

Federal Court



Cour fédérale

**Date: 20191119**

**Docket: T-210-12**

**Citation: 2019 FC 1448**

**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**

**SASKIA RICHARDS**

**Claimant**

**JUDGMENT AND REASONS**

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

[2] For the reasons that follow, I find that Ms. Richards does not meet the eligibility requirements for an Individual Payment 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 May 14, 2019, the Claimant submitted a claim to the Administrator for sickness benefits for a period of sixty-two weeks (mid-November 2004 to end of January 2006).

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

After a thorough review of your file, 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 February 1, 2004 because you were already paid a maximum of fifteen weeks of sickness benefits during your benefit period.

### **III. Analysis**

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

According to my files I have not received the full EI and EI sickness benefits, only a partial amount.

[15] 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 14 above.

[16] The evidence before me is that the Claimant was paid fifteen weeks of maternity benefits commencing the week of February 15, 2004, followed by 29 weeks of parental benefits ending the week of December 12, 2004. The Claimant thereafter received fifteen weeks of sickness benefits commencing the week of January 30, 2005.

[17] Section 5.01 of the Settlement Agreement provides that a person who has established that they meet the class definition is eligible for an Individual Payment if they can also establish that they received less than fifteen weeks of sickness benefits during the relevant benefit period.

[18] The ESDC records before the Court demonstrate that the Claimant received fifteen weeks of sickness benefits during the relevant benefit period. The Claimant has not provided the Court with any documents or information that would refute the documentation put forward by ESDC.

[19] I find that the Claimant has not established that she received less than fifteen weeks of sickness benefits during the relevant benefit period and thus does not meet the eligibility requirements for an Individual Payment. The Administrator therefore properly applied Section 5.01 of the Settlement Agreement and accordingly, the Administrator's determination is upheld.

[20] While the Claimant has also made an unspecified assertion of an entitlement to additional EI benefits beyond sickness benefits, such benefits are not recoverable under this review process.

[21] 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 Saskia Richards is upheld.

“Mandy Ayleen”

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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 SASKIA RICHARDS

**PLACE OF HEARING:** OTTAWA, ONTARIO

**JUDGMENT AND REASONS:** MADAM PROTHONOTARY MANDY AYLEN

**DATED:** NOVEMBER 19, 2019

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FOR THE CLAIMANT