Docket: 2009-2573(IT)I

BETWEEN:

ROSEMARY GUEST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 11, 2010 at Kingston, Ontario

By: The Honourable Justice Judith Woods

Appearances:

Agent for the Appellant:	James Guest
Counsel for the Respondent:	Jack Warren

JUDGMENT

The appeal with respect to determinations of the child tax benefit under the *Income Tax Act* for the period from July 2005 to May 2007 is allowed, and the determinations are referred back to the Minister of National Revenue for reconsideration and redetermination on the basis that: (1) the appellant is entitled to the child tax benefits received for the period from July 2005 to June 2006, and (2) the appellant is not entitled to child tax benefits for the period from July 2006 to May 2007. Each party shall bear their own costs.

Signed at Ottawa, Canada this 18th day of June 2010.

"J. M. Woods"

Woods J.

Citation: 2010 TCC 336
Date: 20100618
Docket: 2009-2573(IT)I

BETWEEN:

ROSEMARY GUEST,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] This appeal concerns the child tax benefit provisions in sections 122.6 to 122.64 of the *Income Tax Act*.

[2] The appellant, Mrs. Rosemary Guest, received monthly child tax benefits in respect of her daughter during the period from July 2005 to May 2007. The total amount received was $2,265.85.

[3] A review of Mrs. Guest's entitlement to these benefits was undertaken by the Canada Revenue Agency as a result of a change of marital status reported on Mrs. Guest's income tax return. It was determined that Mrs. Guest was not entitled to any of the above benefits.

[4] Mrs. Guest has appealed these determinations to this Court. Her husband represented her at the hearing and testified on her behalf.

[5] In his testimony, Mr. Guest stated that he had difficulty finding out from the CRA why the benefits had been denied. He stated that he had no problem with the Minister's determination for the period from July 2006 to May 2007 (the "Second Period") but that he could not understand the determination for the period from July

2005 to June 2006 (the "First Period").

[6] The Minister's assumptions as stated in the reply are not in dispute, and are reproduced below.

a) the appellant was initially issued CCTB for the period of July 2005 to May 2007 on the basis that she was separated, single, widowed or divorced since December 31, 2006;

b) the appellant was separated on or about July 31, 2003;

c) the appellant and the Spouse (Jim Guest) were living in a common law relationship from on or about November 2004 to March 2006;

d) the appellant and the Spouse were separated from on our [sic] about March 2006 to September 2007;

e) the appellant and the Spouse married on or about September 2007;

f) the appellant informed Canada Revenue Agency that she was separated from on our [sic] about March 2006 to September 2007 in May 2008; and

g) the Spouse's net income for the 2004 taxation year was $63,907.

Discussion

[7] The arguments of the parties focused solely on the benefits received for the First Period because the appellant did not take issue with the benefits for the Second Period.

[8] At the beginning of his argument, counsel for the respondent initially relied on the following two grounds to support the Minister's determination in respect of the First Period.

(a) Mr. Guest's income was sufficiently large to result in the benefit being reduced to zero pursuant to "B" of the formula in subsection 122.61(1) of the *Act*. (This ground was not mentioned in the reply.)

(b) Mrs. Guest failed to file a notification of change of marital status within the 11-month limitation period required by subsection 122.62(1) of the *Act*.

[9] Counsel subsequently abandoned the first argument and relied solely on the second. He stated that the failure to provide the notification in s. 122.62(1) on a timely basis was the sole reason for denying the benefits for the First Period. Counsel is to be commended for taking this position since the first argument was not mentioned in the reply and the appellant had no notice of it.

[10] It is not necessary that I consider the first argument. However, I would offer a comment concerning that argument, given Mr. Guest's understandable frustration in attempting to understand the relevant provisions. I am similarly frustrated in trying to understand the legislation. It appears that Mrs. Guest had an option as to how the benefits would be calculated. The benefits may be determined for the First Period by taking into account Mr. Guest's income for the base taxation year of 2004 because Mrs. and Mr. Guest were living in a common law relationship at the end of the year (Definition of "adjusted income" in s. 122.6). It appears that Mr. Guest's income was sufficiently high that this would have resulted in a denial of the benefits. Alternatively, Mrs. Guest had the option to elect that only her income be taken into account for months in the First Period that the couple were separated (Section 122.62(6)). If this election had been made, it appears that it may have given partial relief.

[11] As it turns out, the above analysis is not relevant because the respondent has restricted its argument to the notification requirement in subsection 122.62(1). It provides:

> **122.62(1)** For the purposes of this subdivision, a person may be considered to be an eligible individual in respect of a particular qualified dependant at the beginning of a month only if the person has, no later than 11 months after the end of the month, filed with the Minister a notice in prescribed form containing prescribed information.

[12] It is not clear on the face of this provision whether or not it applies to a change in marital status, and I was not provided with the form that has been prescribed for purposes of the subsection. Subsection 122.62(1) appears to relate to the "eligible individual" criteria. Mrs. Guest's marital status has nothing to do with this criteria (Definition of "eligible individual" in s. 122.6).

[13] Subsequent to the hearing, I reviewed the most recent Guide published by the Canada Revenue Agency concerning the child tax benefit (T4114(E), Rev. 09). Regarding a change of marital status, it provides:

> If your marital status changes, be sure to let us know as soon as possible, as this may affect the amount of CCTB to which you are entitled. […] Complete Form RC65, *Marital Status Change*, or notify us in a letter of your new marital status and the date of the change.

[14] As it does not affect my decision, I will assume without deciding that Form RC65 is a prescribed form for purposes of subsection 122.62(1).

[15] The appellant acknowledges that she only notified the Minister of her change in marital status in May 2008. This was subsequent to the 11-month period. The question, then, is whether the appellant's failure to file a notice under s. 122.62(1) in a timely manner is a sufficient reason for the benefits to be disallowed.

[16] The problem that I have with the respondent's position is that the legislation contemplates that the Minister may either waive the notification requirement or extend the notification deadline. The relevant provisions, subsections 122.62(2) and 220(2.1) of the *Act*, are reproduced below.

> **122.62(2)** The Minister may at any time extend the time for filing a notice under subsection (1).
>
> **220(2.1)** Where any provision of this Act or a regulation requires a person to file a prescribed form, receipt or other document, or to provide prescribed information, the Minister may waive the requirement, but the person shall provide the document or information at the Minister's request.

[17] It appears that the Minister did not consider whether an extension or waiver should be granted in this case. Counsel for the respondent seemed to be unaware that this option was open to the Minister. He stated that he had been told by the relevant CRA officer that the CRA's hands were tied because the notice was not filed in time.

[18] Given the clear intent of Parliament that the Minister may waive or extend the notification requirement, the Minister should have given consideration to this before making the determination to disallow the benefits in their entirety.

[19] In all the circumstances of this case, it is appropriate in my view to allow the appeal with respect to benefits received for the First Period. In reaching this conclusion, I have taken several factors into consideration:

(a) The Minister should have considered whether to waive or extend the notice period in s. 122.62(1). Although the matter could be sent back to the Minister for this consideration, that course of action would unduly delay the disposition of this appeal.

(b) At the hearing, the appellant did not contest the disallowance of benefits with respect to the Second Period.

(c) The T4114 guide does not clearly advise applicants that benefits could be denied simply by being late in filing the prescribed form.

[20] In the muddied circumstances of this case, I have concluded that the appellant should be entitled to child tax benefits in respect of the First Period. In the result, the appeal will be allowed with respect to child tax benefits for the First Period but not the Second Period.

Signed at Ottawa, Canada this 18th day of June 2010.

"J. M. Woods"

Woods J.

CITATION:	2010 TCC 336
COURT FILE NO.:	2009-2573(IT)I
STYLE OF CAUSE:	ROSEMARY GUEST and HER MAJESTY THE QUEEN
PLACE OF HEARING:	Kingston, Ontario
DATE OF HEARING:	June 11, 2010
REASONS FOR JUDGMENT BY:	The Honourable Justice J. M. Woods
DATE OF JUDGMENT:	June 18, 2010

APPEARANCES:

Agent for the Appellant:	James Guest
Counsel for the Respondent:	Jack Warren

COUNSEL OF RECORD:

For the Appellant:

Name:	N/A
Firm:	

For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada