

[OFFICIAL ENGLISH TRANSLATION]

2001-4617(IT)I

BETWEEN:

MARC TESSIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on August 14, 2002, at Montréal, Quebec, by

the Honourable Judge Louise Lamarre Proulx

Appearances

For the Appellant:

The Appellant himself

Counsel for the Respondent:

Susan Shaughnessy

JUDGMENT

The appeal from the assessment made under the *Income Tax Act* for the 2000 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 21st day of August 2002

"Louise Lamarre Proulx"

J.T.C.C.

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Date: 20020821
Docket: 2001-4617(IT)I

BETWEEN:

MARC TESSIER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Lamarre Proulx, J.T.C.C.

[1] This is an appeal under the informal procedure for the 2000 taxation year.

[2] The issue is whether medical expenses of \$9,465 paid by the appellant but reimbursed by the Great-West Life Assurance Company (group plan No. 134634) are eligible for the medical expense credit under section 118.2 of the *Income Tax Act* ("the Act").

[3] The facts of this case are described in paragraph 7 of the Reply to the Notice of Appeal ("the Reply") as follows:

[TRANSLATION]

- (a) for the taxation year at issue, the appellant claimed \$11,669 as medical expenses eligible for the medical expense credit;
- (b) during the taxation year at issue, the appellant was a member of a group plan that covered medical expenses:

- | | | |
|-------|-----------------------------------|-------------|
| (i) | life insurance company | Great-West |
| (ii) | plan number | 134634 |
| (iii) | appellant's identification number | S216588863; |
- (c) after making claims in accordance with the provisions of his group insurance plan No. 134634 with the Great-West Life Assurance Company, the appellant was reimbursed \$9,465 for the 2000 taxation year;
- (d) in computing his income for the 2000 taxation year, the appellant did not have to include the total of \$9,465 he received on his insurance claims;
- (e) the Minister's view was that the medical expenses reimbursed for the 2000 taxation year did not entitle the appellant to a medical expense credit.

[4] In his Notice of Appeal, the appellant argued as follows:

[TRANSLATION]

...

You are reducing my medical expenses from \$11,669.52 to \$2,204.30, a loss of \$9,465.22 that reduces the non-refundable tax credit by \$1,609. The reason given is that I was reimbursed under an insurance plan. Does the reimbursement change the concept of "eligible medical expenses" for tax purposes? A medical expense is any expense incurred pursuant to a medical order for a taxpayer.

Does payment of the expenses by a taxpayer or by a third party change the concept? No.

...

Why does the Department not inquire as to who pays the medical expenses of a person who has no insurance?

...

[5] The appellant admitted all the subparagraphs of paragraph 7 of the Reply with the exception of the last subparagraph. In argument, he submitted that the Minister of National Revenue ("the Minister") does not ask taxpayers to assert that they, and not third parties, are indeed the ones who have paid their medical

expenses. He also referred to the tax treatment of insurance proceeds on depreciable property and to the right of the owner of the property to depreciate on the basis of the new price.

[6] Counsel for the respondent referred to the decision of Judge Teskey of this Court in *Lopes v. Canada*, [1996] T.C.J. No. 1220, which involved the 1993 and 1994 taxation years. She referred to paragraphs 11-13 of that decision:

11. The Appellant argued that since premiums for the insurance plans were paid with taxpayer's dollars, he should be able to expense the medical bills in total eventhough [*sic*] only a very small portion of these bills were actually paid by himself. The fact the insurance premiums were paid with tax paid dollars is irrelevant.
12. Subsection 118.2(1) is the provision of the Act that allows the deduction from income of medical expenses. This provision only allows expenses "actually paid" by the taxpayer. The operative portion reads:
 - (1) For the purposes of computing the tax payable under this Part by an individual for a taxation year, there may be deducted ...
....
A
B is the total of the individual's medical expenses ... and that were paid by either the individual or the individual's legal representative.
13. Since the Appellant is alive and of sound mind, the insurance companies cannot be said to be his legal representative. Thus the only portion the Appellant can use as a deduction are those medical and drug costs that he actually paid from his own funds and he cannot include the portion he was reimbursed for by the insurance companies.

Conclusion

[7] The relevant parts of subsection 118.2(1) and of paragraph 118.2(3)(b) of the *Act* read as follows:

Medical expense credit

118.2(1) For the purpose of computing the tax payable under this Part by an individual for a taxation year, there may be deducted an amount determined by the formula

$$A(B - C) - D$$

where

A is the appropriate percentage for the year;

B is the total of the individual's medical expenses that are proven by filing receipts therefor with the Minister, that were not included in determining an amount under this subsection or subsection 122.51(2) for a preceding taxation year and that were paid by either the individual or the individual's legal representative,

...

Deemed medical expense

118.2(3) For the purposes of subsection (1),

...

(b) there shall not be included as a medical expense of an individual any expense to the extent that

- (i) the individual,
- (ii) the person referred to in subsection (2) as the patient,
- (iii) any person related to a person referred to in subparagraph (i) or (ii), or
- (iv) the legal representative of any person referred to in any of subparagraphs (i) to (iii)

is entitled to be reimbursed for the expense, except to the extent that the amount of the reimbursement is required to be included in computing income and is not deductible in computing taxable income.

[8] Paragraph 118.2(3)(b) of the *Act* clearly states that medical expenses for which an individual is entitled to be reimbursed are not eligible for the medical expense credit. The right to be reimbursed for the medical expenses is sufficient in itself to exclude them from being eligible medical expenses for the purposes of the credit. Here, not only was the appellant entitled to be reimbursed, but he was in fact reimbursed.

[9] The appellant's arguments based on other legal situations cannot be accepted, whether or not they are correct in law. The tax treatment of different legal situations varies. What must be looked at and complied with is the legislation that applies to the legal situation at hand. In this case, that legislation was correctly applied by the Minister.

[10] Accordingly, the appeal is dismissed.

Signed at Ottawa, Canada, this 21st day of August 2002

"Louise Lamarre Proulx"

J.T.C.C.