

Federal Court



Cour fédérale

Date: 20191119

Docket: T-210-12

Citation: 2019 FC 1452

Ottawa, Ontario, November 19, 2019

PRESENT: Madam Prothonotary Mandy Ayles

BETWEEN:

JENNIFER MCCREA

Plaintiff

and

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

Defendant

and

WIOLETTA PEH

Claimant

JUDGMENT AND REASONS

[1] The Claimant, Wioletta Peh, 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. Peh seeks review of the determination of the Administrator of the EI Sickness Benefits Class Action dated August 1, 2019, which denied, in part, her claim for sickness benefits.

[2] For the reasons that follow, I find that Ms. Peh 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 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 February 14, 2019, the Claimant submitted a claim to the Administrator for sickness benefits for the following three periods of time: (a) May 26, 2008 to August 4, 2009; (b) May 12, 2010 to September 2, 2011; and (c) August 22, 2012 to January 21, 2013.

[13] The evidence before the Court is that the Claimant made two applications for maternity/parental EI benefits during the declared periods of sickness. Namely, one application in June 2008 and one application in May 2010.

[14] By letter dated August 1, 2019, the Administrator transmitted its determination to the Claimant denying her claim in part. The Administrator stated:

EI benefit period commencing May 16, 2010

After a thorough review of your file, we have determined that you are eligible for an Individual Payment in accordance with the approved Settlement Agreement for the EI benefit period commencing May 16, 2010. A payment has been issued to you for 8 weeks at a benefit rate of \$437.00 per week for a total gross payment amount of \$3,496. Applicable taxes will be deducted from this amount.

EI benefit period commencing June 22, 2008

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 June 22, 2008 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

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

I was ill and I did not know if I had the right to apply for EI benefits. I was on bed rest and physically was unable to apply. I spoke with agent on the phone and was told I cannot apply for EI.

[16] In reaching my determination, I have reviewed 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 15 above.

[17] As the Claimant's claim for the benefit period commencing May 16, 2010 was allowed, I need to not consider it on this application. Rather, the main focus of this review is the denial of her claim for the benefit period commencing June 22, 2008.

[18] For the benefit period commencing June 22, 2008, the evidence before me is that the Claimant applied for EI benefits on June 9, 2008. She was paid three weeks of sickness benefits, followed by 15 weeks of maternity benefits, 35 weeks of parental benefits and an additional four weeks of sickness benefits.

[19] 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 benefit. 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 during the benefit period commencing June 22, 2008.

[20] To the contrary, the Claimant confirms in her written submissions that she did not apply for benefits because she spoke to an agent on the phone and was told not to apply. As noted above, persons who were advised by the Defendant, the Commission or HRSDC, that they did not qualify for sickness leave because they were on parental leave or not otherwise available for

work at the time of their sickness leave application, on which advice and representations they relied in not applying for sickness leave, do not form part of the class as certified by the Court. As such, I find that the Claimant does not meet the class definition for the benefit period commencing June 22, 2008.

[21] I also note that the Claimant's application to the Administrator included a claim covering a third benefit period commencing August 22, 2012. The Administrator's decision does not address that benefit period, nor do the submissions of the parties address that benefit period. For the purpose of this application, I shall treat the Administrator's failure to address this benefit period as a denial of the Claimant's claim. However, I have no documentation before me of any application for parental EI benefits having been made by the Claimant in relation to this benefit period, nor the required application to convert those benefits to sickness benefits. On that basis, I find that the Claimant does not meet the class definition for this benefit period as well.

[22] Having found that the Claimant does not meet the class definition for the benefit periods commencing June 22, 2008 and August 22, 2012, 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.

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

JUDGMENT IN T-210-12

1. The Administrator's determination dated August 1, 2019 in relation to the application of Wioletta Peh 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 WIOLETTA PEH

PLACE OF HEARING: OTTAWA, ONTARIO

JUDGMENT AND REASONS: MADAM PROTHONOTARY MANDY AYLEN

DATED: NOVEMBER 19, 2019

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For herself

FOR THE CLAIMANT