Jordan v The Queen, 2012 TCC 394

Repeated Travel to-and-from Medical Facility During Period of Treatment Deductible as Medical Expense Tax Credit

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At issue was whether the expenses incurred by one spouse to travel to and from (102 roundtrips) a hospital where the other spouse was receiving medical treatment was deductible through the use of the medical expense tax credit?

The TCC held that the Medical Expense Tax Credit is available not only for the initial transportation of a patient, but also for travel expenses during the entire time of treatment of the patient.

COMMENT

It would appear that the interpretation of this provision by the TCC holds true to the ideal of universal health-care for Canadians. By providing the credit for medical travel over 80 km from a taxpayer's home, Parliament could have recognised the limitations and expenses associated with providing quality medical care to all Canadians. Given the capital demand for medical facilities, and the specialized skills of medical professionals, Parliament has stayed true to the ideal of universal medical coverage by allowing a tax credit where systemic limitations require patients to travel far from home from medical treatment that the government wants all to have access to.

The ethical problem (if one sees the problem as ethical) comes when we consider the policy of universal healthcare to the reality to which this provision seems to apply. This tax credit, being non-refundable, is of course only of use where the taxpayer has taxes otherwise payable. For many Canadians the ability to claim a tax credit if they have to expend money (assuming that they have the money to expend in the first place) for medical treatment not available within 80 km of their home is cold comfort. This provision distinguishes between those with higher income/wealth and those with lower income/wealth, and in effect would provide those with higher incomes greater government assistance with health care expenses.

FACTS

The Appellant's spouse suffered brain damage due to an aneurysm and was at the time of the decision confined to a long-term care facility. When the incident occurred, the spouse was transported 120km from her home town to Regina where her medical needs could be met (both treatment and rehabilitation), before being returned to a long-term facility in her home town.

The Appellant initially accompanied his spouse to the hospital, and thereafter took almost daily trips to the hospital from his home town (after work and on weekends) to assist with his spouse's recovery. He claimed $11,730 in travel and $3,468 in meal expenses under the

medical expense tax credits. The MNR reassessed and denied all but the expenses for the initial and final trips, thereby denying 101 roundtrips.

ARGUMENTS

The Crown argued that the tax credit is only available for travel expenses of an accompanying person incurred as part of the transportation of the patient. This was said to be implicit given the use of the phrase "who accompanied the patient."

The Appellant argued, on the basis of *Bell v The Queen*, 2009 TCC 523, where the TCC held that paragraph 118.2(2)(h) includes not only the initial expenses but also the expenses for the period while away from home and the travel expenses between hotel and hospital, that the expenses here fall within the credit's ambit.

ANALYSIS

Paragraph 118.2(2)(h) of the ITA permits a medical expense tax credit with respect to travel expenses incurred when a patient required medical attention at least 80 km from their home. It reads:

> (2) Medical expenses - For the purposes of subsection (1), a medical expense of an individual is an amount paid
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> […]
>
> g) [transportation] - to a person engaged in the business of providing transportation services, to the extent that the payment is made for the transportation of
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> (i) the patient, and
>
> (ii) one individual who accompanied the patient, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant
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> from the locality where the patient dwells to a place, not less than 40 kilometres from that locality, where medical services are normally provided, or from that place to that locality, if
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> (iii) substantially equivalent medical services are not available in that locality,
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> (iv) the route travelled by the patient is, having regard to the circumstances, a reasonably direct route, and

> (v) the patient travels to that place to obtain medical services for himself or herself and it is reasonable, having regard to the circumstances, for the patient to travel to that place to obtain those services;
>
> (h) [travel expenses] - for reasonable travel expenses (other than expenses described in paragraph (g)) incurred in respect of the patient and, where the patient was, and has been certified by a medical practitioner to be, incapable of travelling without the assistance of an attendant, in respect of one individual who accompanied the patient, to obtain medical services in a place that is not less than 80 kilometres from the locality where the patient dwells if the circumstances described in subparagraphs (g)(iii), (iv) and (v) apply;

The Court in *Bell v The Queen*, 2009 TCC 523, stated at paragraph 5 that:

> 5 [In respect of the allowance by the Minister of hotel costs] I can only assume that the Minister had regard not only to section 12 of the Interpretation Act, which mandates a fair, large and liberal interpretation of legislation, but also to the recent jurisprudence requiring that statutes be given an interpretation that takes into account not only language and context, but also the purpose of the enactment. I expect that, having approached paragraph (h) in that way, he would have seen that it was aimed not simply at the cost of moving the patient, but at those additional expenses incurred by a patient, or the person accompanying a patient, during the period between first leaving home to go to the place of medical treatment, and returning home after the treatment is completed. Travel expenses, in other words, embrace not simply the cost of movement from one place to another, but also the attendant costs of living away from home during the treatment period. The Minister, it seems, recognized this in respect of accommodation and meals, but not in respect of the cost of travel back and forth between the hotel and the hospital for the appellant's wife during his hospitalization. I can see no difference between the two. They are both expenses to which the patient's spouse was subject as a result of his illness and the need to be treated more than 80 kms. from his home in Nanaimo. Clearly, the purpose of this paragraph in section 118.2 of the Act is to provide some relief from the extraordinary expenses incurred when a patient must receive medical treatment 80 kilometers or more from home. (Emphasis added.)

The Court held that this interpretation was reasonable in the context of a broadly-worded and ambiguous provision, and did not see a principled difference between the living expenses while living away from home (*Bell*) and the travel expenses between home and hospital - they were both travel expenses incurred by accompanying person during the period of treatment. The length of the required medical treatment was irrelevant.