



Citation: *LA v Canada Employment Insurance Commission*, 2024 SST 624

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 (652245) dated March 12, 2024
(issued by Service Canada)

Tribunal member:

Bret Edwards

Type of hearing:

In person

Hearing date:

May 1, 2024

Hearing participant:

Appellant

Decision date:

May 8, 2024

File number:

GE-24-1182

Decision

[1] The appeal is dismissed.

[2] The Appellant received Employment Insurance (EI) parental benefits that he wasn't entitled to. There is now an overpayment.

[3] I don't have jurisdiction to reduce or remove the overpayment.

Overview

[4] The Appellant and his wife had a child born on April 12, 2022.

[5] The Appellant's wife applied for EI parental benefits first, on April 17, 2022. She asked for 61 weeks of **extended** parental benefits. Her parental benefits payments were processed on August 19, 2022.

[6] On June 17, 2022, the Appellant applied for EI parental benefits. He asked for 6 weeks of **standard** parental benefits. The Canada Employment Insurance Commission (Commission) paid him 6 weeks of standard parental benefits, starting from the week of June 19, 2022 to the week of July 30, 2022. His payments were processed on September 1, 2022.

[7] The Commission subsequently decided that it made an error by paying the Appellant standard parental benefits. This is because he applied for standard parental benefits **after** his wife had already asked for extended parental benefits.

[8] On January 18, 2024, the Commission decided to change the Appellant's claim from standard to extended parental benefits and retroactively adjusted his claim accordingly. This meant he was overpaid \$1,530 of parental benefits. The Commission asked him to repay this amount.

[9] The Appellant has now appealed the Commission's decision to the Tribunal.

Matter I have to consider first

The Appellant initially asked for an interpreter, but then changed his mind

[10] The Appellant initially asked for an interpreter.¹ The Tribunal arranged to have an interpreter present at the hearing.

[11] On the day of the hearing, the Tribunal was notified that the interpreter was ill and wouldn't be able to attend the hearing.

[12] The Tribunal then contacted the Appellant to notify him that the interpreter was ill and that the hearing would have to be rescheduled. But the Appellant said that he didn't want an interpreter anymore as his English and wanted to proceed with the hearing as scheduled. He said he would submit this request in writing too.²

[13] Prior to the hearing, the Appellant did email the Tribunal to confirm that he no longer wanted an interpreter at the hearing.³

[14] And at the hearing, I asked the Appellant to confirm that he no longer wanted an interpreter. He said yes.

[15] So, the hearing proceeded as scheduled, but without an interpreter present.

Issue

[16] Can the Appellant be paid standard parental benefits?

[17] If not, can I reduce or remove the overpayment on his claim?

Analysis

The Rules for Parental Benefits

¹ GD2-4.

² See Tribunal's telephone conversation logs, May 1, 2024.

³ GD5-1.

[18] Parental benefits are payable to a parent to care for one or more newborn or adopted children.⁴

[19] When you apply for parental benefits, you must choose (elect) between two options: the “standard” option and the “extended” option.

[20] The standard option pays parental benefits at the normal weekly rate⁵ for up to 35 weeks.

[21] The extended option pays the same total amount of benefits, but at a lower weekly rate⁶ and over a longer period of time (up to 61 weeks).

[22] Overall, the amount of money stays the same. It’s just stretched over a different number of weeks.

[23] Once you start receiving parental benefits, you **can’t** change your election.⁷

[24] Two parents can apply for parental benefits for the same child.

[25] But the option chosen by the first parent to make a claim is **binding** on both parents.⁸ This means the option chosen by the parent who applied for parental benefits first is the type of parental benefits that must be paid to the other parent, regardless of whether it is standard or extended.

[26] When two parents apply for parental benefits for the same child, they can also share additional weeks of benefits.⁹

[27] But the maximum number of weeks that can be divided between them is 40 for standard benefits and 68 for extended benefits. This means that if two parents receive

⁴ See section 23(1) of the *Employment Insurance Act* (EI Act).

⁵ The normal rate is 55% of an appellant’s normal weekly earnings, up to a prescribed maximum.

⁶ Extended parental benefits are paid at 33% of an appellant’s normal weekly earnings.

⁷ Section 23(1.2) of the EI Act says your election is irrevocable (that is, final) once you receive benefits. See also *Canada (Attorney General) v Hull*, 2022 FCA 513, *Canada (Attorney General) v Pettinger*, 2023 FCA 51, and *Canada (Attorney General) v Jeffers*, 2023 FCA 52.

⁸ See section 23(1.3) of the EI Act.

⁹ See section 23(4) of the EI Act.

parental benefits for the same child, they could get an additional 5 weeks of standard benefits or 8 weeks of extended benefits.

Can the Appellant be paid standard parental benefits?

[28] Unfortunately, no.

[29] I find the Appellant isn't entitled to any weeks of standard parental benefits because his wife applied for parental benefits first and chose the extended option.

[30] On April 17, 2022, the Appellant's wife applied for extended parental benefits. She received 61 weeks of extended parental benefits. The payments were made to her on August 19, 2022.¹⁰

[31] On June 17, 2022, the Appellant applied for standard parental benefits. He received 6 weeks of standard parental benefits, starting from the week of June 19, 2022 to the week of July 30, 2022. The payments were made to him on September 1, 2022.¹¹

[32] As discussed above, the law says the Appellant's wife couldn't change her choice to receive extended parental benefits after she first started receiving payments. In this case, that date was August 19, 2022.

[33] And as discussed above, the law also says the Appellant is bound by the option his wife chose because she applied for parental benefits first. This means the Appellant could **only** receive extended parental benefits because that is what his wife asked for.

[34] The Appellant doesn't dispute the timeline of events or what the law says. He agrees that his wife applied for benefits before him and now understands that she asked for extended parental benefits. His arguments instead relate to the Commission's actions after he applied for benefits and his ability to repay the overpayment. I will look at these arguments in more detail in the next section.

¹⁰ GD4-4.

¹¹ GD3-28 to GD3-30, GD4-4.

[35] Based on the available evidence, I find the Appellant's claim must be changed from standard to extended parental benefits and that he was overpaid benefits.

[36] More specifically, the Appellant was paid 6 weeks of standard parental benefits when he should have been paid 6 weeks of extended parental benefits.¹² This is because his wife asked for extended parental benefits first and her election was **binding** on him. This means he received \$1,530 in parental benefits that he isn't entitled to.¹³

[37] I therefore find the Appellant should have received extended parental benefits on his claim. This means he can't be paid standard parental benefits. But since he has already been paid these benefits, there is now an overpayment that he must repay.

Can I reduce or remove the overpayment?

[38] Unfortunately, no.

[39] The Appellant testified that:¹⁴

- He doesn't dispute the rules for parental benefits or the Commission's calculation of the overpayment.
- But he shouldn't have to repay the overpayment.
- He didn't know the difference between standard and extended parental benefits when he applied, so he didn't realize then that he had made a mistake.
- The Commission should have called him to let him know he made a mistake on his application and shouldn't have processed his application if a mistake was made.
- If the Commission had called to let him know what happened, he could have changed his option before it was too late. He lost out on benefits because of that.

¹² GD3-29.

¹³ GD3-36.

¹⁴ See also GD2-5.

- His family is having trouble surviving financially with the amount of money they're getting from EI. He can't afford to pay back the money the Commission says he now owes.

[40] I acknowledge the Appellant's frustration with how his claim has been administered.

[41] But unfortunately, the law specifically prohibits the Appellant from receiving standard parental benefits **after** his wife had already elected and started receiving extended parental benefits. And I can't re-write the law or interpret it in a way that is contrary to its plain meaning.¹⁵ I also can't make an exception for the Appellant, no matter how difficult or compelling I find his circumstances.¹⁶

[42] Also, even if I agree that the Commission misled the Appellant in some way by not contacting him after he applied to let him know that he had asked for different parental benefits from his wife, this doesn't mean he is entitled to standard parental benefits now. The Appellant is only entitled to benefits if the law allows for it, regardless of whether the Commission provides incorrect or misleading information.¹⁷ And the law doesn't give me the power to award the Appellant any compensation even if a Commission agent made a mistake, unfortunately.

[43] In other words, this means the Appellant isn't entitled to standard parental benefits because of Commission errors. He is only entitled to them if he meets the conditions set out in the law. But he hasn't met those conditions in this case, unfortunately.

[44] I also greatly sympathize with the Appellant about the financial hardship that the overpayment has caused for him and his family.

¹⁵ *Canada (Attorney General) v Knee*, 2011 FCA 301.

¹⁶ *Pannu v Canada (Attorney General)*, 2004 FCA 90.

¹⁷ In *Canada (Attorney General) v Shaw*, 2002 FCA 325, the Federal Court of Appeal explains that misinformation from the Commission does not give an appellant relief from the provisions of the *Employment Insurance Act*. Similarly, in *Granger v Canada Employment Insurance Commission*, A-684-85, the Federal Court of Appeal explains that Commission agents don't have the power to amend the law. An individual Commission agent cannot promise to pay benefits in a way that is contrary to the law.

[45] Unfortunately, I don't have the power to reduce or erase the Appellant's overpayment either. The law doesn't allow me to do this, even if find the circumstances are unfair. The overpayment remains the Appellant's responsibility to repay.¹⁸

[46] That said, these options are available to the Appellant:

- He can ask the Commission to consider writing off the debt because of undue hardship.¹⁹ In this case, the Commission appears to have already denied this request²⁰, so the Appellant can appeal the Commission's decision (to not write off his debt) to the Federal Court.
- He can contact the Debt Management Call Centre at CRA at 1-866-864-5823 about a repayment schedule or other debt relief measure.²¹

Conclusion

[47] The Appellant was paid standard parental benefits when he was only entitled to extended parental benefits. This means he received more parental benefits than he was entitled to and there is now an overpayment.

[48] I can't reduce or remove the overpayment. But the Appellant may have other options.

[49] This means the appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section

¹⁸ Sections 43 and 44 of the EI Act say that an appellant bears the responsibility for an overpayment.

¹⁹ Section 56 of the *Employment Insurance Regulations* (EI Regulations) gives the Commission broad powers to write off an overpayment when it would cause undue hardship were an Appellant to repay it.

²⁰ GD2-8.

²¹ That's the phone number found on the Notice of Debt that was sent to the Appellant.