



Citation: *RT v Canada Employment Insurance Commission*, 2024 SST 1233

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

# Decision

**Appellant:** R. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (657041) dated April 16, 2024 (issued by Service Canada)

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**Tribunal member:** John Rattray

**Type of hearing:** In person

**Hearing date:** August 15, 2024

**Hearing participant:** Appellant

**Decision date:** August 26, 2024

**File number:** GE-24-1835

## Decision

[1] I am dismissing the appeal.

[2] The Appellant didn't provide a medical certificate to prove that his spouse was critically ill.

[3] This means that the Appellant isn't entitled to family caregiver benefits (special benefits—critically ill adult) from November 21, 2021.

## Overview

[4] The Appellant's spouse was in a motor vehicle accident while visiting Florida. She sustained serious injuries and was unable to return to Canada until two months later.

[5] The Appellant made an initial claim for Employment Insurance (EI) benefits effective April 18, 2021. On July 17, 2023, the Appellant asked the Commission to convert his regular benefits to family caregiver benefits effective November 21, 2021, because he was caring for his spouse from November 23, 2021, to April 16, 2022.

[6] The Appellant submitted supporting documents to the Commission.<sup>1</sup>

[7] Initially, the Commission denied him benefits because it said he didn't have enough hours of insurable employment to establish a benefit period.<sup>2</sup> The Appellant clarified that his request for family caregiver benefits related to his prior claim effective April 18, 2021.

[8] The Commission re-examined the request to convert his benefit type to family caregiver. It told the Appellant that he wasn't eligible for family caregiver benefits because the medical certificate didn't say that his spouse was critically ill or injured.<sup>3</sup>

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<sup>1</sup> See GD3-32.

<sup>2</sup> See GD3-38.

<sup>3</sup> See GD3-41.

[9] The Appellant disagrees. His spouse had serious injuries and he was required to provide all assistance when she returned home. He says that she was unstable and at greater risk of falling and injuring herself without his help.

[10] Also, the Appellant argues that the legislation should be changed if family caregiver benefits are only available if his spouse's life were threatened by her injuries.

## Issue

[11] I have to decide whether the Appellant is entitled to family caregiver benefits for adults (special benefits—critically ill adult).<sup>4</sup>

## Analysis

[12] The law says that benefits are payable to a claimant who is a family member of a critically ill adult, to care for or support that adult if a medical doctor or nurse practitioner has issued a certificate that:

- states that the adult is critically ill and requires the care or support of one or more of their family members
- sets out the period during which the adult requires that care or support<sup>5</sup>

[13] A “critically ill adult” is 18 years of age or older whose baseline state of health has significantly changed **and whose life is at risk as a result of illness or injury**.<sup>6</sup>

## Did the Appellant satisfy the legal requirements to receive family caregiver benefits?

[14] No, he didn't.

[15] I find that the Appellant isn't entitled to receive family caregiver benefits. I find this because the evidence shows that the medical doctor's certificate doesn't say that

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<sup>4</sup> See section 23.3 of the *Employment Insurance Act* (Act).

<sup>5</sup> See section 23.3(1) of the Act.

<sup>6</sup> See section 1(7) of the *Employment Insurance Regulations* (Regulations).

the Appellant's spouse was "critically ill."<sup>7</sup> I also considered the Appellant's testimony and arguments, but they didn't establish that his spouse was critically ill. I explain my decision below.

[16] The medical certificate says that there was a significant change in the baseline health of the spouse, that she required the care or support of a family member, and the period for which she required assistance.

[17] The medical certificate described the significant musculoskeletal/soft tissue injuries his spouse sustained. **However, it concluded that her life wasn't at risk because of her injuries.**<sup>8</sup>

[18] The Appellant's testimony and statements indicate the following:

- He should be entitled to family caregiver benefits although the medical certificate he gave the Commission didn't meet all the criteria to get such benefits.
- On September 19, 2021, his spouse was in a motor vehicle accident in Florida.
- She had serious, significant injuries.
- She was unable to return to Canada until November 23, 2021, and required a nurse to accompany her.
- The Appellant was required to provide care and support to his spouse.
- He took care of all the housekeeping, meal preparation, driving to appointments, and ensuring she didn't fall.
- He was unable to work while providing this level of care.

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<sup>7</sup> See GD3-32.

<sup>8</sup> See GD3-33.

- He was the only one available to provide this care.
- His spouse was on pain killers and muscle relaxants that increased her risk of falling and injuring herself.
- He was concerned that she was at greater risk of injury because of her instability, and increased likelihood of falling.
- After he had been denied family caregiver benefits, he met with the medical doctor who had provided the medical certificate.
- He discussed his concern that his spouse was at greater risk of injury because of her instability.
- The medical doctor said that he could not answer “yes” to the question whether the life of the spouse was at risk as a result of illness or injury.
- He agrees with the medical doctor that her injury in itself isn’t life threatening.

[19] The Appellant argues that:

- All the circumstances need to be considered in assessing whether he should receive family caregiver benefits.
- His wife required a family caregiver.
- If the law denies benefits because her life wasn’t at risk, it’s grossly unfair.
- He has paid into the system for years.
- He believes he’s entitled to benefits.

[20] The Appellant was unable to provide the Tribunal with a medical certificate that could meet all of the requirements of the law to receive family caregiver benefits.

[21] The Commission says it wasn't able to pay the Appellant family caregiver benefits.<sup>9</sup> It says that the requirement to provide a medical certificate from a medical doctor or nurse practitioner stating that the spouse is critically ill is set out in the Act.<sup>10</sup>

[22] The Commission also comments on the Appellant's concern about his spouse's instability and increased risk of injury from a fall. It says that it must rely on the medical certificate and cannot consider hypothetical situations. It says it has no discretion and must apply the law.<sup>11</sup>

[23] I find that the medical certificate doesn't indicate that the life of the Appellant's spouse was at risk because of her injuries. This means that the Appellant hasn't met the conditions to receive family caregiver benefits.

[24] I don't question the severity of the spouse's injuries and the need for him to provide care for the period in question. The law, however, limits family caregiver benefits to a few situations and sets out specific conditions that must be met. The Appellant hasn't met those conditions.

[25] Though the Appellant believes he should be entitled to benefits because he has paid into them, this doesn't mean he is entitled to receive benefits. The *Employment Insurance Act* (Act) is an insurance plan and like other insurance plans, claimants must meet the conditions of the plan to obtain benefits. In this case he doesn't meet those conditions and therefore isn't entitled to benefits.<sup>12</sup>

[26] While I sympathize with the Appellant's situation, as a Tribunal member, I am bound by the clear legislative provisions that don't allow me to establish his entitlement to family caregiver benefits. I am not allowed to rewrite legislation or interpret it in a manner that is contrary to its plain meaning.<sup>13</sup>

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<sup>9</sup> See GD4-4.

<sup>10</sup> See GD4-5.

<sup>11</sup> See GD4-5.

<sup>12</sup> See *Canada (Attorney General) v Pannu*, 2004 FCA 90.

<sup>13</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.

## **Conclusion**

[27] I find that the Appellant isn't entitled to family caregiver benefits for the reasons set out above.

[28] This means that the appeal is dismissed.

John Rattray  
Member, General Division—Employment Insurance Section