



Citation: *SD v Canada Employment Insurance Commission*, 2023 SST 719

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

## Decision

**Appellant:** S. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (575260) dated February 27, 2023 (issued by Service Canada)

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**Tribunal member:** Elyse Rosen

**Type of hearing:** Teleconference

**Hearing date:** May 23, 2023

**Hearing participant:** Appellant

**Decision date:** May 24, 2023

**File number:** GE-23-900

## **Decision**

[1] The appeal is allowed.

[2] The Appellant is entitled to parental benefits beginning on January 29, 2023.

## **Overview**

[3] The Appellant's stepdaughter was unable to care for her children as a result of substance abuse and mental health issues. The Children's Aid Society (CAS) removed her children, who were 8 months and 7 years old at the time, from her care. The children were placed with the Appellant and her spouse on an emergency basis.

[4] The Appellant was working as a support worker in a group home. She had to take a leave from her job so that she could care for her grandchildren. She applied for Employment Insurance (EI) parental benefits.

[5] The Canada Employment Insurance Commission (Commission) concluded that the children weren't placed with the Appellant for the purposes of adoption. So, it decided that she didn't meet the conditions set out in the law to be entitled to parental benefits.

[6] The Appellant disagrees with the Commission's decision. She says she intends to adopt her grandchildren as soon as they become legally adoptable.

[7] I must decide if the Appellant is entitled to parental benefits in the circumstances.

## **Matters I have to consider first**

### **An additional document was added to the record**

[8] At the hearing, the Appellant told me that she had gone to the courthouse to obtain documentation to start the adoption process. I gave her permission to send this documentation to me after the hearing.

[9] Twenty minutes after the close of the hearing, the Appellant sent the Tribunal a copy of various forms to be filed with the Ontario Court of Justice. These documents have been identified as GD6.

[10] I didn't give the Commission a chance to provide submissions (in other words, arguments) on GD6.

[11] The *Social Security Tribunal Rules* (Rules) say that the procedural decisions that I make should ensure that the appeal process is simple, quick, and fair.<sup>1</sup> With that in mind, I decided not to give the Commission a chance to provide submissions on GD6 for the following reasons:

- Since the Appellant asked to submit the documents during the hearing, they aren't late evidence.
- The Commission chose not to attend the hearing. If it had, it would have been able to make submissions on these documents. It isn't fair to the Appellant to delay the file because of the Commission's decision not to attend the hearing.
- The Commission wouldn't be taken by surprise by the documents, given that the Appellant had already expressed her intention to adopt the children as soon as she is able to.
- The hearing took place over 45 days after the Appellant filed her Notice of Appeal.<sup>2</sup> Giving the Commission time to provide submissions on GD6 would only delay the file further.

[12] For all of these reasons, I decided that it wouldn't be unfair to the Commission if I didn't give it an opportunity to file submissions on GD6. I also decided that it would be unfair to make the Appellant wait any longer for the decision on her appeal.

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<sup>1</sup> See section 6 of the Rules.

<sup>2</sup> To meet its commitment to provide an appeal process that is quick, simple, and fair, the Social Security Tribunal tries to make its final decision within 45 days from the filing of an appeal for Employment Insurance appeals at the General Division. The current volume of cases has made it difficult to meet this service standard.

[13] So, GD6 will form part of the record.

### **I don't have jurisdiction to decide whether the Appellant is entitled to family caregiver benefits**

[14] At the same time the Appellant's grandchildren were placed with her, her father moved into her home so that she could provide care for him. She was given conflicting advice by the Commission about the type of benefits she should apply for. The last agent she spoke with told her not to apply for benefits with respect to the care of a critically ill adult (more commonly known as family caregiver benefits). So, she didn't file a claim for family caregiver benefits.

[15] The Appellant has been without income since December 2, 2022. She says if she hadn't been told not to apply for family caregiver benefits, she wouldn't be in the financial predicament that she is currently in. If I decide she isn't entitled to parental benefits, she would like for me to determine if she is entitled to family caregiver benefits instead.

[16] My jurisdiction (in other words, authority to decide) is only triggered when the Commission has rendered a reconsideration decision.<sup>3</sup> The Appellant only applied for parental benefits. Her entitlement to parental benefits is the only issue that was decided by the Commission. As a result, my jurisdiction is limited to deciding if the Appellant is entitled to parental benefits. I can't decide whether she's entitled to family caregiver benefits.

[17] So, I must limit myself to deciding the issue of her entitlement to parental benefits.

[18] I have explained to the Appellant that if she still wishes to apply for family caregiver benefits, she should contact the Commission. I also explained that if she would like this claim to go back to the time her father came to live with her, she can ask the Commission to antedate (in other words, backdate) her claim. I make no finding as

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<sup>3</sup> See section 113 of the Employment Insurance Act (Act).

to whether or not the Appellant has good cause to antedate such a claim if she makes one.

## Issue

[19] Is the Appellant entitled to parental benefits?

## Analysis

[20] I find that the Appellant is entitled to parental benefits beginning on January 9, 2023.

[21] Parental benefits are intended to provide financial support while you take time off work to care for your newborn child or a child who was placed with you for the purpose of adoption (in accordance with provincial adoption laws).<sup>4</sup>

[22] The Federal Court of Appeal (FCA) has confirmed that determining whether a child has been placed with a claimant for the purpose of adoption is a question of fact, to be decided on the basis of the evidence.<sup>5</sup> The burden rests with the claimant. This means they must show it is more likely than not that the child was placed with them for the purpose of adoption.

[23] The FCA has also held that the placement of a child for the purpose of adoption may arise in a variety of circumstances. Therefore, no specific documentation is required to prove that placement was for the purpose of adoption.<sup>6</sup>

[24] The Commission submits that the Appellant isn't entitled to parental benefits because she hasn't proven that her grandchildren were placed with her for the purpose of adoption. These are its arguments:

- The Appellant isn't credible. She originally told the Commission the placement was temporary, but later advised that her intention was to adopt the children. She

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<sup>4</sup> See section 23(1) of the Act.

<sup>5</sup> See *Canada (Attorney General) v Hunter*, 2013 FCA 12.

<sup>6</sup> *Canada (Attorney General) v Hunter*, 2013 FCA 12.

only revised her story after learning she couldn't get benefits if she wasn't adopting the children.

- The Appellant has been unable to provide a timeframe in which the adoption would occur, and has stated that the children aren't yet adoptable. She has not yet begun adoption proceedings.
- The real purpose of the placement was to provide temporary care while her stepdaughter seeks treatment. The objective was to avoid having the children placed in foster care while their mother tries to change the circumstances that led to their removal.
- Since the placement of the children was meant to be temporary, the children aren't yet adoptable, and no adoption proceedings have been commenced, the Appellant doesn't meet the conditions set out in the law to be entitled to parental benefits.

[25] At the hearing, the Appellant testified to the following:

- On December 1, 2022, she received an urgent phone call from the CAS indicating that her grandchildren were at risk in their current home environment and would be removed immediately. She was told that unless she and her spouse came to get them, the children would be placed in foster care.
- Their mother was convinced by CAS to voluntarily place the children with the Appellant and her spouse and to seek treatment for her substance abuse issues.
- At that time, the placement was intended to be temporary. The hope was that the children's mother would improve, and be able to meet the conditions imposed by the CAS for her to be able to get her children back. She was given six months to meet those conditions, which included getting sober.
- The Appellant and her spouse took physical custody of the children on December 3, 2022. The Appellant was obliged to take a leave of absence from

her job to care for the children. She was told the children would be in her care for at least six months while their mother took steps to improve her situation. At that point, the CAS would re-assess.

- On January 31, 2023, during a videoconference call with her stepdaughter, it became clear to the Appellant that her stepdaughter would be unable to get sober and meet the conditions to regain custody of her children. She wasn't in treatment. And, she told the Appellant that she had to think of herself first and wasn't any good for her children.
- Following that call, the Appellant and her spouse made the decision that they would adopt the children. It was clear to her at that point that there was no other option.
- The Appellant hasn't started adoption proceedings because the six-month period given to her stepdaughter to get sober and improve her circumstances hasn't yet elapsed, and the CAS hasn't yet re-evaluated the situation. As a result, the children aren't yet legally adoptable.
- In order to prepare for the children becoming adoptable, the Appellant visited the courthouse to enquire about next steps and was given paperwork to complete to begin the process. The Appellant has completed the paperwork and has indicated she will be filing it in the coming days.<sup>7</sup>
- The Appellant had been in foster care as a child. It was a terrible experience for her. She says there is no way she would allow her grandchildren to be placed in foster care. Her stepdaughter is clearly unable to care for them, and she will adopt them and raise them in her place. She considers this to be an obligation. She hopes her stepdaughter will get well enough to have some role in her children's lives, but she clearly isn't able to parent them.

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<sup>7</sup> See GD6.

[26] D. S., a Kinship Service Worker with the CAS, also testified at the hearing. She provided the following evidence:

- The Appellant has expressed a commitment, since January 31, 2023, to adopt her grandchildren.
- The children aren't currently legally adoptable, but a process has been engaged (she used the term "planning for permanency").
- The Appellant is unable to work. There are no daycare spots available for her younger grandchild, who is currently 14 months of age. She is assisting the Appellant in trying to secure a daycare spot. She will help the Appellant obtain a subsidy for the cost of daycare once a spot is secured. This could take many months.
- She has never seen a claimant providing kinship care be refused EI.

[27] I don't agree with the Commission that the Appellant isn't credible. The Appellant's testimony was sincere and consistent with what she told the Commission.

[28] Contrary to what the Commission asserts, I don't believe that the Appellant changed her story about her intentions regarding adoption so that she would be entitled to parental benefits. I believe that initially she didn't intend to adopt her grandchildren. The placement came as a complete surprise to her and wasn't planned. But, she decided to adopt the children when it became clear to her that their mother wouldn't be able to overcome her issues and would be unable to raise them.

[29] Moreover, given the Appellant's own background, coming from a troubled childhood, and given her personal experience with foster care, I believe her when she says she won't let that happen to her grandchildren. This bolsters her statement that she is committed to adopting them and to raising them.

[30] Based on the evidence, I find that the Appellant has shown that she meets the conditions set out in the law to be eligible for parental benefits.



[31] Although the children weren't initially placed with her and her spouse for the purpose of adoption, the purpose of the placement changed on January 31, 2023. The Appellant and her spouse decided on that day that they would adopt their grandchildren. They shared their plans with the CAS.

[32] The Appellant's testimony to that effect is corroborated by the testimony of D. S., and by a letter from the CAS dated February 23, 2023, confirming that the Appellant intends to adopt the children as soon as legally allowed.<sup>8</sup>

[33] The only thing currently preventing the adoption is the fact that their mother still has decision making authority over the children. As a result, they are not yet legally adoptable. This may continue to be the case for many months. That said, a process is being followed by the CAS and the Appellant in accordance with Ontario adoption laws.

[34] Under EI law, the Appellant must meet two conditions to be entitled to parental benefits:

- i. the children have to have been placed with her
- ii. she must demonstrate her intention to formally adopt them under Ontario law<sup>9</sup>

[35] As of January 31, 2023, both of these conditions were met.

[36] Contrary to what the Commission argues, there is no obligation to commence formal adoption proceedings to be entitled to parental benefits. If children are not yet adoptable, a clear intention to adopt them when that becomes possible will suffice.<sup>10</sup>

[37] So, I find the Appellant has shown that she meets the conditions to be entitled to parental benefits. The children have been placed with her and she has demonstrated

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<sup>8</sup> See GD3-40.

<sup>9</sup> This is in keeping with a Government of Canada press release dated January 4, 2012, which confirms that section 23(1) of the Act is to be interpreted as creating an entitlement to benefits as soon as both of these conditions are met.

<sup>10</sup> The Government's January 4, 2012, press release states: "(T)here is no longer a requirement that the application for adoption be submitted to a competent provincial or territorial court for an individual to qualify for parental benefits. As long as a demonstrable commitment to adopt can be shown, the placement will be considered to be made for the purpose of adoption and parental benefits will be paid."

her intention to adopt. She confirmed this intention to the CAS and has started the necessary paperwork.

[38] However, the Appellant isn't entitled to parental benefits from the week the children were placed with her. This is because the law says the period in which parental benefits can be paid begins when both these conditions are met.<sup>11</sup> Since the Appellant's intention to adopt began on January 31, 2023, she is only entitled to parental benefits as of January 29, 2023.<sup>12</sup>

[39] I note that in her application the Appellant stated she was claiming 13 weeks of benefits. This is an error. She wants the maximum allowable number of weeks of parental benefits she is entitled to under the law. Currently she intends to go back to work in October 2023, but she is not yet certain if this will be possible.

[40] As for the period between December 2, 2023, which was the last day the Appellant worked, to January 29, 2023, the Appellant may be entitled to regular benefits. She took a leave from her job to care for members of her immediate family.<sup>13</sup>

[41] It is clear to me from the evidence that the Appellant had just cause to leave her job, and no reasonable alternative but to do this. The children were placed with her on an emergency basis, the youngest child was an 8-month-old infant at the time of placement, the Appellant made serious efforts to find a daycare spot for her younger grandchild but none were available, there is no one else who can care for the children, the Appellant is in a line of work that can't be done remotely, and the Appellant doesn't have the means to hire a full-time babysitter.

[42] I suggest that the Appellant speak with the Commission about the possibility of treating her claim as a claim for regular benefits from December 2, 2023, until

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<sup>11</sup> See section 23(2)(a) of the Act.

<sup>12</sup> Section 2(1) of the Act says that a week begins on a Sunday. Since the Appellant met the conditions to receive benefits on January 31, 2023, her benefits would begin on the Sunday of that week.

<sup>13</sup> See section 29(c)(v) of the Act.

January 29, 2023. She may wish to provide the Commission with a copy of this decision when she has that discussion.

## **Conclusion**

[43] The appeal is allowed.

[44] The Appellant is entitled to parental benefits beginning on January 29, 2023.

Elyse Rosen  
Member, General Division – Employment Insurance Section