



Citation: *SM v Canada Employment Insurance Commission*, 2024 SST 1012

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

Decision

Appellant: S. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (653871) dated March 21, 2024 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: In person

Hearing date: April 19, 2024

Hearing participant: Appellant

Decision date: May 2, 2024

File number: GE-24-1202

Decision

[1] The appeal is dismissed.

[2] The Appellant can't be paid any more weeks of EI sickness benefits. Even though the Canada Employment Insurance Commission (Commission) gave her incorrect information multiple times, she can't be paid benefits unless the law says she can.

[3] The Appellant can be paid three additional weeks of EI parental benefits after her sickness benefits ended. To claim these benefits, she must contact Service Canada.

Overview

[4] The Appellant went on maternity leave and applied for EI maternity and parental benefits. When her maternity leave was ending, her doctor put her off work for another six months. She talked to Service Canada and it told her to wait until her benefits ended and then ask for sickness benefits.

[5] You can only be paid additional special benefits (like parental and sickness benefits) if you received them during your benefit period.¹ When she returned to Service Canada after her benefits ended, she was told that she couldn't be paid sickness benefits because her benefit period was over.

[6] But, Service Canada agreed to start her sickness benefits three weeks early, so she could receive them before her benefit period was over. This meant her benefit period would continue as long as she was claiming those benefits. Service Canada told her that she would receive 26 weeks of sickness benefits starting in November 2023.

¹ Your benefit period is the time that you can be paid EI benefits. Typically a benefit period is one year (or 52 weeks), but your benefit period can be extended in some circumstances. For example, it can be extended if you claimed more than one type of special benefit and weren't paid the maximum number of weeks of each type of benefit before your benefit period ended. In those situations, your benefit period can continue as long as you are claiming the special benefits that you had already started.

[7] In February 2024, though, her sickness benefits ended. She contacted Service Canada again and it told her that she had been paid the maximum amount of sickness benefits she could receive – 15 weeks.

[8] In December 2022, the law changed to extend the amount of sickness benefits available from 15 weeks to 26 weeks. This change took place on December 18, 2022. Service Canada said this change didn't apply to the Appellant because her claim started one week before, on December 11, 2022.

[9] The Appellant disagrees with this decision. She was told several times that she would receive 26 weeks of sickness benefits. Service Canada sent her a letter confirming that she would receive 26 weeks of sickness benefits. Ending her benefits early has put her in serious financial hardship and means she will have to return to work earlier than her doctor advised.

Matter I had to consider first

[10] The Appellant has been put in a difficult situation, through no fault of her own. She testified that cutting off her benefits earlier than she had been told has had a huge financial impact on her and her family.

[11] Although her payment of parental benefits wasn't an issue in this appeal, I asked the Commission to clarify whether she could claim any more weeks of parental benefits after her sickness benefits ended.

[12] On April 25, 2024, the Commission confirmed that the Appellant can be paid three more weeks of parental benefits.² This isn't what the Appellant asked for in her appeal, but this information is provided solely for her benefit if she chooses to claim those additional weeks of parental benefits.

Issue

[13] Can the Appellant be paid more weeks of sickness benefits?

² See GD6.

Analysis

[14] Until December 17, 2022, the law said that you could be paid up to 15 weeks of sickness benefits on your claim.

[15] On December 18, 2022, the EI Act was changed so that sickness benefits could be paid up to 26 weeks.

[16] The Appellant applied for EI maternity and parental benefits on December 14, 2022.³ The Commission started her benefit period on December 11, 2022, and paid her 15 weeks of maternity benefits followed by 32 weeks of standard parental benefits up to November 11, 2023.

[17] The Appellant asked for her claim to be converted to sickness benefits. Service Canada told her she would be paid sickness benefits for 26 weeks starting November 12, 2023.⁴ However, her benefits ended on February 25, 2024, after only 15 weeks. At this time, Service Canada told her that 15 weeks was the maximum number of weeks she could get because of when her benefit period started.

[18] When the Appellant's benefit period started determines what version of the law applies to her claim. In other words, if her benefit period started on or after December 18, 2022, she can be paid up to 26 weeks of sickness benefits. But if her benefit period started before December 18, 2022, she can only be paid up to 15 weeks of sickness benefits.

[19] This means the start date of her benefit period is important to determine whether she can be paid more than 15 weeks of sickness benefits. So, I will start by looking at whether the Commission correctly determined her benefit period start date.

– **What's the start date of the Appellant's benefit period?**

[20] The Appellant's benefit period had to start on December 18, 2022.

³ See GD3-3 to GD3-17.

⁴ See GD3-25.

[21] If you apply for EI benefits, the Commission will start your benefit period.⁵ Your benefit period is the time when you can receive EI benefits.⁶

[22] The law says that your benefit period starts on the **later** of the Sunday of the week in which you stopped working, or the Sunday of the week in which you applied for benefits.

[23] In other words, the date that you applied for benefits, and the date that you stopped working are linked to the start date of your benefit period.

[24] Since benefit periods always begin on a Sunday, if you stopped working⁷ in the week starting December 11, 2022, and made a claim on December 16, 2022, your benefit period would start on December 11, 2022.⁸ And, if you stopped working in the week starting December 11, 2022, and made a claim on December 19, 2022, your benefit period would start on December 18, 2022. This is because the start date of the benefit period is determined by the **later** of your interruption of earnings and your application for benefits.

[25] The Appellant said that she stopped working on December 8, 2022. She applied for EI benefits on December 14, 2022.

[26] As set out above, your benefit period starts in the later of the week in which you stopped working and the week in which you applied for benefits.

[27] The Appellant stopped working in the week starting December 4, 2022. She applied for benefits in the week starting December 11, 2022. This means her benefit period starts on Sunday, December 11, 2022.

⁵ Benefit periods are established under section 10(1) of the EI Act.

⁶ See section 9 of the EI Act.

⁷ This is a plain language rephrasing of the concept of “interruption of earnings.” However, it is worth noting that the interruption of earnings occurs when you are no longer working and receiving earnings from employment. Therefore, it is not based on the date you **stopped** working so much as the date that you were **no longer** working.

⁸ See section 2 of the EI Act.

– **Can she be paid more weeks of sickness benefits on this claim?**

[28] No. The Appellant can't be paid any more weeks of sickness benefits on this claim. This is because she has already been paid the maximum number of weeks that she's permitted by law.

[29] The law changed on December 18, 2022, so that sickness benefits could be paid up to 26 weeks. But this only applies to claims with a benefit period starting on or after December 18, 2022. The change isn't retroactive to claims that started before that date.

[30] Even though the Appellant asked for sickness benefits after the law had changed, this doesn't change the start date of her **benefit period**.

[31] As the Appellant's benefit period started on December 11, 2022, the increase in the maximum number of weeks of EI sickness benefits doesn't apply to her claim. This means she can't be paid more weeks of sickness benefits because she has already received the maximum that was allowed under the law at the time.

What about the incorrect information Service Canada gave her?

[32] It's clear from the appeal file that Service Canada gave the Appellant incorrect information time and again. The Appellant acted carefully and diligently. She visited Service Canada and followed the advice the Service Canada officer gave her. She relied on the information Service Canada gave her verbally **and in writing** to plan her return to work and arrange daycare for her young child, while counting on the financial support she was assured she would have through EI benefits.

[33] It is truly unfortunate that the Appellant received incorrect information from Service Canada. Regrettably, the fact that she received incorrect information doesn't change my decision. The Courts have held that Service Canada officers can't promise something that the law doesn't permit. And, if they do, the law still prevails. A Service

Canada officer's word, even if put in writing, can't entitle someone to benefits that the law says they aren't entitled to receive.⁹

[34] You can only be paid benefits if the law allows you to be paid benefits. And in this case, the law is clear that the Appellant can't be paid any more weeks of EI sickness benefits on her claim.

[35] I understand the Appellant will be disappointed with this result. I don't doubt that her medical conditions continued past the end of her sickness benefits. Unfortunately, I am bound to apply the law as it is written. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has said:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.¹⁰

Conclusion

[36] The appeal is dismissed.

[37] The Appellant cannot receive more weeks of sickness benefits. She was paid the maximum 15 weeks allowed by the law. The increase in the maximum number of weeks of sickness benefits doesn't apply to her claim because it came into effect after her benefit period started.

Catherine Shaw

Member, General Division – Employment Insurance Section

⁹ The Federal Court of Appeal stated in *Granger v Employment and Immigration Commission*, A-684-85, that Commission agents have "no power to amend the [law]," so any interpretation they make of the law does not, by itself, "have the force of law." The Court also stated that any commitment the Commission's representatives might make, "whether in good or bad faith, to act in a way other than" written in the law, is "absolutely void."

¹⁰ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.