A Disregard of Multiple Birth Parents and their Children – Christian Martin

The recent decision by an umpire under the Employment Insurance (EI) Act regarding the treatment received by the parents of multiple birth children represents a significant blow in our quest for equal treatment. The umpire ruled that parental benefits are based on pregnancy as per the standing government policy and that allocating benefits on the basis of pregnancy rather than on caring for a child does not lead to a discriminatory treatment of multiple birth parents and their children.

I had assumed that my wife Paula and I would be able to get 35 weeks of parental benefits for each child that we would have under the current EI rules, presuming that we would continue to work sufficient hours before each child. We were thrown for a loop when we found out we were having twins. Any parent can get 35 weeks of benefits to care for their child except in multiple children cases where the second parent and the additional children don't count. I believe in equality for the parents of multiple birth children, not special treatment. It should be common sense that caring for two, three or four children at once brings additional challenges to simply caring for one. We decided that the best thing to do was for me to stay home with her and share the duties for those first few months of our twins' lives, given that our financial situation could bear it if we exhausted our savings. It seemed like the right thing to do. I will spare the readers from describing the complications that Paula had during her pregnancy, but briefly say that our difficult journey was not unusual as all multiple birth pregnancies are considered high risk. Caring for our little treasures Lucie and Athena involved the most grueling schedule of my life, and that was with both of us home sharing duties. It was much harder than having just one child for which to care, and over the course of my EI appeal the government has never tried to argue otherwise.

The fact that I cared for a newborn child just like any other parent did not matter. Viewed an alternative way, we got half the benefits as a couple to care for our two children compared to other working parents that have their two children at separate times or even at the same time but with two silly qualifying events recognized by the government (pregnancies or adoption placements).

I fought my rejected EI claim, with the help of my lawyer Stephen Moreau, because I was a fully eligible EI claimant and I believe that it is not rational and it is discriminatory to treat all pregnancies equally in allocating parental benefits. Despite what is said above regarding the circumstances around the pregnancy and those difficult first months at home, it must be crystal clear that I did not request benefits because my children were premature, underweight and slower in their development than the average child but rather because they existed and were in need of care. Regardless of the outcome of my fight, I needed to be home. Pregnancy is an irrelevant consideration in caring for a newborn child. Notably, the 15-week maternity benefit under EI exists to take care of issues surrounding pregnancy. The 35-week parental benefit portion exists to care for newborn or newly adopted children, which is clearly stated in the EI Act (Section 23).

The reasonable criterion to allocate parental benefits is the presence of a new child in need of care. If the system indeed allocated parental benefits on the basis of pregnancy, then nothing would prevent a parent from getting 35 weeks of parental benefits for a stillborn child, a child given away to adoption, or even in the case of a parent leaving for the Caribbean for 35 weeks without the bundle of joy. The distinction between a pregnancy-based and a child-based system can be ignored by the over 95% majority of people who have one child at a time, but the distinction becomes of utmost importance when there is no child for which to care, or when there are several of them at the same time.

The EI Board of Referees, the first stage of appeal, agreed with my interpretation and awarded me 35 weeks of benefits. In assessing the situation, one must factor in that EI is an individual based system where nothing prevents two people in a relationship from each receiving full benefits if they both pay into the system and have worked sufficient hours. There is no couple or family in the EI universe, only individual claimants.

The Federal Government appealed this decision to the second level and the umpire overturned the decision. In doing so he found that I was not excluded from the EI system even though I received zero weeks of benefits. I could have shared the 35 weeks with my wife, he correctly stated, but receiving benefits would have meant taking them away from her with no consideration to the fact that there were two children in need of care and two eligible EI policy holders. It did not make sense for us split the benefits because an orange cut in two halves is still one orange. Had I and my child Lucie not existed, my wife still would have received 35 weeks of benefits for our daughter Athena. Thus, Lucie and I did not count in the equation. The government calls my decision not to take my wife's benefits a choice, while I call it an exclusion from the system.

To my disbelief, the umpire further agreed with the government that giving benefits to me would open a Pandora's box to more benefits needing to be given to others such as the parents of children with difficult behaviors, disabilities and single mothers. I believe these groups of people deserve careful consideration and have significant needs, but they have little to do with my case. My second baby was a human being and mattered as much as any other. She existed and needed care and that does not require adding the considerations mentioned above. I have never disputed that the maximum benefit for a claimant is 35 weeks regardless of the situation faced. The implication, for instance, is that one parent could not currently get benefits of four times 35 weeks in the case of quadruplets. Every insurance policy needs to specify a maximum benefit per policy holder. There are clear boundaries to the amounts of benefits payable because there can only be two parents/EI claimants and therefore two benefits paid regardless of the number of children born under the current structure of the system. Unlike the single mother eligible for EI, I received no compensation for my leave from work despite my EI premiums and good standing within the system. It must be said that the most vulnerable people are not eligible for EI at all due to a lack of hours of work. Great care is required when trying to draw parallels between my situation and those that are regrettably less fortunate. EI is insurance, and arbitrarily withholding benefits to even the richest of policy holders who are in good standing because they are well off would not be an acceptable practice.

Finally, the umpire found that the treatment that I and my child Lucie have received does not amount to discrimination based on the ground of family status because the system is adequate and that we just happened to fall on the wrong side of a line that needed to be drawn somewhere. You and your wife got "something", he implied, so you have no case. If a person was denied benefits or got half the benefits as others because of race or sexual orientation, which are other accepted grounds of discrimination, would anyone be saying that it is ok because he got "something" or that she was not deserving because of personal characteristics beyond her control? In the case of the treatment of multiple births parents and their children, Canada must do better than this.

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