



Citation: *SP v Canada Employment Insurance Commission*, 2025 SST 461

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

## **Decision**

**Appellant:** S. P.

**Respondent:** Canada Employment Insurance Commission

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

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**Tribunal member:** Gary Conrad

**Type of hearing:** In writing

**Decision date:** January 2, 2025

**File number:** GE-24-4074

## Decision

[1] The appeal is allowed.

[2] The Appellant is entitled to 35 weeks of standard parental benefits, as one, she cannot change her election after it has been made, and two, regardless of that, the only thing that could disentitle her is if her ex-spouse had received more than 5 weeks of benefits.

[3] The Canada Employment Insurance Commission (Commission) says the Appellant and her ex-spouse combined received more than the 40 weeks of parental benefits, so the Appellant is only entitled to 5 weeks of parental benefits, but they have failed to prove this, they simply state it, which is insufficient.

[4] This means the Commission has not proven that the Appellant was overpaid weeks of parental benefits, so she does not have to pay back any of her 35 weeks of parental benefits.

## Overview

[5] The Commission paid the Appellant a total of 35 weeks of parental benefits.

[6] They now say that the Appellant was only entitled to receive 5 weeks of parental benefits because her ex-spouse requested 35 weeks and the total that can be split between two parents is 40 weeks. They also say the Appellant requested her weeks be changed to only 5 weeks of parental benefits.

[7] The Commission says this means the Appellant needs to repay 30 weeks of parental benefits she received to which she was not entitled.

[8] I must decide how many weeks of parental benefits the Appellant is entitled to.

## **Matter I have to consider first**

### **Form of hearing**

[9] The Appellant says that she has no preference for the form of hearing, she just wants it to be the easiest and fastest method possible.<sup>1</sup>

[10] In light of the Appellant's request, I chose in writing, since that is by far the easiest (it involves no work for the Appellant) and the fastest, since she does not have to wait for me to book her a teleconference or videoconference hearing.

[11] Finally, I would note, that while not binding, I find the Appeal Division's statement that a hearing in writing is procedurally fair to an appellant,<sup>2</sup> persuasive.

### **Issue**

[12] How many weeks of parental benefits can the Appellant get?

## **Analysis**

### **Weeks of parental benefits**

#### **What the Commission says**

[13] The Commission says that the Appellant originally applied to receive 35 weeks of standard parental benefits. They say this happened before the other parent applied, and that the other parent also requested 35 weeks of benefits.<sup>3</sup>

[14] The Commission says they spoke to the Appellant about the fact that her and her ex-spouse had received more than the allowable total of 40 weeks of benefits between them. They say the Appellant asked to change her entitlement to 5 weeks of standard parental benefits.

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<sup>1</sup> GD02-3

<sup>2</sup> *WL v Canada Employment Insurance Commission*, 2024 SST 872 at paras 24 and 25.

<sup>3</sup> GD04-4

[15] The Commission says they made this change for the Appellant, and this has now resulted in a 30-week overpayment, since the Appellant is only entitled to 5 weeks of standard parental benefits.<sup>4</sup>

### **What the Appellant says**

[16] The Appellant's arguments relate almost entirely to being unable to afford to repay the massive overpayment she is facing.

### **My findings**

[17] When a claimant applies for EI benefits no benefit period shall be established unless the claimant proves they are qualified to receive benefits and provides any other information the Commission says they need to establish a claim.<sup>5</sup>

[18] Once this is done, the Commission, shall, which means they must, decide whether the claimant is qualified to receive benefits.<sup>6</sup>

[19] When it comes to standard parental benefits it is possible for the parents of a child to split these benefits between themselves. They can split a maximum of 40 weeks of benefits,<sup>7</sup> with no one parent being able to receive more than 35 weeks of standard parental benefits.<sup>8</sup>

[20] Parental benefits are payable starting the week the child was born and ending 52 weeks after that week.<sup>9</sup>

[21] I accept the Appellant has provided all the information necessary for the Commission to start a benefit period for her and to show she qualifies to be paid standard parental benefits.

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<sup>4</sup> GD04-5

<sup>5</sup> Section 48 of the *Employment Insurance Act*

<sup>6</sup> Section 48(3) of the *Employment Insurance Act*

<sup>7</sup> Section 23(4) of the *Employment Insurance Act*

<sup>8</sup> Section 23(4.11) of the *Employment Insurance Act*

<sup>9</sup> Section 23(2) of the *Employment Insurance Act*

[22] I accept this because the Commission does not dispute this,<sup>10</sup> I see no evidence to suggest otherwise, and the Appellant was actually paid standard parental benefits.

[23] I accept the Appellant was paid 35 weeks of standard parental benefits as no party disputes this and the payment information provided by the Commission shows as such.<sup>11</sup>

[24] So, the real question is, how many of those 35 weeks is the Appellant entitled to? The answer, all of them.

[25] The first thing I need to address is the Commission's argument that the Appellant requested a change in her entitlement from 35 weeks of standard to 5 weeks, so she has a 30-week overpayment based on this.

[26] I find that this change cannot be made. The Appellant's initial request was for 35 weeks, and she was paid 35 weeks, she cannot amend this after she has been paid her weeks of benefits.

[27] The Federal Court of Appeal (FCA) has said that once paid, parental benefit selections cannot be changed.<sup>12</sup> The Commission even appears to agree as such, since in their own submissions as they state that according to the law, claimants can change their total number of weeks that each parent wishes to receive at any time **before** benefits are paid (emphasis added).<sup>13</sup>

[28] Since the Appellant was paid her 35 weeks of parental benefits from September 24, 2023, to May 25, 2024,<sup>14</sup> and the request to change the weeks of benefits happened

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<sup>10</sup> Disputing how many weeks she is entitled to is not the same as saying she does not qualify. The Commission agrees she can get standard parental benefits, what is in dispute is the number of weeks she can get.

<sup>11</sup> GD03-28 to 31

<sup>12</sup> *Canada (Attorney General) v Hull*, 2022 FCA 82; *Canada (Attorney General) v Jeffers*, 2023 FCA 52; *Canada (Attorney General) v Pettinger*, 2023 FCA 51; and *Canada (Attorney General) v Johnson*, 2023 FCA 49 at para 15 which says "neither the Commission nor the Social Security Tribunal has the jurisdiction ... to change an **election** after it is made and parental benefits have been paid."

<sup>13</sup> GD04-4

<sup>14</sup> GD04-1

in July 2024,<sup>15</sup> this request was made **after** she was paid parental benefits. So, as per the FCA, and even the Commission's own submissions, this change cannot be made.

[29] So, since the Appellant qualifies for standard parental benefits, I find that the only factor which would prevent the Appellant from being entitled to her 35 weeks of benefits would be if they were more than the amount she was allowed to collect under the law.

[30] In other words, if her ex-spouse collected more than 5 weeks of standard parental benefits, the Appellant would not be entitled to 35 weeks, since the maximum number of weeks that can be split between two parents is 40.

[31] I find the Appellant is entitled to all 35 weeks of her standard parental benefits, as there is insufficient evidence to show otherwise.

[32] I find the Commission simply saying that the Appellant's ex-spouse requested 35 weeks of parental benefits<sup>16</sup> is not sufficient to prove he did request that amount or was ever paid that amount.

[33] As the FCA has stated, the Commission is required to produce some evidence of their claims, not just merely assert<sup>17</sup> that the Appellant's ex-spouse received 35 weeks of standard parental benefits. They have failed to do this.

[34] The Commission is in control of the EI program. They could have sent me a copy of the Appellant's ex-spouse's application showing how many weeks of parental benefits he requested, like they sent me the Appellant's, but they did not.

[35] They could have sent me a copy of the payment information of the ex-spouse's benefits showing all the parental benefit payments they issued to him, like they did with the Appellant, but they did not.

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<sup>15</sup> GD03-27

<sup>16</sup> GD04-4

<sup>17</sup> *Canada (Attorney General) v Terrion*, 2013 FCA 97 at para 16.

[36] While I do not draw any adverse inference from their failure to provide said evidence, it is highly questionable to me why they would not, when the entire crux of their case is based on how many weeks of benefits the Appellant's ex-spouse received.

[37] They instead decided to do nothing but state that the Appellant's ex-spouse applied for and received 35 weeks of parental benefits, which, as the FCA has said, is not sufficient.

## **Conclusion**

[38] The appeal is allowed.

[39] The Appellant's choice of weeks of parental benefits cannot be changed after they have been paid, so her choice of getting 35 weeks of standard parental stands.

[40] Regardless, the Commission has failed to show that the Appellant was overpaid weeks of standard parental benefits and should not be entitled to all 35 weeks.

[41] This means the Appellant does not have to pay back any of her 35 weeks of standard parental benefits she received.

Gary Conrad

Member, General Division – Employment Insurance Section