

Docket: 2007-4944(IT)I

BETWEEN:

ELIZABETH J. BARTLETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal called for hearing on August 26, 2008, at Corner Brook,
Newfoundland & Labrador

Before: The Honourable Justice Valerie Miller

Appearances:

Agent for the Appellant: Donald Bartlett
Counsel for the Respondent: Kendrick Douglas

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2006 taxation year is dismissed.

Signed at Halifax, Nova Scotia, this 4th day of September 2008.

“V. A. Miller”

V. A. Miller, J.

Citation: 2008TCC494
Date: 20080904
Docket: 2007-4944(IT)I

BETWEEN:

ELIZABETH J. BARTLETT,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

V.A. Miller, J.

[1] This is an appeal of a reassessment for the Appellant's 2006 taxation year wherein the Minister of National Revenue (the "Minister") disallowed a claim for a medical expense in the amount of \$7357.

[2] Mr. Donald Bartlett, the Appellant's spouse, acted as agent for the Appellant. He stated that the Appellant was in palliative care and could not be present at the hearing. Mr. Bartlett also stated that he agreed with all of the assumptions made by the Minister. Those assumptions are:

- (a) at all material times, the Appellant and her spouse resided in Corner Brook, Newfoundland and Labrador (the "Locality");
- (b) during the relevant period, the Appellant was required to travel away to obtain medical treatment or services that were not available in the Locality;
- (c) during the relevant period, the Appellant travelled not less than 80 kilometres from the Locality for the purpose of obtaining medical treatment or services;

- (d) during the relevant period, the Appellant was incapable of travelling without an attendant;
- (e) the Appellant was accompanied by her spouse, who acted as her attendant (the “attendant”);
- (f) the Appellant and her attendant did not use public transportation;
- (g) the Appellant and her attendant travelled in the same private vehicle;
- (h) the Appellant calculated her medical travel expenses using the Minister’s simplified method, and the total expenses she claimed in respect of her travel was \$7,357;
- (i) the Appellant’s medical travel expenses also included an additional \$7,357 with respect to her attendant’s travel; and
- (j) the disallowed expenses with respect to the attendant’s travel were a duplication of the medical expenses claimed and allowed with respect to the Appellant’s travel.

[3] It was Mr. Bartlett’s position that the Minister did not follow his own rules as stated in Interpretation Bulletin IT-519R2, paragraph 33. Mr. Bartlett’s interpretation of this paragraph is that the Appellant is entitled to claim the travel expenses twice, once for herself and once for her spouse who accompanied her. Paragraph 33 reads as follows:

33. Paragraph 118.2(2)(h) refers to travel expenses other than those referred to in paragraph 118.2(2)(g) (discussed in ¶ 32 above). Paragraph 118.2(2)(h) provides that an individual may include, as qualifying medical expenses, such other reasonable travel expenses (see ¶ 34 below) for a patient to obtain medical services if the patient travels to a place that is at least 80 kilometres away from the locality where he or she dwells to get the medical services, and provided the following other conditions are met:

- (a) Substantially equivalent medical services are unavailable within the patient's locality.
- (b) The patient takes a reasonably direct travel route.
- (c) It is reasonable, in the circumstances, for the patient to travel to that place for the medical services.

The individual claiming travel expenses for the patient under paragraph 118.2(2)(h) may also claim, under the same paragraph, the same kinds of travel expenses (that is,

reasonable travel expenses other than those referred to in paragraph 118.2(2)(g) for one individual to accompany the patient as long as the patient has been certified by a medical practitioner as being incapable of travelling without an attendant

[4] Mr. Bartlett stated that this paragraph allowed an individual who accompanied a patient to claim reasonable travel expenses and the patient can claim the same reasonable travel expenses. In other words, the claim for travel expenses can be duplicated. His interpretation is based on the fact that both the word “individual” and the word “patient” are used in this paragraph.

[5] However, the two words do not necessarily refer to two separate persons. Paragraph 118.2(2)(a) of the *Act* states that the medical expense of an individual is an amount paid for services provided to a patient who is the individual, the individual’s spouse or common-law partner or a dependant. Paragraph 118.2(2)(a) reads as follows:

(2) Medical expenses -- For the purposes of subsection (1), a medical expense of an individual is an amount paid

(a) **[medical and dental services]** – to a medical practitioner, dentist or nurse or a public or licensed private hospital in respect of medical or dental services provided to a person (in this subsection referred to as the “patient”) who is the individual, the individual’s spouse or common-law partner or a dependent of the individual (within the meaning assigned by subsection 118(6)) in the taxation year in which the expense was incurred;

[6] Paragraph 118.2(2)(h) of the *Income Tax Act* (the “*Act*”) reads as follows:

(2) Medical expenses -- For the purposes of subsection (1), a medical expense of an individual is an amount paid

(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;

[7] Neither paragraph 33 of the Interpretation Bulletin nor paragraph 118.2(2)(h) of the *Act* bears the interpretation given by Mr. Bartlett. As well, the initial clause in subsection 118.2(2) of the *Act* makes it clear that the medical expense of an

individual has to be an amount that is paid. The amount of \$7,357 included the travel expenses for the Appellant and for her spouse. This amount was paid only once and it can be claimed only once.

[8] The appeal is dismissed.

Signed at Halifax, Nova Scotia, this 4th day of September 2008.

“V. A. Miller”

V. A. Miller, J.

CITATION: 2008TCC494

COURT FILE NO.: 2007-4944(IT)I

STYLE OF CAUSE: ELIZABETH J. BARTLETT AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Corner Brook, Newfoundland & Labrador

DATE OF HEARING: August 26, 2008

REASONS FOR JUDGMENT BY: The Honourable Justice Valerie Miller

DATE OF JUDGMENT: September 4 2008

APPEARANCES:

Agent for the Appellant:	Donald Bartlett
Counsel for the Respondent:	Kendrick Douglas

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

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