

Federal Court



Cour fédérale

**Date: 20200420**

**Docket: T-210-12**

**Citation: 2020 FC 534**

**Ottawa, Ontario, April 20, 2020**

**PRESENT: Madam Prothonotary Mandy Ayles**

**BETWEEN:**

**JENNIFER MCCREA**

**Plaintiff**

**and**

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

**Defendant**

**and**

**LISA MUNROE**

**Claimant**

**JUDGMENT AND REASONS**

[1] The Claimant, Lisa Munroe, 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. Munroe seeks review of a portion of the determination of the Administrator of the EI Sickness Benefits Class Action dated November 18, 2019, which denied her claim for sickness benefits for the period commencing April 6, 2008. Her other two claims for sickness benefits for the periods commencing July 26, 2009 and November 21, 2010 are not at issue on this application.

[2] For the reasons that follow, I find that Ms. Munroe’s application is time-barred pursuant to Section 8.01 of the Settlement Agreement, as the application was submitted to the Federal Court more than 30 days from the date of the Administrator’s decision. Accordingly, the decision 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 8.01 of the Settlement Agreement, where the Administrator determines that a claim is not established and denies a payment, a claimant may seek a review of the Administrator's decision by the Federal Court within 30 days.

[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 August 26, 2019, the Claimant submitted a claim to the Administrator for sickness benefits for three periods of time. The period of time at issue on this application is only the period commencing April 6, 2008.

[13] By letter dated November 18, 2019, the Administrator transmitted its determination to the Claimant denying her claim for the period commencing April 6, 2008. 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 April 6, 2008 because you do not meet the class definition as 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] The Applicant submitted her Application for Review of Claims Decision Determination form to the Federal Court on February 10, 2020 (although it is dated December 10, 2019).

[15] 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 commencing April 6, 2008 on the following grounds:

This date indicates that I was a high risk pregnancy and was on sick leave; because this was my first pregnancy and the child was born September 3, 2008. Therefore I was supposed to receive sick benefits then converted to EI.

[16] In reaching my determination, I have also 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] ESDC has raised a preliminary ground of objection to the application – namely, that it is time-barred as it was submitted to the Court approximately two and a half months after the 30-day deadline stipulated in Section 8.01 of the Settlement Agreement.

[18] Section 8.01 of the Settlement Agreement provides:

Where the Administrator determines that a Claim is not established and denies an Individual Payment, a Claimant may seek a review of such decision within 30 days by completing and signing an Application for Review of Determination in the form attached as **Schedule “L”**. The Application should be submitted to the Federal Court of Canada.

[19] The Settlement Agreement requires that a claimant submit a review application to the Court within 30 days of the determination of the Administrator. The Settlement Agreement does not vest the Court with any authority to extend that deadline.

[20] In this case, the Administrator’s determination is dated November 18, 2019 and the Claimant’s application was only submitted to the Court on February 10, 2020, well after the expiry of the 30-day deadline. In the circumstances, I find the application is time-barred. As a result, the decision of the Administrator is hereby upheld.

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

**JUDGMENT IN T-210-12**

1. The Administrator's determination dated November 18, 2019 in relation to the application of Lisa Munroe is upheld.

“Mandy Ayles”

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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 LISA MUNROE

**PLACE OF HEARING:** OTTAWA, ONTARIO

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

**DATED:** APRIL 20, 2020

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FOR THE CLAIMANT