



Citation: *NB v Canada Employment Insurance Commission*, 2025 SST 323

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (664467) dated June 11, 2024
(issued by Service Canada)

Tribunal member: Laura Hartsliet

Type of hearing: Videoconference

Hearing date: March 21, 2025

Hearing participants: Appellant

Decision date: March 24, 2025

File number: GE-25-200

Decision

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

[2] The Appellant received 24 weeks of Employment Insurance (EI) parental benefits when she was only entitled to receive 20 weeks of parental benefits.

[3] The Appellant says that, even though she made a mistake on her application for parental benefits, the Commission should bear some of the responsibility for giving her incorrect information.

[4] For the following reasons, I find that the Appellant received 4 additional weeks of benefits above the maximum allowable number of weeks. This means the Appellant received benefits she was not entitled to receive and she must repay those benefits.

The Appellant's Appeal was Returned from the Appeal Division

[5] The Appellant first appealed the Commission's decision regarding her parental benefits to the Tribunal's General Division ('GD') in July 2024. The GD decided the Commission had made a discretionary decision when it reconsidered the claim but it found that the Commission did not exercise its discretion judiciously. At that time, the GD said that the mistakes in the Appellant's claim were because of the Commission and the Appellant should not have to pay for those mistakes.

[6] The GD agreed that the Appellant was not entitled to receive 24 weeks of parental benefits, but it found that the Commission should not have reconsidered the claim. As a result, the GD set aside the overpayment. The Commission appealed this decision to the Tribunal's Appeal Division.

[7] The Appeal Division decided the GD failed to provide a fair process when it did not alert the parties to the material issue of whether the Commission judicially reconsidered the claim for EI benefits. By failing to provide a fair process, the GD made an important error of law.

[8] The Appeal Division ordered the appeal to be returned to the GD for a new hearing. This decision is a result of that hearing.

Overview

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

[10] 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. More importantly, subsection 23(4) of the Act says that, when parents share standard parental benefits, they cannot receive more than a combined maximum of **40** weeks of benefits; when parents share extended parental benefits, they cannot receive more than a combined maximum of **69** weeks of benefits⁴.

[11] The Appellant’s child was born on May 4, 2023⁵. There is no dispute that the Appellant’s husband applied for benefits first and he received **20** weeks of standard parental benefits. In April 2023, the Appellant applied for **20** weeks of standard parental benefits⁶ and she started receiving those benefits on August 20, 2023.⁷

[12] The Appellant says that she understands that she received 4 more weeks of benefits than she was entitled to receive. However, the Appellant says that she should not be held responsible for this mistake. The Appellant says the Commission repeatedly gave her incorrect advice when she requested additional weeks of benefits and the

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.

⁴ Subsection 23(4) of the EI Act.

⁵ See GD3-6

⁶ See GD3-7

⁷ See GD4-2

Commission failed to act judicially when it eventually reconsidered her claim for parental benefits. For these reasons, the Appellant says she should not be responsible for repaying the benefits she received by mistake.

[13] The Commission says that the Appellant was only entitled to receive **20** weeks of parental benefits instead of the 24 weeks she actually received. The Commission noticed this mistake on the Appellant's application on March 27, 2024⁸. The Commission says it acted judicially when it reconsidered the Appellant's claim for parental benefits, the Appellant's mistake choice resulted in an overpayment of \$2,600.00⁹ and she responsible for paying back those benefits.

Issues

[14] Did the Commission exercise its discretion judicially when it reconsidered the Appellant's claim for parental benefits?

[15] Is the Appellant allowed to receive the 24 weeks of standard parental benefits she received?

[16] Is the Appellant responsible for the overpayment, even though the Commission gave her incorrect information throughout the process?

Analysis

a) *Did the Commission exercise its discretion judicially when it reconsidered the Appellant's claim for parental benefits?*

[17] Section 52 of the Act says that the Commission "may reconsider a claim for benefits" even after benefits have been paid to a person¹⁰. This means that, even after the Commission pays out benefits, it is legally permitted to re-open that claim and consider whether those benefits should have been paid. The Commission has the authority to do this for **any** claim regarding benefits that have been paid or should have

⁸ See GD3-19

⁹ See GD3-20

¹⁰ See section 52(1) of the EI Act.

been paid¹¹. However, just because the Commission is allowed to reconsider a claim for benefits does not mean that it should reconsider a claim.

[18] If the Commission decides to reconsider a claim, it must do so within the proper timelines and it must do so judicially (or fairly). This means that the Commission cannot act in bad faith or for an improper purpose, discriminate, consider irrelevant factors or fail to consider relevant factors¹². The law does not tell the Commission what factors to consider. The Federal Court says the Commission should consider factors that favour finality (claimants should be able to rely on Commission decisions) and accuracy (mistakes and misrepresentations should be corrected). This includes the factors in its reconsideration policy.¹³ The Commission should not consider the claimant's personal factors – such as ability to pay or stress¹⁴.

[19] Specifically, the Commission may reconsider a claim within 36 months after benefits have been paid¹⁵ or within 72 months if the Commission believes that a false or misleading statement was made in connection with a claim¹⁶.

[20] When the Commission acts judicially, the Tribunal can not interfere with its decision to reconsider a claim. When the Commission does not act judicially, the Tribunal can decide whether to reconsider a claim.

[21] In the matter before me, there is no dispute that the Commission exercised its discretion to reconsider the Appellant's claim within the proper timeframe. The Commission's reconsideration decision was made on March 27, 2024.¹⁷ The parental benefits the Commission looked at were for the period from August 20, 2023, to January 2024¹⁸, which is within 36 months of the decision to reconsider.

¹¹ *Canada Employment Insurance Commission v BB*, 2024 SST 89 (AD-23-821)

¹² *Purcell* A-694-94(FCA)

¹³ Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

¹⁴ *Molchan* 2024 FCA 46; *Al-Harbawi* FCA 148

¹⁵ See section 52(1) of the EI Act

¹⁶ See section 52(5) of the EI Act

¹⁷ See GD3-19

¹⁸ See GD4-2

[22] The real issue before me is whether the Commission acted judicially (or fairly) when it decided to reconsider the Appellant's claim for parental benefits. As noted above, in order to act judicially, the Commission:

- cannot act in bad faith or for an improper purpose or motive;
- cannot consider an irrelevant factor;
- cannot ignore a relevant factor; and
- cannot act in a discriminatory manner¹⁹.

[23] Because the EI doesn't specifically say what factors are relevant to the Commission's exercise of discretion, the Commission developed an internal policy document which outlines different scenarios when the Commission should reconsider a claim. This policy is designed to ensure that there is consistency within the Commission's decisions and its decisions are not arbitrary²⁰. The Federal Court in *Molchan* notes that while the Commission has a reconsideration policy, it is not law²¹. But the Federal Court says that these are relevant factors to weigh when deciding if a claim should be reviewed. The Commission's internal policy document says that a claim will only be reconsidered when:

- benefits have been underpaid;
- benefits were paid contrary to the structure of the EI Act;
- benefits were paid as a result of a false or misleading statement; or
- the claimant ought to have known there was no entitlement to the benefits received²².

[24] For the following reasons, I am not satisfied that the Commission failed to act judicially when it reconsidered the Appellant's claim for benefits.

[25] I say this even though I believe the Appellant when she says she received incorrect information from the Commission when she contacted them for information. At

¹⁹ See *Suresh v Canada (Minister of Citizenship and Immigration)*, 2000 CanLII 17101 (FCA), [2000] 2 FC 592; *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 FC 644; *Canada (Attorney General) v Uppal*, 2008 FCA 388; *MS v Canada Employment Insurance Commission*, 2022 SST 933 (AD-22-91)

²⁰ *T-Giorgis v Canada (Attorney General)*, 2024 FCA 47 at para. 59

²¹ *Molchan* para 20

²² See Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

the hearing, the Appellant provided very detailed testimony about her plan for her maternity leave, her application process, and her repeated contact with the Commission. The Appellant says that she and her husband originally planned to receive 20 weeks each of standard parental benefits. However, partway through her time off from work, the Appellant's father became gravely ill and she began to investigate whether she could take more time off in order to spend time with her family and her new baby. To that end, the Appellant says that her husband contacted the Commission to inquire about transferring 4 weeks of the 20 he applied for over to the Appellant. The Appellant says that the Commission told her husband he was allowed to make this transfer, provided that the Appellant contact the Commission personally to verify his request.

[26] In response to these instructions, the Appellant says she contacted the Commission multiple times to ask whether it would be feasible to transfer 4 weeks of parental benefits from her husband. The Appellant says that she was repeatedly told that this was feasible, but she was confused because each agent she spoke to gave her a different potential end-date for her benefits. The Appellant says she diligently and repeatedly confirmed with the Commission that her husband was permitted to transfer 4 weeks of his parental benefits to her without any consequence to either of them.

[27] The Appellant gave testimony on these points in a detailed and consistent manner and I have no reason to disbelieve her. I believe the Appellant when she says she repeatedly contacted the Commission to confirm that her husband could transfer 4 weeks of benefits to her. I believe the Appellant when she says that the Commission's agents told her this plan was feasible and I believe the Appellant when she says she repeatedly confirmed this with the Commission.

[28] The difficulty here is that the prevailing caselaw addresses the specific situation when the Commission has given incorrect information to an individual. The case of *Molchan v AGC*, 2024 FCA 46 says misinformation from the Commission cannot be relied upon to avoid the Commission's authority to reconsider a claim or to relieve the Appellant of an overpayment. This case means that, even though the Commission very

likely gave incorrect information to the Appellant, she cannot rely on that argument to establish that the Commission failed to act judicially (or fairly) when it reconsidered her claim. This portion of the Appellant's argument must be dismissed.

[29] I have also considered the Appellant's testimony about the Commission's "lack of accountability" for giving her incorrect information. The Appellant expressed extreme frustration at the hearing because she intentionally completed the necessary "due diligence" by investigating her options, she received incorrect information from the Commission and then relied on that information to obtain 4 more weeks of parental benefits. The Appellant says the whole process lacked "transparency" and the agents lack "accountability". The Appellant says she did everything she could to avoid receiving benefits she was not entitled to receive and yet she is finding herself in the very situation she hoped to avoid.

[30] While I completely understand the Appellant's position and I deeply sympathize with her frustration, there is insufficient evidence before me to establish that the Commission failed to act judicially when it reconsidered the Appellant's claim for parental benefits. The fact is that the Appellant received **4** weeks of parental benefits that she was not entitled to receive. There is no judgement or discretion used when determining the total number of weeks payable for parental benefits. The EI Act sets out the basic components of a person's entitlement to benefits. This means she was paid benefits that were "contrary to the structure of the EI Act²³" and the Commission's policy allows the Commission to reconsider the Appellant's claim for those benefits. Also, the Appellant's EI application specifically reminds her that, if parents share standard parental benefits, they can receive up to a combined total of **40** weeks²⁴." This suggests to me that the Appellant "ought to have known there was no entitlement to the benefits²⁵" she received and the Commission's policy allows the Commission to reconsider the Appellant's claim for those benefits.

²³ See Chapter 17.3.3 of the Digest of Benefit Entitlement Principles

²⁴ See GD3-6

²⁵ See Chapter 17.3.3 of the Digest of Benefit Entitlement Principles

[31] For all of these reasons, I am satisfied that the Commission did not act in bad faith or for an improper purpose, discriminate, consider irrelevant factors, or fail to consider relevant factors. It followed its internal policy document, it was justified in reconsidering the Appellant's claim for benefits and it exercised its discretion judicially in this regard.

b) Is the Appellant allowed to receive the 24 weeks of standard parental benefits she received?

[32] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.²⁶ 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 option²⁷. The Act also says that, when parents share standard parental benefits, they cannot receive more than a combined maximum of **40** weeks of benefits²⁸.

[33] This means that the answer to the question before me is no - the Appellant is not entitled to receive the **24** weeks of extended parental benefits she received. There is no dispute that the Appellant's husband applied for benefits before her and he received **20** weeks of standard parental benefits. This means the Appellant was only entitled to receive **20** weeks of benefits to reach the combined maximum total of **40** weeks.

[34] The Appellant says she initially applied for **20** weeks of standard parental benefits, but because of a change in her circumstances, she investigated the option of receiving an additional **4** weeks. The Appellant says that, based on the information she received from multiple Commission staff, she assumed that she was entitled to these additional **4** weeks of benefits.

[35] At the hearing, I showed the Appellant the portion of his application which indicates that parents who share standard parental benefits are not permitted to receive

²⁶ 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.

²⁷ Subsection 23(1.3) of the EI Act.

²⁸ Subsection 23(4) of the EI Act.

more than a combined maximum of **40** weeks. The Appellant says she remembers reading this portion, which is precisely why she contacted the Commission to ask whether she could receive an additional **4** weeks of benefits.

[36] The Appellant says she now understands that she was not entitled to receive these additional 4 weeks of benefits but she does not believe she should be held responsible for the incorrect information she received from the Commission. The Appellant says that receiving the extra **4** weeks of benefits is the Commission's fault and, for this reason, she does not feel she should be held responsible for receiving too many weeks of benefits.

[37] However, as outlined above, regardless of whether the Commission provided incorrect information or failed to notice the Appellant's mistake, the fact remains that the Appellant received 4 weeks of benefits that she was not entitled to receive. The EI Act is clear that, when parents share standard parental benefits, they are not entitled to receive more than a combined maximum of **40** weeks. As the Appellant's husband received **20** weeks of parental benefits and the Appellant received **24** weeks of parental benefits, the Appellant received **4** weeks of benefits she was not entitled to receive.

c) Is the Appellant responsible for the overpayment?

[38] Once the Commission recalculated the Appellant's parental benefits from **24** weeks to **20** weeks of extended parental benefits, the result was an overpayment of \$2,600.00²⁹. The Appellant says that she should not be responsible for paying back the entire amount because she relied on incorrect information she received from the Commission.

[39] At the hearing, the Appellant described the financial impact this overpayment has created. The Appellant gave details about her family's circumstances and her financial situation and she described the detriment to her family that would result if she had to

²⁹ See GD3-20

pay back \$2,600.00 to the Commission. The Appellant gave her testimony on these points in a detailed and consistent manner and I have no reason to disbelieve her.

[40] While I recognize the financial impact and I sympathize with the Appellant regarding her circumstances, she received benefits she was not entitled to receive and she is responsible for the resulting over payment. The law says that a person who receives EI benefits to which they are not entitled must return the amount wrongly paid³⁰.

[41] Also, the fact that the Commission likely gave incorrect information to the Appellant 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 decision³¹. This means that the Appellant is still responsible for the overpayment, regardless of any error the Commission may have made in its decision when it paid her **24** weeks of parental benefits.

[42] I would also note that the Commission's delay in noticing the Appellant's error, while most unfortunate, does not erase the Appellant's responsibility for the overpayment. Subsection 52(1) of the EI Act allows the Commission to revisit a claim up to 36 months after the benefits have been paid³². Also, subsection 52(5) allows the Commission to revisit a claim up to 72 months, within certain circumstances³³. While I understand how frustrating and extremely inconvenient it is to have the Commission overpay benefits and then not notice for a period of time, the fact remains that the law allows the Commission to do this and this delay does not erase the Appellant's responsibility for the overpayment.

[43] Finally, it is important to note that the Tribunal does not have the jurisdiction to write-off an overpayment. This means that the law does not allow me to write-off the

³⁰ EI Act Sections 43-46.1 and 65

³¹ See *Desrosiers v. Canada* (AG) A-128-89

³² See EI Act subsection 52(1)

³³ See EI Act subsection 52(5)

overpayment or make any decision which affects the Appellant's responsibility to repay the benefits she received by mistake.

[44] However, 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.³⁴ The Appellant may decide to request a write-off of her overpayment due to financial hardship. To do this, she may contact her Service Canada office to request a write-off of her 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.

[45] In any case, and for all the reasons already stated, I find that the Appellant received **4** weeks of standard parental benefits that she was not entitled to receive. This created an overpayment and the Appellant is responsible for repaying those benefits.

Conclusion

[46] The Commission acted judicially when it reconsidered the Appellant's claim for parental benefits.

[47] The Appellant is not entitled to receive 24 weeks of standard parental benefits.

[48] The Appellant is responsible for the overpayment that resulted from her decision to receive 4 extra weeks of benefits.

[49] This means that the appeal is dismissed.

Laura Hartsliet
Member, General Division – Employment Insurance Section

³⁴ See EI Regulations section 56(1)