Neighbourhood Legal Services
LONDON AND MIDDLESEX

By Email (HUMA@parl.gc.ca)

April 8, 2021

Standing Committee on Human Resources,
Skills and Social Development and the Status of Persons with Disabilities

Dear Standing Committee:

Re: Review of Employment Insurance Program

Neighbourhood Legal Services - London & Middlesex (NLSLM) is a poverty law clinic that provides legal advice and representation to low-income residents of London and Middlesex County in social assistance, landlord and tenant law, and employment law. Due to the nature of our work, we are regularly made aware of the challenges and difficulties that low-income Londoners face.

In addition to NLSLM's endorsement of the **Inter-Provincial EI Working group's** written brief's, NLSLM has outlined a couple issues that we have experienced as a clinic when assisting members of the community accessing employment insurance benefits.

Specifically:

1) Clear and concise rules regarding "valid job separation"; and
2) Expanding Employment Insurance Sickness Benefits beyond 15 weeks.

Clear and concise rules regarding "valid job separation"

Our clinic has witnessed how rules regarding valid job separation can be overly complex to claimants who are not familiar with the *Employment Insurance Act ("the Act")*. These rules can work to punish and deter claimants from actively engaging and pursuing employment. As outlined in Recommendation 1[1], this Committee has recommended that claimants should be encouraged to try new jobs during their benefit period, and be allowed to retain EI benefits should the employment not be suitable.

[1] Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities. "Exploring the Impact of Recent Changes to Employment Insurance and Ways to Improve Access to the Program" Third Report, House of Commons, June 10, 2016, page 10.

Case Example

We have had a notable case where a client (57 years old) was laid off after 13 years of employment and was required to apply for regular Employment Insurance (*"EI"*) benefits. After one month of *EI benefits*, she became disqualified after attempting two weeks of work with a new employer at a grocery store. The claimant voluntarily resigned due to issues with the employment attempted including: limitations with her hands, a preference for full-time rather than part-time, and fear of the neighbourhood where the employer was located. Service Canada determined that the claimant quit her employment voluntarily without "just cause" after attempting less than 2 weeks of work, and therefore determined the claimant was not eligible for ongoing *EI* regular benefits. Unfortunately, due to the assurance by the EI caseworker that there was no merit to an appeal when being told over the phone she was not eligible upon reconsideration, the client chose not to appeal the decision to the SST. Furthermore, the claimant failed to obtain legal advice relying on the information provided by the caseworker deciding her reconsideration. This client fell through the cracks and reported significant financial difficulties during her period of unemployment.

In hindsight, the employment attempted by our client was not "suitable employment" as per section 27 of *the Act* and therefore had "good cause" to voluntarily leave employment and continue receiving benefits. *The Act* allows for leniency to claimants who are attempting a new job *while* already being a recipient of *EI benefits;* a claimant is allowed to voluntarily leave their attempted job if after attempting the job they have "good cause" to do so. This is significantly different from the "just cause" required if voluntarily leaving a job to *initiate* regular *EI benefits*; "just cause" requires a potential claimant to prove they voluntarily left their job as a last resort due to one of the reasons listed in section 29(c) of *the Act* (list is not exhaustive as per caselaw), after attempting to work it out with employer, and sometimes requiring the claimant to have lined up another job prior to quitting.

Outlining the differences between "good cause" and "just cause" shows the difficulty of applying valid job separation rules, for both administrators and claimants. This complexity is causing inconsistent application of the rules. We are concerned there may be a segment of claimants wrongly denied and are not requesting a reconsideration or appealing to the SST. This committee notes a reduction of 85% in appeals since the SST was formed, and only 15% of claimants who are denied at the reconsideration stage

appeal to the Social Security Tribunal.[2] It is noted in the KPMG report that approximately 46% of reconsideration cases are rescinded or modified[3]. However, under the legacy Board of Referees ("BOR") system, an informal reconsideration was conducted as part of the first level of appeal. It is not clear whether the addition of a mandatory reconsideration prior to an appeal to the SST is leading to better and more efficient outcomes, or in the alternative, adding a level of complexity which is reducing the number of valid appeals.

Since the change from the BOR system to the SST system, KPMG notes that ESDC/Service Canada on behalf of CEIC, has a more defined role as a party of the appeal process, due to the SST becoming independent of the CEIC.[4] We are concerned that this change in perception of roles may impede on the effectiveness of reconsideration requests, due to CEIC's perceived role in the appeal. As highlighted by the above client in our example, the caseworkers she dealt with when applying for *EI* benefits had shown zero interest regarding the circumstances as to why she voluntarily resigned after 2 weeks of employment. They simply lasered in on the fact that she voluntarily quit, and therefore assumed she was unqualified for benefits.

In our experience, if a client seeks advice from our office immediately after receiving their denial and we are able to intervene at the Reconsideration stage, outlining the law and how it applies to the client's report as to what occurred, we've had a high success rate overturning decisions denying *EI* benefits at the reconsideration stage. While this can be perceived as a success, it also points to a potential problem with the current EI appeal procedure. Claimant's who are unable to clearly articulate why they are entitled to the benefits as per *the Act* are more likely to be wrongly denied. This is especially true when the claimant voluntarily leaves employment, as the test for eligibility becomes complex and requires more discretion from the adjudicator. Knowledge of exemptions within *the Act* and obtaining case law to show others have been treated similarly has a large impact on the success of overturning a decision.

Furthermore due to complexity of the rules regarding valid separation of employment, if the initial adjudicator determining eligibility is not trained in the nuisances of voluntarily

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[2] *Ibid, p 33.*

[3] KPMG. "Review of the Social Security Tribunal of Canada for Employment and Social Development Canda" October 2017, section 4.2.4.

[4] *Ibid*, section 4.2.2.

leaving with "good cause" as per section 27, or voluntarily leaving with "just cause" as per section 29, it is unlikely the claimant will be treated fairly as per *the Act*.

Expanding Employment Insurance Sickness Benefits beyond 15 weeks

It is our submission that the current maximum amount of Sickness Benefits (15 weeks) is insufficient, and should be increased. The vast majority of the low wage and precarious workers we assist have no access to health benefits through their employer. Furthermore, these clients do not qualify for WSIB as the disability or injury did not occur in the workplace. This often results in our clients relying on Employment Insurance Sickness benefits as a last resort.

In September 2019, the 2019 Employment Insurance Sickness Benefit Policy Report was created from a policy roundtable held in Ottawa which including the following stakeholder organizations: Canadian Cancer Society, Canadian Labour Congress, Cystic Fibrosis Canada, Diabetes Canada, Heart and Stroke Foundation, Multiple Sclerosis Society of Canada, and the Neurological Health Charities Canada.

The report provides several recommendations, including the EI sickness benefits needing to be expanded from 15 to 26 weeks.[5] The report noted many Canadians may face conditions that are recoverable, however require a longer recovery period that would not qualify them for long term disability (if available) but longer than what the current EI sickness provides.[6] Furthermore, concerns were raised that the anxiety of exhausting sickness benefits and still not being able to return to work actually hinders the recovery process for these Canadians and may actually add additional mental health problems that may not otherwise be present when recovering from a physical illness.[7]

As a result, in situations where a worker does not have health benefits and is unable to return to work for a prolonged period of time, they are forced to rely on 15 weeks of sickness benefits and when exhausted seek out welfare, which is only approx $700/mth in Ontario. If their health restrictions are likely to last longer than a year or indefinitely, they can apply for provincial or federal disability benefits which would increase their income partially--provided they qualify financially. However, government disability benefits can

[5] Baran, Y., Carter, M. (2019), 2019 Multi-Stakeholder Policy Roundtable, "2019 Employment Insurance Sickness Benefit Policy Report", p.13
[6] Ibid
[7] Ibid, 14

take years to process, which may cause financial instability in the meanwhile. In short, workers who are unable to work due to medical issues and do not have extended health care benefits to cover them during time off work face significant financial issues. An extension of sickness benefits to 26 weeks would have a drastic impact in improving the lives of people who face this situation. Furthermore, by extending the benefit, it provides financial relief until other benefits become available.

Recommendations

NLSLM recommends the following to resolve the above noted concerns:

1) Have a "no-penalty period" where a claimant is able to trial employment, and if determined non-suitable, allow the claimant to quit within the "no-penalty period" and continue to be eligible for regular benefits. This would limit human error when determining ongoing eligibility, create definitive and transparent parameters for all parties to understand and encourage claimants to attempt employment.
2) Refer claimants to legal resources. In Ontario, can be referred to legal clinics.
3) Rather than completely refuse eligibility, have a penalization model (reducing benefits rather than eliminating them) instead for claimants who fail to comply with rules such as refusing eligible employment, voluntarily leaving, or misconduct. This would reduce the effects of problematic decisions, and create a fairer less punitive model for benefits.
4) Train better initial adjudicators dealing with claimants regarding exceptions to voluntarily leaving employment, suitable employment, and ongoing benefits.
5) Expand the current EI Sickness benefit from 15 weeks to 26 weeks to reduce additional financial and health stressors to claimants.

Thank you for considering our input on the review of Employment Insurance benefits to improve access to benefits.

Yours very truly,

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