



Citation: *PM v Canada Employment Insurance Commission*, 2023 SST 1740

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

## Decision

**Appellant:** P. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (573647) dated March 10, 2023 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Teleconference

**Hearing date:** July 28, 2023

**Hearing participant:** Appellant

**Decision date:** August 10, 2023

**File number:** GE-23-1604

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.

[2] The Appellant's Employment Insurance (EI) parental benefits application shows that she selected the extended benefits option.

[3] The Appellant argues that she didn't know that having had a claim for EI regular benefits affected special benefits and Service Canada assured her that she would get parental benefits until May 2023. She has shown that she was misled when she said she wanted the extended benefits option.

## Overview

[4] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."<sup>1</sup>

[5] 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.

[6] Once you start receiving parental benefits, you can't change options.<sup>2</sup>

[7] On her application, the Appellant chose extended parental benefits. She started receiving benefits at the lower rate the week of June 1, 2022. But she later asked to get standard parental benefits.

[8] The Appellant says that she chose extended parental benefits but did know how getting EI regular benefits would affect her parental benefits.

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<sup>1</sup> Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

<sup>2</sup> Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

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

[10] The Appellant disagrees and says that if getting EI regular benefits affected the number of weeks of parental benefits she could get, Service Canada should not have presented the option for her to get extended parental benefits and should not have told her that her benefits would continue until May 2023.

## **Issue**

[11] Which type of parental benefits did the Appellant actually want when she made her choice on the application?

## **Analysis**

### **Which kind of benefits did the Appellant elect to receive?**

[12] The Appellant elected to receive extended parental benefits.

### **The parties' arguments**

[13] The Commission says what the Appellant chose on the application tells us which option she wanted. It argues that it is too late to change options now.

[14] The Appellant says she spoke to a Service Canada officer who asked her if she preferred standard or extended option for payment of parental benefits. She says the officer assured her that her payments would continue until May 2023.

[15] The Appellant was laid off her job. So, she applied for and got EI regular benefits for the period starting October 24, 2021. On March 14, 2022, the Appellant applied for maternity and parental benefits. She had given birth to a baby on February 26, 2022. She said she wanted to claim 61 weeks of parental benefits under the extended option.

[16] The Appellant said she spoke to Service Canada in June 2022. But the Commission's reconsideration file has notes of a conversation from that happened on

May 9, 2022. This may be a record of the conversation the Appellant referred to. It notes the date of confinement and the possible need to amend the maternity and parental period. But it doesn't reflect anything about the options for payment of parental benefits.

[17] The Appellant says that because she said on her bi-weekly reports that she had had a baby, her payments stopped. On May 31, 2022, the Commission amended payments it had made to the Appellant. It switched the payment of regular benefits for the period November 28, 2021, to February 19, 2022, to maternity benefits. Then on June 1, 2022, it processed payments of an additional three weeks of maternity benefits for the period up to March 12, 2022, and extended parental benefits for the period March 13, 2022, to May 28, 2022.

[18] The Appellant testified that she was asked if she would like to get standard payment of parental benefits at 55% of her income, or the extended option at 33%. She chose the extended option. She said the officer told her that her payments would be at the decreased rate but for a longer period which would take her to May 2023. She added that the date of May 2023 was mentioned many times, and she made a note of this, knowing that she would have to keep it in mind due to bills she had coming in.

[19] I found the Appellant's testimony to be clear, honest, and consistent with what she told the Commission. So, I have no reason to doubt her account of the conversation she had with Service Canada. She testified that her husband was on the line with her also, and that the call was recorded. Even though I don't have access to this recording, I have no reason to doubt the Appellant's testimony.

[20] I find that the Appellant originally elected for the extended option for parental benefits in March 2022. But when she spoke to spoke to the Service Canada officer, she still had time to change her election. This is because no parental benefits had yet been paid. I find that by assuring her that the reduced parental benefits under the extended option would continue until May 2023, the Commission misled her.

[21] The Commission referred in its submissions to a decision of the Federal Court. In that decision, the court confirmed that the election between standard and extended parental benefits is irrevocable once benefits have been under the original election. But the court also said a claimant may be able to get relief if they rely on official, incorrect information, and are misled by it.<sup>3</sup>

[22] I find from the Commission's notes that it knew of the need to amend the payments of regular benefits it paid to the Appellant when it spoke to her. And the Commission, being the expert, knew that the Appellant was entitled to a maximum of 50 weeks of combined regular and special benefits. So, it wasn't possible that the Appellant could get parental benefits up to May 2023.

[23] It is notable that the Commission amended the payment of EI regular benefits so that it could pay maternity benefits to the Appellant before she had her baby. This allowed for payment parental benefits, but for fewer weeks of parental benefits than even the maximum 35 weeks entitlement under the standard option.

[24] The Appellant said she didn't know that having received regular benefits could affect the number of weeks of maternity and/or parental benefits she was entitled to. She said that this was explained to her later, and she was advised to ask the Commission to reconsider its decision not to change payment of parental benefits from the extended to the standard option.

[25] I find that by assuring her that she would get extended parental benefits up to May 2023, the Commission misled the Appellant. I find that this caused her to confirm her election for extended parental benefits at the point where she could have changed her election for the option that made sense in her circumstances.

[26] The Appellant said the Commission should not have presented her with the option to get extended parental benefits. I don't agree with this. The Appellant said that had the Commission told her that her parental benefits would end in October 2022 no matter which option she chose, she would have elected for the standard option. I

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<sup>3</sup> See *Karval v Canada (Attorney General)*, 2021 FC 395.

accept this as fact and find that this is what the Appellant's election would have been, but for the misleading information given to her.

## **Conclusion**

[27] The Appellant only chose extended parental benefits after being misled by the Commission.

[28] This means that the appeal is allowed.

Audrey Mitchell

Member, General Division – Employment Insurance Section