



Citation: *AM v Canada Employment Insurance Commission*, 2024 SST 814

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

Decision

Appellant: A. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (639345) dated January 19, 2024 (issued by Service Canada)

Tribunal member: Laura Hartsliet

Type of hearing: Teleconference

Hearing date: April 2, 2024

Hearing participants: Appellant

Decision date: April 2, 2024

File number: GE-24-570

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant's Employment Insurance (EI) parental benefits application shows that he selected the standard benefits option even though his spouse previously selected the extended benefits option.

[3] The Appellant says that, even though he made a mistake, the Commission should have caught the mistake earlier, which would have prevented the resulting overpayment.

[4] For the following reasons, I find that the choice the Appellant's spouse made is binding on the Appellant, regardless of when the Commission discovered his mistake.

Overview

[5] When you fill out your EI parental benefits application, you need to choose between two options: the "standard option" and the "extended option."¹

[6] The standard option pays benefits at the normal rate for up to 35 weeks. The extended option pays the same amount of benefits at a lower rate for up to 61 weeks. Overall, the amount of money stays the same. It is just stretched over a different number of weeks. Once you start receiving parental benefits, you can not change options.²

[7] In addition, subsection 23(1.3) of the Act says that, when parental benefits are shared, the choice made by the first parent regarding the same child is **binding** on the other parent³.

¹ Section 23(1.1) of the *Employment Insurance Act* (EI Act) calls this choice an "election."

² Section 23(1.2) of the EI Act says that the election is irrevocable (that is, final) once you receive benefits.

³ Subsection 23(1.3) of the EI Act.

[8] The Appellant's child was born on May 1, 2023⁴. The Appellant's spouse applied for extended parental benefits. On May 20, 2023, the Appellant applied for 15 weeks of standard parental benefits⁵. He started receiving standard parental benefits on on May 21, 2023⁶.

[9] The Appellant says he and his wife spoke with the Commission about their options for parental benefits but they were never told that his wife's choice to receive extended parental benefits was binding on him. The Appellant says that the staff at the Commission failed in their obligations and he should not be held financially responsible for their mistake.

[10] The Commission says that the Appellant is bound by his spouse's choice to receive extended parental benefits and the Appellant can not change his choice. The Commission noticed the discrepancy between the Appellant's choice and his wife's choice on approximately November 24, 2023⁷. The Commission says that the Appellant's mistaken choice resulted in an overpayment of \$3,900.00 and this overpayment can not be rescinded.

Matter I need to consider first

[11] Although the Commission mentions the Appellant's overpayment in their written submissions, they do not mention the amount of the overpayment. I would also note that the Appellant's file does not contain a "notice of debt" which indicates the exact amount of the overpayment.

[12] However, at the hearing, the Appellant stated that he received a notice of debt from the Commission which confirms that the overpayment is \$3,900.00.

[13] As there appears to be no dispute regarding the amount of the overpayment, this decision will simply refer to the overpayment as being \$3,900.00.

⁴ See GD3-6

⁵ See GD3-7

⁶ See GD3-25

⁷ See GD3-20

Issues

[14] Is the Appellant allowed to receive the 15 weeks of standard parental benefits he originally chose?

[15] Is the Appellant responsible for the overpayment, even though the Commission failed to inform the Appellant of his mistake until November 24, 2023?

Analysis

a) Is the Appellant allowed to receive the 15 weeks of standard parental benefits he originally chose?

[16] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.⁸ When parental benefits are shared, both parents are required to make the same choice - either standard or extended. Subsection 23(1.3) of the EI Act says that the first parent who completes the EI application binds the other parent to the same option⁹. The law says that you can not change options once the Commission starts paying parental benefits.¹⁰ In other words, once parental benefits have begun to be paid, the choice regarding standard or extended benefits becomes irrevocable.

[17] This means that the answer to the first question before me is no - the Appellant is not entitled to receive the 15 weeks of standard parental benefits he originally chose. There is no dispute that the Appellant's spouse applied for benefits before him and she chose to receive extended parental benefits. This choice is binding on the Appellant and his is not entitled to receive the standard parental benefits he originally chose.

[18] The Appellant says he was unfamiliar with the application process, so both and his wife contacted the Commission numerous times before applying for benefits and immediately after applying for benefits. The Appellant says he would often have his wife

⁸ Section 23(1.1) of the EI Act says that, when you make a claim for benefits under that section, you have to choose to receive benefits over a maximum of 35 or 61 weeks.

⁹ Subsection 23(1.3) of the EI Act.

¹⁰ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

on the same call with Commission staff and they would compare both files to see if there were any discrepancies. The Appellant says at no time prior to filing his application did the Commission tell him that his wife's parental benefits choice was binding on him and at no time after he applied did the Commission notice that his wife had chosen extended parental benefits and he had chosen standard parental benefits.

[19] The Appellant went into great detail about the number of phone calls he and his wife had made, the number of agents they spoke to and the details of their conversations. The Appellant says that the Commission should be held accountable both for the mistaken information they provided as well as the delay in discovering the discrepancy on his application.

[20] The Appellant provided his testimony on these points in a detailed and consistent manner and I have no reason to disbelieve him. I believe the Appellant when he says that he and his wife spoke to the Commission numerous times both before they filed their applications and immediately afterwards. I believe the Appellant when he says the Commission never pointed out to him that he and his wife must make the same choice for parental benefits. I believe the Appellant when he says that the Commission did not inform him about any discrepancy between his file and his wife's file until well into November 2023.

[21] However, subsection 23(1.3) of the EI Act is clear that the choice of the first parent who applies for benefits is binding on the second parent. This means the Appellant is not entitled to revert his application back to the standard parental benefits he originally chose, regardless of what the Commission told him and regardless of their delay in discovering the discrepancy. This is because the Appellant's spouse applied for parental benefits first, she chose to receive extended parental benefits and this choice is binding on the Appellant.

[22] I fully understand the Appellant's position and I sympathize with him and his family, particularly in light of the very stressful circumstances he described surrounding the birth of his child. I understand that the Appellant relied on advice from the

Commission staff to his detriment and I deeply sympathize with the Appellant and his family regarding the stress and hardship that has resulted over the last several months.

[23] However, I am not permitted to change the law, regardless of how compelling the Appellant's circumstances may be. The law says that the choice the Appellant's wife made to receive extended parental benefits is binding on the Appellant; I have no discretion to change the law or apply it in a different way. This means that the Appellant is not entitled to receive the standard parental benefits he applied for.

b) Is the Appellant responsible for the overpayment?

[24] Once the Commission converted the Appellant's parental benefits to the extended option, the result was an overpayment of \$3,900.00. The Appellant says that he should not be responsible for the overpayment because the Commission failed to inform him of his mistake until late November 2023.

[25] At the hearing, the Appellant described how stressful this situation has been. The Appellant gave details about his family's circumstances and how this ongoing stress has been challenging for himself and for his wife, particularly as a single income household. The Appellant described the financial strain this situation has caused his family in light of higher mortgage costs, higher food costs and an overall increase in the cost of living. The Appellant gave his testimony on these points in a detailed and consistent manner and I have no reason to disbelieve him.

[26] While I recognize the financial impact and the emotional strain this situation has created for the Appellant and his family, the fact remains that he is still responsible for the overpayment that resulted from his mistaken selection. At the hearing, I pointed to the portion of the application which clearly informs claimants that one parent's choice regarding parental benefits is binding on the other parent. The Appellant does not remember reading this portion and he feels that the Commission's staff were responsible for explaining this to him.

[27] While I sympathize with the Appellant regarding his circumstances, the fact remains that he made a choice he was not entitled to make, he received benefits he

was not entitled to receive and he is responsible for the resulting over payment. This is regardless of when the Commission discovered his mistake and regardless of whether the Commission provided the Appellant with incorrect or incomplete information. The law says that a person who receives EI benefits to which they are not entitled must return the amount wrongly paid¹¹.

[28] The Commission's delay does not erase the Appellant's liability for the overpayment. The Federal Court of Appeal has addressed the issue of the Commission's clerical errors and has said that they are not fatal to a Commission's decision¹². This means that the Appellant is still responsible for the overpayment, regardless of any error the Commission may have made in its initial discussion with him when it allowed him to choose standard parental benefits.

[29] While I do not have jurisdiction to write-off an overpayment, **the Appellant may have options** in this regard. The Commission has the discretion to write-off overpayments in specific circumstances.¹³ The Appellant may decide to request a write-off of his overpayment due to financial hardship. To do this, he may contact his Service Canada office to request a write-off of his overpayment and specifically ask for a "write-off of his overpayment because of financial hardship". The Appellant can also contact the Canada Revenue Agency (CRA) to negotiate a repayment option. The CRA would then assess the Appellant's financial situation and make a recommendation to the Commission's Chief Financial Officer Branch.

[30] In any case, and for all the reasons already stated, I find that the Appellant received 15 weeks of standard parental benefits that he was not entitled to receive. This created an overpayment and the Appellant is responsible for repaying those benefits.

Conclusion

[31] The Appellant is not entitled to receive standard parental benefits.

¹¹ EI Act Sections 43-46.1 and 65

¹² See *Desrosiers v. Canada* (AG) A-128-89

¹³ See EI Regulations section 56(1)

[32] The Appellant is responsible for the overpayment that resulted from his choice.

[33] This means that the appeal is dismissed.

Laura Hartsliel

Member, General Division – Employment Insurance Section