



Ref: 117TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a decision of the Respondent to refuse the Appellant, the incapacitated child tax credit (hereafter 'the tax credit') contained at section 465 of the Taxes Consolidation Act 1997 (hereafter 'TCA 1997') in respect of the 2017 tax year of assessment.
2. This appeal is being undertaken without an oral hearing, in accordance with section 949U TCA 1997.

Background

3. The Appellant's, CHILD X, has suffered from mental illness since age Y and has attended mental health services since then. In Year -5 her mother died. She is estranged from her father and has no immediate family caring for her. As a result of the mental illness, in YEAR 1 CHILD X was unwell, unfit to take care of herself and homeless. She was presented to be treated and housed at the HOSPITAL on REDACTED and was placed under the supervision of a mental health social worker. CHILD X stayed at the mental health unit for a short period.

4. In August Year 1, the Appellant, as CHILD X's only available relative, discharged CHILD X from the mental health unit and with the agreement and permission of the mental health and social care services, took CHILD X to her home to be cared for. From August YEAR 1 until sometime in YEAR 2, CHILD X was under the care of the Appellant at her home. The Appellant engaged with a number of the relevant mental health and social services providers on behalf of CHILD X.
5. CHILD X's date of birth is REDACTED and was age 21 in August YEAR 1 when she first came to live with the Appellant.
6. The Appellant made an application for Incapacitated Child Tax Credit in respect of the YEAR 1 tax year. On 27 February YEAR 2 the Respondent refused the claim for the credit on the following basis:
 - a) It was not clear how the Appellant fulfilled the requirement in S.465 (3) to have custody of the child.
 - b) The medical evidence suggested that CHILD X's condition could be managed with medication and may lessen over time. Therefore, CHILD X did not qualify as being permanently incapacitated from maintaining herself in accordance with S.465 (1)(b).
7. The Appellant appealed this decision to the Tax Appeals Commission on 7 March YEAR 2.

Legislation

Section 465 TCA 1997 - Incapacitated child tax credit

(1) Where a claimant proves that he or she has living at any time during a year of assessment any child who

(a) is under the age of 18 years and is permanently incapacitated by reason of mental or physical infirmity, or



(b) if over the age of 18 years at the commencement of the year, is permanently incapacitated by reason of mental or physical infirmity from maintaining himself or herself and had become so permanently incapacitated before he or she had attained the age of 21 years or had become so permanently incapacitated after attaining the age of 21 years but while he or she had been in receipt of full-time instruction at any university, college, school or other educational establishment,

the claimant shall, subject to this section, be entitled in respect of each such child to a tax credit (to be known as the “incapacitated child tax credit”) of [€3,300].

(2)

(a) A child under the age of 18 years shall be regarded as permanently incapacitated by reason of mental or physical infirmity only if the infirmity is such that there would be a reasonable expectation that if the child were over the age of 18 years the child would be incapacitated from maintaining himself or herself.

(b) A tax credit under this section shall be in substitution for and not in addition to any tax credit to which the individual might be entitled in respect of the same child under section 466.

(3) Where the claimant proves for the year of assessment—

(a) that the claimant has the custody of and maintains at his or her own expense any child who, but for the fact that that child is not a child of the claimant, would be a child referred to in subsection (1), and

(b) that neither the claimant nor any other individual is entitled to a tax credit in respect of the same child under subsection (1) or under any other provision of this Part (other than section 466A), or, if any other individual is entitled to such a tax credit, that such other individual has relinquished his or her claim to that tax credit,

the claimant shall be entitled to the same tax credit in respect of the child as if the child were a child of the claimant.

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Submissions

The Appellant made the following submission:

"I took CHILD X into my care and home as she was homeless and had been sectioned under the mental health act into an acute mental health unit. Her mother died in YEAR 5 and she is estranged from her father.

She has had mental health issues since her mother's death. She is difficult to manage and suffers from ILLNESS .She is on ILLNESS medication, ILLNESS meds, ILLNESS meds.

She needs full supervision to take meds, and can be mentally AND physically challenging. She is a flight risk (in the middle of the night). She needs constant monitoring to get up, wash, eat and attend a course in REDACTED.

I do not receive any support for her from the state or elsewhere. She has tried to REDACTED on several occasions

The medication she is taking has helped when she takes it but every day is a battle with her. the medication also causes her to eat abnormally which has huge costs. I take her to all her mental health appointments and have to do all her laundry and cleaning etc she can be very destructive and is also a fire hazard ... REDACTED.

I have previously sent a letter from a consultant and GP outlining her condition for the foreseeable future."

8. The Appellant provided copies of contemporaneous correspondence she had with the psychiatric department of HOSPITAL and social welfare services since August YEAR 1. This correspondence indicated that the Appellant had applied for 'guardianship payments' in October YEAR 1 but was refused as social services had by that time added CHILD X's name to a TRAINING COURSE list. The correspondence also indicated that there were difficulties with CHILD X accessing social protection payments such as job seekers allowance as she was not engaging properly with the services.
9. The consultant psychiatrist at the HOSPITAL submitted that CHILD X had been under his care since September Year 1. He confirmed that CHILD X had been living under the care of the Appellant since August YEAR 1. He noted that CHILD X previously has



ILLNESS diagnosed in HOSPITAL and that she continues to have ongoing symptoms. She is currently prescribed various psychiatric medicine. The consultant psychiatrist submitted that 'her difficulties will be ongoing and she will require frequent input from services for the forth coming years'.

10. The Respondent submitted that the Appellant did not qualify for the credit for the following reasons:

- a) It was not clear how the Appellant fulfilled the requirement in S.465 (3) to have custody of the child 'given her age and lack of any financial support'.
- b) 'To qualify as a permanent incapacity, the incapacity must be such that even with the benefit of treatment, medication or therapy CHILD X cannot maintain herself on a permanent basis.' The medical evidence suggested that CHILD X's condition could be managed with medication and may lessen over time. Therefore, CHILD X did not qualify as being permanently incapacitated from maintaining herself in accordance with S.465 (1)(b).

11. The Revenue Commissioners issued a Guidance Note on 4 October 2018 in respect of the tax credit. This guidance outlines Revenue's interpretation and application of S.465 TCA 1997 and states that;

"The incapacity must be such that the child is unlikely to maintain themselves even with the benefit of any:

- *treatment*
- *device*
- *medication*
- *therapy*

For the purposes of this credit 'maintaining' means the ability to support themselves by earning a living from working."

Analysis

12. Based on CHILD X's long-term medical condition and the fact that the mental health services had agreed to discharge CHILD X into her care in August Year 1, the Appellant



believed that she was entitled to the tax credit for the Year 1 tax year. The Appellant submitted that she has not received any financial assistance in respect of the care of CHILD X. She incurred the costs of the care during a period when CHILD X was unable to care for herself due to her mental illness. The Appellant submitted that CHILD X did not have a medical card and was not in receipt of job seekers allowance or any other financial assistance. Contemporaneous email correspondence between the Appellant and social welfare and medical services was submitted by the Appellant as evidence of this.

13. The question of whether the Appellant was entitled to the tax credit turns on the question of whether the Appellant's CHILD X, was (1) '*permanently incapacitated*' within the meaning of section 465 TCA 1997 and (2) whether the Appellant proves that she had the custody of CHILD X in Year 1 and maintained CHILD X at her own expense in that year or part of that year.

(1) Permanently Incapacitated

14. From August YEAR 1 until sometime in YEAR 2, CHILD X resided with and was under the care of the Appellant. CHILD X was over the age of 21 at this time.
15. As a result of the mental illness, in August YEAR 1 CHILD X was unwell, unfit to take care of herself and homeless. She was presented to be treated and housed at the HOSPITAL and placed under the supervision of a mental health social worker. CHILD X stayed at the mental health unit for a short period until the Appellant discharged her from the mental health unit.
16. Whilst under the care of the Appellant and a Welfare Officer, CHILD X was enrolled on a TRAINING COURSE.
17. S.465 TCA 1997 provides that the concept of '*permanent incapacity*' is to be determined in this appeal by reference to the question of whether the child "*is permanently incapacitated by reason of mental or physical infirmity from maintaining... herself and had become so permanently incapacitated before he or she had attained the age of 21 years*" The Respondent contended that maintaining oneself means "earning a living from work". However, while earning ability is a relevant factor, there is nothing in the legislation to suggest that the test is purely monetary. In this appeal the evidence provided by a consultant psychiatrist and the circumstances giving rise to CHILD X's



homelessness and admission to a mental health unit indicates that she had a permanent condition which was under active management and her capacity to maintain herself fell to be evaluated in that context.

18. The evidence put forward by the Appellant about CHILD X's behaviour and condition in Year 1/ Year 2 is credible and lends strong credence to the assertion that in Year 1, CHILD X was suffering from a permanent incapacity. There are also strong inferences to suggest that the illness CHILD X suffers from predated her 21st birthday, on REDACTED.
19. In accordance with section 465(1)(b) TCA 1997 and in respect of children over 18, the test of whether the child has capacity to maintain himself or herself is not confined exclusively to the question of whether he/she has or can achieve a position of paid employment. It is necessary also to consider the extent to which the child has the capacity for independent living based on their health condition or disability.
20. In late YEAR 1 and YEAR 2, CHILD X benefitted from care provided by the Appellant, welfare officers and her psychiatrist. This care included the appropriate management of medications and control of her general welfare and support in making applications for State supports. While she returned to training during the period, there are strong indications that she did not at that time have capacity for independent living.
21. On the basis of the above, I find that during the YEAR 1 tax year CHILD X was permanently incapacitated by reason of mental infirmity from maintaining herself.

(2) Custody and Maintenance

22. The Respondent also refused the claim on the basis that the appellant "must have custody and control of CHILD X and this was not clear from her claim".
23. The Appellant provided copies of contemporaneous correspondence she had with the psychiatric department of HOSPITAL and social welfare services since August YEAR 1. The correspondence indicates that HOSPITAL had discharged CHILD X into the care of





the Appellant and consulted the Appellant on matters relating to CHILD X's traineeship, welfare entitlements etc. at the time she was discharged and afterwards. The Appellant has also engaged with the Consultant Psychiatrist for REDACTED whilst managing CHILD X's wellbeing in YEAR 1 and YEAR 2.

24. On the basis of the above, I find that, while the Appellant has not provided comprehensive evidence of the supports she had provided to CHILD X in YEAR 1, nevertheless, on the balance of probabilities, the Appellant did, for the YEAR 1 have "the custody of and maintains at ... her own expense any child who, but for the fact that that child is not a child of the claimant, would be a child referred to in subsection (1)" as required by the legislation.

Conclusion

25. For the reasons set out above I determine that the Appellant has satisfied the requirements of section 465 TCA 1997 and is entitled to avail of the incapacitated child tax credit in respect of the YEAR 1 tax year of assessment.

26. The appeal hereby is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

7 May 2020

