

Federal Court



Cour fédérale

Date: 20191203

Docket: T-210-12

Citation: 2019 FC 1546

[UNREVISED CERTIFIED ENGLISH TRANSLATION]

Ottawa, Ontario, December 3, 2019

PRESENT: Madam Prothonotary Mandy Ayles

BETWEEN:

JENNIFER MCCREA

Plaintiff

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Defendant

and

CARINE HUTCHINSON

Claimant

JUDGMENT AND REASONS

[1] The Claimant, Carine Hutchinson, brings this application for review of claims decision determination pursuant to Section 8 of the Settlement Agreement reached in the context of this class action proceeding and approved by the Honourable Madam Justice Kane in her Order and Reasons dated January 29, 2019. Ms. Hutchinson seeks review of the determination of the Administrator of the EI Sickness Benefits Class Action dated September 18, 2019, which denied her claim for sickness benefits.

[2] For the reasons that follow, I find that Ms. Hutchinson does not meet the class definition and accordingly, the determination of the Administrator is upheld.

I. Background

[3] The background to the underlying class action is described in detail in *McCrea v Canada (Attorney General)*, 2013 FC 1278, [2013] FCJ No 1444 [*McCrea 2013*], *McCrea v Canada (Attorney General)*, 2015 FC 592, [2015] FCJ No 1225 (QL) [*McCrea 2015*] and the Order and Reasons of Madam Justice Kane dated January 29, 2019.

[4] In summary, the class action involved a claim by the representative Plaintiff that she and other people who became ill while in receipt of parental benefits were unlawfully denied sickness benefits under the *Employment Insurance Act*. The class action was certified but with a modified class definition. The Court refused to expand the class definition to include persons who, during the relevant period, were “advised orally or in writing by the defendants, the Commission or HRSDC, that they did not qualify for sickness leave because they were on

parental leave or not otherwise available to work at the time of their sickness leave application, on which advice and representations they relied in not applying for sickness leave”.

[5] For the purpose of this application, the details of the Settlement Agreement, its implementation and the application for review process are key.

[6] Section 4.02 of the Settlement Agreement defines the class as follows:

All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

- (i) Applied for and were paid parental benefits under the EI Act or corresponding types of benefits under Quebec’s An Act respecting parental insurance;
- (ii) Suffered from an illness, injury or quarantine while in receipt of parental benefits;
- (iii) Applied for sickness benefits in respect of the illness, injury or quarantine referred to in ii;
- (iv) Were denied a conversion of parental benefits to sickness benefits because:
 - (a) the person was not otherwise available for work; or
 - (b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

[Emphasis added]

[7] Pursuant to Section 5.01 of the Settlement Agreement, any person who can establish that they meet the class definition and received less than 15 weeks of sickness benefits during the benefit period in which the original application to convert to sickness benefits was made is eligible for an Individual Payment (as defined in the Settlement Agreement).

[8] The Settlement Agreement provides that certain persons who have been identified through the File Review Project are deemed eligible class members. For persons who are not identified through the File Review Project, it must be established that they meet the class definition. Section 5.03 of the Settlement Agreement provides:

Claimants who were not identified as a Class Member through the File Review Project will be eligible where it is established that they meet the class definition based on evidence in ESDC's file of the application to convert to sickness benefits in either the: (a) SROC; (b) the checklist for conversion that was in use during the class period; or (c) another record made by ESDC. Alternatively, ESDC shall consider documentary evidence provided by the person that establishes they made an application to ESDC for a conversion.

[9] Section 7 of the Settlement Agreement provides for a claims administration process for persons seeking to make a claim for benefits under the Settlement Agreement. The Administrator processes all claims and renders written determinations to claimants.

[10] Pursuant to section 8 of the Settlement Agreement, a claimant may seek a review of the Administrator's determination by the Federal Court where the Administrator determines that a claim is not established and denies the claimant an Individual Payment.

[11] Section 8.05 of the Settlement Agreement provides that a designated Prothonotary of the Federal Court shall determine whether the claimant is an Eligible Class Member (as defined in the Settlement Agreement) or not and thereafter either uphold the Administrator's determination or reverse the Administrator's determination and refer the claim back to the Administrator for calculation and processing of the Individual Payment to the claimant.

II. The Administrator's Determination

[12] On July 29, 2019, the Claimant submitted a claim to the Administrator for sickness benefits for two periods of illness, that is, from October 28, 2003, to March 31, 2004, and from December 24, 2005, to January 15, 2006.

[13] By letter dated September 18, 2019, the Administrator transmitted its determination to the Claimant denying her claim. The Administrator stated:

[TRANSLATION]

Start of the EI benefit period commencing October 5, 2003

After a thorough review of your case, we have determined that you are **not** eligible for an Individual Payment in accordance with the approved Settlement Agreement for the Employment Insurance (EI) claim commencing October 5, 2003, because you did not apply for EI sickness benefits while in receipt of EI parental benefits or corresponding types of benefits under the Quebec's Act Respecting Parental Insurance (QPIP).

Start of the EI benefit period commencing January 8, 2006

We have also determined that you are **not** eligible for an Individual Payment in accordance with the approved Settlement Agreement for the Employment Insurance (EI) claim commencing January 8, 2006, because you did not apply for EI sickness benefits while in receipt of EI parental benefits or corresponding types of benefits under Quebec's Act Respecting Parental Insurance (QPIP).

III. Analysis

[14] In her Application for Review of Claims Decision Determination, the Claimant seeks a review of the Administrator's Determination on the following grounds:

[TRANSLATION]

At the time, it was clearly stated that, if a person received maternity benefits, she could not receive sickness benefits. It was therefore obvious that I did not submit a claim for sickness benefits since I was not entitled to it! However, I was very ill while receiving my maternity benefits. My doctor's office can confirm this to you.

[15] In reaching my determination, I have reviewed the documents produced by ESDC in accordance with section 8.04 of the Settlement Agreement and the written submissions filed by ESDC. The Claimant has not filed any other written submissions, despite being afforded the opportunity to do so. As such, the only submission that I have from the Claimant are the grounds for review detailed in paragraph 14 above.

[16] For the reasons that follow, I find that the Claimant does not meet the definition of Class Member.

[17] First, based on the evidence before me, the Claimant made two EI claims covering the two periods of illness declared on the claim form.

[18] For the application for benefits commencing October 5, 2003, until March 31, 2004, she received 15 weeks of maternity benefits (the week of October 19, 2003, until the week of January 25, 2004), followed by 35 weeks of parental/child care benefits (the week of February 1, 2004, until the week of September 26, 2004).

[19] For the application for benefits commencing December 24, 2005, until January 15, 2006, she received 15 weeks of maternity benefits (the week of January 22, 2006, until the week of April 30, 2006), followed by 33 weeks of parental/childcare benefits (the week of May 7, 2006, until the week of December 17, 2006).

[20] According to the class definition, a member is a person who suffered from an illness, while in receipt of parental benefits. In the present case, the Claimant claims that she is entitled to compensation for a period during which she did not receive parental benefits (from December 24, 2005 to January 15, 2006). As the application for indemnities does not relate to a period during which the Claimant received parental benefits, the latter does not meet the class definition. I come to the same conclusion with regard to the period from October 28 to January 25, 2004, also during which the Claimant did not receive parental benefits.

[21] As detailed above, in order to meet the class definition, the Claimant must have “applied for sickness benefits in respect of an illness, injury or quarantine” during the period of October 28, 2003, to March 31, 2004, and of December 24, 2005, to January 15, 2006. The Court has no documentation, either in the ESDC file or in that of the Claimant, to support that the Claimant

filed an application for conversion to sickness benefits. To the contrary, the Claimant confirmed in her written observations that she had not submitted claims for benefits.

[22] The class definition in section 4.02 and the burden of proof in section 5.03 require that a claimant had taken positive measures to apply for a conversion of benefits. Having not submitted applications for the conversion of benefits, I conclude that the Claimant does not meet the class definition for the two claim periods.

[23] Having found that the Claimant does not meet the class definition, I find that the Claimant is not an Eligible Class Member (as defined in the Settlement Agreement). The Administrator properly applied sections 4.02 and 5.03 of the Settlement Agreement and accordingly, the Administrator's determination is upheld.

[24] There shall be no award of costs on this application.

JUDGMENT IN T-210-12

1. The Court upholds the Administrator's determination dated September 18, 2019, in relation to the application of Carine Hutchinson.

"Mandy Ayles"
Prothonotary

Certified true translation
This 17th day of December 2019.

Elizabeth Tan, Revisor

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-210-12

STYLE OF CAUSE: JENNIFER MCCREA v HER MAJESTY THE QUEEN
IN RIGHT OF CANADA and CARINE HUTCHINSON

PLACE OF HEARING: OTTAWA, ONTARIO

JUDGMENT AND REASONS: MADAM PROTONOTARY MANDY AYLEN

DATED: December 2, 2019

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FOR THE CLAIMANT