



Citation: *DS v Canada Employment Insurance Commission*, 2024 SST 334

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 (641444) dated January 31, 2024
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Videoconference

Hearing date: March 19, 2024

Hearing participant: Appellant

Decision date: April 5, 2024

File number: GE-24-633

Decision

[1] The appeal is allowed. The Appellant is entitled to the 17 weeks of Employment Insurance (EI) parental benefits he received.

Overview

[2] The Appellant and his wife both applied for EI standard parental benefits. His wife applied first and asked for 35 weeks. But after talking to Service Canada, the Appellant and his wife agreed that the Appellant would also apply. They agreed that if the Appellant's application was approved, he would take 17 weeks, which would reduce the number of weeks available to his wife. They say they told Service Canada about their agreement.¹

[3] Based on the information in the Appellant's application form, the Commission paid the Appellant 17 weeks of EI standard parental benefits.

[4] About a year 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 because his wife applied first and asked for 35 of the 40 weeks available.² The Commission has since asked the Appellant to repay the other 12 weeks of benefits.

[5] The Appellant says he shouldn't have to repay the benefits. He says it's not their fault that the Service Canada officer they spoke to didn't know the law or document the call.

Issue

[6] Is the Appellant entitled to the 17 weeks of EI parental benefits he received?

¹ Both the Appellant and his wife testified at the hearing.

² See decision letters on page GD3-23 and GD3-36.

Analysis

[7] 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.³

[8] The Appellant and his wife, the child's mother, claimed standard parental benefits.

[9] The child's mother applied for EI parental benefits first and asked for 35 weeks of standard parental benefits.

[10] When the Appellant applied a few days later, he asked for 17 weeks of standard parental benefits.

[11] The Appellant and his wife agreed that the Appellant would receive 17 weeks, if approved, and she would take the balance.

[12] So, when the Appellant's application was approved, his wife called Service Canada. She told the officer that she and her husband had agreed that he would receive 17 weeks of standard parental benefits. She wanted to know if she had to reapply to change the number of weeks she wanted. The officer told her that it was a shared benefit, and she didn't have to reapply. The Appellant also call Service Canada and explained their agreement on the division of benefits.

[13] In February 2023, when the Commission didn't seem to be following their agreement, the Appellant's wife again called Service Canada to explain how the weeks of parental benefits were to be divided. She told the officer that she didn't think she had any more weeks available because her husband had been paid 17 weeks of benefits.

³ 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.

The officer assured her that everything was okay and she was entitled to the benefits she continued to receive.

Is the Appellant entitled to 17 weeks of EI parental benefits?

[14] Yes. The Appellant is entitled to 17 weeks of EI parental benefits.

[15] The Appellant and his wife can share up to 40 weeks of standard parental benefits because their child was born after March 17, 2019.

[16] When there are multiple claimants for the same benefits, the benefits are shared as agreed to by the claimants.⁴ The law sets out how benefits are paid when the parties can't agree.⁵

[17] In this case, the parties agreed to how the benefits would be shared, so the division must be based on that agreement.

[18] I find that the parties agreed that the Appellant would receive 17 weeks of parental benefits and his wife would receive the remaining 23 weeks. The parties have consistently stated that this was their agreement. I have no reason to doubt what they say. The timing of his wife's call to Service Canada in February 2023 about her ongoing entitlement supports their claims that this is what they agreed.

[19] I find that the Appellant and his wife communicated their agreement about the division of benefits to the Commission before the Commission paid any parental benefits.

[20] The Appellant and his wife called Service Canada to tell it about their agreement about the division of benefits. These calls were made around the time the Appellant applied for benefits and before benefits could have been paid to the Appellant. I have no

⁴ See section 23(4) of the EI Act.

⁵ Section 41.6 of the Employment Insurance Regulations applies when multiple claimants cannot agree on the division of benefits.

reason to doubt that the Appellant and his wife called Service Canada as they claim in May 2022. Their statements about this have been consistent.

[21] The Commission says that the Appellant was only entitled to 5 weeks of standard parental benefits. It says that his wife applied first and asked for 35 weeks, so the most it can pay the Appellant is 5 weeks.⁶ The Commission says that it puts the onus on the claimant to request the correct number of weeks of parental benefits to ensure that there is no overpayment. It says that the discrepancy wasn't flagged and addressed until November 2023.⁷

[22] However, the Appellant did put the correct number of weeks of EI parental benefits he wanted, as agreed to by him and his wife. Both he and his wife communicated their agreement to Service Canada by telephone. Before parental benefits were paid, she told Service Canada that she wanted to change the number of weeks she asked for on her application form because she and her husband had agreed to a different division. The Appellant also called Service Canada about their agreement on the division of benefits. And when the Commission didn't seem to be following the agreement, the Appellant's wife called again. I don't know what else the Appellant could have done to communicate the agreement to the Commission.

[23] The Commission says that the Appellant's wife's call in February 2023 wasn't documented because she was calling about general information and no action was required. It also says that for security reasons the officer would have had access to only his wife's file, not the Appellant's.

[24] I appreciate the Commission's position and its procedural limitations. But these things don't change the fact that the Appellant and his wife agreed on the division of benefits and communicated that agreement to the Commission. Once that agreement was communicated, it was up to the Commission to divide the benefits as per the agreement.

⁶ See page GD4-5.

⁷ See page GD4-5.

[25] So, the Appellant is entitled to the 17 weeks of benefits he received as agreed to by the Appellant and his wife. Since the parties agreed on the division of benefits, it doesn't matter who applied first, nor does it matter that Service Canada didn't action the agreement when it was communicated to it.

[26] My decision doesn't mean that the Appellant and his wife are entitled to more than 40 weeks of standard parental benefits. It simply means that the Commission can't change the division of benefits as agreed to by the Appellant and his wife, which was 17 weeks for the Appellant and 23 weeks for his wife.

Conclusion

[27] The Appellant is entitled to 17 weeks of EI standard parental benefits, as agreed between him and his wife, and as communicated to the Commission.

[28] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section