



Citation: *NN v Canada Employment Insurance Commission*, 2025 SST 439

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (707038) dated January 15, 2025
(issued by Service Canada)

Tribunal member: Laura Hartslief

Type of hearing: Videoconference

Hearing date: March 18, 2025

Hearing participants: Appellant
Sudhir Khakhria, Interpreter

Decision date: March 18, 2025

File number: GE-25-503

Decision

[1] The appeal is dismissed.

[2] The Appellant is only entitled to 5 weeks of standard parental benefits. The Appellant received an additional 17 weeks of parental benefits that she was not entitled to receive and this created an overpayment.

[3] The law does not allow me to reverse the Commission's decision about the weeks of parental benefits or the overpayment.

[4] The Commission acted judicially when it decided to exercise its discretion to reconsider the Appellant's claim because she had been overpaid parental benefits.

Overview

[5] The Appellant and her spouse selected standard parental benefits and they received a combined total of **57** weeks of benefits.

[6] There is no dispute that the Appellant received **17** weeks more than the maximum number of **40** weeks that is allowed to be shared between spouses. This created an overpayment.

[7] The Commission has the power to reconsider a claim under section 52 and it exercised its discretion judicially in doing so.

[8] The Appellant understands that she received an additional **17** weeks of parental benefits that she was not entitled to receive. However, the Appellant says she was not aware of the **40**-week maximum when she and her husband applied for benefits. The Appellant says she should not be held responsible for the resulting overpayment.

[9] For the following reasons, I find the Commission acted judicially when it reconsidered the Appellant's claim for parental benefits. I also find that the Appellant received **17** more weeks of parental benefits than she was entitled to receive and I have no discretion to write-off the resulting overpayment.

Issues

[10] Did the Commission act judicially when it reconsidered the Appellant's claim for parental benefits?

[11] Was the Appellant entitled to receive the 22 weeks of standard parental benefits she received?

[12] If not, is she responsible for paying back the benefits she received by mistake?

Analysis

Did the Commission act judicially when it reconsidered the Appellant's claim for parental benefits?

[13] Section 52 of the Act says that the Commission "may reconsider a claim for benefits" even after benefits have been paid to a person¹. 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 paid². However, just because the Commission is allowed to reconsider a claim for benefits does not mean that it should reconsider a claim.

[14] 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 factors³. 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

¹ See section 52(1) of the EI Act.

² *Canada Employment Insurance Commission v BB*, 2024 SST 89 (AD-23-821)

³ *Purcell* A-694-94(FCA)

reconsideration policy.⁴ The Commission should not consider the claimant's personal factors – such as ability to pay or stress⁵.

[15] Specifically, the Commission may reconsider a claim within 36 months after benefits have been paid⁶ or within 72 months if the Commission believes that a false or misleading statement was made in connection with a claim⁷.

[16] 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.

[17] 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 April 26, 2024.⁸ The parental benefits the Commission looked at were for the period from June 20, 2021, to November 20, 2021⁹, which is within 36 months of the decision to reconsider.

[18] 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 manner¹⁰.

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

⁴ Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

⁵ *Molchan* 2024 FCA 46; *Al-Harbawi* FCA 148

⁶ See section 52(1) of the EI Act

⁷ See section 52(5) of the EI Act

⁸ See GD3-25

⁹ See GD3-19-21

¹⁰ 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 arbitrary¹¹.

[20] The Federal Court in *Molchan* notes that while the Commission has a reconsideration policy, it is not law¹². 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 received¹³.

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

[22] At the hearing, I asked the Appellant for her response to whether the Commission acted judicially when it reconsidered her claim for parental benefits. The Appellant provided no information to suggest that the Commission discriminated against her, acted in bad faith or considered any irrelevant factors when it reconsidered her claim. Instead, the Appellant's primary position is that, regardless of the Commission's reconsideration, I should "forgive" the overpayment because she is experiencing financially difficulties.

[23] Based on the evidence before me, I am not satisfied that the Commission failed to act judicially when it reconsidered the Appellant's claim for parental benefits. While I understand the Appellant's position regarding the financial impact of the Commission's decision, and I deeply sympathize with her situation, there is insufficient evidence

¹¹ *T-Giorgis v Canada (Attorney General)*, 2024 FCA 47 at para. 59

¹² *Molchan* para 20

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

before me to establish that the Commission failed to act judicially when it reconsidered the Appellant's claim for parental benefits.

[24] The fact is that the Appellant received **17** 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 the Appellant was paid benefits that were "contrary to the structure of the EI Act¹⁴" 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 the [standard] parental benefits, they can receive up to a combined total of **40** weeks¹⁵." This suggests to me that the Appellant "ought to have known there was no entitlement to the benefits¹⁶" she received and the Commission's policy allows the Commission to reconsider the Appellant's claim for those benefits.

[25] 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.

Is the Appellant entitled to receive the 22 weeks of standard parental benefits she received?

[26] When you apply for EI parental benefits, you need to choose between the standard option and the extended option.¹⁷ When parental benefits are shared, both parents are required to make the same choice - either standard or extended. The first parent who completes the EI application binds the other parent to the same option¹⁸.

¹⁴ See Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

¹⁵ See GD3-8

¹⁶ See Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles*

¹⁷ 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.

¹⁸ Subsection 23(1.3) of the EI Act.

The maximum number of weeks of shared parental benefits in respect of the same child cannot exceed 40 weeks for standard parental benefits or 69 weeks for extended parental benefits¹⁹.

[27] There is no dispute that the Appellant's spouse received **35** weeks of standard parental benefits²⁰. The Appellant received **22** weeks of standard parental benefits between June 20, 2021, to November 20, 2021²¹. The Appellant and her spouse received a combined total of **57** weeks of standard parental benefits.

[28] The EI Act says that, when two major attachment claimants share standard parental benefits, the combined number of weeks of benefits they receive cannot exceed **40** weeks²². This means that the Appellant received **17** weeks of benefits that she was not entitled to receive. The Appellant was only entitled to receive **5** weeks of benefits because her spouse received **35** weeks of benefits. As the Appellant actually received **22** weeks of standard parental benefits, this means she received **17** weeks of benefits that she was not entitled to receive.

[29] The Appellant confirmed at the hearing that she understands this and does not dispute that she received **17** weeks of parental benefits that she was not entitled to receive. However, the Appellant says that she made a simple mistake because she did not understand that she and her husband could only receive a combined total of **40** weeks of parental benefits.

[30] Based on the evidence before me, I am not satisfied that the Appellant was entitled to receive the **22** weeks of parental benefits she received. Instead, the Appellant was only entitled to receive **5** weeks of benefits and this means she received **17** weeks of benefits she was not entitled to receive.

¹⁹ See subsection 23(4) and (4.1) of the EI Act

²⁰ See GD3-16

²¹ See GD3-19-21

²² See subsection 23(4) and (4.1) of the EI Act

Is the Appellant responsible for the overpayment?

[31] There is no dispute that the Appellant received **17** weeks of standard parental benefits that she was not entitled to receive. This resulted in an overpayment of approximately \$11,000²³. The Appellant says that paying back this overpayment will worsen the already challenging financial situation that she and her family are experiencing.

[32] The Appellant gave detailed testimony regarding her current financial situation. The Appellant says that her husband is the sole income earner for their family as she has been unable to return to work following the birth of their second child. This is because the Appellant has not been able to find childcare before and after school for their two small children. The Appellant says that she and her husband have several outstanding debts which include bank loans and credit card debt. The Appellant says that she would experience even more financial hardship if she were required to repay the \$11,000.00 in benefits which she received by mistake. The Appellant also described the extreme emotional toll it would take on her and her family if she were required to pay back \$11,000.00 to the Commission. The Appellant described the current stress and struggles with depression that she and her husband are facing in light of their financial challenges.

[33] In support of her testimony, the Appellant provided several bank documents and bills which confirm her testimony that she and her husband have several outstanding loans²⁴. These documents include three credit card bills, a car loan document and a bank statement for a line of credit. All of these documents support the Appellant's testimony that she and her family are currently experiencing financial difficulties.

[34] The Appellant gave her 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 that she and her family are currently experiencing financial difficulties. I believe the

²³ See GD3-36

²⁴ See GD2-12-17

Appellant when she says that paying back these benefits will create financial difficulty and emotional stress for her and her family.

[35] While I sympathize with the Appellant's situation, for the reasons already outlined, I am satisfied that the Appellant received 17 weeks of parental benefits that she was not entitled to receive. This means the Appellant is required to pay back the benefits she received by mistake. A person who receives EI benefits to which they are not entitled must return the amount wrongly paid²⁵.

[36] 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 she received by mistake.

[37] 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.²⁶ The Appellant may decide to request a write-off of his overpayment due to financial hardship. To do this, she may contact her 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".

[38] 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.

[39] In any case, and for all the reasons already stated, I find that the Appellant received 17 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. The Appellant received benefits that were "contrary to the structure of the Act" and the Commission was entitled to reconsider the Appellant's claim pursuant to section 52. For these reasons, I find that the Commission acted judicially when it reconsidered

²⁵ EI Act Sections 43-46.1 and 65

²⁶ See EI Regulations section 56(1)

the Appellant's claim for parental benefits. This means the Appellant's appeal is dismissed.

Conclusion

[40] The Appellant's appeal is dismissed.

Laura Hartsliet

Member, General Division – Employment Insurance Section