



Citation: *LA v Canada Employment Insurance Commission*, 2024 SST 298

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: L. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (628035) dated November 15,
2023 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: January 10, 2024

Hearing participant: Appellant

Decision date: January 15, 2024

File number: GE-23-3302

Decision

[1] The appeal is dismissed.

[2] This means the Appellant was paid the maximum 15-weeks of Employment Insurance (EI) Family Caregiver benefits for adults in the 52-week family caregiver window she established from March 20, 2022, to March 18, 2023.

Overview

[3] The Appellant was issued 15-weeks of EI Family Caregiver benefits from April 17, 2022, to the week commencing July 24, 2022.

[4] The Appellant applied for 11-weeks of EI Family Caregiver benefits for adults on August 9, 2023.

[5] The Canada Employment Insurance Commission (Commission) issued Family Caregiver benefits to the Appellant from January 29, 2023, to March 18, 2023. However, the Commission discovered they previously established a Family Caregiver benefits window for the same family member and the Appellant had already received the maximum of 15-weeks of benefits from April 17, 2022, to the week commencing July 24, 2022.

[6] The Commission reconsidered its decision to issue Family Caregiver benefits to the Appellant from January 29, 2023, to March 18, 2023, and imposed a retroactive indefinite disentitlement effective January 30, 2023. The Commission explained they issued the Appellant 21-weeks of EI Family Caregiver benefits within a 52-week window and the law only allowed for 15-weeks of benefits.

[7] The Commission apologized for their error (GD4). However, the Commission says the Appellant was required to re-imburse the overpaid amount of the benefits she received.

[8] The Appellant says the Commission advised she could apply for additional EI Family Caregiver benefits on a new claim. She says that she cannot payback the overpayment amount.

Issue

[9] Was the Appellant eligible for more than 15-weeks of EI Family Caregiver benefits for adults within the 52-week family caregiver window?

Analysis

[10] Family Caregiver benefits for adults are special benefits available to eligible individuals who take leave from work to provide care or support to their critically ill or injured adult family member.

[11] The law provides two caps to the maximum number of weeks of EI Family Caregiver benefits payable. One cap is a maximum of 15-weeks of benefits payable within the 52-week window set forth in the law in respect of the same critically ill or injured adult,¹ whether these benefits are claimed by one individual or shared with another family member.²

[12] The other cap under the law is a maximum of 15-weeks of benefits payable in a benefit period.³

Was the Appellant eligible for more than 15-weeks of EI Family Caregiver benefits within the 52-week family caregiver window?

[13] I find the Appellant wasn't eligible for more than 15-weeks of EI Family Caregiver benefits within the 52-week family caregiver window. I make this finding because the Appellant had already received the maximum 15-weeks of benefits when she was issued an additional 6-weeks of benefits by the Commission in the 52-week family caregiver window (from March 20, 2022, to March 18, 2023). In short, the Appellant was

¹ Subsections 23.3(3) and 23.3(4) of the *Employment Insurance Act* (EI Act).

² Subsection 12(4.5) of the EI Act

³ Paragraph 12(3)(f) of the EI Act.

issued 21-weeks of Family Caregiver benefits within the family caregiver window and the law only allowed for 15-weeks of benefits to be paid.

[14] I realize the Appellant testified that she was provided misinformation from the Commission when they indicated she could apply for additional Family Caregiver benefits on a new claim. Nevertheless, misinformation by the Commission was no basis for relief from the operation of the EI Act and Regulations.⁴

Additional Testimony from the Appellant about her overpayment

[15] I recognize the Appellant testified that she only followed the information provided by the Commission when she applied for additional Family Caregiver benefits on a new claim. I realize the Appellant was frustrated, unhappy, and displeased with her overpayment. However, I must apply the law to the evidence. In other words, I cannot change or re-fashion the law even for sympathetic reasons.⁵

[16] Finally, I realize the Appellant explained that she cannot repay the overpayment. On this matter, I wish to emphasize that I have no authority to reduce or write-off the Appellant's overpayment.⁶ However, the Commission can decide to write off an overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship. So, the Appellant can ask the Commission to write-off her overpayment. Or, she can contact the Canada Revenue Agency (CRA) to discuss a fair re-payment arrangement.

Conclusion

[17] The appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁴ *Shaw v Canada (Attorney General)*, 2002 FCA 325.

⁵ *Knee v Canada (Attorney General)*, 2011 FCA 301.

⁶ *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97.