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THE TAX COURT COMMITTEE ON OPINIONS

TAX COURT OF NEW JERSEY

JOSEPH M. ANDRESINI
JUDGE
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December 8, 2015

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Re: Marie Cahill v. Director, Division of Taxation
Docket No. 011921-2015

Dear Counsel:

This is the court's letter opinion with respect to Marie Cahill's (hereafter referred to as "Plaintiff") complaint wherein she challenged the final determination of the Director, Division of Taxation (hereafter referred to as "Director") denying Plaintiff's request for a Homestead Rebate for tax year 2011. On the day of trial, Plaintiff made an appearance by teleconference call.¹

¹ The two prong test for allowing testimony via telecommunication, as set forth in Aqua Marine Products, Inc. v. Pathe Computer Control Systems Corp., 229 N.J. Super. 264, (App. Div. 1988), was satisfied in this case. See State v. Santos, 210 N.J. 129, 140-3 (2010). First, opposing counsel consented to the telephone testimony before trial, and there was a special medical circumstance that compelled the need for telephone testimony. Second, the court was satisfied that the witness was in fact Plaintiff. The court verified this by dialing Plaintiff's home phone number, Plaintiff answered the phone and identified herself as Marie Cahill, and she correctly answered several identifying questions related to documents submitted to the court.

Additionally, Plaintiff's son, Gerard Cahill, appeared before the court as a fact witness.² Director brought forth Chung Lee from the Division of Taxation as a fact witness. For the reasons stated below, the denial is affirmed.

Plaintiff timely filed her 2011 personal tax return on October 15, 2012. She also timely filed her 2012 personal tax return on September 16, 2013. The filing deadline for the 2011 Homestead Rebate application was December 14, 2012. Plaintiff filed her 2011 application on January 16, 2015. By letter dated May 4, 2015, the Director issued a denial determination denying Plaintiff's rebate applications on the grounds that they were untimely filed.

Plaintiff testified she was unable to timely file her application because she was ill. Plaintiff was suffering from a chronic medical condition, which worsened after the death of her husband in 2005. The chronic condition did not render Plaintiff incapacitated, but it created other complications, including depression and fatigue. Gerard Cahill testified he took Plaintiff to the hospital on a few occasions for various medical issues throughout 2012 and 2013. However, these visits did not result in extended stays in the hospital or incapacitation.

The Director contends that Plaintiff was not incapacitated, nor was she suffering from an illness that would have prevented her from filing her application in a timely fashion. Director points to the timely filing of Plaintiff's 2011 and 2012 personal tax returns as evidence of the same. Director also emphasized that Plaintiff filed her application approximately two years after the filing deadline. As such, Director argues there is no good cause basis for an extension of the filing deadlines in this case.

² Gerard Cahill retains a durable power of attorney over Plaintiff's affairs. He is not a licensed attorney, nor is he a party to the case. As such, his participation during the trial was limited solely to that of a fact witness. See New Jersey Committee on the Unauthorized Practice of Law, A Nonlawyer Who Holds a Power of Attorney May Not Engage in the Practice of Law, 211 N.J.L.J. 866 (March 25, 2013).

The Director can establish the filing deadline for homestead rebate applications. N.J.S.A. 54:4-8.62(a). However, if an applicant can show “good cause,” then the deadline will be extended “for a reasonable period.” Ibid.

[T]o establish good cause [for an extension of time to file] . . . the applicant shall provide to the director either medical evidence, such as a doctor’s certification, that the claimant was unable to file the claim by the date prescribed by the director because of illness or hospitalization, or evidence that the applicant attempted to file a timely application. Except as may be established by medical evidence of inability to file a claim, good cause shall not be established due to a claimant not having received an application from the director.

[Ibid.]

In this case, Plaintiff failed to provide a doctor’s certification or sufficient medical evidence to support her claim. While the Director has the discretion to extend the filing deadline for good cause, it is the Plaintiff’s responsibility to provide evidence that she was unable to file the application in a timely manner. Testimony that Plaintiff visited the hospital on a few occasions in 2012 and 2013 is not substantial enough for the court to find Plaintiff was incapacitated or unable to file due to illness. There was no evidence of incapacitation, extended stays in the hospital, or even an attempt to file the application in a timely manner.

There was insufficient evidence to support the notion that Plaintiff’s chronic medical condition impeded her ability to file the application. As a matter of fact, Director dismantled this argument by presenting evidence that Plaintiff managed to timely file her 2011 and 2012 personal tax returns. In Hovland v. Director, Div. of Tax, 204 N.J. Super. 595 (App. Div. 1985), an extension was granted because the taxpayer was hospitalized for three months due to cancer of the spine. While the law does not require a medical condition to be severe in order to obtain a good cause extension, the medical condition must have rendered the taxpayer unable to file the

homestead rebate application. In this case, the evidence was insufficient and did not support Plaintiff's claim that her chronic medical condition prevented her from filing her application.

The court finds Directors argument persuasive that there is no good cause for a deadline extension in this case. While the court empathizes with Plaintiff's situation, there simply was not enough evidence to support Plaintiff's claim.

Therefore, for the foregoing reasons, the court finds in favor of the Division of Taxation.

Very truly yours,

A handwritten signature in cursive script, reading "J M Andresini", followed by a vertical line.

Joseph M. Andresini, J.T.C.