

Docket: 2006-2959(IT)APP

BETWEEN:

DANIELLE M.M.F. HOULE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

Application heard on June 22, 2007 at Ottawa, Canada

Before: The Honourable Justice Patrick Boyle

Appearances:

Agent for the Applicant: Mike Moreland

Counsel for the Respondent: Jennifer Neill

ORDER

Upon application made by the Applicant for an Order to extend time to file a Notice of Appeal under the *Income Tax Act*;

And upon hearing submissions of the parties;

The application is dismissed in accordance with the attached Reasons for Order.

Signed at Ottawa, Canada, this 26th day of June 2007.

“Patrick Boyle”

Boyle, J.

Citation: 2007TCC381
Date: 20070626
Docket: 2006-2959(IT)APP

BETWEEN:

DANIELLE M.M.F. HOULE,

Applicant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Boyle, J.

[1] This is an application for extension of time within which to file notices of appeal for the 1995 and 1996 years under the *Income Tax Act*. The taxpayer's agent says it is needed because it will affect the amount of Ms. Houle's disability pension. Ms. Houle has suffered from multiple sclerosis for a number of years and was in court this morning. There are, I am told, ongoing CPP pension determination proceedings before the Canada Pension Plan administrators.

[2] The *Income Tax Act* does not permit a taxpayer to commence an appeal to the Court unless she has first filed an objection with the Canada Revenue Agency. The taxpayer's agent, and her filings with the Court, along with the CRA affidavit filed with the Court, each confirm that the application under section 167 for an extension of time within which to file a notice of appeal to the Court cannot succeed.

[3] If the application is treated as an application instead under section 166.2 to permit an objection to the November 23, 2006 reassessments of 1995 and 1996, the Court can still not deal with it because that section requires that an application to CRA under section 166.1 first have been made for an extension to file the objection out of time.

[4] The CRA graciously and appropriately was prepared to consider the application as an application under section 166.1 to the CRA for an extension of

time to file an objection. However, section 166.1 (like section 166.2) requires that such an application be made within one year of the normal 90-day period for filing an objection following the receipt of a reassessment. Since the 1995 and 1996 reassessments were dated November 2003, this is an insurmountable problem. (I did point out to Ms. Houle's agent that the CRA could be asked to again reassess the 1996 year under section 152(4.2) although, as discussed below, it is not clear how that would help the taxpayer in the circumstances.)

[5] The taxpayer's application must therefore be dismissed.

[6] I would like to add that it is not at all clear that the taxpayer has a dispute under the *Income Tax Act* with CRA even had she been in time to file objections for her 1995 and 1996 reassessments. From the material before the Court, most notably CRA's letter of March 7, 2006 to Ms. Houle, it appears that CRA has reassessed her 1995 and 1996 years as she has requested for the CPP amounts of \$74.14 and \$35.11 in question.

[7] While I am not in this proceeding in a position to comment on the CPP or related legislation as it may or may not apply to Ms. Houle, I understand from her agent that a stumbling block to her receiving her proper CPP disability pension is that the 1995 and 1996 CPP contributions (which CRA confirmed in its March 7, 2006 letter have been assessed and have been paid) are not being credited by CPP officials as CPP contributions for 1995 and 1996 for purposes of determining her CPP entitlement. If that is the case, she and her agent will need to pursue the reason for that, and how and whether that can be remedied, with the CPP authorities, at least initially. I note that CRA's March 7, 2006 letter does go on to say: "Further, due to restrictions under the *CPP Act*, we are unable to process requests which would result in a lower amount of CPP payable if the requests are received later than four years after the end of the calendar year". From what I can see, that does not appear to be the case here as the adjustments Ms. Houle requested and which were made by CRA increased her CPP contribution for 1995 and 1996 rather than lowered the amount payable. I trust

that the CPP officials will diligently and thoroughly try to help Ms. Houle with all of her concerns in this regard.

Signed at Ottawa, Canada, this 26th day of June 2007.

"Patrick Boyle"

Boyle, J.

CITATION: 2007TCC381
COURT FILE NO.: 2006-2959(IT)APP
STYLE OF CAUSE: DANIELLE M.M.F. HOULE AND H.M.Q.
PLACE OF HEARING: Ottawa, Canada
DATE OF HEARING: June 22, 2007
REASONS FOR ORDER BY: The Honourable Justice Patrick Boyle
DATE OF ORDER AND REASONS FOR ORDER: June 26, 2007

APPEARANCES:

Agent for the Appellant: Mike Moreland

Counsel for the Respondent: Jennifer Neill

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent:

John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada