



Citation: *SP v Canada Employment Insurance Commission*, 2025 SST 527

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (692747) dated November 19,
2024 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: May 14, 2025

Hearing participants: Appellant

Decision date: May 14, 2025

File number: GE-25-1463

Decision

[1] The appeal is dismissed.

[2] This means the Appellant wasn't entitled to more than a combined total of 40-weeks of Employment Insurance (EI) parental benefits.

Overview

[3] The Appellant established a claim for EI maternity and standard parental benefits on June 4, 2023.

[4] The Appellant received 15-weeks of maternity benefits from June 11, 2023, to September 23, 2023. The Appellant further received 35-weeks of standard parental benefits from September 24, 2023, to May 25, 2024.

[5] The Appellant's partner applied for 35-weeks of standard parental benefits (RGD2-5 to RGD2-8). The Appellant's partner received 35-weeks of parental benefits from October 2023 to the end of June 2024 (RGD2-17 to RGD2-19)

[6] On July 23, 2024, the Canada Employment Insurance Commission (Commission) informed the Appellant that the combined entitlement for all parents had exceeded the maximum number of shareable weeks. The Appellant told the Commission she would change her requested weeks of parental benefits to five-weeks. The Appellant told the Commission she understood that she would have an overpayment (GD3-27).

[7] The Commission adjusted the Appellant's claim and paid her parental benefits for the five-week period of September 24, 2023, to October 28, 2023, only. However, the Commission's adjustment resulted in an overpayment for the Appellant for the weeks of October 29, 2023, to May 25, 2024.

[8] The Appellant appealed the Commission's decision. The General Division Member issued a decision on January 2, 2025, and allowed the Appellant's appeal. The Commission then appealed the General Division decision to the Appeal Division. On

April 30, 2025, the Appeal Division Member issued a decision and referred the appeal back to the General Division citing evidentiary gaps.

[9] The Commission says the global maximum amount of 40-weeks of parental benefits had been paid to the Appellant and anything more wasn't supported by the law. The Commission further says the Appellant chose to have her weeks of entitlement reduced to five-weeks of parental benefits.

[10] The Appellant confirmed she told the Commission to reduce her parental benefits to five-weeks, but didn't know it would result in the size of the overpayment. She further says she and her ex-partner didn't have any agreement in place about sharing the parental benefits. Finally, the Appellant says she was looking for "grace" and asked that her overpayment be waived or written off.

Issue

[11] Should a disentitlement be imposed on the Appellant in relation to the maximum shared entitlement to EI parental benefits?

Analysis

[12] Parental benefits are special benefits provided for the purpose of caring for one or more new-born children or one or more children placed with a claimant for the purpose of adoption.¹

[13] The law establishes the maximum number of weeks for which EI parental benefits may be paid in respect of providing care to a child or children for whom a claim was established.² On this matter, the maximum number of weeks that has been elected under the law was 35-weeks, or of the weeks for which benefits may be paid are divided, 40-weeks.³

¹ Subsection 23(1.1), 12, and 14 of the *Employment Insurance Act* (EI Act).

² Subsection 12(4.01) of the EI Act.

³ Subsection 23(1.1) of the EI Act established under subparagraph (3)(b)(i).

Should a disentitlement be imposed on the Appellant in relation to the maximum shared entitlement to EI parental benefits?

[14] I find a disentitlement should be imposed on the Appellant in relation to the maximum shared entitlement to EI parental benefits. I make this finding because the Appellant and her partner both received 35-weeks of parental benefits, and the maximum **shared** benefits allowed under the law was **40-weeks**.

[15] I recognize the Appellant testified that she didn't know her partner had received 35-weeks of parental benefits until she was informed by the Commission on July 23, 2024. However, the Appellant confirmed she told the Commission on July 23, 2024, that she would reduce her parental benefits to five-weeks (GD3-27). The Commission then made the adjustment which created the overpayment of benefits for the Appellant.

Additional Testimony from the Appellant

[16] I realize the Appellant testified she was looking for some "grace" because she was in a difficult financial situation. I genuinely sympathize with the Appellant. Nevertheless, I must apply the law to the evidence before me. In other words, I cannot ignore or re-fashion the law even for compassionate reasons.⁴

The Appeal Division's Decision

[17] I recognize the Appeal Division member wrote that it wasn't known when the other parent applied, or what type of EI benefits were requested. However, the Commission has now submitted information showing the application by the Appellant's partner for 35-weeks of standard EI parental benefits (RGD2-17 to RGD2-19). The Commission further provided specific details on the payment of EI parental benefits to the Appellant's partner from October 2023 to the end of June 2024 (RGD2-5 to RGD2-8).

⁴ *Knee v Canada (Attorney General)*, 2011 FCA 301.

[18] I further realize the Appeal Division member wrote that it wasn't clear why the excess weeks of benefits weren't split between the parents. However, the Appellant testified during the hearing that she decided to reduce her entitlement to EI parental benefits on July 27, 2023, to prevent an argument with her partner. The Appellant also testified that she wasn't currently speaking to her ex-partner.

The Appellant's Overpayment

[19] During the hearing, the Appellant confirmed she had requested that her overpayment be written off. However, I have no authority to write-off the Appellant's overpayment.⁵ 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.

[20] So, the Appellant can ask the Commission to write-off her overpayment. Or she can contact the Canada Revenue Agency (CRA) to discuss payment arrangements.

Conclusion

[21] The appeal is dismissed.

[22] The Appellant wasn't entitled to more than a combined total of 40-weeks of EI parental benefits.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁵ *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).