



Citation: *RT v Canada Employment Insurance Commission*, 2024 SST 1569

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

R. T.

Respondent:

Canada Employment Insurance Commission

Representative:

Dinah Bélanger and Annick Dumoulin

Decision under appeal:

General Division decision dated September 24, 2024
(GE-24-2952)

Tribunal member:

Janet Lew

Type of hearing:

In Writing

Decision date:

December 18, 2024

File number:

AD-24-737

Decision

[1] The appeal is allowed. The Claimant qualifies for Employment Insurance family caregiver benefits from January 29, 2023, to March 4, 2023.

Overview

[2] The Appellant, R. T. (Claimant), is appealing the General Division decision of September 24, 2024.

[3] The General Division found that the Claimant did not qualify for Employment Insurance family caregiver benefits for the care of a critically ill adult. It found that he had not produced a valid medical certificate for his father for the period for which he was seeking benefits. It was not valid because it did not state that his father was critically ill.

[4] The Claimant argues that his father was critically ill and that he should qualify for family caregiver benefits. However, he argues that his father's doctor made a mistake on the medical certificate. He says that the doctor will not correct the mistake on the medical certificate now that his father has passed away.

[5] The Respondent, the Canada Employment Insurance Commission (Commission), concedes the appeal. The Commission concedes that the Claimant may receive family caregiver benefits from January 29, 2023, to March 4, 2023.¹

Preliminary matters

[6] I held a settlement conference on December 16, 2024. I confirmed the parties' positions. The parties also agreed that I may issue a decision based on the written materials, without the need for a hearing in this matter.

¹ See Commission's concession dated December 11, 2024, at AD3.

Issue

[7] Although the Commission is conceding the appeal, I need to satisfy myself that the concession is consistent with the law and the evidence. The issue in this appeal is whether the General Division overlooked some of the evidence.

Analysis

[8] The Appeal Division may intervene in General Division decisions if the General Division made any jurisdictional, procedural, legal, or certain types of factual errors.²

[9] For factual errors, the General Division had to have based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.³

The General Division did not address some of the evidence

[10] The Claimant sought family caregiver benefits for the period from January 29, 2023, to March 4, 2023. To qualify for family caregiver benefits, a claimant has to produce a certificate issued by a medical doctor or nurse practitioner that:

- (a) states that the adult is a critically ill adult and requires the care or support of one or more of their family members; and
- (b) sets out the period during which the adult requires that care or support.⁴

[11] A critically ill adult is defined as a person who is 18 years of age or older whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.⁵

[12] The Claimant's father's doctor prepared three medical certificates February 22, 2022, January 29, 2023, and March 25, 2023. The doctor addressed whether the Claimant's father's life was at risk because of illness, whether there had been a

² See section 58(1) of the *Department of Employment and Social Development (DESD) Act*.

³ See section 58(1)(c) of the *DESD Act*.

⁴ See section 23.3 (1) of the *Employment Insurance Act*.

⁵ See section 1(7) of the *Employment Insurance Regulations*.

significant change in his baseline health, and whether he required care or support of one or more family members.

| | Patient's life at risk because of illness? | Significant change in baseline state of health of the patient? | Patient requires care or support of one or more family members |
|--------------------------------------|--|--|--|
| February 22, 2022⁶ | Yes – due to stage 5 chronic kidney disease and acute coronary syndrome. Condition will continue until a successful kidney transplant is done. | Yes | Yes – until 2024/09/30. Date could be extended depending on donor availability for transplant. |
| January 29, 2023⁷ | No | Yes | Yes – until March 4. Date could be extended depending upon availability of donors. |
| March 25, 2023⁸ | Yes – due to stage 5 chronic kidney disease and unstable angina | Yes | Yes – until May 31, 2023 |

[13] The January 2023 medical certificate covered the relevant timeframe. The doctor was of the opinion that there had been a significant change in the baseline state of the health of the Claimant's father. He was also of the opinion that the Claimant's father required care or support of one or more family members until a suitable organ transplant donor could be located.

[14] The doctor determined that the Claimant's father was not critically ill. The doctor indicated that, at that point, the father's life was not at risk from illness. The Claimant

⁶ See medical certificate dated February 22, 2022, at GD 3-26.

⁷ See medical certificate dated January 29, 2023, at GD 3-60.

⁸ See medical certificate dated March 25, 2023, at GD 3-72.

advised the General Division that the doctor had made a mistake. However, the doctor would not correct the mistake because the Claimant's father had already passed away.

[15] The General Division determined that, based on the January 2023 medical certificate, the Claimant did not qualify for benefits, as the doctor said the father's life was not at risk at that point.

[16] However, the 2022 medical certificate already established that the father's life was at risk due to advanced chronic kidney disease and acute coronary syndrome. The doctor wrote that not only would the condition continue, but the Claimant's father would continue to face risks to his life until he had a successful kidney transplant.

[17] The Claimant's father's stage 5 chronic kidney disease was not going to improve to the point that his life was no longer at risk without a transplant. The father was on maintenance dialysis but that did not improve his prospects for survival. The damage to the father's kidneys was irreversible.

[18] In his medical certificate dated March 25, 2023, the doctor again diagnosed the Claimant's father with stage 5 chronic kidney disease and unstable angina. The doctor also determined that the father's life was at risk because of the same condition that he had had since at least February 2022.

[19] A suitable donor transplant was not located. The Claimant's father passed away later that year, shortly after turning 54 years old.

[20] The January 2023 medical certificate conflicted with the balance of the evidence. The Claimant's father's health was already at risk in February 2022. He needed an organ transplant; otherwise, his life remained at risk. Dialysis only maintained his condition. That did not change – the March 2023 confirmed that the father's life remained at risk and that he needed an organ transplant because of his advanced kidney disease.

[21] The doctor did not explain why he gave a different opinion in his January 2023 medical certificate. He did not explain why he felt that the Claimant's father's health was

no longer at risk, despite the fact that his patient's diagnosis and prognosis remained unchanged. The Claimant's father's kidney disease was advanced. He was in need of a transplant, otherwise faced the risk of death.

[22] Given the doctor's own conflicting evidence, the General Division should have addressed and considered what the February 2022 and March 2023 medical certificates, and the father's death in late 2023, meant in the overall scheme.

[23] The Claimant had argued that the doctor made a mistake in the January 2023 medical certificate. As this issue had been raised, the General Division should have asked itself whether the doctor's January 2023 medical certificate could withstand scrutiny and was consistent with the balance of the evidence.

[24] The General Division focussed on the January 2023 medical certificate mechanistically and made only a perfunctory reference to the February 2022 and March 2023 medical certificates, and to the fact that the Claimant's father passed away in late 2023.

[25] If the General Division had considered the February 2022 and March 2023 medical certificates and the fact that the Claimant's father passed away in late 2023, it could have only concluded that the doctor had made a mistake in the January 2023 medical certificate. It is apparent from the evidence, taken as a whole, that the Claimant's father's life had been at an ongoing risk from advanced kidney disease since 2022. The need for a successful organ transplant was present throughout 2023.

Fixing the error

[26] Upon having found an error, the Appeal Division can either return the matter to the General Division for redetermination or it can give the decision that the General Division should have given.

[27] The parties agree that the Appeal Division should give the decision that the General Division should have given. There are no gaps in the evidence, and there is

nothing to be gained by returning this to the General Division. All of the evidence is before me.

[28] On balance, the medical evidence showed that the Claimant's father was critically ill and that his life remained at risk because of advanced chronic kidney disease between at least February 2022 and December 2023, when he passed away.

[29] The evidence also shows that there had been a significant change in the baseline state of the health of the Claimant's father, and that he required care or support of one or more of his family members.

[30] The evidence shows that the Claimant met the requirements to qualify for family caregiver benefits under the *Employment Insurance Act* and the *Employment Insurance Regulations*.

Conclusion

[31] The appeal is allowed. The Claimant qualifies for Employment Insurance family caregiver benefits from January 29, 2023, to March 4, 2023.

Janet Lew
Member, Appeal Division