

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

KARIN KEITA and MOUSSA KEITA,)	
)	
Plaintiffs,)	TC-MD 070061C
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiffs appeal Defendant’s denial of their claim to the working family child care credit for 2005. Trial was held by telephone August 7, 2007. Karin Keita (Karin) appeared for Plaintiffs. Becky Segovia appeared for Defendant.

I. STATEMENT OF FACTS

Karin worked for the Oregonian Publishing Co. (*The Oregonian*) in Portland in 2005. Her hours were 9:00 a.m. to 2:30 p.m. She was hired by *The Oregonian* in 1998. Karin’s husband, Moussa Keita (Moussa), was unemployed for the majority of calendar year 2005, but, according to the testimony, was actively seeking employment that year. Karin testified that Moussa worked a total of 11 days in 2005 during the months of February, March, and April. Karin further testified that Moussa also participated in a six-day dump truck training course in Woodland, Washington, that year and obtained a commercial driver license (CDL). However, for the majority of 2005, Moussa was pounding the pavement looking for work.

Plaintiffs have two children: a daughter born in 2000 and a son born in 2003. Karin testified that both children were in paid child care five days per week during the months of January through June 2005. From September through December 2005, their son was back in child care four days per week. The couple’s daughter began school in September 2005, and

therefore, did not need to be in paid child care for the last four months of the year. Karin testified that the provider charged \$30 per day regardless of whether she was caring for one or both children.

Plaintiffs filed joint income tax returns for 2005, including a state tax return and an Oregon Schedule WFC reporting child care expenses in the amount of \$4,000. The care was reportedly provided by Carriean Clipperton, an unregistered provider who cares for children in her home in Portland. Based on their income, Plaintiffs are entitled to a credit equal to 40 percent of allowable expenses. Defendant issued a Notice of Deficiency August 18, 2006, denying the credit in its entirety. Plaintiffs filed a written objection September 15, 2006, and, after reviewing Plaintiffs' position, Defendant issued a Notice of Assessment November 13, 2006, consistent with its earlier decision to deny entirely the working family child care credit. Plaintiff timely appealed. After reviewing certain information provided with the appeal, Defendant accepts that Plaintiffs spent \$4,000 for paid child care. Defendant does not challenge whether Karin was gainfully employed in 2005. The only question is whether Moussa was employed, seeking employment, or attending school.

II. ANALYSIS

ORS 315.262¹ allows certain low-income taxpayers a refundable credit against their Oregon income taxes for the purpose of partially offsetting the taxpayer's child care costs. The statute provides, in pertinent part:

“A qualified taxpayer shall be allowed a credit against the taxes otherwise due under ORS chapter 316 equal to the applicable percentage of the qualified taxpayer's child care expenses * * *.”

ORS 315.262(2).

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

The credit is only allowed if the child care expenses were incurred “for the purpose of allowing the taxpayer to be gainfully employed, to seek employment or to attend school on a full-time or part-time basis.” ORS 315.262(1)(a). In the case of a married couple, both parents must be involved in qualifying activities to claim the credit. As indicated above, the issue in this case is whether Moussa was gainfully employed, seeking employment, or attending school in 2005.

Moussa did not testify. That is unfortunate since it is his activities that are under scrutiny. Karin testified as to Moussa’s job search activities. According to her testimony, Moussa was working with a vocational rehabilitation (Voc Rehab) counselor named Sheila Davis (Davis) because he was involved in an accident in 2000 and was no longer able to work in his former occupation as a carpenter. Karin testified that Voc Rehab paid for Moussa’s six-day dump truck training. Karin testified that Moussa met at least once a month with Davis, who “sent” Moussa on various job interviews. Karin further testified that Moussa worked on an informal basis with a friend named Kenne Sabullah (Sabullah), a job developer for Irco Immigrant and Refugee Care Organization. Moussa allegedly met regularly with Sabullah, the latter giving Moussa between 8 and 15 job leads that Moussa would then pursue on his own. Finally, Karin testified that Moussa would identify prospective jobs in the classified section of *The Sunday Oregonian*.

Karin testified that Moussa’s usual job-search routine was to check *The Sunday Oregonian* for prospective jobs, circle the best prospects, and then go to the employer’s office to obtain a job application, which he would bring home to fill out. When the application was completed, Moussa would return to the employer’s office to drop off the completed application. The additional leads provided by Voc Rehab and Sabullah were presumably pursued in a similar fashion. Karin testified that Moussa’s job seeking activity was a full-time undertaking and that

is why the children were required to be in child care outside of the home for the majority of the year. According to her testimony, Karin typically dropped the children off at the provider's home in the morning, although Moussa did occasionally take them to the provider. Karin testified that she always picked the children up after she got off of work because it was easier than trying to coordinate Moussa's schedule. Karin testified that she did encourage her husband to take off the months of July and August to save child care costs, given that he had been unsuccessful in finding a job.

Karin testified that Moussa had "many" job interviews in 2005, although she and Moussa were only able to specifically remember between 15 and 20 interviews that year. Karin testified that she kept a record of Moussa's interviews on her calendar, but that the calendar had been stolen. Plaintiffs did not keep the various rejection letters Moussa received following his interviews because they memorialized a negative event. Moussa did eventually obtain a job in late 2006, after following up on a job lead his friend Sabullah provided. In closing, Karin opined that it is difficult for a person to get back into the workforce after years of unemployment due to an injury, because the circumstances of the injury are not something ordinarily shared with a prospective employer. Also, Karin believes that Moussa had difficulty obtaining a job because he is black. After Moussa obtained his first job in 2006 as a private security officer, he was able to obtain a better paying job as a bus driver.

Overall, the testimony was vague and incomplete as to what kept Moussa busy enough to require full-time paid child care for Plaintiffs' children. The court simply finds it hard to believe Moussa spent all day looking for work five days a week, for an entire year. Karin's calendar with Moussa's job search activity was reportedly stolen, and Moussa only had about 14 interviews all year. Nonetheless, the court believes some paid care was necessary beyond the 11 days Moussa

worked and the 5 weekdays he was in school. Defendant did not challenge the 14 interviews Moussa is said to have had. The court will allow a half day for each interview, for an additional 7 days of paid care.² The court further believes Moussa spent some time looking for work, but given the lack of independent substantiation, plus Moussa's failure to appear and testify at trial, the court will allow only an additional 20 days for job seeking. The total number of days is 43, and at \$30 per day, the total allowable child care expense is \$1,290.

III. CONCLUSION

After careful and thoughtful review of the evidence in light of the applicable statute, the court concludes Plaintiffs are entitled to an ORS 315.262 working family child care credit based on allowable expenses of \$1,290 which, at 40 percent, results in a credit of \$516.

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is granted in part, as set forth above, with a reduced level of expenses allowed for the working family child care credit.

Dated this _____ day of August 2007.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

² The half day allowance strikes the court as sufficient, if not generous, not only because of the time typically involved in getting to and from an interview, plus the time for the actual interview, but also because some of Moussa's interviews could have occurred late enough in the afternoon that Karin would have been home from work and able to watch the children while Moussa was gone. Without any substantiation, more time simply is not warranted.

*This document was signed by Magistrate Dan Robinson on August 27, 2007.
The Court filed and entered this document on August 27, 2007.*