



Citation: *DS v Canada Employment Insurance Commission*, 2024 SST 335

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

## Decision

**Appellant:** D. S.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (628672) dated November 16, 2023 (issued by Service Canada)

---

**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** January 5, 2024, and January 26, 2024

**Hearing participant:** Appellant

**Decision date:** January 26, 2024

**File number:** GE-23-3213

## Decision

[1] The appeal is dismissed. The Canada Employment Insurance Commission (Commission) paid the Appellant too many weeks of Employment Insurance (EI) parental benefits. The Appellant must repay the overpayment.

## Overview

[2] The Appellant worked for the Canadian Armed Forces. After returning from his second overseas deployment, his employer encouraged him to take a break and go on parental leave. He agreed and worked with his clerk to get the leave and apply for EI parental benefits. He told his clerk he would take as many weeks as he could given the number of weeks the mother was taking.

[3] Based on the information in the Appellant's application form, the Commission paid the Appellant 29 weeks of EI standard parental benefits.

[4] Almost three years later, the Commission took another look at the Appellant's claim for benefits. It decided that the Appellant was entitled to only 5 weeks of EI parental benefits. <sup>1</sup>The Commission has since asked the Appellant to repay the other 24 weeks of benefits.

[5] The Appellant says that he would have made different decisions if he'd known that he wasn't entitled to the full 29 weeks. He wasn't trying to get benefits he wasn't entitled to, and he was truthful in his application for benefits. Repayment of the benefits will be a real financial hardship.

## Issues

[6] Was the Appellant entitled to the 29 weeks of EI parental benefits he received?

[7] If not, does he have to repay the overpayment?

---

<sup>1</sup> See decision letters on page GD3-17 and GD3-22.

## Analysis

[8] The law says that parents with children born on or after March 17, 2019, can share up to 40 weeks of standard parental benefits, but the most one parent can receive is 35 weeks.<sup>2</sup>

[9] The Appellant and his child's mother claimed standard parental benefits.<sup>3</sup>

[10] The child's mother applied for EI parental benefits on October 22, 2020. She asked for 35 weeks of standard parental benefits.<sup>4</sup>

[11] The Appellant applied for EI parental benefits on November 20, 2020. He asked for 29 weeks of standard parental benefits.<sup>5</sup>

### **Was the Appellant entitled to 29 weeks of EI parental benefits?**

[12] No. The Appellant was entitled to only 5 weeks of EI parental benefits.

[13] The Appellant and the child's mother can share up to 40 weeks of standard parental benefits because their child was born after March 17, 2019.

[14] The child's mother claimed 35 weeks of standard parental EI benefits in October 2020.<sup>6</sup> This means that only 5 weeks of benefits were available for the Appellant when he applied in November 2020.

[15] The benefits are first paid to the child's mother because the Appellant wanted to take the number of weeks available to him given the number of weeks the mother was

---

<sup>2</sup> See sections 12(3) and 12(4) of the Employment Insurance Act (EI Act). Parents can receive parental benefits at a reduced rate over a longer period if an election for extended parental benefits is made under s 23(1.1) of the EI Act. Since the Appellant's claim was for standard parental benefits, I haven't mentioned the maximum weeks available for extended parental benefits. The election can't be changed once benefits are paid, as they have been in this case. See section 23(1.2) of the EI Act.

<sup>3</sup> The mother's election of standard parental benefits governed because it was the first election made. See section 23(1.3) of the EI Act. Her election is shown on page GD8-5.

<sup>4</sup> See page GD8-5.

<sup>5</sup> See page GD3-8.

<sup>6</sup> The mother's claim for 35 weeks of standard parental EI benefits is on page GD8-5.

claiming. There is no evidence of any other agreement between the parents about how the parental benefits would be shared.<sup>7</sup>

[16] So, the Appellant was entitled to 5 weeks of EI parental benefits.<sup>8</sup>

[17] Since the Commission paid the Appellant 29 weeks of EI parental benefits, he was overpaid by 24 weeks.

### **Does the Appellant have to repay the overpayment?**

[18] Yes. The Appellant must repay the 24 weeks of EI parental benefits that he shouldn't have received.

[19] The law says that when a claimant receives benefits that they weren't entitled to receive, they must repay those benefits.<sup>9</sup>

[20] The Appellant wants me to find that he doesn't have to repay the benefits. He shared personal information with me about how he came to apply for parental benefits, leaving the military, training for a new career, and his financial situation. Repaying the benefits will cause financial hardship.

[21] The Appellant talked to Service Canada before he applied, and the officer told him he could ask for up to 35 weeks of standard parental benefits.<sup>10</sup> He may have made different decisions if he had known that he wasn't entitled to the benefits.

[22] The Appellant explained that he and his wife intended to complete their application forms correctly. They thought the question about whether the other parent would be receiving "Maternity, Paternity, Parental or Adoption benefits from the Quebec Parental Insurance Plan" was asking if the other parent would be receiving any of the listed benefits under the Quebec Parental Insurance Plan. They didn't realize the

---

<sup>7</sup> See section 23(4) of the EI Act. Section 41.6 of the Employment Insurance Regulations applies when multiple claimants cannot agree on the division of benefits.

<sup>8</sup> This is the maximum of 40 weeks less the 35 weeks payable to the child's mother.

<sup>9</sup> See section 43 of the EI Act

<sup>10</sup> See page GD3-20.

Commission was asking if they would be receiving maternity or parental benefits under the EI Act OR adoption benefits under the Quebec Parental Insurance Plan.<sup>11</sup>

[23] I understand why the Appellant and his wife interpreted and answered that question the way they did. I had the same interpretation at first.<sup>12</sup>

[24] I sympathize with the Appellant's situation. But no matter the reason why the Commission overpaid him benefits, he still has to pay back the overpaid benefits. As much as I would like to help the Appellant, I have no authority to allow him the extra weeks of benefits or to forgive the debt for compassionate reasons. The law simply doesn't give me this power.

[25] The Appellant may want to discuss payment arrangements with the Canada Revenue Agency which handles the collection of EI overpayments. The telephone number is 1-866-864-5823. More information about repayment can be found at [Overpayments and Repayments - Canada.ca](#).

## **Conclusion**

[26] The Appellant was entitled to 5 weeks of EI standard parental benefits. Since he was paid 29 weeks, he was overpaid EI parental benefits, and he must repay the overpayment.

[27] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section

---

<sup>11</sup> The Commission suggests that the answer to this question led to the overpayment of benefits.

<sup>12</sup> See page GD05.