



Citation: *SS v Canada Employment Insurance Commission*, 2023 SST 1053

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

Decision

Appellant: S. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (572726) dated February 21, 2023 (issued by Service Canada)

Tribunal member: Marc St-Jules
Type of hearing: Videoconference
Hearing date: July 7, 2023
Hearing participant: Appellant
Decision date: August 1 2023
File number: GE-23-860

Decision

[1] The appeal is dismissed.

[2] The Appellant isn't entitled to receive benefits for the care of a critically ill adult (family caregiver benefits).

[3] The forms and added explanations do not confirm that his wife meets the legal requirements for the Appellant to receive family caregiver benefits.

Overview

[4] The Appellant took a leave from his job to care for his wife. She had surgery and needed full-time care afterwards.

[5] The Appellant applied for Employment Insurance (EI) special benefits for the care of a critically ill adult. These benefits are also called family caregiver benefits. He requested 15 weeks of family caregiver benefits.

[6] To prove his entitlement to benefits, the Appellant provided the Canada Employment Insurance Commission (Commission) with two medical certificates. A third medical certificate was sent along with his appeal to the Tribunal. The three medical certificates are the same forms, but the questions are answered differently.

[7] The Commission decided the Appellant wasn't entitled to family caregiver benefits. This was because he didn't provide a medical certificate confirming that his wife met all three conditions to receive family caregiver benefits.

Issue

[8] Is the Appellant entitled to receive family caregiver benefits?

Analysis

[9] An appellant can receive family caregiver benefits if they stop working to care for a critically ill adult family member.¹

[10] To receive these benefits, an appellant has to provide a medical certificate that meets the requirements set out in the law. This means the medical certificate must:

- Be signed by a medical doctor or nurse practitioner.
- State that the patient is critically ill and needs the care or support of one or more family members.
- Set out the period during which the family member needs that care or support.

[11] The EI Regulations define what critically ill means.²

critically ill adult means a person who is 18 years of age or older on the day on which the period referred to in subsection 23.3(3) or 152.062(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

[12] The Appellant provided the Commission with a medical certificate, dated January 18, 2023.³ This certificate was signed by a medical doctor. This medical says the patient will require the care or support of one or more family members until April 29, 2023. It also says there has not been a significant change in the patient's baseline state of health. It also says that the patient's life is not at risk as a result of illness or injury.

¹ See section 23.3(1) of the *Employment Insurance Act* (Act).

² See section 1(7) of the *Employment Insurance Regulations* (Regulations).

³ See GD03 page 23.

[13] With this information, the Commission denied the Appellant's request for family caregiver benefits. The Commission sent a letter dated January 30, 2023, confirming this.⁴

[14] On February 1, 2023, the Appellant submitted a request for reconsideration to the Commission. The Appellant added that his wife has a high risk of falling and causing further injury. If she were to fall, she would not be able to get up on her own.

[15] Included with the reconsideration request is a new form from the same doctor.⁵ It now says there has been a significant change in the patient's baseline state of health and that she required the care or support of a family member. But it also says his wife's life wasn't at risk as a result of an illness or injury.

[16] The Commission spoke to the Appellant on February 21, 2023.⁶ The Appellant mentioned he has been caring for his wife for two months now without income. He added that if his wife were to fall, her life would be at risk. The Commission explained to the Appellant that he would need to discuss this issue with the doctor and if a new or amended medical were to be submitted, entitlement would be reviewed.

[17] During this same conversation with the Appellant, the Commission advised the decision was maintained. The Commission followed up with a letter dated February 21, 2023. This new letter says the Commission is maintaining its decision.

[18] The Appellant then requested an appeal with the Social Security Tribunal. Accompanying this appeal is a new form signed by the same doctor.⁷ It now answers all three questions as yes.

[19] When a medical practitioner answers yes to the patient's life is at risk, they are asked the following question: "If yes, please elaborate briefly (for example conditions

⁴ See GD03 page 26.

⁵ See GD03 page 28.

⁶ See GD03 page 33.

⁷ See GD02 page 10.

and diagnosis).” The answer the medical practitioner provided in this section says: “risk of falling/injury if help is not present.”

[20] The Appellant argues that the first two forms were completed incorrectly. It should be this third and last form that should count. The Appellant added that he was told by the Commission that if the surgeon revised the form to say “yes” to all three conditions, then he would be awarded benefits.

[21] The Appellant is asking for the benefits to be awarded based on this new medical information.

[22] The Commission is asking the Tribunal to maintain its decision. It says the doctor did not elaborate on the patient’s condition and diagnosis. It says the medical practitioner specified the patient was at risk for falling/injury if help is not present.

[23] The Commission is not disputing the fact that the patient needs care. However, the Commission is saying the medical certificate does not demonstrate that the patient’s life is at risk as a result of their illness or injury.

[24] The Appellant’s testimony was honest and sincere. I have no doubt that his wife was unable to care for herself after her surgery. I believe that he needed to take a leave from his job to care for her.

[25] I believe all three forms were signed by the same medical practitioner. I have no reason to doubt this. The signatures are not dissimilar.⁸ They all have the same stamps. The location of each stamp is different.

[26] The Appellant testified that his wife was on medication and could have decided to get out of bed, fall and tear the wound causing bleeding. The bleeding would be life threatening.

[27] I have three medicals in front of me. All dated January 18, 2023. All saying different things. The Appellant says that the doctor did not re-examine his wife. They

⁸ I am not a handwriting expert. This conclusion is not based on a formal hand-writing analysis.

had not met since the patient left the hospital. The first form was completed by his wife as the doctor was very busy. It is the doctor who signed the completed form. The other two forms were sent to the doctor and completed by the doctor's office.

[28] I agree the doctor signed the three forms which have different answers. Regarding the most recent form, I agree with the Commission. What was added to elaborate on her condition does not support that her life is at risk **as a result** of the illness or injury.

[29] The Appellant is saying he was told that if the form indicated yes three times, he would be approved for benefits. This is what he did. He provided a medical which has the three yeses.

[30] In this case, I believe the Appellant when he was told that if the form had three yeses, he would be paid. I also do not believe the Commission pre-adjudicates cases. It can't promise in advance because such decisions are dependent on the form being received and meeting the requirements under the EI Act.

[31] I have three forms before me. The first two clearly do not meet the criteria.

[32] I have a third form which does not elaborate on how her life is at risk **as a result of** the illness or injury. When I read this, I interpret this as a person's life must be at risk **because** of the illness or injury. I interpret this as the legislation intention. The added explanation does not support or explain how the person's life is at risk because of the illness or injury.

[33] For this reason, based on the evidence before me, I find it more likely than not that the Appellant has not met the conditions to received family caregiver benefits. To come to this conclusion, I am looking at all three medicals. I am also looking at the explanation provided on the last medical which does not elaborate on how the patient's life is at risk as a result of the illness or injury.

[34] So, the fact that a box is checked off on the certificate does not demonstrate or support that the Appellant's wife's life is at risk as a result of an illness or injury. Accordingly, the legal requirements to receive these benefits have not been met.

[35] I agree the Appellant may need financial assistance. He mentioned this to the Commission. However, I have no jurisdiction to change the law. As a Tribunal Member, I can only decide based on the law parliament enacted.

[36] A Federal Court of Appeal (FCA) decision agrees that rigid rules can sometimes lead to harsh results. Even so, the FCA says I can only follow the plain written meaning of the law.⁹ I can't rewrite the law or add new things to the law to make an outcome that seems fairer for the Appellant.

Conclusion

[37] The appeal is dismissed.

[38] This means the Appellant is not entitled to family care benefits.

Marc St-Jules
Member, General Division – Employment Insurance Section

⁹ *Canada (Attorney General) v Knee*, 2011 FCA 301, at paragraph 9.