

Docket: 2012-4188(IT)I

BETWEEN:

JAMES NANCARROW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 5, 2013, at Toronto, Ontario.

Before: The Honourable Justice Paul Bédard

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Tony Cheung

JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 2009 and 2010 taxation years are dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 19th day of August 2013.

“Paul Bédard”

Bédard J.

Citation: 2013 TCC 258
Date: 20130819
Docket: 2012-4188(IT)I

BETWEEN:

JAMES NANCARROW,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bédard J.

[1] The appellant suffered from serious medical conditions. In computing nil tax payable for the 2009 taxation year and tax payable for the 2010 taxation year, the appellant included in the calculation of gross non-refundable the amounts of \$7,196.00 and \$7,239.00 respectively for Disability Tax Credits (“DTCs”). The Minister of National Revenue (the “Minister”) disallowed the DTCs on the following grounds:

- i) The appellant did not have during the 2009 and 2010 taxation years one or more severe and prolonged mental or physical impairments whose effects were such as to markedly restrict his ability to perform a basic activity of daily living within the meaning of section 118.4 of the *Income Tax Act* (the “Act”), and he is therefore not entitled to DTCs pursuant to subsection 118.3(1) of the Act for the 2009 and 2010 taxation years.
- ii) The appellant did not have during the 2009 and 2010 taxation years one or more severe and prolonged mental or physical impairments

whose cumulative effects were such as to markedly restrict his ability to perform more than one basic activity of daily living within the meaning of section 118.4 of the Act, and he is therefore not entitled to DTCs pursuant to subsection 118.3(1) of the Act for the 2009 and 2010 taxation years.

- iii) The appellant did not have it certified in prescribed form that during the 2009 and 2010 taxation years he had one or more mental or physical impairments that were severe and prolonged and had the effects described in either paragraph i) or ii) above, and he is therefore not entitled to DTCs pursuant to subsection 118.3(1) of the Act for the 2009 and 2010 taxation years.

[2] The evidence revealed the following:

- i) The appellant filed a completed Form T2201, Disability Tax Credit Certificate, as requested (Exhibit A-1).
- ii) On September 19, 2011, the Minister sent a letter to Dr. Ian Lindsay (the qualified practitioner who had completed the T2201 Form) requesting clarification regarding the appellant's medical condition. In the questionnaire he completed on October 26, 2011, Dr. Lindsay indicated that the appellant could walk without taking an inordinate amount of time (possibly with the help of appropriate therapy, medication, and devices). It was also determined by Dr. Lindsay that, with regard to the appellant's ability to perform the mental functions necessary for everyday life, the restriction was not present all or substantially all of the time.
- iii) On November 8, 2011, the Minister sent a letter to the appellant (Exhibit A-1) stating that he was not eligible for the DTC in view of the clarification provided by Dr. Lindsay.
- iv) Neither additional medical documentation from Dr. Lindsay clarifying the certificate already submitted nor a new T2201 Form certified by a qualified practitioner was provided to the Minister.

[3] In his testimony, the appellant essentially reiterated the reasons and facts stated in his notice of objection (Exhibit R-2). Those facts and reasons are the following:

- I am an individual with multiple diseases that markedly restrict (all of the time) one or more of the basic activities of daily living.
- I am filing this appeal within the prescribed 90 days after CRA mailed the notice of determination (NOD: Nov. 08, 2011 – Letter of appeal Jan. 26, 2012)
- My disabilities have been recognized by the Canada Pension Plan – CPP as severe and prolonged and I am receiving benefits from them.
- My requirement for medication has been acknowledged by the Ontario Drug Benefit Program (Trillium Drug Program) and I receive drug cost subsidy from them.
- I have the disease of deep vein thrombosis which occurred spontaneously August 2008.
- In late 2009 the diagnosis was re-evaluated and determined to be chronic or of indefinite duration.
- The acquired disposition to thrombosis is medically documented as effecting 1 [*sic*] in 1000 persons resulting in blood clots in the legs.
- Even with appropriate therapy, medication and devices it takes me an inordinate amount of time to walk 100 metres or the distance of a city block.
- The pain in my legs results in the need to sit or lay down for relief after standing or walking for any time or for any distance (5 minutes or 30 metres).
- I believe these limitations would classify me as significantly restricted under your definitions for walking, feeding or dressing.
- My physical-medical limitations and associated disorders such as memory loss, depression, fatigue etc. appear to be related to my disease of chronic alcoholism. However, I have not consumed alcohol since being diagnosed with D.V.T. in Aug. 2008.
- Alcohol induced brain damage has resulted from my prior abuse and continues to effect [*sic*] my speech, hearing, perception and other mental functions necessary for everyday life.
- The cumulative effect of these damages result [*sic*] in significant impairment of undetermined duration.

[4] The relevant sections of the Act provide as follows:

118.3(1) Where

- (a) an individual has a severe and prolonged mental or physical impairment,
 - (a.1) the effects of the impairment are such that the individual's ability to perform a basic activity of daily living is markedly restricted,
 - (a.2) a medical doctor, or where the impairment is an impairment of sight, a medical doctor or an optometrist, has certified in prescribed form that the individual has a severe and prolonged mental or physical impairment the effects of which

- are such that the individual's ability to perform a basic activity of daily living is markedly restricted,
- (b) the individual has filed for a taxation year with the Minister the certificate described in paragraph (a.2), and
 - (c) no amount in respect of remuneration for an attendant or care in a nursing home, in respect of the individual, is included in calculating a deduction under section 118.2 (otherwise than because of paragraph 118.2(2)(b.1)) for the year by the individual or by any other person,

for the purposes of computing the tax payable under this Part by the individual for the year, there may be deducted an amount determined by the formula

$$A \times \$4,118$$

where

A is the appropriate percentage for the year.

...

118.4(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 and 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; and

- (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.

Conclusion

[5] The appellant did not have it certified in prescribed form that during the 2009 and 2010 taxation years he suffered from one or more mental or physical impairments that were severe and prolonged and had the effects described in section 118.4 of the Act. Therefore, for the 2009 and 2010 taxation years, the appellant is not entitled to DTCs pursuant to subsection 118.3(1) of the Act. Paragraph 118.3(1)(a.2) of the Act is mandatory. In other words, it must be certified by a qualified practitioner that the individual suffers from impairments within the meaning of the Act.

[6] For these reasons, the appeals are dismissed.

Signed at Ottawa, Canada, this 19th day of August 2013.

“Paul Bédard”

Bédard J.

CITATION: 2013 TCC 258

COURT FILE NO.: 2012-4188(IT)I

STYLE OF CAUSE: JAMES NANCARROW v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: July 5, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Paul Bédard

DATE OF JUDGMENT: August 19, 2013

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Tony Cheung

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: William F. Pentney
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