Severe Disability - Moving and Medical Expenses Claimed

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Olney v The Queen, 2014 TCC 262

The issue was whether the following expenses were proper medical expenses, deductible pursuant to section 118.2, and proper moving expenses, deductible pursuant to section 62, of the *Income Tax Act:*

- **Medical Expenses:** Cell Phone, Lawn Care, Personal Grooming, CAA Auto Club Membership, Clothing Alterations, Personal Trainer, Housekeeping
- **Moving Expenses:** Search for new home, packing assistance, moving-storage, transport of vehicle to new city, meals, accommodation, taxi to airport, and return airfare.

Justice Campbell J Miller of the TCC held that all the expenses, other than the scouting for a new home, cell phone, and CAA membership are properly deductible. This is yet another excellent decision by Justice Miller.

The taxpayer suffers from the effects of Thalidomide, and was classified by her doctor as suffering from a major disability (category 3). Despite this, she has strived to be independent and contributes fully to Canadian society. She moved from Ontario to Alberta for work purposes.

All the medical expenses has been previously claimed and accepted by the CRA, but it was the move resulting in her returns going to a different taxation office that resulted in the CRA questioning her claimed expenses.

ANALYSIS

The taxpayer relied on the attendant care provision in paragraph 118.2(2)(b.1) of the ITA. The Court noted that the medical expense provisions are intended to provide relief, and have to be liberally and humanely interpreted: *Radage v Her Majesty the Queen*, 1996 3 C.T.C. 2510., which were cited by Justice Bowie in *Pina Garcea Zaffino v Her Majesty the Queen,* 2007 TCC 388. See also *Johnston v. The Queen*, [1996] 3 C.T.C. 2510.

In *Zaffino*, the TCC held that "Attendant care" refers to:

> [...] the totality of the services provided by an attendant, and that if a particular service falls within it when it is delivered along with other services, then it must necessarily fall within when delivered alone. The fact that a particular taxpayer requires to obtain only one of the services commercially surely does not change the nature of that service from being "attendant care" to something else.

> [...]
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> [...] an "attendant" [is] "a person employed to wait on others or provide a service" and the meaning meanings of the word "care" include "process of looking after or providing for someone ... the provision of what is needed for health or protection".

Though the court agreed that the taxpayer needed the cell phone and CAA membership because of her disability, these did not fall into the definition of medical expense in subsection 118.2(2) and it was not open for the court to create new categories (para 17). The CAA membership could not fit the definition of "Attendant Care".

The TCC stated that the cell phone may fall under paragraph 118.2(2)(m) being a prescribed device or equipment, but none of the prescribed items in Regulation 5700 include a cell phone. (paras 20-21).

The personal trainer, as recommended by her physician, was deductible under paragraph 118.2(2)(b.1) as "attendant care" and would have also qualified under paragraph 118.2(2)(l.9) as treatment of a physical disorder or therapy (rehabilitative therapy being theory to restore normal life by training) (para 25).

Payments to have someone alter her clothing, like lawn care and house cleaning, qualifies as "attendant care" - being the payment to someone else to do a thing a person cannot do for themselves (para 27).

Unfortunately, moving expenses do not include house hunting expenses, as moving expenses require actual moving: *Robert T. Ball v Her Majesty the Queen*, [1996] 3 C.T.C. 2178.

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