

Docket: 2012-639(GST)I

BETWEEN:

LYN WILLIAMS-KEELER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on October 26, 2012 at Ottawa, Ontario

By: The Honourable Justice J.M. Woods

Appearances:

Agent for the Appellant: Marc Thibault

Counsel for the Respondent: Paul Klippenstein

JUDGMENT

The appeal with respect to assessments made under the *Excise Tax Act* for periods ending December 31, 2005 and December 31, 2006 is dismissed.

Signed at Toronto, Ontario this 28th day of January 2013.

“J. M. Woods”

Woods J.

Citation: 2013 TCC 28
Date: 20130128
Docket: 2012-639(GST)I

BETWEEN:

LYN WILLIAMS-KEELER,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Woods J.

[1] This appeal concerns whether trauma therapy services provided by the appellant, Lyn Williams-Keeler, are exempt from goods and services tax (GST). Ms. Williams-Keeler has been assessed under the *Excise Tax Act* on the basis that the services are taxable except to the extent that they are covered by provincial health insurance.

[2] The position of Ms. Williams-Keeler is that the services are exempt supplies pursuant to the following provisions in the health care exemptions contained in Part II of Schedule V of the *Excise Tax Act*:

- (a) a supply by a medical practitioner (section 5);
- (b) a supply by a practitioner of a psychological service (section 7(j));
and
- (c) a supply of a health care service made on the order of a medical practitioner or practitioner (section 10).

[3] The amount of GST at issue is \$3,029 for the reporting period ending December 31, 2005 and \$3,871 for the reporting period ending 2006.

Background

[4] Ms. Williams-Keeler is an historian by way of educational background who specialized in the impact of traumatic events. Her career took a turn in the early 1990s after she went to the United States to interview Vietnam veterans who were suffering from post-traumatic stress disorder (PTSD). She then decided that it was not sufficient to write about the problem. She wanted to become a therapist.

[5] Since Canada did not provide trauma therapy training at the time, Ms. Williams-Keeler made an arrangement to receive some training at a medical facility in the United States.

[6] Ms. Williams-Keeler subsequently returned to Canada and worked as a researcher in mental health at the Royal Ottawa Hospital. That experience enabled her to work closely with the psychiatrists and psychologists at the hospital and to pursue her interest in PTSD. After about seven years, Ms. Williams-Keeler transitioned to private practice as a trauma therapist.

[7] Ms. Williams-Keeler has been trained in several techniques that help people manage the symptoms of PTSD. Some of these are eye movement desensitization and reprocessing, EMDR, sensory motor psychotherapy, cognitive processing therapy, emotionally focused therapy, dialectical behaviour therapy, and accelerated attachment oriented therapy (Transcript, p. 42-44).

[8] Many of Ms. Williams-Keeler's patients are referred to her by psychiatrists and family doctors and in most cases the patients also require ongoing medical treatment. Ms. Williams-Keeler described her relationship with the patients' doctors as highly collaborative.

[9] If the therapy provided by Ms. Williams-Keeler is funded by insurance or a government agency, reports are required. Ms. Williams-Keeler typically co-signs reports with a doctor, with her signature being required as the treatment provider.

[10] In the case of patients who receive benefits as civil servants, a doctor must not only sign the report but certify as having supervised Ms. Williams-Keeler's work.

[11] At the relevant time, there was no governmental requirement for certification

to practice trauma therapy in Canada. However, Ms. Williams-Keeler does have certification as a psychotherapist by the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists.

[12] Ms. Williams-Keeler considers her patients to be her own and she bills them directly.

Analysis

[13] The *Excise Tax Act* provides exempt status to a great many health care services listed in Part II of Schedule V. Services by trauma therapists are not listed specifically, but Ms. Williams-Keeler submits that her services are encompassed by the following exemptions:

- (a) a supply by a medical practitioner (section 5);
- (b) a supply by a practitioner of a psychological service (section 7(j));
and
- (c) a supply of a health care service made on the order of a medical practitioner or practitioner (section 10).

[14] Despite the sympathetic circumstances of this appeal, I have concluded that the services provided by Ms. Williams-Keeler are not encompassed by any of the above exemptions. My reasons follow.

Medical practitioner

[15] Ms. Williams-Keeler relies on an exemption for a service provided by a medical practitioner. The relevant legislation is in section 5 of Part II, and the definition of “medical practitioner” in section 1 of Part II.

5. [Medical/dental service] – A supply made by a medical practitioner of a consultative, diagnostic, treatment or other health care service rendered to an individual (other than a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes).

1. [...] “**medical practitioner**” means a person who is entitled under the laws of a province to practice the profession of medicine or dentistry;

[16] Ms. Williams-Keeler is not a medical practitioner as defined above, but she

submits that her services are encompassed by this provision in light of the close collaboration that she has with psychiatrists and family doctors.

[17] The relevant question may be put this way: Are Ms. Williams-Keeler's services provided by a doctor?

[18] Ms. Williams-Keeler was an impressive witness and I found her testimony to be detailed and straightforward. I accept her testimony without reservation. I would conclude, though, that Ms. Williams-Keeler's services are not provided by medical practitioners. Her services are separate supplies.

[19] As Ms. Williams-Keeler described her practice, her relationship with patients was separate from the relationship that her patients had with their doctors. Ms. Williams-Keeler had a contractual relationship with patients to provide trauma therapy and she billed them for these services. The services were provided by Ms. Williams-Keeler – not the doctors.

[20] Ms. Williams-Keeler receives many referrals from doctors but this does not mean that her services are supplied by doctors. Referrals are commonly made by medical practitioners which involve a separate arrangement between the patient and the other professional. It is no different in Ms. Williams-Keeler's case.

[21] Ms. Williams-Keeler's work is highly collaborative, but nevertheless she and the medical practitioners provide separate services. Collaboration generally entailed discussions between the professionals as to a patient's diagnosis and treatment. Occasionally, a patient had a joint session with Ms. Williams-Keeler and a psychiatrist where they had a patient in common. Even in these cases, it appears that there was a separate relationship with each professional.

[22] In what were described as civil service situations, a doctor is required to supervise Ms. Williams-Keeler's work and to certify as such in a report. The evidence suggests that the supervisor did not generally provide trauma therapy services in such cases except to approve the treatment that Ms. Williams-Keeler was providing. I am not satisfied that in such cases Ms. Williams-Keeler's services were provided by the doctor.

[23] For completeness, I would also comment that Ms. Williams-Keeler did not seek partial relief and did not provide any breakdown of her services between referrals, supervision or collaboration. Even if I were satisfied that some of her services qualify, the evidence was not sufficient to enable partial relief to be given.

Psychological services

[24] Section 7 provides an exemption for specifically-listed health services, including psychological services. The relevant provision is s. 7(j).

7. [Non-medical health care] – A supply of any of the following services when rendered to an individual where the supply is made by a practitioner of the service:

- (a) optometric services;
- (b) chiropractic services;
- (c) physiotherapy services;
- (d) chiropodic services;
- (e) podiatric services;
- (f) osteopathic services;
- (g) audiological services;
- (h) speech therapy services;
- (i) occupational therapy services; and
- (j) psychological services.

(Emphasis added)

[25] It may be the case that Ms. Williams-Keeler's services are properly described as psychological in nature, however, that is not sufficient for the services to qualify for this exemption. The exemption also requires that the services be provided by a practitioner, as that term is defined in section 1.

1. [...] “**practitioner**”, in respect of a supply of optometric, chiropractic, physiotherapy, chiropodic, podiatric, osteopathic, audiological, speech therapy, occupational therapy, psychological or dietetic services, means a person who

- (a) practises the profession of optometry, chiropractic, physiotherapy, chiropody, podiatry, osteopathy, audiology, speech therapy, occupational therapy, psychology or dietetics, as the case may be,
- (b) where the person is required to be licensed or otherwise certified to practice the profession in the province in which the service is supplied, is so licensed or certified, and
- (c) where the person is not required to be licensed or otherwise certified to practice the profession in that province, has the qualifications equivalent to those necessary to be so licensed or otherwise certified in another province.

[26] Ms. Williams-Keeler is not a practitioner, as defined, because no licensing or certification was required to practice in the area of trauma therapy in any province

during the period at issue.

[27] The representative for Ms. Williams-Keeler submits that she qualifies by virtue of her certification by the Association of Consultants, Counsellors, Psychometrists and Psychotherapists. He suggests that it is not necessary under the definition of “practitioner” that certification be a requirement to practice. He submits that the word “required” in paragraphs (b) and (c) above only applies to licenses and not certifications.

[28] I disagree with this interpretation. In my view, the term “required” in the phrase “required to be licensed or otherwise certified to practice the profession” is intended to apply to both licensing and certification. It makes no sense for there to be a different test for licensing and certification.

[29] It remains to be considered whether referrals and collaboration by a licensed psychologist are sufficient to satisfy section 7. For the reasons discussed above relating to medical practitioners, I would conclude that referrals and collaboration in the case of Ms. Williams-Keeler are not sufficient to qualify under section 7.

Other health care services

[30] Ms. Williams-Keeler also relies on the exemption for other health care services in section 10 of Part II. The provision, and related regulation, are reproduced below.

10. A supply of a prescribed diagnostic, treatment or other health care service when made on the order of a medical practitioner or practitioner.

Regulation

2. For the purposes of section 10 of Part II of Schedule V to the *Excise Tax Act*, the following services, other than services related to the provision of a surgical or dental service that is performed for cosmetic purposes and not for medical or reconstructive purposes, are prescribed:

(a) laboratory, radiological or other diagnostic services generally available in a health care facility; and

(b) the administration of drugs, biologicals or related preparations in conjunction with the provision of services included in paragraph (a).

(Emphasis added)

[31] The representative for Ms. Williams-Keeler submits that the exemption in section 10 is not restricted to services that are prescribed by regulation, but that it includes “other health care services” where they have been ordered by a medical practitioner or a practitioner. He submits that the term “prescribed” does not modify “other health care service.”

[32] I reject this interpretation because it makes no sense to have a different test for diagnostic services and other health care services. In addition, it seems unlikely that Parliament intended to cast section 10 as broadly as suggested by this submission, given the exhaustive list of exempt health care services in Part II.

Conclusion

[33] I would conclude that the exemptions relied on by Ms. Williams-Keeler do not include the trauma therapy services that she provides. Although there may be good policy arguments in favour of exempting these services, this is a matter for Parliament and not the courts. The appeal will be dismissed.

Signed at Toronto, Ontario this 28th day of January 2013.

“J. M. Woods”

Woods J.

CITATION: 2013 TCC 28

COURT FILE NO.: 2012-639(GST)I

STYLE OF CAUSE: LYN WILLIAMS-KEELER and HER MAJESTY THE QUEEN

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: October 26, 2012

REASONS FOR JUDGMENT BY: The Honourable Justice J.M. Woods

DATE OF JUDGMENT: January 28, 2013

APPEARANCES:

Agent for the Appellant: Marc Thibault

Counsel for the Respondent: Paul Klippenstein

COUNSEL OF RECORD:

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