appealed to the Tribunal's General Division. It found that the Claimant was misled by the Commission and would have chosen standard parental benefits if she had known that she would stop receiving parental benefits in October 2022.

[7] The Commission now appeals the General Division decision to the Appeal Division. It says that that General Division made an error of law by allowing the Claimant to change her election. It says that both the Commission and the General

Division also made an error when it was determined that the Claimant could not receive extended parental benefits after October 2, 2022. The Commission says that the Claimant cannot change her election but is entitled to an extension to her benefit period to allow her to receive additional weeks of parental benefits.

The parties agree on the outcome of the appeal

[8] The parties agree that the General Division made an error of law when it found that the Claimant could change her election to standard parental benefits. They agree that the General Division decision should be rescinded and that the Claimant is entitled to receive 52 weeks of extended parental benefits. Her benefit period should be extended by 22 weeks to allow the additional weeks of benefits to be paid.

I accept the proposed outcome

[9] The General Division made an error of law when it found that the Claimant could change her election because she was misled by the Commission.¹ Recent decisions from the Federal Court and the Federal Court of Appeal have confirmed that a claimant's election is the option that they choose on the application form.² Once benefits have been paid, that choice cannot be changed by the claimant, the Commission or the Tribunal.³

[10] The General Division also failed to apply subsections 10(13.02), 12(6) and 12(7) of the *Employment Insurance Act* (Act). This was an error made by the Commission in its initial decision to stop paying the Claimant extended parental benefits after October 2, 2022.

¹ General Division decision at para 27.

² See *Canada (Attorney General) v Hull*, 2022 FCA 82 (Hull); *Canada (Attorney General) v Jeffers*, 2023 FCA 52; *Canada (Attorney General) v Johnson*, 2023 FCA 49; *Canada (Attorney General) v Pettinger*, 2023 FCA 51.

³ See *Hull* at para 64.

[11] Pursuant to subsection 12(6) of the *Act*, when special benefits are combined with regular benefits in the same benefit period, the total number of weeks of benefits cannot exceed 50, subject to the applicable maximum for each type of benefit.

[12] However, subsection 12(7) of the *Act* specifies that when a claimant elects extended parental benefits, which are paid at a reduced weekly rate, those weeks must be converted to the number of weeks of benefits that would have been paid at the standard weekly rate.⁴ The equivalent number of weeks is set out in a table at Schedule IV of the *Act*.

[13] A claimant's benefit period can be extended for up to 26 weeks, under subsection 10(13.02) of the *Act*, to allow the payment of the number of weeks of extended parental benefits determined under subsection 12(7).

[14] According to these sections, the Claimant was entitled to receive a total of 52 weeks of extended parental benefits. She only received 30 weeks before the Commission determined that her benefit period had ended. She was entitled to an extension to her benefit period of 22 weeks to allow the additional weeks of benefits to be paid.

[15] I am rescinding the General Division that the Claimant could change her election to standard parental benefits. The parties agree, and I accept, that the Claimant elected to receive extended parental benefits and is entitled to receive a total of 52 weeks of parental benefits.

⁴ The applicable number of weeks are set out in the table in Schedule IV, for the purpose of determining whether the total number of 50 weeks of benefits established under Subsection 12(6) of the *Act* has been reached.

Conclusion

[16] The appeal is allowed. The General Division made an error of law.

[17] The General Division decision is rescinded. The Claimant elected to receive extended parental benefits and is entitled to receive 52 weeks of parental benefits. Her benefit period is extended by 22 weeks.

Melanie Petrunia
Member, Appeal Division