



Citation: *AW v Canada Employment Insurance Commission*, 2024 SST 674

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

Decision

Appellant: A. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decisions (637049) dated January 4, 2024, and January 5, 2024 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Teleconference

Hearing date: March 14, 2024

Hearing participant: Appellant

Decision date: March 14, 2024

File number: GE-24-690

Decision

[1] The appeal is allowed in part.

[2] The Appellant may be entitled to receive benefits for the care of a critically ill adult (family caregiver benefits) for the week of January 8, 2023.

Overview

[3] The Appellant's grandmother was living in a long-term care facility when the Covid-19 pandemic (pandemic) began. Her family decided to bring her home to live with them.

[4] The Appellant was unemployed at the time. She had lost her job because of the pandemic. Since it was difficult to find reliable caregivers for her grandmother, the Appellant decided that she would devote herself to her grandmother's care. She says she cared for her grandmother until she passed away.

[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**.

[6] She made her initial application for benefits on January 10, 2023. She made that application as a self-employed person, not as an employee.

[7] The Canada Employment Insurance Commission (Commission) decided that she didn't qualify for special benefits for self-employed people.

[8] The Appellant filed another application for family caregiver benefits as an employee on March 8, 2023.

[9] The Commission decided it couldn't pay her benefits under that application either, because she hadn't submitted a medical certificate that met the requirements set out in the law.

[10] The Appellant provided the required medical certificate and asked the Commission to reconsider her claim.

[11] After reconsideration, the Commission maintained the decisions it had made previously.

[12] The Appellant believes she should be entitled to family caregiver benefits. She couldn't work because she had to care for her grandmother. She says she did the right thing by putting her grandmother first.

[13] She argues that because she's paid into the EI system since she was 15 years old, she should be able to rely on it when she needs it. She says that if she doesn't meet all of the conditions set out in the law to be entitled to benefits, there should be a way for the Tribunal to bend the rules in her case.

Issue

[14] Is the Appellant entitled to family caregiver benefits?

Matter I must decide first

[15] The Appellant applied for family caregiver benefits both as an employee and as a self-employed person.

[16] At the hearing, she confirmed that she was never self-employed during the period at issue.

[17] She also confirmed that she never entered into an agreement with the Commission to participate in the program for special benefits for the self-employed.¹

[18] As a result, I am only going to consider whether she is entitled to family caregiver benefits as an employee.

¹ Self-employed people can only qualify for family caregiver benefits if they enter into an agreement with the Commission 12 months beforehand. See section 152.07 of the *Employment Insurance Act (Act)*.

Analysis

[19] You can receive family caregiver benefits if you stop working to care for or support a critically ill family member.

[20] To receive these benefits, you have to provide a medical certificate that meets the requirements set out in the law.² The medical certificate must:

- be signed by a medical doctor or nurse practitioner
- state that the family member is critically ill and needs care or support
- set out the period during which the family member needs that care or support

[21] Family caregiver benefits can be paid for every week of unemployment during a specific period, which is commonly called the **family caregiver benefit window**.

[22] The window begins the week the family member requiring care or support is certified by a doctor or nurse practitioner to be critically ill and in need of care or support.³

[23] The window closes on the last day of the week in which any of the following occur:⁴

- 52 weeks have elapsed since the window opened
- all benefits that could be paid have been paid
- the person being cared for passes away

[24] The Appellant provided the Commission with a medical certificate dated February 7, 2023.⁵ This certificate was signed by her grandmother's doctor. It confirms that the Appellant's grandmother was critically ill and in need of care and support and

² See section 23.3 of the Act.

³ See section 23.3(3) of the Act.

⁴ See section 23.3(3)(b) of the Act.

⁵ See GD3B-67.

that these conditions existed as of July 19, 2022. It also says that her grandmother passed away on January 8, 2023.

[25] So, according to the medical certificate, the family caregiver benefit window in this case opened on July 19, 2022, and closed on January 8, 2023.

[26] But to be entitled to benefits during this window, the Appellant has to meet the other conditions in the law.

[27] The law says that your EI claim can only start the later of the week you've had an interruption of earnings or the week you file your application for benefits.⁶

[28] The Appellant first applied for family caregiver benefits on January 10, 2023.⁷ Although she checked the wrong box and said she was applying as a self-employed person, that shouldn't be held against her. Her claim must be considered as though she was claiming as an employee. Case law confirms this.⁸

[29] This means the earliest her claim could start is January 8, 2023, which is the Sunday of the week that she made her application.

[30] Because her grandmother died on January 8, 2023, the last day she could be paid benefits was on January 14, 2023. This is the last day of the week in which her grandmother died.⁹

[31] This means she may be entitled to benefits during the week of January 8, 2023, if she can also show that she meets the other conditions she must meet in order to get benefits. For instance, she must have enough insurable hours to qualify for benefits and she must have been unemployed during that week. The Commission will have to determine if this is the case.

⁶ Section 10(1) of the Act.

⁷ See GD3A-19.

⁸ *Canada (Attorney General) v Caughlin*, A-1168-84.

⁹ See section 23.3(3)(b)(ii) of the Act.

Other arguments raised by the Appellant

[32] The Appellant believes that she should be able to receive benefits for the entire period she cared for her grandmother. She says she couldn't work while she was devoting herself to her grandmother's care. She thinks I should be able to bend the rules so that she can get the benefits she deserves. She says the government bends the rules in all sorts of situations. She points out that she's a third-generation Canadian who has paid EI premia since she was 15 years old.

[33] EI is an insurance plan; it isn't a savings account. Like other insurance plans, you have to meet certain conditions to receive benefits.¹⁰ In this case, the Appellant doesn't meet the conditions set out in the law for the entire period she was caring for her grandmother. As set out above, the law says her claim can only start the week she applied for benefits.

[34] While I empathize with the Appellant, and I commend her for her decision to look after her grandmother, I must follow the law.¹¹ I can't bend the rules to award her benefits that she isn't entitled to under the law.

Conclusion

[35] The Appellant may be entitled to family caregiver benefits for the week of January 8, 2023.

[36] This means the appeal is allowed in part.

[37] The Commission will have to determine if she meets all of the other conditions she must meet before she can be paid family caregiver benefits for that week.

Elyse Rosen

Member, General Division – Employment Insurance Section

¹⁰ *Pannu v Canada (Attorney General)*, 2004 FCA 90.

¹¹ *Canada (Attorney General) v Knee*, 2011 FCA 301.