



Citation: *RJ v Canada Employment Insurance Commission*, 2024 SST 1728

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: R. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (684556) dated October 10, 2024
(issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: December 13, 2024

Hearing participant: Appellant

Decision date: December 17, 2024

File number: GE-24-3750

Decision

[1] The appeal is dismissed.

[2] This means the Canada Employment Insurance Commission (Commission) correctly calculated the Appellant's weeks of entitlement to Employment Insurance (EI) standard parental benefits.

Overview

[3] The Appellant established a claim for EI extended parental benefits on October 1, 2023.

[4] The Appellant elected to receive 28-weeks of **extended** parental benefits for her child that was born on October 26, 2022.

[5] The Appellant's spouse had previously elected to receive 35-weeks of EI **standard** parental benefits for the same child when he applied on January 11, 2023.

[6] The law says you have to choose the same type of parental benefits as the other parent.¹ This means the option chosen by the parent who applies for benefits first is the option all parents will receive. As a result, the Appellant's claim was converted to standard parental benefits because her spouse applied for standard parental benefits first.

[7] The Commission waived the Appellant's one-week waiting period in the week of October 1, 2023, and paid her a total of four-weeks of standard parental benefits from October 1, 2023, to October 28, 2023. The Commission confirmed the Appellant was further paid EI standard parental benefits for the weeks of October 29, 2023, to December 30, 2023.

[8] The Commission says the parental window in this case was from October 26, 2022, to October 28, 2023. Based on when the Appellant applied, the Commission says

¹ Section 23 (1.3) of the *Employment Insurance Act* (EI Act).

the Appellant was eligible for a total of four out of the five-weeks of remaining entitlement to standard parental benefits between October 1, 2023, and October 28, 2023, before reaching the end of the **parental window**. The Commission says the overpayment of \$2,282.00 was generated for the weeks the Appellant was paid standard parental benefits from October 29, 2023, to December 30, 2023.

[9] The Appellant says the EI application wasn't clear about both parents needing to choose the same type of parental benefits. She further requested that her overpayment of benefits be waived or reduced.

Issue

[10] Did the Commission correctly calculate the Appellant's weeks of entitlement to EI standard benefits?

Analysis

[11] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.² The law says that you can't change options once the Commission starts paying parental benefits.³

[12] The law says you have to choose the same type of parental benefits as the other parent.⁴ This means the option chosen by the parent who applies for benefits first is the option all parents will receive.

[13] The law stipulates that standard parental benefits are payable during a period that begins with the week in which the child of the claimant is born (or actually placed with the claimant for the purpose of adoption) and ends 52-weeks after that week.⁵

² 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.

³ Section 23(1.2) says that the choice is irrevocable (that is, final) once you receive benefits.

⁴ Section 23 (1.3) of the EI Act.

⁵ See section 23(2) of the EI Act.

[14] The law states that if two major attachment claimants each make a claim for benefits under this section⁶ — or if one major attachment claimant makes a claim for benefits under this section and an individual makes a claim for benefits under section 152.05 — in respect of the same child or children, the weeks of benefits payable under this section, under section 152.05 or under both those sections may be divided between them up to a maximum of 40, if the maximum number of weeks that has been elected under subsection (1.1) or 152.05(1.1) is established under subparagraph 12(3)(b)(i) or 152.14(1)(b)(i), or up to a maximum of 69, if that number of weeks is established under subparagraph 12(3)(b)(ii) or 152.14(1)(b)(ii).

Did the Commission correctly calculate the Appellant's weeks of entitlement to EI standard parental benefits?

[15] I find the Commission correctly calculated the Appellant's weeks of entitlement to EI standard parental benefits for the following reasons:

[16] First: The parental window in this case was from October 26, 2022, to October 28, 2023. Based on when the Appellant applied, she was only eligible for a total of four out of the five-weeks of remaining entitlement to standard parental benefits between October 1, 2023, and October 28, 2023. In short, the Appellant had reached the end of the parental window on October 28, 2023, because her baby was born on October 26, 2022.

[17] Second: The Appellant's spouse had previously applied for 35-weeks of EI parental benefits (for the same child) on January 11, 2023. I realize the Appellant testified that the information on the application wasn't clear about both parents needing to make the same election for parental benefits. I sympathize with the Appellant on this matter. However, the law states that you have to choose the same type of parental benefits as the other parent. In this case, the Appellant's spouse selected 35-weeks of standard parental benefits on January 11, 2023, and the claim was established with

⁶ See section 23(4) of the EI Act

standard benefits because he applied first. On this matter, I must apply the law. In other words, I cannot change or re-fashion the law even for sympathetic reasons.⁷

Additional Testimony and Submissions from the Appellant

[18] I realize the Appellant testified that she provided “no misleading” information on her part. She further says the application system was flawed and “not fair.” I do recognize the Appellant was particularly frustrated and displeased about the overpayment of EI standard parental benefits. Still, I have no authority to change or re-fashion the law even for compassionate reasons.⁸

[19] Finally, I recognize the Appellant specifically requested that her overpayment amount be waived or at least reduced (GD2). However, I **have no authority** to write-off or reduce the Appellant’s overpayment.⁹ But the Commission can decide to write-off an overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship. So, the Appellant can ask the Commission to write-off her overpayment. Or, she can contact the Canada Revenue Agency (CRA) to discuss fair payment arrangements.

Conclusion

[20] The Commission correctly calculated the Appellant’s weeks of entitlement to EI standard parental benefits.

[21] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁷ *Knee v Canada (Attorney General)*, 2011 FCA 301.

⁸ *Knee v Canada (Attorney General)*, 2011 FCA 301.

⁹ *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97).