



Citation: *SG v Canada Employment Insurance Commission*, 2023 SST 626

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: S. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (501978) dated October 18, 2022 (issued by Service Canada)

Tribunal member: Kristen Thompson

Type of hearing: Videoconference

Hearing date: May 16, 2023

Hearing participants: Appellant
Appellant's support person

Decision date: May 24, 2023

File number: GE-22-3846

Decision

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

[2] The Appellant has shown that she is entitled to critically ill adult benefits.

Overview

[3] The Appellant was laid off from her job on May 31, 2019. She later applied for critically ill adult benefits, through an antedated claim.

[4] The Canada Employment Insurance Commission (Commission) decided that the Appellant wasn't entitled to critically ill adult benefits from June 30, 2019, to August 10, 2019. It says that she wasn't providing care or support to the critically ill adult because she was outside of Canada.

[5] The Appellant disagrees and says that she was providing care and support to the critically ill adult. She says that she was outside of Canada for the month of July 2019.

[6] I have to decide whether the Appellant has proven that she was providing care or support to the critically ill adult, while outside of Canada.

Issue

[7] Is the Appellant entitled to receive critically ill adult benefits, while outside of Canada?

Analysis

[8] An appellant is entitled to critically ill adult benefits in order to care or support an adult family member. A medical doctor or nurse practitioner has to issue a certificate that says that the critically ill adult requires the care or support of their family member.¹

[9] **Care** means all care that is required because of the state of health of the critically ill adult, other than the care provided by a health care professional. **Support** means all

¹ See section 23.3(1) of the Act

psychological or emotional support that is required because of the state of health of the critically ill adult.²

[10] Generally, appellants aren't entitled to receive benefits when they aren't in Canada.³ However, an appellant isn't disentitled from receiving critically ill adult benefits for the sole reason that she is outside of Canada.⁴

[11] It is up to the Appellant to prove that she was providing care or support for the critically ill adult. She has to prove this on a balance of probabilities.

Was the Appellant providing care or support while outside of Canada?

[12] I find that the Appellant was providing care or support for the critically ill adult, while outside of Canada.

[13] The Commission says that the Appellant wasn't able to provide care or support to the critically ill adult because she was outside of Canada and the critically ill adult was in Canada. It says that the Appellant didn't communicate directly with the critically ill adult because he was incoherent. It says that benefits are paid to assist appellants who are required to take time off work to care or support a loved one who is critically ill.

[14] The Appellant received critically ill adult benefits on behalf of her father. She says that her father's health rapidly declined starting February 2019. She says that her father passed away on August 17, 2019.

[15] The medical certificate says that her father was both physically and cognitively impaired.⁵

[16] The Appellant says that she was in the United States assisting her partner move for the month of July 2019.

² See section 1(5) of the Regulation.

³ See section 37(b) of the Act.

⁴ See section 55(4) of the Regulation, appellants aren't disentitled for the sole reason that they are outside of Canada, unless their Social Insurance Card or Number has expired.

⁵ See GD3-43 to 45.

[17] The Appellant says that, during the month of July 2019, her father was moved from a long-term care facility to a hospital emergency room, and then into palliative care.

[18] While outside of Canada, the Appellant says that she provided the same level of care to her father as she provided while in Canada. She says that she was in contact with her father's care team daily. She says that she communicated with his care team through the telephone, email, and videoconferencing.

[19] The Appellant says that the care team could reach her at any point throughout the day. She says that she received calls in the morning, afternoon, and sometimes in the evening. She says that there were days when she received several calls from the care team.

[20] The Appellant says that communication with the care team included daily updates and decision-making. She says that she had sole decision-making authority, including giving consent for the care team to administer drugs and therapy to her father. She says that there was no other family member actively involved. She says that she was the primary point of contact for her father's care team, 24-hours per day.

[21] The Appellant says that due to her father's lack of mobility, she was unable to assist him physically. For example, she says that it could have been dangerous for her to assist him in eating or bathing, due to the risk that he could choke or either of them could get hurt.

[22] The Appellant says that her father's care team handled his daily needs, which was strictly monitored by nurses and doctors. However, she says that she was required to have "forceful" conversations with the care team to ensure that his hygiene and nutritional needs were met. She says that, for the care she was able to provide, it wasn't necessary for her to be at the care facility.

[23] While outside of Canada, the Appellant says that she provided support to her father. She says that she spoke with him daily. She says that she did all the talking because her father couldn't communicate, due to his health condition. She says this is

similar to the support she gave to him while inside Canada, which included talking to him at his bedside.

[24] The Appellant says that she wouldn't have been able to work during the time in question, due to the amount of time she spent communicating with her father's care team, and the emotional tole it had on her.

[25] I find that the Appellant was providing the critically ill adult with the care that was required because of the state of his health, while outside of Canada. I rely on the testimony of the Appellant, along with the medical certificate, which indicate that her father's health care professionals were required to provide most of his care, due to his health condition. However, the Appellant played a significant role in his care, including being accessible daily from morning to evening to field calls from his care team, making healthcare-related decisions, and advocating for his hygiene and nutritional needs. Her role wasn't limited by not being physically within the health care facility.

[26] I find that the Appellant was providing the critically ill adult with the psychological or emotional support required because of the state of his health, while outside of Canada. Although her father couldn't reciprocate in communicating with her due to the state of his health, the Appellant provided him with support through her daily phone calls. This is similar to the support she gave to him while in Canada, talking with him at his bedside.

Conclusion

[27] I find that the Appellant isn't disentitled from receiving critically ill adult benefits.

[28] This means that the appeal is allowed.

Kristen Thompson
Member, General Division – Employment Insurance Section