

BETWEEN:

JILL K. REYNOLDS,

applicant,

and

HER MAJESTY THE QUEEN,

respondent.

Application heard on August 28, 2013, at Vancouver, British Columbia.

Before: The Honourable Justice Gaston Jorré

Appearances:

For the applicant: The applicant herself

Counsel for the respondent: Zachary Froese
Matt Huculak (student-at-law)

JUDGMENT

In accordance with the attached reasons for judgment, the application is dismissed, without costs, because it is unnecessary.

Signed at Ottawa, Ontario, this 16th day of September 2013.

“Gaston Jorré”

Jorré J.

BETWEEN:

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REASONS FOR JUDGMENT

Jorré J.

Introduction

[1] Jill Reynolds, the applicant, seeks to be recognized as the eligible parent of two children, A and T, for the purposes of the Canada Child Tax Benefit. Her time extension application to file an objection ultimately turns on the following provision:

... [the provisions of the *Income Tax Act* relating to returns, assessments, objections, appeals and time extensions] ... apply, *with any modifications that the circumstances require*, ... to a determination or redetermination of ... [the child tax benefits to which an individual is entitled] ...

[Emphasis added.]

and on the question: what exactly are the modifications required by the circumstances?

[2] The time extension application before me relates to A and T and the 2008 and 2009 base years.

[3] I want to take this opportunity to thank counsel for the respondent for the documents which the respondent put in evidence; without those documents I would not have been able to understand what happened.

[4] The respondent takes the position that the application should be dismissed because it has been made beyond the period during which one may make an application to extend the time.

[5] For the reasons that follow, the application will be dismissed because it is not necessary.

[6] In these reasons I shall refer to the Canada Child Tax Benefit as the Child Benefit, the *Income Tax Act* as the *Act* and the Canada Revenue Agency as the Agency.

The Facts

[7] The applicant first applied for the Child Benefit with respect to two children, D and E, and had been recognized as the eligible parent of those two children.

[8] With respect to the 2008 base year, the redetermination was issued on November 20, 2009. It states that a review of the entitlement was made based on a change to the eligible children and that it was accepted that the applicant was now eligible for D. The notice also indicated that the applicant was eligible for E.

[9] Subsequently, a review of the applicant's Child Benefit occurred. The applicant learned of this in a letter from the Agency dated June 27, 2011.

[10] As a result of this review, the redetermination dated August 19, 2011 was issued with respect to the applicant's 2009 base year. The applicant's entitlement was reviewed with respect to marital status and the applicant was determined to be married or living common-law with a resulting reduction of benefits. Apparently the applicant was asked to repay benefits. This redetermination was based on D and E being eligible children.

[11] Subsequently, the applicant filed an application for the Child Benefit with respect to two additional children, A and T. The application was received by the Agency on October 6, 2011.

[12] The Minister responded to the October 6, 2011 application by a letter dated November 23, 2011, Exhibit R-2.

[13] The applicant then filed a notice of objection with the Agency much later; it was received on January 29, 2013.

[14] By letter dated March 14, 2013, the Agency granted an extension for the 2010 base year and concluded that the objection was on time for the 2011 base year. With respect to the 2008 and 2009 base years, the letter advised that the Agency had concluded that the extension request was too late for an extension to be granted because the last day for making the request was May 2, 2011, for 2008, and November 19, 2012, for 2009.

[15] The applicant filed a time extension application with this Court on May 1, 2013.

Analysis

[16] The Child Benefit is contained in sections 122.6 to 122.64 of the *Act*.

[17] Pursuant to subsection 122.62(1) of the *Act*:

... 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
...

[18] In other words, one must apply for the Child Benefit. The benefit can only be paid in respect of months that are not earlier than the eleventh month prior to the month in which the application is made. For example, if an application is made in December 2012 and all other eligibility criteria are met, then a benefit may be paid for January 2012 and subsequent months, but no benefit may be paid for December 2011 and prior months.

[19] The general administrative provisions of the *Act* are made applicable to the Child Benefit by subsection 152(1.2).¹

[20] For the purposes of this appeal the relevant portions of subsection 152(1.2) are:

... this Division and Division J, as they relate to an assessment or a reassessment ... apply, *with any modifications that the circumstances require*, ... to a determination or redetermination of ... an amount deemed under section 122.61 to be an overpayment on account of a taxpayer's liability under this Part ...

[Emphasis added.]

“This Division and Division J” are the administrative provisions dealing with, among other things, returns, assessments, objections and time extensions. The deemed overpayment under section 122.61 is the amount of the Child Benefit.

¹ It reads as follows:

(1.2) Paragraphs 56(1)(l) and 60(o), this Division and Division J, as they relate to an assessment or a reassessment and to assessing or reassessing tax, apply, with any modifications that the circumstances require, to a determination or redetermination under subsection (1.01) and to a determination or redetermination of an amount under this Division or an amount deemed under section 122.61 to be an overpayment on account of a taxpayer's liability under this Part, except that

(a) subsections (1) and (2) do not apply to determinations made under subsections (1.01), (1.1) and (1.11);

(b) an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss, farm loss or limited partnership loss for a taxation year may be made by the Minister only at the request of the taxpayer; and

(c) subsection 164(4.1) does not apply to a determination made under subsection 152(1.4).

[21] This provision may appear straightforward on its face; however, it is in fact not so easy to apply.²

[22] The Agency's position is that the applicant had 90 days from the redeterminations of November 20, 2009 and August 19, 2011, respectively, within which to file objections.

[23] The Agency further submits that, pursuant to paragraph 166.2(5)(a) of the *Act*, I cannot make an order extending the time because the applicant failed to make a time extension request to the Minister "within one year after the expiration of the time otherwise limited by this Act for serving a notice of objection or making a request". In other words, the Agency submits that the application is out of time because it is beyond 90 days plus one year from the redeterminations of November 20, 2009 and August 19, 2011, respectively.

[24] There is no question that the application is more than 90 days plus one year after those two dates. If the Agency's analysis is correct, I should dismiss the appeal.

Is the Application of October 6, 2011 an Objection?

[25] However, this analysis assumes that I should consider that the application for the Child Benefit for A and T received by the Agency on October 6, 2011 was, in fact, an objection to the redeterminations of November 20, 2009 and August 19, 2011.

[26] The analysis also, in effect, assumes that an application should be treated in respect of a base year much in the same way as a tax return is treated with respect to a tax year. Specifically, once a tax year has been assessed, absent a timely objection, there is, in general, no right for a taxpayer to have a tax year reopened.³

[27] It is useful to consider in broad terms the scheme of the Child Benefit contained in the *Act*.⁴

[28] In paying a benefit for a month, the Agency must first determine if an individual has an eligible child, or eligible children, for that month.

[29] Secondly, the Agency must determine the amount to be paid for the month. This is a function not only of the number of children but also of family income.

² And I can understand how the Agency could have interpreted it in the manner that it has. The difficulty in understanding certain provisions of the Child Benefit was previously commented on by Justice Woods in *Guest v. The Queen*, 2010 TCC 336, at paragraph 10.

³ There are some exceptions. There is also a possibility that the Minister may reopen a year in favour of a taxpayer under certain circumstances with the taxpayer's consent; in those circumstances there is no automatic right to have the Minister reopen.

⁴ The following is a simplification but is accurate enough for the purpose here.

[30] Because it would be impractical to use current family income on an ongoing basis, the scheme uses past family income based on prior tax years. This is where the notion of base taxation year comes in.

[31] The base year is used for the calculation of family income for the second half of the following year and the first half of the second year after the base year, what one could refer to as the “benefit period”. Thus, family income in the 2010 base year, the 2010 calendar year, will be used in the computation of benefits for the benefit period comprising the months of July 2011 to June 2012.

[32] Typically, tax returns are filed before April 30th.⁵ Where an application has already been made for a Child Benefit, the Agency will by mid-year have both the information from the application for the Child Benefit enabling it to determine eligibility and the information from the parents’ tax returns allowing it to determine family income for the purpose of establishing the amount of the Child Benefit.

[33] For example, if the Agency has previously accepted that a parent has an eligible child, the Agency will typically have received the family income tax returns for 2010 before June 2011 and, soon after receipt of the returns, it will be able to issue a determination of the amount of the Child Benefit payable for the months starting in July 2011 and ending in June 2012.

[34] Let us suppose that, in the example, the determination was issued in mid-June 2011.

[35] Let us suppose, as well, that the parent in the example has a second child born on November 15, 2011⁶ and files an application in December 2011 with respect to the new child.

[36] If I understand the respondent’s approach correctly, this would mean that in the example, insofar as receiving any Child Benefits for the benefit period from the birth of the child in November 2011 until June 2012, the application filed in December 2011 would be an objection that was filed late because the application related to the 2010 base year which had already been the subject of a determination more than 90 days earlier.

[37] Thus, if this were correct we would have the surprising result that a parent of a second child born in November who applied for the Child Benefit a month after birth

⁵ Or June 15th for individuals carrying on business.

⁶ Or, alternatively, that there has been a change in the custody arrangements such that this particular parent has become the eligible parent with respect to a second child.

would need to apply for a time extension even though the application was within the period set out in subsection 122.62(1) of the *Act*.⁷

[38] That is not the way in which the *Act* works.

[39] Child Benefit applications are applications with respect to particular children.

[40] Because an individual's eligible children may vary after an application for the Child Benefit is made, a subsequent application that includes a newly born child or which alleges a subsequent change in the facts regarding custody or care of a child cannot be part of a determination based on the earlier application.

[41] As a result, one of the "modifications that the circumstances require" is that a subsequent Child Benefit application cannot be considered to be the equivalent of seeking to file an amended income tax return for a year that has already been assessed. In the context of the Child Benefit, the obligation of the Minister to assess a return in section 152 must be understood as an obligation to determine eligibility in respect of a child⁸ whenever an application for the Child Benefit is made.⁹

[42] Indeed, the Agency's letter of November 23, 2011 says that, where circumstances change and someone subsequently meets the requirements for eligibility, they have to submit a new application. This is implicit recognition that the Agency has to make a determination when a new application alleges a factual change with regard to an eligible child.

[43] I note that Parliament has set a clear and limited deadline for claiming the Child Benefit given that no benefit can be paid for any month earlier than the eleventh month prior to the month in which the application is made.

[44] In this appeal, the redeterminations of November 20, 2009 and August 19, 2011 with respect to the 2008 and 2009 base years are redeterminations of both the eligibility of D and E and of the amount of the benefit payable for the benefit periods starting in July 2009 and ending in June 2010 and starting in July 2010 and ending in June 2011, respectively.

⁷ See paragraphs 17 and 18 above.

⁸ As well as determining the Child Benefit, if any, payable; if necessary this may require redetermining the benefits payable for a particular benefit period related to a particular base year.

⁹ Such an obligation would not be triggered in the unlikely event that a new application were filed even though no change were alleged with respect to the facts regarding custody or care of a child as compared to a prior application; that would amount to no more than refiling the same application.

[45] Those two redeterminations cannot be viewed as determinations of the eligibility for A and T, children who were not at all under consideration when the redeterminations were made.

[46] They were based on applications in respect of D and E made some time before November 20, 2009¹⁰ well before the application was received by the Agency on October 6, 2011 in respect of children A and T.

[47] Thus the redetermination of, for example, August 19, 2011 of the 2009 base year is not a definitive redetermination of the Child Benefit payable for the period of July 2010 to June 2011 where there are changes in the children in respect of which a person is eligible subsequent to the time of the previous application in respect of any children.

[48] Accordingly, I am satisfied that the application for a Child Benefit in respect of A and T, in respect of which the applicant had not previously made an application, received by the Agency on October 6, 2011 was not an objection and that the Agency had an obligation to make a determination in respect to it.

Conclusion

[49] Did the Agency make a determination? The respondent took the position that the letter dated November 23, 2011 was not a determination.

[50] While there are some elements of the letter that arguably suggest a determination, overall, I agree with the respondent. I note the absence of any directions as to how to file a notice of objection, something one would expect if this were a determination.

[51] The Agency has not yet dealt with the application dated October 6, 2011 for the Child Benefit in respect of A and T. The Agency has an obligation to do so.

[52] As a consequence the time to object has not yet started.

[53] Accordingly the time extension application is dismissed, not because it is out of time, but because it is unnecessary.¹¹

¹⁰ The evidence does not tell us when the application(s) were made in respect of D and E but we know it had to be before November 20, 2009 since they were both recognized as eligible children by the redetermination of that date.

¹¹ While I am convinced of the analysis set out above, readers should be aware of the fact that I did not have the benefit of submissions on much of this approach. The applicant represented herself and did not suggest that a time extension was unnecessary.

I considered whether I should invite further submissions but decided that, given that pursuant to the *Tax Court of Canada Act* time extension applications are to be dealt with as informally and expeditiously as the circumstances and conditions of fairness permit, it would be better to get these reasons out and insert this note. See subsection 18.15(3) of the *Tax Court of Canada Act*, made applicable to this application by reason of paragraph 18.29(3)(vii) of the *Tax Court of Canada Act*.

[54] I note that, because the application was made in October 2011, if it turns out that the applicant were eligible in respect of A and T, such eligibility could not be for months prior to November 2010.¹²

Signed at Ottawa, Ontario, this 16th day of September 2013.

“Gaston Jorré”

Jorré J.

¹² See paragraphs 17 and 18 above.

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DATE OF HEARING: August 28, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Gaston Jorré

DATE OF JUDGMENT: September 16, 2013

APPEARANCES:

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