



Citation: *JK v Canada Employment Insurance Commission*, 2025 SST 373

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

## **Decision**

**Appellant:** J. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (689227) dated October 16, 2024  
(issued by Service Canada)

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**Tribunal member:** Laura Hartslief

**Type of hearing:** Teleconference

**Hearing date:** February 25, 2025

**Hearing participants:** Appellant

**Decision date:** February 25, 2025

**File number:** GE-24-3810

## Decision

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

## Overview

[2] The Appellant applied for Family Caregiver Benefits because he had to care for his father in India after he suffered a stroke.

[3] Although the Commission initially paid the Appellant 10 weeks of benefits, the Commission later reconsidered this decision and found that the Appellant was not entitled to receive the Family Caregiver Benefits he was paid. This is because the Medical Certificate he submitted fails to indicate that the Appellant's father's life is at risk due to his illness or injury.

[4] The Appellant does not dispute that he is not entitled to receive Family Caregiver benefits. However, the Appellant says that the Commission mistakenly granted his application for benefits and he should not be held responsible for the Commission's mistake. The Appellant also says that the Commission failed to act judicially when it reconsidered his claim after they approved his application and paid him over \$6,000.00 in benefits. The Appellant says he would like the overpayment either reduced or eliminated.

[5] The Commission says that the Appellant was not entitled to receive the 10 weeks of benefits he was paid. The Commission noticed the mistake on June 13, 2024.<sup>1</sup> The Commission says it acted judicially when it reconsidered the Appellant's claim for Family Caregiver Benefits. The Commission's mistake in paying out benefits to the Appellant resulted in an overpayment of \$3,900.00<sup>2</sup> and \$2,548.00<sup>3</sup>. The Commission says the Appellant is responsible for paying back those benefits.

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<sup>1</sup> See GD3-41

<sup>2</sup> See GD3-43

<sup>3</sup> See GD3-47

## Issues

[6] Did the Commission exercise its discretion judicially when it reconsidered the Appellant's claim for Family Caregiver Benefits?

[7] Is the Appellant entitled to receive any Family Caregiver Benefits?

[8] Is the Appellant responsible for the overpayment, even though the Commission failed to notice the mistake prior to paying out the benefits?

## Analysis

a) *Did the Commission exercise its discretion judicially when it reconsidered the Appellant's claim for Family Caregiver Benefits?*

[9] Section 52 of the Act says that the Commission "may reconsider a claim for benefits" even after benefits have been paid to a person<sup>4</sup>. 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 been paid<sup>5</sup>. However, just because the Commission is allowed to reconsider a claim for benefits does not mean that it should reconsider a claim.

[10] 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 factors<sup>6</sup>. 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

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<sup>4</sup> See section 52(1) of the EI Act.

<sup>5</sup> *Canada Employment Insurance Commission v BB*, 2024 SST 89 (AD-23-821)

<sup>6</sup> *Purcell A-694-94(FCA)*

reconsideration policy.<sup>7</sup> The Commission should not consider the claimant's personal factors – such as ability to pay or stress<sup>8</sup>.

[11] Specifically, the Commission may reconsider a claim within 36 months after benefits have been paid<sup>9</sup> or within 72 months if the Commission believes that a false or misleading statement was made in connection with a claim<sup>10</sup>.

[12] 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.

[13] 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 June 13, 2024.<sup>11</sup> The Family Caregiver Benefits the Commission looked at were for the period from July 30, 2023, to August 26, 2023, and from August 27, 2023, to October 14, 2023. These periods are within 36 months of the decision to reconsider.

[14] The real issue before me is whether the Commission acted judicially (or fairly) when it decided to reconsider the Appellant's claim for Family Caregiver 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 manner<sup>12</sup>.

[15] Because the EI Act does not specifically say what factors are relevant to the Commission's exercise of discretion, the Commission has developed an internal policy

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<sup>7</sup> Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

<sup>8</sup> *Molchan* 2024 FCA 46; *Al-Harbawi* FCA 148

<sup>9</sup> See section 52(1) of the EI Act

<sup>10</sup> See section 52(5) of the EI Act

<sup>11</sup> See GD3-41

<sup>12</sup> 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)

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 arbitrary<sup>13</sup>. The Federal Court in *Molchan* notes that while the Commission has a reconsideration policy, it is not law<sup>14</sup>. 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 received<sup>15</sup>.

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

[17] I say this because the Appellant does not seem to dispute that the Commission acted judicially when it reconsidered his claim, he simply objects to the fact that the Commission made a mistake when it paid him benefits and he objects to now being held financially responsible for that mistake. At the hearing, the Appellant provided detailed testimony regarding how truthful both he and the doctor were regarding his father's condition. The Appellant explained that the doctor refused to indicate on the Medical Certificate that his father's life was at risk because this was not factually correct. The Appellant says he understands and agrees with the doctor's decision to complete the form in a truthful manner. The Appellant's primary disagreement is that he is now being punished for being truthful and being punished for the Commission's mistake in paying him 10 weeks of benefits. Finally, the Appellant says that he doubts the credibility of the entire EI system now and, if he were to be paid EI benefits in the future, he does not trust that the Commission would make another mistake and create another overpayment. In other words, the Appellant has lost trust in the EI system due

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<sup>13</sup> *T-Giorgis v Canada (Attorney General)*, 2024 FCA 47 at para. 59

<sup>14</sup> *Molchan* para 20

<sup>15</sup> See Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

to the Commission's failure to notice their own mistake until one year after the benefits were paid.

[18] The Appellant gave 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 the doctor completed the Medical Certificate truthfully. I believe the Appellant when he says that the Commission should have noticed its mistake earlier and their failure to do so has created a large overpayment that he cannot afford to repay.

[19] The difficulty here is the prevailing caselaw. 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 failed to notice its mistake until later in the process, the Appellant cannot rely on that argument to establish that the Commission failed to act judicially (or fairly) when it reconsidered his claim.

[20] While I completely understand the Appellant's frustration with the Commission, and I deeply sympathize with his situation, there is insufficient evidence before me to establish that the Commission failed to act judicially when it reconsidered the Appellant's claim for Family Caregiver Benefits. The fact is that the Appellant received **10** weeks of benefits that he was not entitled to receive. There is no judgement or discretion used when determining entitlement for Family Caregiver Benefits. The EI Act sets out the basic components of a person's entitlement to benefits. This means he was paid benefits that were "contrary to the structure of the EI Act<sup>16</sup>" and the Commission's policy allows the Commission to reconsider the Appellant's claim for those benefits.

[21] For all of these reasons, I am satisfied that the Commission did not act in bad faith or for an improper purpose. I am also satisfied that the Commission did not discriminate, consider irrelevant factors, or fail to consider relevant factors when it reconsidered the Appellant's claim for Family Caregiver Benefits. The Commission

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<sup>16</sup> See Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

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 entitled to receive any Family Caregiver Benefits?*

[22] The Appellant filed a claim for EI benefits and requested 10 weeks of Family Caregiver Benefits while he cared for his 75-year-old father in India after he suffered a stroke<sup>17</sup>. The Appellant says that his father required constant care during this time as his mother is elderly and was not able to provide all of the daily care that his father required during his recovery period. The Appellant's father was on bed rest for several weeks and he needed help getting to medical appointments and he needed help with his daily routine and exercises. Essentially, the Appellant's father required constant care while he recovered from his stroke.

[23] The Appellant submitted a Medical Certificate dated June 29, 2023,<sup>18</sup> regarding his father's medical condition. This certificate supports the Appellant's testimony that his father had experienced a change in his baseline state of health and he required the care or support of a family member for several weeks. However, the Medical Certificate does not indicate that the Appellant's father's life was at risk as a result of his stroke.

[24] Despite this missing criterion, the Commission granted the Appellant's claim for EI Family Caregiver Benefits and paid him 4 weeks of benefits from July 30, 2023 to August 26, 2023, and 6 weeks of benefits from September 3, 2023 to October 14, 2023<sup>19</sup>.

[25] The Appellant understands that the Commission made a mistake when it paid him 10 weeks of Family Caregiver Benefits. At the hearing, the Appellant explained that he understands he failed to meet all three criteria on the Medical Certificate and he supports the doctor's decision to indicate that his father's life was **not** at risk as a result

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<sup>17</sup> See GD3-28

<sup>18</sup> See GD3-18

<sup>19</sup> See GD4-1

of his stroke. I agree with the Appellant that he received benefits he was not entitled to receive.

[26] The law sets out the criteria the Appellant must meet in order to qualify for Family Caregiver Benefits, and he has simply failed to meet these criteria. The Tribunal has no discretion to apply these criteria differently to particular individuals and there is no legislative authority that requires me to weigh each appellant's personal circumstances in the way the Appellant has described.

[27] The *Employment Insurance Act* (the 'EI Act') says that Family Caregiver Benefits are paid to a major attachment claimant to care for a "critically ill adult<sup>20</sup>" if a medical doctor or nurse practitioner has issued a certificate that states that the adult is a "critically ill adult" and requires the care or support of one or more of their family members.

[28] The *Employment Insurance Act Regulations* (the 'Regulations') go on to define a "critically ill adult" as "a person who 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 an illness or injury<sup>21</sup>." In fact, the Medical Certificate the Appellant was required to submit contains a three-point checklist that was developed specifically from the definition contained in the EI Regulations.

[29] This means that, in order to qualify for Family Caregiver Benefits, a claimant needs to establish that they are caring for a "critically ill adult" by submitting a Medical Certificate which confirms that:

- the patient's life is at risk as a result of their illness or injury;
- they have experienced a significant change in their baseline state of health; and
- they require care or support from one or more of their family members.

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<sup>20</sup> See subsection 23.3(1) of the EI Act.

<sup>21</sup> EI Regulations subsection 1(7)



[30] All three of these criteria **must** be in place in order to qualify for Family Caregiver Benefits.

[31] The EI Act says that Family Caregiver Benefits are payable to a family member of a “critically ill adult” who submits a medical certificate to that fact. The caselaw says that a complete Medical Certificate is an essential requirement to qualify for this type of benefit<sup>22</sup>. The Regulations clearly define what constitutes a “critically ill adult” and it is clear from the Regulations that, provided the patient is over 18 years old, two additional criteria must be met; the patient’s life **must** be at risk as a result of an illness or injury and they must have experienced a significant change to their baseline state of health.

[32] These criteria are confirmed in the *G. L. v. Canada Employment Insurance Commission*, 2019 SST 209 case where the Appeal Division explains:

The EI Act and the EI Regulations define “critically ill adult” as “a person who 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 an illness or injury.” The term “critically ill adult” must be interpreted based on the definition in the Act and Regulations, not based on a claimant’s particular circumstances or their opinion of the law. Therefore, the legislation requires the following two conditions to be met: the baseline state of health has significantly changed and the life is at risk as a result of an illness or injury<sup>23</sup>.

[33] There is no dispute that one of those conditions was not met in the matter before me. The Appellant’s doctor refused to indicate that the Appellant’s father’s life was at risk due to his stroke. Although the doctor does indicate that the Appellant’s father experienced a significant change in his condition and required care from a family member, the fact remains that the Medical Certificate fails to include the third criteria that the patient’s life was at risk because of his condition. This missing factor is the reason the Appellant’s claim for Family Caregiver Benefits must be denied.

*c) Is the Appellant required to pay back the resulting overpayment?*

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<sup>22</sup> See *MB v Canada Employment Insurance Commission*, 2022 SST 103

<sup>23</sup> See *G. L. v. Canada Employment Insurance Commission*, 2019 SST 209, paragraphs 12 and 13

[34] As the Appellant received **10** weeks of Family Caregiver Benefits that he was not entitled to receive, this created an overpayment of \$2,548.00 (for the **4** weeks of benefits paid from July 30, 2023, to August 26, 2023<sup>24</sup>) and \$3,900.00 (for the **6** weeks of benefits paid from September 3, 2023, to October 14, 2023<sup>25</sup>).

[35] The Appellant says that he should not be held responsible for the overpayment because he was paid these benefits as a result of the Commission's mistake. The Appellant says that, if the Commission had denied him benefits from the beginning, as it was supposed to do, he would have secured financial help from other sources to travel to India and he would not now be required to repay \$6,448.00. The Appellant says that this overpayment has created extreme financial stress for him. This stress is compounded by the fact that he works in the automotive industry, which is unpredictable at best and will be negatively affected by the upcoming tariffs. The Appellant says that he expects to be laid off from his job shortly and he is in no financial position to repay the benefits he received.

[36] The Appellant provided 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 he does not believe he should be held financially responsible for the Commission's mistake. I believe the Appellant when he says that this overpayment has created severe financial difficulties for him which are compounded by his tenuous employment situation. I sympathize with the Appellant in this regard and I understand his frustration with this situation.

[37] However, regardless of the Commission's mistake, the law states that the Appellant is still responsible for paying back the benefits that he received by mistake. A person who receives EI benefits to which they are not entitled must return the amount wrongly paid<sup>26</sup>.

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<sup>24</sup> See GD3-47

<sup>25</sup> See GD3-43

<sup>26</sup> EI Act Sections 43-46.1 and 65

[38] The Commission's mistaken decision to pay to the Appellant **10** weeks of Family Caregiver Benefits he was not entitled to receive does not erase the Appellant's liability for the overpayment. The Federal Court of Appeal has addressed the issue of the Commission's errors and has said that they are not fatal to a Commission's decision<sup>27</sup>. This means that the Appellant is still responsible for the overpayment, regardless of any error the Commission may have made in its initial decision about his application.

[39] I would also 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 overpayment or make any decision which affects the Appellant's responsibility to repay the benefits he received by mistake.

[40] 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.<sup>28</sup> 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".

[41] 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.

[42] In any case, and for all the reasons already stated, I find that the Appellant received **10** weeks of Family Caregiver Benefits that he was not entitled to receive. The Commission acted judicially when it reconsidered the Appellant's claim and created an overpayment for these benefits. The Commission's reconsideration created an overpayment and the Appellant is responsible for repaying those benefits.

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<sup>27</sup> See *Desrosiers v. Canada* (AG) A-128-89

<sup>28</sup> See EI Regulations section 56(1)

## **Conclusion**

[43] The appeal is dismissed.

Laura Hartsliet

Member, General Division – Employment Insurance Section