

Docket: 2002-3451(IT)I

BETWEEN:

LARRY E. YOUNG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeals heard on March 4, 2003 at Edmonton, Alberta

Before: The Honourable Mr. Justice L.M. Little

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Galina M. Bining

AMENDED JUDGMENT

The appeals from the assessments made under the *Income Tax Act* for the 1996, 1998, 1999 and 2000 taxation years are dismissed in accordance with the attached Reasons for Judgment.

This Judgment is issued in substitution for the Judgment dated the 21st day of March 2003.

Signed at Vancouver, British Columbia, this 8th day of August 2003.

"L.M. Little"

Little, J.

Citation: 2003TCC151
Date: 20030808
Docket: 2002-3451(IT)I

BETWEEN:

LARRY E. YOUNG,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Little, J.

A. FACTS:

[1] The Appellant testified that he suffers from the following ailments:

- severe migraines,
- vascular dementing headaches,
- back pain due to spinal deterioration,
- tennis elbow and arthritis, and
- various other physical impairments

[2] The Appellant said that he is required to go to the medical clinic approximately six times per year in connection with these medical problems. The Appellant also said that his doctor has provided him with medication that enables him to function normally.

[3] The Appellant said that during the 1996, 1997, 1998 and 1999 taxation years he was responsible for the care of his mother, Connie Young. The Appellant said that his mother died on the 6th day of December 1999.

[4] When the Appellant computed his income tax liability for the 1996, 1998, 1999 and 2000 taxation years he claimed the following:

- (a) a personal credit for his mother since he maintained that she was a wholly dependent person. The Appellant claimed the following amounts with respect to his mother:

1996	\$5,380.00
1998	\$5,380.00
1999	\$5,718.00

- (b) the credit for mental or physical impairment for himself. The Appellant claimed the following amounts:

1999	\$4,233.00
2000	\$4,293.00

[5] In assessing the Appellant for the 1996, 1998, 1999 and 2000 taxation years the Minister of National Revenue (the "Minister") made the following adjustments:

- (a) allowed a personal credit for a wholly dependent person in respect of the Appellant's mother in the amount of \$5,380.00 for the 1996 and 1998 taxation years.
- (b) disallowed the claim for a personal credit for a wholly dependent person in respect of the Appellant's mother in the amount of \$5,718.00 for the 1999 taxation year.

AND

- (c) disallowed the claim for the credit for mental or physical impairment for the Appellant in the amount of \$4,233.00 for the 1999 taxation year and \$4,293.00 for the 2000 taxation year.

[6] The Minister issued a subsequent Notice of Reassessment on August 17, 2001 to disallow the claim of \$5,380.00 in respect of the Appellant's mother for the 1998 taxation year. (Note: The claim made by the Appellant in the amount of \$5,380.00 in respect of the Appellant's mother for the 1996 taxation year has never been disallowed by the Minister.)

B. ISSUES:

[7] 1) Is the Appellant entitled to claim a personal credit for a wholly dependent person in respect of his mother in the amount of \$5,380.00 for the 1998 taxation year and \$5,718.00 for the 1999 taxation year?

2) Is the Appellant entitled to claim a credit for mental or physical impairment in respect of himself in the amount of \$4,233.00 for the 1999 taxation year and \$4,293.00 for the 2000 taxation year?

C. ANALYSIS:

1. Re: Wholly dependent person

[8] Paragraph 118(1)(b) of the *Income Tax Act* (the "Act") permits an individual taxpayer, who does not claim the married amount under paragraph 118(1)(a) to claim an equivalent amount for a wholly dependent person if certain conditions are met. The taxpayer may not make the claim if the income of the dependent person exceeded a certain "base number". For the purposes of this claim the base number in 1998 was \$5,918.00 and the base number in 1999 was \$6,290.00.

[9] Counsel for the Respondent filed a copy of the Appellant's mother's income tax return for the 1999 taxation year (Exhibit R-1). The tax return was prepared and filed by the Public Trustee of Alberta and it indicated that the Appellant's mother had received income of \$16,623.57 in 1999. The amount of \$16,623.57 was made up of a Canada Pension Plan payment, Old Age Security payment, other pension income, interest and some royalty income from Amoco.

[10] At my request, counsel for the Respondent obtained information from the Public Trustee of Alberta re. Connie Young's 1998 taxation year. By letter dated the 7th day of March 2003, Ms. Bining of the Department of Justice advised the Court that the Public Trustee of Alberta had stated that Mrs. Young's net income for the 1998 taxation year was in excess of **\$16,000.00**. (Note: The Appellant was provided with a copy of Ms. Bining 's letter to the Court.)

[11] The Appellant said that the Public Trustee of Alberta had, pursuant to a Court order, seized control of his mother's income in 1997. The Appellant admitted that the Public Trustee of Alberta had paid a number of expenses for his mother in 1998 and 1999. The Appellant stated that he was also required to pay certain expenses for his mother in 1998 and 1999.

[12] In view of the income received by the Appellant's mother in the 1998 and 1999 taxation years, I find that the Appellant is not entitled to claim a personal credit for a wholly dependent person in those years.

2. Disability Tax Credit

[13] Paragraph 118.3(1)(a.1) of the *Act* provides that a taxpayer is entitled to a credit for mental or physical impairment 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).

[14] Section 118.4 of the *Act* defines the nature of impairment in the following terms:

118.4: Nature of impairment.

(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;

[15] In this situation the issue is to determine whether the Appellant's physical impairment comes within the provisions of the *Act*.

[16] The Appellant filed a Disability Tax Credit Certificate (the "Certificate") signed by his physician, Dr. Blackie Swartzs (Exhibit A-1).

[17] Part B of the Certificate contains questions relating to the taxpayer's impairment. The Appellant answered "YES" to all questions. In other words there were no impairments noted in the Certificate that applied to the Appellant.

[18] The Certificate also contained the following comment under the heading "Diagnosis":

Severe migraines and vascular dementing headaches. With Maxault, within two hours he can function normally.

[19] In order to qualify under sections 118.3 and 118.4 of the *Act* the Appellant must be markedly restricted in his ability to perform a basic activity of daily living. Our courts have said that the test is that a person must be markedly restricted "all or substantially all of the time". Our courts have said that the phrase "all or substantially all" means 90% or more.

[20] The Appellant testified that he was required to go to the Clinic approximately six times per year to obtain relief from his severe migraines and vascular dementing headaches. As noted above Dr. Swartzs stated in the Certificate that after taking the medication, Maxault, the Appellant can function normally.

[21] In my opinion the Certificate provided by the Appellant and the evidence presented by the Appellant do not establish that the Appellant was suffering from a prolonged physical impairment all or substantially all of the time. I have therefore concluded that the Appellant is not entitled to claim the disability tax credit in the 1999 and 2000 taxation years.

[22] The appeals for the 1998, 1999 and 2000 taxation years are dismissed, without costs.

[23] The appeal filed for the 1996 taxation year is dismissed because the Notice of Reassessment issued for the 1996 year was a NIL Assessment. The law is clear that a taxpayer cannot file an appeal to a NIL Assessment.

Signed at Vancouver, British Columbia, this 8th day of August 2003

"L.M. Little"

Little, J.

CITATION: 2003TCC151

COURT FILE NO.: 2002-3451(IT)I

STYLE OF CAUSE: Larry E. Young and
Her Majesty the Queen

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: March 4, 2003

**AMENDED REASONS FOR
JUDGMENT BY:** The Honourable Mr. Justice
L.M. Little

**DATE OF AMENDED
JUDGMENT:** **August 8, 2003**

APPEARANCES:

For the Appellant: The Appellant himself

Counsel for the Respondent: Galina M. Bining

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Morris Rosenberg
Deputy Attorney General of Canada
Ottawa, Canada