Docket: 2018-4817(IT)I

BETWEEN:

HUIQIONG CHEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on July 18, 2019 at Hamilton, Ontario

Before: The Honourable Mr. Justice Randall S. Bocock

Appearances:

Agent for the Appellant:	Kristopher Woodbeck
Counsel for the Respondent:	Payton Tench

JUDGMENT

WHEREAS THE COURT has delivered reasons for judgment of even date in respect of this appeal;

NOW THEREFORE the appeal from reassessment made under the *Income Tax Act*, RSC 1985, c.1, as amended, (the "Act") is hereby dismissed, without costs on the basis that the medical expenses incurred did not relate to a procedure prescribed by a medical practitioner.

Signed at Vancouver, British Columbia, this 17th day of September, 2019.

"R.S. Bocock"

Bocock, J.

Citation: 2019TCC192
Date: 20190917
Dockets: 2018-4817(IT)I

BETWEEN:

HUIQIONG CHEN,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Bocock, J.

I. Introduction and Facts

[1] The Minister's agents, the CRA, disallowed the Appellant's medical expense tax credit of $ 5,720. The Appellant incurred these expenses in order to harvest and store stem cells. These stem cells were harvested from the umbilical cord when she was delivered of her second son. The procedure was originally rejected as an eligible expense by the Minister on various grounds. Ultimately, these grounds melded into a single objection. It forms the issue before the Court: was the harvesting and storage procedure prescribed by a medical practitioner as required by the statute?

[2] Although no facts are contested, some additional facts are required. The Appellant's husband, who also acted as the Appellant's agent for the hearing, is a Type I diabetic. It is accepted medical science that offspring of diabetic parents, and those of diabetic fathers in particular, have a higher cumulative risk of contracting diabetes than the general population.

[3] As a result of that medical condition, the Appellant and her husband, after some consultation and apparently as a result of a verbally communicated recommendation from their obstetrician, undertook the harvesting and storage procedure (the "procedure").

[4] The recommending obstetrician did not testify in Court. According to the Appellant's husband, that doctor did make a note of the recommendation in her clinical notes. The clinical notes were not produced.

[5] A family doctor did provide a letter. It is not certain from the evidence and somewhat unlikely that the family doctor delivered the child in 2016 when the stem cells were collected. That letter, dated October 16, 2017, was adduced into evidence as proof of the prescribed treatment. It provides as follows:

> Oct 16, 2017
>
> To Whom it May Concern;
>
> Re; [son of appellant] [date of birth] [age]
>
> [phone numbers]
>
> The above patient's parents are storing his core blood for future use as an illness over the general population. All patients are advised to do this, if possible, from birth.
>
> Yours truly,
>
> [signed]
>
> [name of physician, MD CCFP(EM) (college enrollment #)

II. The Law

The Statute

[6] Paragraph 118.2(2)(o) of the *Income Tax Act*, RSC 1985, c.1, as amended (the "Act") provides as follows:

> **118.2(2)(o)** for laboratory, radiological or other diagnostic procedures or services together with necessary interpretations, for maintaining health, preventing disease or assisting in the diagnosis or treatment of any injury, illness or disability, for the patient as prescribed by a medical practitioner or dentist;

[7] There is no dispute that there are four elements or conditions which must be met in order to afford deductibility of the medical expense from income. To summarize and simplify, the expense must be:

(a) for a laboratory, radiology or diagnostic activity;

(b) undertaken to maintain health, prevent disease or diagnose or treat injury, illness or disability;

(c) for the patient; and

(d) all as prescribed by a medical practitioner.

Jurisprudence

[8] In the case of *Shapiro v. HMQ*, 2014 TCC 74, Justice Hogan provided an analysis of what factual elements are necessary to satisfy the conditions where the medical procedure undertaken is the harvest and storage of stem cell blood from a newborn. To summarize, Justice Hogan held that the first element was satisfied because the harvesting and storage were similar with other laboratory procedures and services. Similarly, the second condition is satisfied because the procedure anticipates maintaining health and assisting in the treatment of illness, regardless of whether such illness is subsisting or prospective. Thirdly, like the second condition, prospective illness where possible for the intended patient, is sufficient.

[9] On the final condition, Justice Hogan stated the following at paragraph 17, "… [In] my opinion, prescribed means that the procedure or service must be recommended by the medical practitioner". This point is squarely where this Court finds itself and upon which point it shall decide this appeal.

III. Analysis

Submission of the parties

[10] The Appellant identifies that the procedure was prescribed by a medical practitioner. In reply, the Respondent concedes, based upon *Shapiro* that sufficient evidence of the factual elements of the first three conditions are present: there is a laboratory procedure, directed towards the treatment of disease for a prospective patient/taxpayer. The Respondent disagrees that factually there is reliable evidence before the Court, either through the testimony of the Appellant's husband or documentary evidence of a procedure prescribed by a medical practitioner.

[11] The Appellant, in reply, stated that unlike the facts in *Shapiro,* in this appeal there is a physician directed future treatment which meets the final condition. The verbal recommendation by the obstetrician at the time of or just before birth and the letter confirming "all patients are advised to do this, if possible, from birth" form conjunctively a prescription from a medical practitioner.

Conclusion and Decision

[12] Again, the sole issue before the Court is whether the procedure was "prescribed by a medical practitioner". In the context of the entire paragraph and relevant to the stem cell procedure, the prerequisite "prescription" ought to be "laboratory services … for assisting the patient … in the illness" treatment, as prescribed by a medical practitioner. Does the evidence meet that test? Are there reliable facts before the Court comprising the elements of a medically prescribed treatment at or around the time when the procedure was completed.

[13] The letter of October 16, 2017 is not enough. The letter is a retrospective descriptive record of what the taxpayer did, why and on what basis. Although it identifies an elevated risk, it also reflects a generic suggestion that such a procedure is recommended for all patients: "…all patients are advised to do this, if possible, form birth"; the procedure is not expressly or implicitly prescribed by the physician in the *post facto* 2017 letter. The letter suggests something akin to good standard health practices. It does not reference or connect the procedure as a treatment of the illness through a prescribed course of action by that medical practitioner, but endorses after the fact, the taxpayer's decision.

[14] From the perspective of common sense and *Shapiro,* best practices are not captured within the ambit of paragraph 118.2(2)(o). The provision creates a deduction for medical expenses incurred by a taxpayer for medical treatments and therapies prescribed to treat that taxpayer's present and future ailments. It is not intended to create a deduction for generic and undiagnosed population-wide illness and disease. The 2017 letter, more likely than not, refers to just such a basis for the expenditure. To reiterate, its date, some 17 months after the procedure and its language, descriptive rather than directive, cannot provide evidence of a medical prescription undertaken by the Appellant in 2016.

[15] The only other "evidence" to be weighed by the Court is the submitted verbally communicated physician "directive" expressed in advance or at the time of the stem cell harvest. There was no evidence, aside from the assertion by the Appellant's husband that it was said, of its content, specificity or effect at the time

it was made. The obstetrician did not testify. The clinical notes were not produced. Again, there is not observable evidence before the Court of a medical practitioner having directed the prescribed procedure before or even near the time it was completed.

[16] For these reasons, the appeal is dismissed without costs.

Signed at Vancouver, British Columbia this 17th day of September, 2019.

"R.S. Bocock"

Bocock, J.

CITATION:	2019TCC192
COURT FILE NO.:	2018-4817(IT)I
STYLE OF CAUSE:	HUIQUIONG CHEN AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	Hamilton, Ontario
DATE OF HEARING:	July 18, 2019
REASONS FOR JUDGMENT BY:	The Honourable Mr. Justice Randall S. Bocock
DATE OF JUDGMENT:	September 17, 2019

APPEARANCES:

Agent for the Appellant:	Kristopher Woodbeck
Counsel for the Respondent:	Payton Tench

COUNSEL OF RECORD:

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Firm:

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