



Citation: *Canada Employment Insurance Commission v HS*, 2025 SST 1087

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Julie Duggan

**Respondent:** H. S.  
**Representative:** H. T.

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**Decision under appeal:** General Division decision dated March 26, 2025  
(GE-25-391)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** July 7, 2025

**Hearing participants:** Appellant's representative  
Respondent  
Respondent's representative

**Decision date:** October 20, 2025

**File number:** AD-25-258

## Decision

[1] The Canada Employment Insurance Commission's appeal is allowed. The General Division made an error of law in its substituted decision.

[2] I have substituted with my own decision. The Commission exercised their discretion in a judicial manner when it reconsidered the claim. The Commission's reconsideration decision on the issue of parental benefits is maintained.

## Overview

[3] H. S. is the Claimant. She applied for Employment Insurance maternity and parental benefits.<sup>1</sup> She elected to receive standard parental benefits. On her application she asked for 35 weeks of parental benefits; the Commission paid her 35 weeks of parental benefits from December 6, 2020, to August 7, 2021.<sup>2</sup>

[4] The Commission later reconsidered her claim and determined that she was overpaid 30 weeks of parental benefits. It found the Claimant's partner was the **first** one to claim standard parental benefits and had already received 35 weeks for the period from September 27, 2020, to May 29, 2021.<sup>3</sup> This resulted in a notice of debt issued against the Claimant totalling \$15,000.00.<sup>4</sup>

[5] The *Employment Insurance Act* (EI Act) says that when parental benefits are shared between parents, 40 weeks is the maximum amount that can be paid.<sup>5</sup> This information is reflected in the application for benefits.<sup>6</sup>

[6] The General Division allowed the Claimant's appeal. It found that the Commission reconsidered the claim within the 36-month period, but it failed to act

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<sup>1</sup> See application form at pages GD3-4 to GD3-16. The Claimant applied for benefits on October 8, 2020, and her benefit period was made effective October 4, 2020.

<sup>2</sup> See pages GD3-8 to GD3-10. The application form asks, "How many weeks do you wish to claim?" Also, see payment charts at pages GD3-23 to GD3-24, GD3-29 to GD3-30 and GD3-59.

<sup>3</sup> See Commission's initial and reconsideration decision at pages GD3-25 to GD3-26 and GD3-50.

<sup>4</sup> See Notice of Debt at pages GD3-31 to GD3-32.

<sup>5</sup> See sections 23(4) and 23(4.11) of the *Employment Insurance Act* (EI Act).

<sup>6</sup> See pages GD3-8 to GD3-9.

judicially when it reconsidered the claim. The General Division then substituted with its own decision, finding that the claim should not be reconsidered.<sup>7</sup>

[7] The Commission applied to the Appeal Division arguing that the General Division made errors of law.<sup>8</sup>

[8] I have found that the General Division made an error of law.<sup>9</sup> I am substituting with my own decision and giving the decision the General Division should have given.<sup>10</sup>

## **Preliminary Matters**

### **The Claimant was represented by her partner at the Appeal Division**

[9] The Claimant was represented by her partner, H. T., at the Appeal Division hearing. He presented arguments on her behalf and, occasionally, she provided some detail to the arguments during the hearing.

[10] In this decision, when I refer to the “Claimant,” I am referring to the arguments that the Claimant and her partner made at the hearing.

### **The only issue under appeal is whether the Commission exercised its discretion properly when it reconsidered the Claimant’s entitlement to parental benefits**

[11] There was some procedural history with this file. The Claimant appealed the Commission’s initial decision to the Federal Court.<sup>11</sup> The matter was sent back to the Commission to render a reconsideration decision first.<sup>12</sup>

[12] The Commission made its reconsideration decision on December 17, 2024, maintaining its initial decision that the Claimant was only entitled to get 5 weeks of

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<sup>7</sup> See General Division decision at pages AD1-8 to AD1-17.

<sup>8</sup> See pages AD1-1 to AD1-17 and AD4-1 to AD4-8.

<sup>9</sup> See section 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>10</sup> See section 59(1) of the DESD Act.

<sup>11</sup> See Commission’s initial decision at pages GD3-25 to GD3-26.

<sup>12</sup> See sections 112 and 113 of the EI Act.

parental benefits. On the same date, the Commission refused to write-off the overpayment (this is not a “reconsideration” decision).<sup>13</sup>

[13] When the Claimant appealed to the General Division, she included the Commission’s reconsideration decision about parental benefits and the write-off refusal.<sup>14</sup> The General Division didn’t address whether it had jurisdiction to write-off the overpayment (presumably because it found the claim should not be reconsidered which would result in no overpayment).

[14] At the Appeal Division hearing, the Claimant initially said that the write-off refusal was “the decision” she appealed and referred to section 56(2) of the *Employment Insurance Regulations* (EI Regulations). This provision deals with the write-off of amounts wrongly paid, penalties and interest.

[15] The Claimant later clarified that she wasn’t appealing the write-off refusal and restated that the Tribunal has jurisdiction to decide whether the Commission had exercised its discretion in a judicial manner.<sup>15</sup>

[16] I find that the question of write-off is outside of the Tribunal’s jurisdiction. Section 112.1 of the EI Act says that the Tribunal doesn’t have jurisdiction to write off an overpayment.<sup>16</sup> Only the Commission has the power to write-off an overpayment under s. 56 of the EI Regulations.<sup>17</sup>

[17] This means I can’t make any decisions about the Commission’s refusal to write-off the overpayment. If the Claimant wishes to dispute that decision, that would be done by applying for judicial review to the Federal Court as set out in the Commission’s write-off decision.<sup>18</sup>

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<sup>13</sup> See Commission’s refusal to write-off the overpayment at pages GD3-52 to GD3-53.

<sup>14</sup> See pages GD2-1 to GD2-21.

<sup>15</sup> See section 52 of the EI Act.

<sup>16</sup> See section 112.1 of the EI Act.

<sup>17</sup> See section 56 of the *Employment Insurance Regulations* (EI Regulations).

<sup>18</sup> See pages GD2-11 to GD2-12.

[18] The Claimant can also contact the Debt Management Call Centre with the Canada Revenue Agency at 1-866-864-5823 and ask about debt relief due to financial hardship.

[19] The only issue under appeal is the Commission's exercise of discretion under s. 52 of the EI Act to reconsider the Claimant's entitlement to parental benefits.

**I will consider the Claimant's arguments about whether the Commission reconsidered the parental benefit claim within the legislated timeframes**

[20] The Commission is the party who appealed to the Appeal Division. While the Claimant did not cross appeal the General Division's decision, she did argue that the General Division made an error when it determined that the claim was reconsidered within the 36-month period.

[21] This issue was fully addressed at the General Division hearing and at the Appeal Division hearing. It is disputed between the parties. Section 52 limits the amount of time within which the Commission may reconsider a claim. So, I will first review whether the General Division made any reviewable errors when it decided that the claim was reconsidered within the 36-month period set out in s. 52(1) of the EI Act.

## **Issues**

[22] The issues are:

- a) Did the General Division reconsider the claim within the legislated timeframe?
- b) Did the General Division make an error of law in its substituted decision by considering an *irrelevant* factor, namely, that the Commission had failed to administratively cross-check the Claimant and her partner's applications?
- c) If so, how should the error or errors be fixed?

## Analysis

[23] An error of law happens when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it. If the General Division made an error of law, then I can intervene.<sup>19</sup>

### **The General Division didn't make an error of law when it concluded that the Commission had reconsidered the claim within the 36-month period**

[24] The Claimant argues that the General Division erred because the Commission didn't reconsider the claim within the 36-month period because she only became aware of the debt in June 2024 and didn't get a copy of the notice of debt.<sup>20</sup>

[25] The Claimant relied on a decision made by the Appeal Division called *M.G. v Canada Employment Insurance Commission*, 2018 SST 1150, to support her position.

[26] The Commission argues that the General Division didn't make an error because they submit that all operations were completed within the 36-month period, by September 12, 2023, when the notice of decision was sent to the Claimant.<sup>21</sup> This resulted in an overpayment of \$15,000.00.

[27] Section 52(1) of the EI Act says that the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.<sup>22</sup>

[28] When the Commission reconsiders and determines that a person is not entitled to receive benefits, it is required under s. 52(2) of the EI Act to calculate the amount owing and to notify them. Under s. 52(3) of the EI Act, the amount owing is calculated, and the person is liable to repay the overpayment for benefits they weren't entitled to receive based on s. 43 of the EI Act.

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<sup>19</sup> See section 58(1)(b) of the DESD Act.

<sup>20</sup> See pages AD3-3 and GD3-33.

<sup>21</sup> See pages AD4-8 and GD3-31 to GD3-32.

<sup>22</sup> Section 52(1) of the EI Act says, "Despite section 111, but subject to subsection (5), the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable."

[29] The General Division had to first consider whether the Commission completed the required steps within the 36-month timeframe set out in s. 52(1) of the EI Act.

[30] The General Division found that parental benefits were paid to the Claimant from December 6, 2020, until August 7, 2021.<sup>23</sup> And it found the Commission's reconsideration decision was issued on September 12, 2023.<sup>24</sup>

[31] The General Division acknowledged in its decision that it didn't have enough evidence to make a finding on *when* the Commission prepared and issued the notice of debt. But it noted that the Claimant didn't dispute that she got the Commission's decision and also received account summaries/monthly statements showing the amount of the debt owing.<sup>25</sup> And this is what led the Claimant to ask the Commission for an explanation about the debt on June 10, 2024.<sup>26</sup>

[32] The General Division concluded that the Commission had reconsidered the claim within the 36-month period set out in s.52(1) even if she didn't have a full explanation for the debt until June 2024.<sup>27</sup>

[33] The General Division relied on two decisions *Canada (Attorney General) v LaForest*, A-607-87, and *Briere v Canada (Attorney General)*, A-637-86, that say the Commission must complete its review, make any recalculation on the claim, and notify a claimant of its decision and the amount of any overpayment within the 36-month window.<sup>28</sup>

[34] I find that the General Division didn't make an error of law when it concluded that the Commission had completed all of the steps required within the 36-month period. It correctly stated the law and its findings on this issue are consistent with the evidence before it.

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<sup>23</sup> See payment chart at pages GD3-22 to GD3-24.

<sup>24</sup> See paragraph 16 of the General Division decision.

<sup>25</sup> The Claimant told the Commission she was getting monthly statements from the Canada Revenue Agency at page GD3-45.

<sup>26</sup> See paragraphs 17–18 of the General Division decision.

<sup>27</sup> See paragraphs 16–19 of the General Division decision.

<sup>28</sup> See paragraph 11 of the General Division decision.

[35] It was undisputed that the Claimant's partner began receiving parental benefits *before* she made her claim for parental benefits.<sup>29</sup> She opted to be exempt from filing reports.<sup>30</sup>

[36] Based on s. 52(1) of the EI Act, the Commission can reconsider a claim for benefits *within* 36 months after benefits were paid. The evidence shows that the Claimant got parental benefits from December 6, 2020, and the last parental benefit payment was made in the week ending August 7, 2021.<sup>31</sup>

[37] The final parental benefit payment was for the week from August 1, 2021, to August 7, 2021. This means that the Commission's 36-month deadline to reconsider that particular claim was 36 months—to August 7, 2024, to complete all the operations.

[38] The Commission's decision dated September 12, 2023, says they are unable to pay her parental benefits from January 10, 2021, because the benefits have already been paid to one or more persons. It says that if she owes money, she will receive a notice of debt. If repayment is an issue, it also says to call Canada Revenue Agency listed on the notice of debt.<sup>32</sup>

[39] The statement date for the notice of debt is September 23, 2023, and it shows the Claimant's mailing address. The amount is for \$15,000.00. It says "parental std childcare" and under the reason for the debt it says, "an overpayment resulted due to an indefinite disentitlement."<sup>33</sup>

[40] The evidence shows that the Claimant called the Commission to inquire about the debt on June 10, 2024, noting that they had "recently" returned to Canada. She told

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<sup>29</sup> See paragraph 40 of the General Division decision.

<sup>30</sup> See page GD3-10.

<sup>31</sup> See payment chart at pages GD3-22 to GD3-24.

<sup>32</sup> See Commission's initial decision at page GD3-25 to GD3-26. Also see page GD3-29 to GD3-30, it shows that the Claimant was only entitled to 5 weeks of parental benefits from December 6, 2020, to January 9, 2021.

<sup>33</sup> See pages GD3-31 to GD3-32.

the Commission that she received a letter saying she owes \$15,000.00 and doesn't understand why.<sup>34</sup>

[41] For some added context, the Claimant and her partner were out of Canada for medical reasons from late 2022. It seems that the Claimant only saw the Commission's decision and account summaries/monthly statements when she returned to Canada around the end of May 2024/early June 2024 and opened her mail.<sup>35</sup>

[42] I see no reason to interfere with the General Division's finding that the Commission had completed its review of the claim within the 36-month period set out in s. 52(1) of the EI Act.<sup>36</sup> The evidence shows that the Commission completed its review, recalculated the claim, and *notified* the Claimant of its decision and debt owing in September 2023, which was within the 36-month period.<sup>37</sup>

[43] Section 52(3) of the EI Act says that "if the Commission decides that a person has received money by way of benefits for which the person was not qualified or to which the person was not entitled, or has not received money for which the person was qualified and to which the person was entitled, the Commission must calculate the amount of the money and notify the claimant of its decision."

[44] The Commission's decision and account summaries/monthly statements were mailed to the Claimant's address—this fact wasn't disputed between the parties.<sup>38</sup> The Claimant received them, albeit later, in late May 2024/early June 2024 when she returned to Canada and opened her mail because that's what led her to calling the Commission on June 10, 2024, to inquire further about the \$15,000.00 debt she owed.<sup>39</sup>

[45] I acknowledge that the Claimant is arguing she didn't *receive* the notice of debt (the one in the file dated September 23, 2023, at pages GD3-31 to GD3-32) and that it was possibly generated at a later date. However, even if the Claimant didn't receive that

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<sup>34</sup> See page GD3-33.

<sup>35</sup> Listen to the audio recording of the General Division hearing at 1:12:29 to 1:13:00. See page GD3-43.

<sup>36</sup> See paragraph 19 of the General Division decision.

<sup>37</sup> See Commission's reconsideration decision at pages GD3-25 to GD3-26.

<sup>38</sup> See paragraph 18 of the General Division decision.

<sup>39</sup> See page GD3-33.

particular document, it doesn't mean that she wasn't "notified" of the Commission's decision and the "amount of money she owed" as required by s.52(3) of the EI Act. As the General Division noted, the Claimant got the Commission's decision and account summaries/monthly statements showing the amount of the debt, even if she didn't get a full explanation of the debt until her inquiry on June 10, 2024.<sup>40</sup> I see no reviewable error with this finding.

[46] In *Briere v Canada (Attorney General)*, A-637-86 the Federal Court of Appeal found that the word "notify" means, in its everyday sense, "to inform expressly" and "to make known, to give notice, to inform." It held that the Commission was obligated to ensure that it had the correct address in order to notify the person, within the prescribed time of the overpayment.

[47] The evidence shows that the Commission did what they were supposed to do—which was to calculate the amount of money and notify her of its decision. This happened in September 2023 and was within the 36-month period. They notified her by mailing the decision which followed with the account summaries/monthly statements of the debt to her existing address on file.<sup>41</sup> In my view, the Claimant's own delay in opening her mail doesn't mean she wasn't notified of the decision and the debt owing.

[48] Finally, the *M.G.* decision relied on by the Claimant is not relevant because the Commission isn't relying on a false or misleading statement or representation made in connection with the claim to extend the period to 72 months under s. 52(5) of the EI Act. The Commission is relying on s. 52(1) of the EI Act, which gives them 36 months to reconsider the claim after the benefits have been paid. As a result, I find the *M.G.* decision is not helpful in this particular case.<sup>42</sup>

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<sup>40</sup> See paragraphs 16–19 of the General Division decision.

<sup>41</sup> See paragraph 18 of the General Division decision and pages GD3-45 to GD3-46.

<sup>42</sup> In the *M.G.* decision, the Commission reconsidered the claim close to 6 years later when it discovered that the wife had been overpaid. The Appeal Division found that the General Division had made errors of law and substituted with its own decision. It found that the wife hadn't made a false or misleading statement or representation in connection with her claim, so it couldn't extend the period to 72 months to reconsider the claim based on s.52(5). It concluded that the Commission only had 36 months to reconsider the claim based on s.52(1). So, it was out of time and could not seek recovery of the parental benefits that had been overpaid.

[49] The General Division made no reviewable errors when it concluded that the claim was reconsidered within the 36-month period.

**The General Division made an error of law in its substituted decision when it gave weight to an irrelevant factor**

[50] The General Division's decision shows that it gave the "most weight" to the lack of false or misleading statements by either parent, the fact that no new information was provided (the Commission had all the information it needed to make its decision), and the Commission's administrative errors, including failing to cross-check information provided by both parents.<sup>43</sup>

[51] The Commission says that the General Division erred when it gave weight to an irrelevant factor, namely that the Commission had failed to do an administrative cross-check of the applications.<sup>44</sup> It argues that a cross-check of the applications was done, but there is no legal requirement to do this *before* benefits were paid to the Claimant.

[52] The Claimant argues that there may not be a legislative requirement for the Commission to do an administrative cross-check of an application, but they have the tools to do it, and it shouldn't take them 3–4 years to do.

[53] I find that the General Division made an error of law because it gave significant weight to an irrelevant factor, namely that the Commission had failed to cross-check the applications and information provided by both parents.<sup>45</sup>

[54] The Commission can reconsider a claim for benefits within 36 months after the benefits have been paid under s. 52(1) of the EI Act. But there is no legal requirement for the Commission to cross-check applications *before* benefits are paid. The delay in

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<sup>43</sup> See paragraph 48 of the General Division decision.

<sup>44</sup> See paragraphs 47–48 of the General Division decision.

<sup>45</sup> See section 58(1)(b) of the DESD Act.

addressing the Claimant's entitlement (for example, cross-checking her application sooner than it did) is not relevant as the Commission acted within the statutory period.<sup>46</sup>

## **Fixing the Error**

### **I will substitute it with my own decision**

[55] There are two options for fixing an error. I can send the appeal back to the General Division for reconsideration or I can give the decision the General Division should have made.<sup>47</sup> If substituting, I can make any necessary findings of fact.<sup>48</sup>

[56] The Commission argues that the General Division's decision should be rescinded, and the Appeal Division should substitute with its own decision. It says that the record is complete, so it doesn't need to go back to the General Division.

[57] The Claimant agrees that if there is an error, then the Appeal Division should substitute with its own decision.

[58] I will substitute with my own decision and give the decision the General Division should have given. Both parties have had a full and fair opportunity to present their cases and the record is complete.

### **Factors relevant to the exercise of discretion under s. 52 of the EI Act**

#### **The Commission had 36 months to reconsider a claim under s. 52(1) of the EI Act**

[59] I have to first decide whether the Commission was within the legislated time limit set out in s. 52(1) of the EI Act.

[60] As noted above, the Commission has 36 months to complete its review, make any recalculation on the claim, and notify a claimant of its decision and the amount of

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<sup>46</sup> See *Molchan v Canada (Attorney General)*, 2024 FCA 46 at paragraph 44.

<sup>47</sup> See section 59(1) of the DESD Act.

<sup>48</sup> See section 64(1) of the DESD Act.

any overpayment.<sup>49</sup> The Commission can only exercise its discretion to reconsider within that period of time.

[61] I find that the Commission acted within the 36-month period set out in s. 52(1) of the EI Act. I am adopting the General Division’s findings on this issue (see reasoning set out above in paras. 24–49).<sup>50</sup>

### **The EI Act doesn’t say what factors are relevant to the exercise of discretion**

[62] Section 52 of the EI Act doesn’t say what factors are relevant to the exercise of discretion. The law doesn’t tell the Commission when it should or should not exercise its discretion to reconsideration, within the time limits.

[63] The Commission developed an internal policy called the *Digest of Benefit Entitlement Principles* (Digest) which provides guidance to its agents. The parties in this case have made arguments about the Digest and I’ve taken notice of its contents.<sup>51</sup>

[64] The Commission’s reconsideration policy requires consideration of whether:<sup>52</sup>

- benefits have been underpaid;
- benefits were paid contrary to the structure of the Act;
- benefits were paid as a result of a false or misleading statement;
- the claimant ought to have known there was no entitlement to the benefits.

[65] The Court in *Canada (Attorney General) v Purcell*, A-694-94, says that to exercise discretion judicially means it can’t be made in bad faith, for an improper

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<sup>49</sup> See section 52 of the EI Act, *Canada (Attorney General) v LaForest*, A-607-87 and *Briere v Canada (Attorney General)*, A-637-86.

<sup>50</sup> See paragraphs 10–19 of the General Division decision.

<sup>51</sup> A similar approach was taken in another Appeal Division decision, see *MS v Canada Employment Insurance Commission*, 2022 SST 933 at paragraphs 39–40.

<sup>52</sup> See section 17.3.3 reconsideration policy in the Digest.

purpose, in a discriminatory manner, consider irrelevant factors or fail to consider relevant factors.<sup>53</sup>

[66] The primary dispute between the parties in this case is about which factors are relevant and irrelevant to the exercise of discretion under s.52 of the EI Act.

[67] The Court in *Molchan v Canada (Attorney General)*, 2024 FCA 46, accepted that factors that are relevant to the exercise of discretion under s. 52 of the EI Act are those that help resolve the tension between finality and accuracy.<sup>54</sup> This means that a person should be able to rely on the finality of a Commission decision, and the Commission also has an interest in decisions that are accurate because mistakes should be corrected.

[68] The Commission says they relied on two things from section 17.3.3 of the reconsideration policy from the Digest, namely that benefits were paid contrary to the structure of the EI Act and benefits were paid as a result of a false or misleading statement.<sup>55</sup>

[69] The Commission is guided by the reconsideration policy, but it isn't law, and they aren't bound by it.<sup>56</sup>

[70] The file shows that the Commission had a written rationale for their decision and noted the following factors were relevant:<sup>57</sup>

- That the Claimant was overpaid parental benefits because the number of weeks claimed by each parent led to a combined total that exceeded the maximum number of weeks allowed by law, so the benefits were paid contrary to the structure of the EI Act.

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<sup>53</sup> See *Canada (Attorney General) v Purcell*, A-694-94.

<sup>54</sup> See *Molchan*, at paragraph 53.

<sup>55</sup> The factors contained in the reconsideration policy are considered as **relevant factors** in paragraph 20 of the *Molchan* decision.

<sup>56</sup> See *Molchan*, at paragraphs 41 and 53.

<sup>57</sup> See Commission's decision reasoning and rationale at page GD3-51.

- That the application form stated when parental benefits are shared between both parents, the maximum number of weeks payable for the same child is 40 weeks and since the Claimant asked for 35 weeks, she provided false information and made a false statement, even if it was unintentional or a misunderstanding.
- That the period under review ran from December 6, 2020, to August 7, 2021, and the decision was issued on September 12, 2023, so the claim was reconsidered within the 36-month period set out in s. 52(1) of the EI Act.<sup>58</sup>

### **Parental benefits were paid contrary to the structure of the Act**

[71] “Contrary to the structure of the Act” refers to “basic elements” that are required to set up a claim and pay benefits.<sup>59</sup> A basic element includes a requirement for a person to meet the specific conditions to receive parental benefits, which includes the determination of the number of weeks of payment and entitlement.

[72] Sometimes the Commission corrects an error on a going forward basis; the error is corrected currently, which means that there is usually not an overpayment.<sup>60</sup> But, if the Commission’s error resulted in a decision that is contrary to the structure of the EI Act, the Commission corrects the error retroactively; this may result in an overpayment.

[73] Whether benefits were paid contrary to the structure of the Act is relevant, but this factor itself is not determinative (meaning that not one factor is determinative because all relevant factors have to be considered).

[74] The law clearly says that when parental benefits are shared between parents, 40 weeks is the maximum amount that can be paid.<sup>61</sup>

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<sup>58</sup> The Commission used the notification week as September 12, 2023, added 4 additional weeks for notification.

<sup>59</sup> See section 17.3.3.2 of the Digest.

<sup>60</sup> See section 17.3.2.2. of the Digest

<sup>61</sup> See sections 23(4) and 23(4.11) of the EI Act.

[75] The evidence shows that the Claimant's partner was the first one to claim parental benefits and got 35 weeks from September 27, 2020, to the week ending May 29, 2021.<sup>62</sup>

[76] The evidence also shows that the Claimant asked for 35 weeks of parental benefits in her application form.<sup>63</sup> Based on her request, the Commission paid her 35 weeks of parental benefits from December 6, 2020, to the week ending August 7, 2021.<sup>64</sup>

[77] Given that the Claimant was sharing parental benefits with her partner, the maximum amount that can be shared is 40 weeks. Since her partner got 35 weeks paid, she could only be paid a maximum of 5 weeks, so she ended up getting an additional 30 weeks of benefits that she wasn't entitled to receive. These benefits were paid contrary to the structure of the Act, and it resulted in a 30-week overpayment.

### **False or misleading statement**

[78] The Commission also relied on the fact that the Claimant made a false statement in her application form by asking for more weeks than she was entitled to receive. It found that she made a false statement because the application form clearly states under the standard option, "if parental benefits are shared, up to a combined total of 40 weeks payable if the child was born."<sup>65</sup> Despite that, the Commission says the Claimant asked for 35 weeks in her application form.

[79] Benefits that are paid as a result of a false or misleading statement is a relevant factor to consider according to the reconsideration policy.<sup>66</sup> Whether a false or misleading statement exists in a particular case is a relevant factor because it goes to tension between finality versus accuracy.

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<sup>62</sup> See payment chart at pages GD3-59 to GD3-60.

<sup>63</sup> See pages GD3-8 to GD3-9.

<sup>64</sup> See overpayment chart at pages GD3-29 to GD3-30.

<sup>65</sup> See page GD3-8.

<sup>66</sup> See section 17.3.3. of the Digest and *Molchan* at paragraph 45.

[80] The parties dispute whether a false or misleading statement existed in this case.

[81] The reconsideration policy refers to false or misleading statements as “any information submitted in respect of a claim for benefit that is untrue. A false statement may arise from an intentional, knowing or negligent action or from an honest mistake resulting in the real or possible payment of benefits. The Commission doesn’t have to prove that a claimant made a false or misleading statement, it only has to show that it could reasonably conclude that a false or misleading statement was made in connection with the benefit claimed.”<sup>67</sup>

[82] There was enough evidence before the Commission to reasonably conclude that this factor existed (i.e., that a false or misleading statement had been made in the Claimant’s application form). At this step, the threshold is low, and the Commission doesn’t have to prove that she actually made a false or misleading statement, they just have to reasonably conclude that one was made in connection with her claim.

[83] The evidence in this case shows the following:

- The Claimant’s child was born August 6, 2020.<sup>68</sup>
- The Claimant’s partner applied for parental benefits on September 25, 2020, and got his first parental benefit payment for the week of September 27, 2020, to October 3, 2020.<sup>69</sup> He asked for and got 35 weeks of parental benefits.<sup>70</sup>
- The Claimant made an application for maternity and parental benefits on October 8, 2020 (which was made effective at the beginning of the week of October 4, 2020).<sup>71</sup> She asked for 35 weeks of parental benefits and to be exempt from filing reports.<sup>72</sup>

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<sup>67</sup> See section 17.3.3.3 of the Digest.

<sup>68</sup> See page GD3-8.

<sup>69</sup> See pages GD3-29 and GD3-54.

<sup>70</sup> See page GD3-59.

<sup>71</sup> See pages GD3-4 to GD3-16.

<sup>72</sup> See pages GD3-9 to GD3-10.

- After receiving maternity benefits from October 4, 2020, to December 5, 2020, the Claimant started getting parental benefits starting the week of December 6, 2020.<sup>73</sup> She collected 35 weeks of parental benefits until the week ending August 7, 2021.<sup>74</sup>

[84] The Claimant pointed out that the application form asked her how many weeks she “wished” for, and she wished for 35 weeks, so that doesn’t amount to making a false statement. She restates that it was the Commission’s error by paying her, so she shouldn’t be responsible to repay.

[85] Respectfully, I disagree with the Claimant. While the application form uses the word “wish” that doesn’t automatically mean she will be entitled to get the number of weeks that she wishes (or asks for) in her application. The law and the application form sets out the maximum number of weeks she can get when sharing parental benefits. Even if the Claimant made an honest mistake in the application form (which may have been the case here), it had the effect of her getting more weeks than she was entitled to receive.

[86] The presence of a false *or* misleading statement is a relevant factor to consider and there was a reasonable basis for the Commission to conclude there was one made. Their applications for benefits were made less than two weeks apart, with both of them asking for 35 weeks of parental benefits. By the time the Claimant started getting parental benefits, her partner had already received around 11 weeks of parental benefits, so her request for 35 weeks of parental benefits exceeded the 40-week maximum outlined in the application form and in law.<sup>75</sup> If the Claimant (and her partner) had carefully read the application form, they would have known that 40 weeks was the

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<sup>73</sup> The Claimant’s got 9 weeks of maternity benefits starting from October 4, 2020, to December 5, 2020, and parental benefits followed from December 6, 2020, to August 7, 2021. See pages GD3-23 to GD3-24, GD3-29 to GD3-30, and GD3-59.

<sup>74</sup> See pages GD3-22 to GD3-23.

<sup>75</sup> The Claimant’s partner started getting parental benefits from September 27, 2020, to May 29, 2021. See page GD3-59.

maximum amount that can be shared between parents and could have identified the correct number of weeks based on how they wanted to apportion them.

[87] It's important to note that the Commission only relied on s. 52(1) of the EI Act when it made its decision, so false and misleading statements or representations in the context of s. 52(5) of the EI Act was not applicable (that allows the Commission to extend the period of time to reconsider to 72 months "if in the opinion of" the Commission, a false or misleading statement or representation has been made in connection with a claim).

[88] The evidence above met the low bar and was enough for the Commission to reasonably conclude there was a false or misleading statement made in her application form. The Commission doesn't have to *prove* that it was false or misleading at this stage, but it simply has to have a reasonable basis that there might be one.

### **The Commission exercised its discretion in a judicial manner**

[89] I find that the Commission exercised its discretion in a judicial manner when it decided to reconsider the parental benefit claim.

[90] Based on my review, the Commission considered its reconsideration policy and all the relevant factors it was required to consider. The Commission had a reasonable basis to believe there was a false or misleading statement was made in connection with her claim. Benefits were also paid contrary to the structure of the Act.

[91] I see no indication that the Commission considered any irrelevant factors such as financial hardship, or any other factors that were not relevant.

[92] I acknowledge the Claimant's interactions with Service Canada have been frustrating to date, but the interactions described don't amount to bad faith, an improper purpose or acting in a discriminatory manner.<sup>76</sup> And the Tribunal has no jurisdiction to

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<sup>76</sup> The interactions she described included a discussion she had with a Service Canada agent and being prematurely sent to Federal Court.

address and remedy concerns about Service Canada's interactions with them.<sup>77</sup> The Claimant is free to contact Service Canada's *Office for Client Satisfaction* at 1-866-506-6806. Accordingly, I see no indication the Commission acted in bad faith, for an improper purpose or in a discriminatory manner.

[93] Since the Commission exercised its discretion in a judicial manner when it reconsidered the claim, it means I can't interfere with the Commission's decision to reconsider the parental benefit claim.

[94] The parties don't dispute the Commission's underlying decision (i.e., that the Claimant was overpaid 30 weeks of parental benefits based on what the law allows). The dispute was focused on the Commission's decision to reconsider the claim. As a result, the Commission's decision on the parental benefits issue is maintained. The Claimant is liable to repay the overpayment, and the Tribunal has no jurisdiction to write-off the overpayment.<sup>78</sup>

## **Conclusion**

[95] The Commission's appeal is allowed. The General Division made an error of law in its substituted decision. I am giving the decision the General Division should have given. The Commission exercised its discretion in a judicial manner when it reconsidered the claim. The Commission's decision on the issue of parental benefits is maintained.

Solange Losier  
Member, Appeal Division

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<sup>77</sup> See paragraphs 7, 14, 45 and 52 of the General Division decision which describes some of the interactions.

<sup>78</sup> See sections 43 and 112.1 of the EI Act.