

Citation: 2021 TCC 78
Date: 20211117
Docket: 2019-2022(IT)I

BETWEEN:

FENGLAN GUO,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

AMENDED REASONS FOR JUDGMENT

Russell J.

I. Introduction:

[1] The appellant, Ms. Guo (FG), appeals a determination (Determination) made October 3, 2018 by the Minister of National Revenue (Minister) under the federal *Income Tax Act* (Act). The Determination was that FG did not qualify for a disability tax credit (DTC) for any of her 2010 through 2017 taxation years. FG objected to this Determination, which the Minister confirmed May 19, 2019, causing FG to institute this appeal.

[2] A DTC is a non-refundable tax credit, provided for in the Act, that is available to individuals with certain mental or physical impairments. For a DTC in any particular taxation year, a medical practitioner must certify that the individual had a severe and prolonged impairment in physical or mental functions per subsections 118.3(1) and 118.4(1) of the Act.

[3] According to the respondent's Reply, the Minister did not allow a DTC for any of the 2010 – 2017 taxation years as claimed because FG had provided no medical practitioner certification that during any of those years she had had any impairment within the scope specified in the Act as required for entitlement to a DTC.

II. Issue and Evidence:

[4] The issue is whether FG is entitled to a DTC for any of her 2010 – 2017 taxation years. Did the Minister err in not allowing her a DTC for any or all of those years?

[5] At the hearing FG testified that throughout the 2010 – 2017 period and continuing she suffered from various afflictions. They included at various times high fever, which in 2011 lasted a number of months including seven days of hospitalization, severe joint pain, muscle pain and weakness, loss of balance, heart palpitations and extreme fatigue. Muscles in the right side of her face started contracting. One or more further difficulties presented post the 2017 taxation year. Doctors initially could not diagnose this situation but eventually in 2018 a diagnosis of Lyme disease (which had been earlier suggested but also rejected) was made.

[6] FG’s husband, Mr. Eric Goakery, testified too. His evidence was confirmatory of FG’s evidence as to ailments she had experienced during the subject period. I found both witnesses credible in their testimony. Neither indicated that he or she was any type of medical practitioner.

[7] The respondent called no *viva voce* evidence, however the affidavit of Canada Revenue Agency (CRA) officer Mr. P. Wu affirmed February 5, 2021 was accepted in evidence (Ex. R-1) at the commencement of the hearing. It includes as an exhibit the one DTC Certificate (prescribed form T2201) submitted by FG to the CRA.

[8] In that Certificate, signed 20 August 2018, a Dr. T. H. Wong certified that he/she had been attending physician of FG since 2010. It was a “negative certificate” insofar as it did not provide certification that FG’s impairments met the requirements of subsection 118.4(1) of the Act for the purpose of claiming the DTC(s) under subsection 118.3(1) of the Act. In particular, with reference to basic activities of daily living, it indicated that FG was not blind, was not markedly restricted in speaking, or in hearing, or in walking, or in eliminating, or in feeding, or in dressing, or in performing the mental functions necessary for everyday life, nor was life-sustaining therapy required, nor were there significant (not quite marked restrictions) in any two or more of the above referenced basic aspects of daily living.

[9] These elements referenced in the prescribed form Certificate to which Dr. Wong responded all derive from the DTC provisions at sections 118.3 and 118.4 of the Act.

[10] Regarding “negative” and “positive” DTC Certificates, the Federal Court of Appeal (FCA) in *Canada v. Buchanan*, 2002 FCA 231, determined that (para. 25):

... the Court must be faithful to the words of the *Income Tax Act*. The Act requires the positive certificate of a physician. That means that the function of the Tax Court Judge is not to substitute his or her opinion for that of a physician, but to determine, based on medical evidence, whether a negative certificate should be treated as a positive certificate. Where the Tax Court Judge is unable to reach that conclusion, either the appeal must be dismissed or the matter must be remitted to the Minister with a direction to reassess, should the taxpayer provide a positive certificate.

(Underlining added for emphasis.)

[11] Further, as to medical evidence to support treatment of a negative certificate as a positive certificate, the FCA wrote (para. 22):

At the other end of the spectrum would be the case of a taxpayer appealing a disallowance of disability tax credit on the basis of a negative medical certificate where the taxpayer is simply dissatisfied with the medical judgment of the physician who completed the certificate. In the absence of conflicting testimony from another physician, it is difficult to envision a case in which the Tax Court Judge, in these circumstances, could find that a negative certificate should be treated as a positive certificate. In this type of case, it would seem that if the Tax Court Judge was doubtful as to the correctness of the negative certificate, at most, the recourse would be to remit the matter to the Minister for reassessment on the basis that the taxpayer file a new positive certificate, if one could be obtained.

[12] In this matter no physician orally testified. What evidence I heard gave me no reasonable basis to question the medical opinions Dr. Wong expressed as noted above in his/her DTC Certificate regarding FG.

[13] Having full regard for the significant afflictions FG has suffered from, I do not view them as coming within the scope of the impairments Parliament has identified in establishing statutory criteria for DTC entitlement. I rely on Dr. Wong’s medical opinions in this regard. Additionally, the evidence I heard provides no basis for contemplating that a “positive certificate” from another physician could be in the offing.

[14] Accordingly this appeal will be dismissed, without costs.

These Amended Reasons for Judgment are issued in substitution for the Reasons for Judgment dated November 9, 2021.

Signed at Vancouver, British Columbia, this 17th day of November 2021.

“B. Russell”

Russell J.

CITATION: 2021 TCC 78
COURT FILE NO.: 2019-2022(IT)I
STYLE OF CAUSE: FENGLAN GUO v. HER MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

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AMENDED REASONS FOR JUDGMENT BY: The Honourable Justice B. Russell

DATE OF AMENDED REASONS FOR JUDGMENT: November 17, 2021

APPEARANCES:

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