Citation: *HS v Canada Employment Insurance Commission*,

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	H. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (707731) dated December 17, 2024 (issued by Service Canada)

Tribunal member:	Suzanne Graves
Type of hearing:	Teleconference
Hearing date:	March 5, 2025
Hearing participant:	Appellant
Decision date:	March 25, 2025
File number:	GE-25-391

Decision

[1] The appeal is allowed. The General Division agrees with the Appellant.

[2] The Commission didn't act judicially when it decided to review the Appellant's claim. This is because it considered an irrelevant factor when it made the decision. I find that the Appellant's claim should not be reviewed. This means that the Appellant doesn't have to repay the benefits she was paid in error.

Overview

[3] The Appellant applied for maternity and parental benefits on October 8, 2020. She claimed nine weeks of maternity benefits and 35 weeks of parental benefits from December 6, 2020, until August 7, 2021.

[4] In September 2023, the Commission reviewed the Appellant's claim and determined it had overpaid her 30 weeks of parental benefits. The Commission says it sent her a notice of debt for $15,000 on September 23, 2023.

[5] The Commission argues that the maximum number of shared weeks of parental benefits is 40 weeks, but the Appellant and her spouse received 70 weeks combined. The Commission decided that the Appellant made a false or misleading statement by requesting more benefits than she was entitled to.

[6] The Appellant strongly denies making any false or misleading statements. She mistakenly asked for 35 weeks of benefits but gave all necessary information in her claim, including details about her spouse's claim. She argues the Commission made an administrative error and she should not be required to repay benefits three years later.

[7] The Appellant also argues that the Commission mishandled her file, including by failing to issue a notice of debt until she appealed to the Social Security Tribunal. It didn't reconsider its decision when first requested. Instead, it sent her to Federal Court, forcing her to incur significant legal costs. The Appellant was directed back to the Commission for a reconsideration, and she has appealed that decision to the Tribunal.

Issues

[8] Did the Commission properly review the Appellant's claim under the *Employment Insurance Act* (EI Act)?

[9] If the Commission didn't act properly, should the Appellant's claim be reviewed?

Analysis

Did the Commission properly review the Appellant's claim under the EI Act?

There is a time limit for claim reviews under the EI Act

[10] Section 52 of the EI Act says the Commission may reconsider a claim for benefits within 36 months after benefits have been paid or would have been payable.[1]

[11] Courts have said that 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.[2]

[12] The Commission argues that it met the EI Act timelines. It made a decision, calculated the overpayment and sent her a notice of debt within 36 months of benefits having been paid. The Commission says it sent the notice of debt to the Appellant on September 23, 2023.

[13] The Appellant argues the Commission waited too long to review her claim, and never sent her a notice of debt. She knew the amount of a debt. But she wasn't informed about the *reason* for the overpayment until she followed up in June 2024.

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[1] Section 52 of the *Employment Insurance Act* (EI Act) applies despite section 111 (power to rescind or amend a decision in certain circumstances) and is subject to section 52(5). Section 52(5) of the EI Act further extends the time available for the Commission to review a claim up to 72 months when a claimant has made a false or misleading statement or misrepresentation in respect of a claim.
[2] *Canada (Attorney General) v LaForest,* A-607-87, and *Briere v Canada (Attorney General),* A-637-86.

[14] The Appellant says the notice of debt wasn't even in the Commission's Federal Court file.[3] She testified that the first time she saw the notice of debt was when it was included in the Tribunal appeal documents. She suggests that the Notice of Debt may have been generated in early 2025, rather than in September 2023.[4]

[15] She argues it is too late to recoup parental benefit payments made to her in error, and she shouldn't have to repay benefits three years after they were paid.

The Commission met the 36-month review timeline

[16] I considered whether the Commission completed the required steps within the 36-month timeline under section 52 of the EI Act. The parties agree that parental benefits were paid to the Appellant from December 6, 2020, until August 7, 2021. The evidence shows that the Commission made its reconsideration decision on September 12, 2023.[5]

[17] The Appellant argues that she didn't get a notice of debt.[6] Her testimony is consistent with the evidence on file showing that she called the Commission on June 10, 2024, to ask about the *reason* for her overpayment.[7]

[18] I don't have enough evidence to make a finding on when the Commission prepared and issued the notice of debt. But the Appellant doesn't dispute that she got the decision and also received account summaries showing the amount of the debt. This is why she followed up to ask for an explanation about the debt.

[19] So, I find that the Commission showed that it completed its review of the Appellant's claim within the 36-month time limit. This is the case, even if the Appellant didn't have a full explanation for the debt until she called the Commission to make an enquiry in June 2024.

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[3] The Appellant says she was alerted to the lack of a notice of debt by a Commission counsel who called her during the Federal Court process to let her know that there were "irregularities" in her file.
[4] The notice of debt, showing a date of September 23, 2024, is at GD3-31.
[5] The Commission's decision dated September 12, 2023, is at GD3-25 to 26.
[6] The Appellant makes this argument at GD2-9.
[7] The Commission's notes of its conversation with the Appellant on June 10, 2024, are at GD3-33.

The Commission didn't act judicially in reviewing the claim

[20] Section 52 of the EI Act gives the Commission a discretionary power. It isn't enough for the Commission to show that it completed its review within the statutory deadline. It must also show that it acted judicially, or properly, when it made the decision to review the Appellant's claim.

[21] "Acting judicially" means the Commission must not consider irrelevant factors or ignore relevant factors. It must also act in good faith and not in a discriminatory manner.[8] If the Commission didn't act judicially, I can set aside the Commission's decision and make the decision it should have made.

[22] The Commission argues that it exercised its discretion properly. In its record of decision, the Commission shows it took into account that the Appellant was paid contrary to the operation of the EI Act, and that she made a false or misleading statement when she claimed benefits.[9]

[23] The Commission says the Appellant knew or should have known that she wasn't entitled to 35 weeks of benefits because the application form states that the maximum total number of shared parental benefits is 40 weeks.

[24] The Appellant strongly denies making any false or misleading statements. She acknowledges that she applied for benefits based on a mistaken understanding of her entitlement. But she provided all the information needed for the Commission to assess her claim, including the name and social insurance number of the other parent.

[25] A mistaken understanding about benefits entitlement doesn't necessarily amount to a false or misleading statement.

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[8] See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).
[9] The Commission's record of decision is at GD3-51.

[26] I accept the Appellant's argument that she reported no false information and find that the evidence shows she didn't make a false or misleading statement or fail to provide relevant information to the Commission.

[27] So, I find that the Commission didn't act judicially because it took into account an irrelevant factor when it decided to review the Appellant's claim.

[28] Since the Commission didn't act judicially, I will go ahead and make the decision the Commission should have made.

Should the Appellant's claim be reviewed?

[29] I find that the Appellant's claim should not be reviewed for the reasons set out below.

[30] The Commission is guided by the reconsideration policy in the Digest of Benefits Entitlement. But the policy isn't law and the Commission isn't bound by the policy. There may also be other relevant factors to be considered.

[31] The Commission's policy states it will only reconsider a claim in certain circumstances, including when benefits were paid as a result of a false or misleading statement, benefits were paid contrary to the structure of the Act, or a claimant ought to have known they weren't entitled to the benefits.[10]

[32] Section 17.3.2.1 of the Digest says the Commission *will only* impose a retroactive decision resulting in an overpayment if one of the situations in the policy exists. It doesn't require that a decision be reviewed in any of those situations.

[33] The parties agree that the application form includes information about the maximum number of shared parental benefits, and that the Appellant received benefits contrary to the operation of the EI Act because she was paid too many weeks of parental benefits.

[10] Digest of Benefits Entitlement (Digest), section 17.3.3, Reconsideration Policy.

[34] Generally, when benefits are paid contrary to the operation of the EI Act, this factor would outweigh other relevant factors. But in the specific circumstances of this case, there are other relevant factors to be considered and balanced.[11]

[35] The Federal Court of Appeal says that relevant factors are those that resolve the tension between the Appellant's ability to rely on the finality of the decision and the Commission's interest in the accuracy of the decision.[12]

[36] While this appeal relates to the Appellant's parental benefits claim, it is a claim for shared parental benefits so should be evaluated in that context.

[37] The Commission's record of decision shows it reviewed the Appellant's claim because it believed that false information was provided by the Appellant.[13] It says that the claimant was informed on her application form that up to 40 shared weeks combined can be claimed.

[38] The Appellant didn't recall reading the wording about the maximum number of shared parental benefits weeks, but I have already decided that she didn't provide false information in her application for benefits.

[39] The Appellant applied for maternity benefits on October 8, 2020, and asked to receive parental benefits after her maternity benefits ended. She received nine weeks of maternity benefits and began receiving parental benefits on December 6, 2020.

[40] The parties agree that the Appellant's spouse began receiving parental benefits before she made her claim. Both parents testified they provided all information required for the Commission to evaluate their claims. This testimony is supported by information showed in the Appellant's benefits application.

[41] I accept that both parents provided all the relevant information to the Commission about each other at the time they made their claims.

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[11] See *Molchan v Canada (Attorney General)*, 2024 FCA 46.
[12] See *Molchan v Canada (Attorney General)*, 2024 FCA 46, at paragraph 53.
[13] The Commission's record of decision is at GD3-51.

[42] The Commission says it asks claimants to provide information about the other parent so it can cross-check information and prevent overpayments. It explains that a parental client record is created and the system links records for all clients who are sharing parental benefits for the same child.

[43] The Commission's validation process creates a work item when the total number of parental weeks requested on linked records exceeds the number of sharable parental benefits weeks.[14] But the Commission didn't follow its process and cross-check the two parents' information in this case and so incorrectly paid additional weeks of parental benefits to the Appellant.

[44] If the Commission had properly evaluated both claims and informed each parent about their benefit entitlement, either one could have considered converting all or part of their parental benefits claim to a different type of special benefit, including COVID-related benefits, or begun looking for work.

[45] Significant procedural anomalies are also apparent in the Commission's review of the Appellant's file. While the Commission met the timing requirements for its review, I accept that the Appellant didn't receive a notice of debt setting out information about the overpayment, even during the Federal Court process.

[46] This meant that the Appellant wasn't fully notified of the reason for her overpayment until she followed up in June 2024.

[47] In addition, the Commission already had all information it needed to make its decision at the time the Appellant made her claim.[15] No new information was given to the Commission. But it delayed almost three years until late September 2023 to review the Appellant's claim, more than 36 months after the Appellant's spouse had begun receiving parental benefits.

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[14] The Commission describes its validation process at GD4-5.
[15] In *Molchan v Canada (Attorney General)*, 2024 FCA 46, the Court accepted that the absence of "new facts" is a relevant factor for the Commission to consider because it goes to the finality of a decision.

[48] I have considered all of the facts and relevant circumstances of this case and balanced the need for accuracy against finality of decisions. In making my decision, I have put most weight on 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.

[49] In the particular facts of this case, I find that the Appellant's claim should not be reviewed.

The Appellant's financial hardship and her spouse's illness are not relevant factors in this appeal

[50] The Appellant argues she is experiencing financial hardship and that repaying $15,000 would not be possible. The Appellant's spouse testified that he developed a very serious COVID vaccine related injury, which required extensive and lengthy immunotherapy during the period after the two claims were made. This added to the financial and personal stress of this situation.

[51] I didn't consider these personal and financial issues when making my decision on whether the Appellant's claim should be reviewed. They aren't relevant factors in this appeal because they don't relate to the competing interests of a claimant's ability to rely on the finality of a decision and the Commission's interest in the accuracy of the decision.[16]

[52] Although also not relevant to this appeal, I also acknowledge that the Commission's actions after reviewing her claim clearly caused confusion and distress. Instead of making a reconsideration decision, the Commission directed the Appellant to Federal Court. This led the couple to spend time and financial resources, only to be sent back to the Commission for a decision on the Appellant's reconsideration request.

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[16] The Federal Court of Appeal in *Molchan v Canada (Attorney General)* 2024 FCA 46, says a claimant's financial situation isn't relevant when deciding to reconsider a claim because it doesn't go to either finality or accuracy (although it may be relevant for other decisions, such as writing off an overpayment).

Conclusion

[53] The Commission didn't act judicially when it reviewed the Appellant's claim. I find that the Appellant's claim should not be reviewed.

[54] The means that the appeal is allowed, and the Commission cannot require repayment of the Appellant's benefits.

Suzanne Graves
Member, General Division—Employment Insurance Section