

Federal Court



Cour fédérale

Date: 20200120

Docket: T-210-12

Citation: 2020 FC 79

Ottawa, Ontario, January 21, 2020

PRESENT: Madam Prothonotary Mandy Ayles

BETWEEN:

JENNIFER MCCREA

Plaintiff

and

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

Defendant

and

TAM LAM

Claimant

JUDGMENT AND REASONS

[1] The Claimant, Tam Lam, 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. Lam seeks review of the determination of the Administrator of the EI Sickness Benefits Class Action dated November 13, 2019, which denied her claim for sickness benefits for the period of February 22, 2004 to February 20, 2005. Her second claim for sickness benefits for the period of April 19, 2008 to April 19, 2009, was granted and a payment was made to Ms. Lam, such that this second period is not at issue on this application.

[2] For the reasons that follow, I find that Ms. Lam does not meet the class definition in relation to her claim for sickness benefits for the period of February 22, 2004 to February 20, 2005 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 individuals 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 an illness, injury or quarantine referred to in ii; and
- 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.

[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 September 6, 2019, the Claimant submitted a claim to the Administrator for sickness benefits for two periods of time. The period of time at issue on this application is the period from February 22, 2004 to February 20, 2005.

[13] By letter dated November 13, 2019, the Administrator transmitted its determination to the Claimant denying her claim for the period February 22, 2004 to February 20, 2005. The Administrator stated:

We have also determined that you are **not** eligible for an Individual Payment in accordance with the approved Settlement Agreement for the EI benefit period commencing February 22, 2004 because you did not apply for EI sickness benefits while in receipt of EI parental benefits or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance (QPIP).

III. Analysis

[14] In her Application for Review of Claims Decision Determination form, the Claimant seeks a review of the Administrator's determination in relation to her claim for the period February 22, 2004 to February 20, 2005 on the following grounds:

I had my daughter February 20, 2004. I did not know I had to apply for EI sickness benefit or I did applied and didn't get approve. Thank you its been so long, can't remember.

[15] In reaching my determination, I have also reviewed the letter from the Claimant dated November 19, 2019 (which re-iterates the grounds of review noted above), the documentation 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 additional 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] The evidence before me is that the Claimant applied for EI maternity benefits on February 14, 2004. Following the two-week waiting period, the Claimant was paid 15 weeks of maternity benefits (from the week of March 7, 2004 to the week of June 13, 2004), followed by 35 weeks of parental benefits (from the week of June 20, 2004 to the week of February 13, 2005).

[17] In order to meet the class definition, the Claimant must have applied for sickness benefits in respect of an illness, injury or quarantine suffered during the period of time that the Claimant was in receipt of parental benefits. There is no documentation before the Court, from ESDC's file or from the Claimant, to support any application having been made by the Claimant to convert her parental benefits to sickness benefits. Moreover, there is no evidence before the Court of any illness, injury or quarantine suffered by the Claimant during the relevant time. As such, I find that the Claimant does not meet the class definition.

[18] 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.

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

JUDGMENT IN T-210-12

1. The Administrator's determination dated November 13, 2019 in relation to the application of Tam Lam is upheld.

“Mandy Ayles”

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-210-12

STYLE OF CAUSE: JENNIFER MCCREA V. HER MAJESTY THE QUEEN
IN RIGHT OF CANADA and TAM LAM

PLACE OF HEARING: OTTAWA, ONTARIO

JUDGMENT AND REASONS: MADAM PROTHONOTARY MANDY AYLEN

DATED: JANUARY 20, 2020

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FOR THE CLAIMANT