

Docket: 2003-733(IT)I

BETWEEN:

ROBERT CASAVANT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

Appeal heard on August 13, 2003, at Montréal, Quebec.

Before: The Honourable Justice P.R. Dussault

Appearances:

Agent for the Appellant: Bertrand Desrosiers

Counsel for the Respondent: Antonia Paraherakis

JUDGMENT

The appeal from the assessment made pursuant the *Income Tax Act* for the 2001 taxation year is dismissed, in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 4th day of September 2003.

“P.R. Dussault”

Dussault J.

Translation certified true
on this 30th day of March 2009.
Bella Lewkowicz, Translator

Citation: 2003TCC614

Date: 20030904

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BETWEEN:

ROBERT CASAVANT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR JUDGMENT

Dussault J.

[1] This is an appeal under the Informal Procedure from the assessment for the 2001 taxation year in which the Minister of National Revenue disallowed the Appellant's tax credit for an impairment in mental or physical functions, pursuant to sections 118.3 and 118.4 of the *Income Tax Act* (the Act).

[2] The Appellant, who has held jobs in the past for limited periods of time, no longer works and receives \$9,000 in disability pension per year from the Régie des rentes du Québec.

[3] According to Hélène Vallée, the Appeals Officer, in 2000, the Canada Customs and Revenue Agency established a national program for verifying claims for credits for an impairment in mental or physical functions to ensure the most effective application of the Act.

[4] As part of this verification, the Appellant was asked to file the certification required by paragraph 118.3(1)(a.2) of the Act on the prescribed form (T-2201). Dr. Patrick Laplante completed the form on November 20, 2001. Dr. Laplante's diagnosis is as follows:

[TRANSLATION]

Slight mental impairment, very emotional, very impulsive, easily stressed and frustrated, very little physical endurance. Never able to get and keep a job.

[5] However, Dr. Laplante does not in any way certify that this is a serious and prolonged impairment in mental or physical functions the effects of which are such that the Appellant's ability to perform a basic activity of daily living is markedly restricted, as required by paragraph 118.3(1)(a.2) of the Act (Exhibit I-1).

[6] A supplementary questionnaire was completed by a Dr. Larose. The answers provided did not contradict the answers supplied by Dr. Laplante on the prescribed form in any way.

[7] The agent for the Appellant stressed the fact that the Appellant had received the credit in the past, that he currently does not work and that he has a very modest income from the Régie des rentes du Québec. According to the agent, for the Appellant to lose the benefits of the credit would only aggravate his situation.

[8] I think it is important to refer to subsection 118.4(1) of the Act, which states the following:

118.4 Nature of impairment

- (1) For the purposes of subsection 6(16), sections 118.2 and 118.3 and this subsection,
 - (a) an impairment is prolonged where it has lasted, or can reasonably be expected to last, for a continuous period of at least 12 months;
 - (b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;

- (c) a basic activity of daily living in relation to an individual means
 - (i) perceiving, thinking and remembering,
 - (ii) feeding oneself or dressing oneself,
 - (iii) speaking so as to be understood, in a quiet setting, by another person familiar with the individual,
 - (iv) hearing so as to understand, in a quiet setting, another person familiar with the individual,
 - (v) eliminating (bowel or bladder functions), or
 - (vi) walking;
- (d) for greater certainty, no other activity, including working, housekeeping or a social or recreational activity, shall be considered as a basic activity of daily living;

[9] We note that “working” is not considered a basic activity of daily living and that the fact that it cannot be done cannot be taken into consideration.

[10] The Federal Court of Appeal clearly indicated that the medical or other certification, pursuant to paragraph 118.3(1)(a.2) of the Act constitutes a mandatory requirement. In *Buchanan v. Canada*, [2002] F.C.J. No. 838 (Q.L.), which counsel for the Respondent referred to, Rothstein J. expressed the following at paragraph 8:

The requirement for a medical certificate was addressed in the decision of this Court in *Attorney General v. McIsaac*, [2000] D.T.C. 412. In that case, it was determined that paragraph 118.3(1)(a.2) was mandatory and not directory and that a certificate by a doctor that the individual suffers impairment in the language of the section was a requirement. At paragraph 5, Sexton J.A. stated:

Section 118.3(1)(a.2) of the *Income Tax Act* is not merely directory. It is mandatory. Simply put, there must be a certificate by the doctor that the individual suffers impairments in the language of these subsections. This Court held to the same effect in *Partanen v. Canada*, [1999] F.C.J. 751, and we feel bound by this decision.

[11] While cognizant of the Appellant's problems in his daily life and the extremely vulnerable state of his financial situation, it is not my place to change the requirements established by Parliament.

[12] Accordingly, the appeal is dismissed.

Signed at Ottawa, Canada, this 4th day of September 2003.

"P.R. Dussault"

Dussault J.

Translation certified true
on this 30th day of March 2009.
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CITATION: 2003TCC614

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STYLE OF CAUSE: Robert Casavant and Her Majesty the Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 14, 2003

REASONS FOR JUDGMENT BY: The Honourable Justice P.R. Dussault

DATE OF JUDGMENT: September 4, 2003

APPEARANCES:

Agent for the Appellant: Bertrand Desrosiers

Counsel for the Respondent: Antonia Paraherakis

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

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