



Citation: *SF v Canada Employment Insurance Commission*, 2024 SST 959

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (641266) dated February 1, 2024
(issued by Service Canada)

Tribunal member: Greg Skelly

Type of hearing: Teleconference

Hearing date: May 6, 2024

Hearing participant: Appellant

Decision date: May 15, 2024

File number: GE-24-849

Decision

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

[2] The Appellant received eight more weeks of parental benefits than he was entitled to receive. This means that he must repay those eight weeks of benefits.

Overview

[3] The Appellant and his partner had a child that was born on October 26, 2021. The other parent applied first and requested 37 weeks of extended parental benefits from Employment Insurance (EI). The Appellant applied later and requested 40 weeks of extended parental benefits.

[4] The Employment Insurance Commission (Commission) contacted the Appellant on July 21, 2022, and confirmed that he wished to receive 40 weeks of extended parental benefits.¹

[5] The Commission decided on December 9, 2023, that the Appellant was not entitled to extended parental benefits after February 13, 2023, because those benefits had already been paid to another person. This meant that the Appellant had to repay eight weeks of extended parental benefits.

[6] The Appellant does not agree. He says that he spoke to Service Canada and that they were negligent in the information that they provided to him. The Appellant says he was told by Service Canada that there was no conflict with his wife's application for benefits. And that this error by Service Canada has resulted in a \$3064 overpayment which causes him financial hardship. The Appellant asserts that it is the Commission's error that it overpaid his extended parental benefits.

¹ See GD3-21.

Matter I have to consider first

The Appellant asked me to adjourn (that is, pause) the appeal / I will accept the documents sent in after the hearing

[7] At the start of the hearing the Appellant said that he had only reviewed the material that was sent to him an hour before the hearing and based on the case law submitted by the Commission, he asked for an adjournment. The Appellant said that when he called into the Tribunal, he was told that he didn't need to prepare for the hearing.

[8] I confirmed with the Appellant at the hearing that he was sent the Reconsideration file (GD3) and the CEIC Representations (GD4) files on March 13, 2024

[9] I reviewed the discussions that the Appellant had with the Tribunal staff. He spoke to them on April 26, 2024, and asked about the hearing. In that discussion, Tribunal staff referred the Appellant to the Social Security Tribunal website for information on how to prepare for a hearing. Within that website there is a section that says "Read the documents we send you" and another section titled "Consider the law and cases that are similar to yours".

[10] I also note that the Appellant received a reminder call for the hearing on April 29, 2024, and one of the suggestions that Tribunal staff gave to the appellant was to carefully read the submissions of the other parties.

[11] I decided not to grant the adjournment of the hearing. The Appellant had ample opportunity to review the material that the Tribunal sent him and was provided with sufficient information that he ought to know that he should prepare for the hearing. However, as the Appellant was mainly concerned about the case law that the Commission quoted in their GD4 file, I allowed the Appellant one week (until May 13, 2024) to send me any submissions regarding his response to the case law that was noted in the GD4 file.

[12] At the time of the writing of this decision, no submissions were received from the Appellant.

Issues

[13] Did the Appellant receive parental benefits that he was not entitled to receive?

[14] If so, does he have to repay those parental benefits?

Analysis

[15] Parental benefits are payable to a claimant to care for their newborn child.² The maximum number of weeks of extended parental benefits that can be paid to one claimant is 61 weeks.³

[16] Both parents may “share” parental benefits to care for the same child. If they choose to share, the maximum number of weeks of extended parental benefits that can be shared is increased to 69 weeks.⁴ Even if the weeks are shared, the maximum number of weeks of extended parental benefits that can be paid to one claimant remains at 61 weeks.⁵

[17] The Appellant’s wife applied first for parental benefits. She chose the extended parental benefits option and requested 37 weeks of benefits. At the hearing the Appellant said that he was unsure when she applied for benefits or how many weeks she applied for, but did not object to the Commission’s position that his wife applied for 37 weeks of benefits.

[18] The Appellant applied for 40 weeks of extended parental benefits on July 6, 2022.⁶

² See section 23(1) of the *Employment Insurance Act* (EI Act).

³ See section 12(3)(b)(ii) of the EI Act.

⁴ See section 23(4.1)(b) of the EI Act.

⁵ See section 23 (4.11) of the EI Act.

⁶ See GD3-9.

[19] In testimony, the Appellant said that he and his wife didn't discuss how many weeks of extended parental benefits each would take and said that they only tried to maximize the amount of time off they would have together with their new child. And he confirmed that he had been paid for the weeks of extended parental leave that he had requested.

[20] The Appellant says that he understood from his discussions with Service Canada that he would be allowed to take the 40 weeks of extended parental benefits that he had requested and had he known that he could only take 32 weeks, he would have gone back to work sooner.⁷

[21] The Commission says the maximum number of weeks of extended parental benefits that can be shared between a child's parents is 69 weeks. It says in this case, the child's parents collected 77 weeks.

[22] The law says the maximum number of weeks of extended parental benefits that can be shared by parents is 69 weeks.⁸ The evidence tells me that the Appellant and his spouse together received 77 weeks of benefits. The Appellant's spouse received 37 weeks of extended parental benefits leaving 32 weeks of extended parental benefits for the Appellant to receive. The Appellant received 40 weeks of extended parental benefits. This means that the Appellant received eight weeks of extended parental benefits that he was not entitled to receive.

[23] It is clear from the application for EI benefits that if you choose to receive extended parental benefits that they can be shared for a maximum of 69 weeks and the Appellant confirmed that he was aware of the maximum number of weeks. But the Appellant said at the hearing, that he spoke to Service Canada when he was applying, and they told him he could get 40 weeks.

⁷ See GD3-34.

⁸ See section 23(4) of the EI Act.

[24] I accept the Appellant's testimony that he spoke to a Service Canada agent on July 21, 2022, and based on that discussion felt that he was entitled to claim 40 weeks of parental benefits.⁹

[25] And in its representations to the Tribunal, the Commission does not dispute that their officers may have provided inaccurate information to the Appellant.

[26] I agree that it would have been better had the Appellant been told that his extended parental benefits would be reduced by eight weeks when he spoke to the Service Canada agent on July 21, 2022.

[27] The law says the Commission may reconsider a claim for benefits and may verify a claimant's entitlement to benefits already paid to them.¹⁰ The Commission has a maximum of three years to revisit its decisions where there is no evidence of misrepresentation.¹¹

[28] The law says a claimant (appellant) is liable to repay benefit money paid to him by the Commission to which he was not entitled.¹² And the courts have upheld the principle that a claimant (appellant) who receives benefit money that they were not entitled to receive must repay the amount.¹³

[29] As a result, I find the Appellant must repay the \$3064 in extended parental benefits that he was not entitled to receive.

[30] The Appellant argued in testimony that he should only have to repay half of the overpayment based on case law submitted by the Commission.¹⁴ Unfortunately for the Appellant, that case doesn't reference reducing an overpayment and in fact reaffirms that even if the Commission staff make an error, you can't receive benefits that are in contradiction of the Act.

⁹ See GD3-21.

¹⁰ See section 52 of the EI Act.

¹¹ See section 52(1) of the EI Act.

¹² See section 43 of the EI Act.

¹³ See *Launzo v Canada (Attorney General)* 2005 FCA 324.

¹⁴ See *Canada (Attorney General) v Tjong* A-672-95.

[31] I note that the Federal Court of Appeal has found it is obvious 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”.¹⁵

[32] The Court also said that any commitment the Commission’s representatives might make, “whether in good faith or bad faith, or to act in a way other than” written in the law is “absolutely void”. This means that even if the Appellant did receive incorrect information from the Service Canada officer, what is important is what is written in the EI Act and whether the Appellant complied with those provisions.

[33] The Appellant argued that repaying the overpayment would result in financial hardship for he and his family.

[34] The Appellant argues that the debt should be written off due to the mistakes of the Commission and the financial hardship the overpayment would cause.

[35] I do not have the authority to write off the Appellant’s debt. I am sympathetic to the Appellant’s financial circumstances that the request to repay the benefits has created. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.¹⁶ I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[36] The Commission can write off all or part of an overpayment.¹⁷ The Tribunal doesn’t have the legal power to do that. So, the Appellant can ask the Commission to write off his overpayment. And based on the apparent mistakes of the EI staff in dealing with this claim, I urge the Commission to look closely at a request for write off all or part of the overpayment.

¹⁵ See *Granger v Employment and Immigration Commission*, A-684-85.

¹⁶ See *Canada (Attorney General) v Knee* 2011 FCA 301.

¹⁷ See section 56 of the *Employment Insurance Regulations*.

[37] Finally, the Canada Revenue Agency (CRA) collects debts for federal government departments including ESDC. The Appellant can get more information about payment plans and debt relief from the CRA webpage on the collection of EI overpayments for by calling toll free 1-800-864-5823.

Conclusion

[38] This means that the appeal is dismissed.

Greg Skelly

Member, General Division – Employment Insurance Section