

Docket: 2008-2230(IT)I

BETWEEN:

HAZEL LYNN BENTLEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on March 18, 2009, at Vancouver, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the Appellant: The Appellant herself

Counsel for the Respondent: Natasha Reid

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2006 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 9th day of June 2009.

"Gaston Jorré"

Jorré J.

Citation: 2009 TCC 316

Date: 20090609

Docket: 2008-2230(IT)I

BETWEEN:

HAZEL LYNN BENTLEY,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Jorré J.

[1] The issue in this appeal is whether the Appellant can deduct various naturopathic remedies as medical expenses. There is no real dispute as to the facts; the matter turns on the proper application of the law.

[2] The Appellant suffers from a variety of chronic illnesses. The overall effect of these illnesses is severe and, in the opinion of her family physician, the net result is that she is unable to work. Some of these conditions cause her widespread pain.

[3] The Appellant is intolerant of most pharmacological drugs. As a result, she takes a number of naturopathic medicines; the course of action was recommended to her by her current doctor.

[4] In filing her 2006 income tax return, the Appellant claimed a number of medical expenses. On reassessment, the portion of the expenses claimed relating to (i) visits to the naturopath and (ii) the purchase of naturopathic medicines was disallowed.

[5] The Appellant filed a notice of objection and, as a result, the Minister reassessed again and allowed the visits to the naturopath, but not the purchase of naturopathic medicines.

[6] The naturopathic medicines were bought at the naturopath's office.

[7] The staff members of the naturopath's office who dispensed the naturopathic medicines were not pharmacists licensed by the College of Pharmacists of British Columbia.

[8] For the expenses claimed to be deductible, they must fall within paragraph 118.2(2)(n) of the *Income Tax Act*. That paragraph reads in part:

118.2(2) For the purposes of subsection (1), a medical expense of an individual is an amount paid

...

(n) for drugs, medicaments or other preparations or substances . . . for use in the diagnosis, treatment or prevention of a disease, disorder, abnormal physical state, or the symptoms thereof or in restoring, correcting or modifying an organic function, purchased for use by the patient as prescribed by a medical practitioner . . . and as recorded by a pharmacist;

[9] I have great sympathy for the Appellant who appears to benefit from the naturopathic medicines. However, it is clear that it is an essential requirement of paragraph 118.2(2)(n) that the sale of the medication must be "recorded by a pharmacist". A pharmacist means a person who is recognized as such under the relevant provincial legislation.¹

[10] That requirement is not met here and I must dismiss the appeal.

Signed at Ottawa, Canada, this 9th day of June 2009.

"Gaston Jorré"

Jorré J.

¹ See *Ray v. Canada*, 2004 FCA 1, at paragraphs 1, 11, 12 and 13, as well as *Selent v. The Queen*, 2004 TCC 113, at paragraphs 13 to 15. The Appellant drew to my attention two decisions of this Court. The first, *Frank v. R.*, [2001] 3 C.T.C. 2596, while taking a broad approach, predates the decision of the Federal Court of Appeal in *Ray*, while the second, *Claussen Estate v. R.*, [2003] 2 C.T.C. 2363, does not assist the Appellant directly, but at paragraph 7 does express the sentiment that the legislature should consider amendments to recognize natural medicines.

CITATION: 2009 TCC 316

COURT FILE NO.: 2008-2230(IT)I

STYLE OF CAUSE: HAZEL LYNN BENTLEY v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 18, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: June 9, 2009

APPEARANCES:

For the Appellant: The Appellant herself

Counsel for the Respondent: Natasha Reid

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
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