ALABAMA TAX TRIBUNAL

JERMAINE WILLIAMS,	§	
Taxpayer,	§	DOCKET NO. INC. 16-457-CE
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Jermaine Williams ("Taxpayer") for 2014 Alabama income tax. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on February 28, 2017. CPA Steve Richardson represented the Taxpayer. Assistant Counsel Mary Martin Mitchell represented the Revenue Department.

The relevant facts are undisputed. The Taxpayer was involved in an automobile accident years ago that left him disabled and unable to live alone. He requires supervision and assistance with daily living activities such as cooking, bathing, dressing, grooming and walking. Rather than place the Taxpayer in the care of a long-term facility or institution, the Taxpayer's parents modified their home and moved the Taxpayer in with them. They provide him around-the-clock supervision and care. The Taxpayer's parents explained at the hearing that this arrangement provides better care for their son at a much lower cost compared to a nursing home. This arrangement continues to this day.

The Taxpayer receives income from a special needs trust established for his benefit. During the tax year at issue, the Taxpayer's parents incurred costs to care for him, and from time to time, the trust reimbursed them for those expenses. Such expenses included the following: medical expenses such as drug expenses, expenses for doctor's

appointments, etc.; entertainment; dry cleaning; clothing; personal care items and toiletries; mileage for trips to doctor visits, church, haircuts and eating out; utilities; groceries and snacks; and charitable contributions. The Taxpayer claimed deductions for these expenses.

The Taxpayer filed a 2014 Alabama income tax return reporting adjusted gross income in the amount of $65,887, and claiming itemized deductions in the amount of $49,599. The return reported tax due in the amount of $773, and requested a refund in the amount of $1,181 of taxes previously paid.

The Department audited the Taxpayer's return and requested documentation to substantiate the medical expenses claimed on the Taxpayer's return. In response, the Taxpayer provided a one-page receipt memorializing payments made to the Taxpayer's parents for "disability care and health maintenance" of the Taxpayer. The Department determined that this document failed to substantiate the expenses claimed on the Taxpayer's return, disallowed the deductions, and entered the final assessment at issue.

The Taxpayer appealed, asserting that the expenses qualified as tax-deductible medical expenses, but did not submit any documents to substantiate the claimed expenses.

At the hearing, the Taxpayer's parents submitted records documenting the expenses reimbursed by the trust. After its review of the records, the Department allowed substantiated medical expenses. The Department disallowed expenses it determined were not medical expenses. Specifically, the Department disallowed expenses incurred for utilities, clothing, groceries and snacks, meals at restaurants, dry-cleaning services, entertainment, personal care items and toiletries, haircuts, and mileage for transportation

to and from personal outings, such as church and haircuts.

The Taxpayer asserted that, as a chronically ill person, he should be allowed to deduct as medical expenses any expenses incurred for goods and services that would normally be provided or rendered if he were living in a nursing home or other long-term care institution. The Taxpayer asserted that the lodging provided by his parents, and all other ancillary costs related to their care of him, should be allowed as a medical deduction. Essentially, the Taxpayer argues that his parents' home should be viewed as an institution, and that any expenses his parents incurred to care for him during the tax year at issue should be deductible to the Taxpayer when he reimburses them for those expenses. It does not appear from the evidence in the record that the Taxpayer claimed deductions for lodging or rent, or for nursing or personal care services other than the cost of dry-cleaning services.

Section 40-18-15(a)(13) allows a deduction for medical and dental expenses as determined in accordance with the federal medical deduction, 26 U.S.C. §213. Section 213 allows a deduction for medical expenses or the medical care of the taxpayer, his spouse, or a dependent that are not compensated for by insurance. Relevant to this appeal, amounts paid for medical care is defined in the statute as amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of a disease, or for the purpose of affecting any structure or function of the body; for transportation primarily for and essential to medical care; or for qualified long-term care services.

IRS Regulation 1.213-1(e)(1)(i) and (ii) provides that expenditures allowed under §213 will be confined strictly to expenses incurred primarily for the prevention or alleviation of a physical or mental defect or illness, and that expenditures which merely benefit the

general health of an individual are not expenditures for medical care. The regulation further provides that medical expenses shall include amounts paid for transportation primarily for and essential to medical care, for hospital services, nursing services, medical laboratory, surgical, dental and other diagnostic and healing services, X-rays, medicine and drugs, artificial teeth or limbs, and ambulance hire.

Where an expenditure is so personal in nature that it only rarely loses its identity as a personal expense, the determination of whether that expense is medical or personal in nature is primarily one of fact. *Jacobs v. Commissioner*, 62 T.C. 813, 818-819 (1974); *Volwiler v. Commissioner*, 57 T.C. 367 (1971). The Tax Court has established a two-part test to determine whether expenses are directly or proximately related to treatment of a medical condition: (1) the expense must be an essential element of the treatment of the condition, and (2) the expense would not have otherwise been incurred for nonmedical reasons. *Jacobs*, 62 T.C. at 819.

Meals and lodging are generally personal expenditures. However, if meals and lodging are provided as part of in-patient hospital care, such expenses are considered medical expenditures if the costs are incurred in conjunction with the hospital care. 1.213-1(e)(1)(v). Also, the costs of meals and lodging provided as part of care provided by an institution other than a hospital are medical expenditures, *but only if* the principle reason the individual is institutionalized is for medical care *and* the meals and lodging are furnished as a necessary incident to such medical care. 1.213-1(e)(1)(v)(a) (emphasis added).. Lodging and meals provided outside of an institutional setting are not deductible, except in very rare circumstances. *Levine v. Commissioner*, 695 F.2d 57 (2nd Cir.1982);

See Kelly v. Commissioner, 440 F.2d 307 (7th Cir.1971); *Ungar v. Commissioner*, 22 T.C.M. 766 (1963) (holding that the taxpayer's short-term stay in an apartment was deductible as a medical expense where the apartment was near the hospital where his physician worked and nursing services and special equipment were provided to the taxpayer in the apartment during the taxpayer's acute stages of an illness.).

Qualified long-term care services are defined as necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services which are required by a chronically ill individual. 26 U.S.C. §7702B(c)(1). The care provided must follow a plan of care prescribed by a licensed health care practitioner to be deductible. Id. Maintenance or personal care *services* means any *care* the primary purpose of which is providing the chronically ill individual with needed assistance with his disabilities, including the protection from threats to health and safety due to cognitive impairment. 26 U.S.C. §7702B(c)(3) (emphasis added).

A person is considered chronically ill if he has been certified by a licensed health care practitioner as unable to perform at least two daily living activities without substantial assistance for a period of at least 90 days due to a loss of functional capacity or has a similar level of disability, or he requires substantial supervision to protect such individual from threats to health and safety due to sever cognitive impartment. 26 U.S.C. §7702B(c)(2). For purposes of the statute, daily living activities include eating, toileting, transferring, bathing, dressing and continence. Id.

Qualified long-term care compromises a variety of *services* that include medical and non-medical *care* to assist with daily living activities. The Internal Revenue Code does not

limit the deduction to care services provided at a long-term care facility. Thus, the deduction is available for these services rendered in the Taxpayer's home.

It is not a requirement that the person rendering qualified long-term care services be a licensed nurse or have special training. *Estate of Baral v. Comm'n of Internal Rev.*, 137 T.C. 1 (2011). However, amounts paid to a relative for such services are not deductible unless the services are provided by an individual who is a licensed professional with respect to the services provided. §213(d)(11)(a).

The Taxpayer's expenses for utilities, clothing, groceries and meals, entertainment, personal care items and toiletries, haircuts, and transportation to and from church, haircuts, movies, etc, are personal in nature – these expenses would have been incurred by the Taxpayer regardless of whether he was chronically ill. *See Levine v. Commissioner*, T.C.M. 1982-5. There is no direct or proximate relation between these expenses and the diagnosis, cure, mitigation, treatment or provision of disease. Consequently, the expenses do not qualify as medical expenses. While it may be true that some of these items and services may be ancillary to and included in the cost of placing the Taxpayer in a long-term care institution, that possibility is not instructive on the deductibility of the expenses as medical expenses at issue in this appeal. This argument has been rejected by the U.S. Tax Court. *Levine,* T.C.M. 1982-5; *Volwiler*, 57 T.C. at 37.

Further, with respect to meals and food, the law is clear that these expenses are only deductible as part of in-patient hospital care or as part of non-hospital institutional care if the principle reason the individual is institutionalized is for medical care and the meals and lodging are furnished as a necessary incident to such medical care. There is no

provision in the Internal Revenue Code or regulations that allows a deduction for food and meal expenses outside of a hospital or institutional setting, regardless of the individuals medical needs, and I find no other authority upholding such deduction in cases with similar facts and circumstances as those presented in this appeal.

The Taxpayer cites *Ungar* as authority for his position. In *Ungar*, the court found that the taxpayer was entitled to deduct rent expense for an apartment where nursing services and special equipment were provided to the taxpayer during the taxpayer's acute stages of an illness. 22 T.C.M. 766. The court held that because the room was a substitute for a hospital room, the rent expense was deductible as a medical expense. *Id.* The Taxpayer's reliance on the court's decision in *Ungar* is misplaced. The court in *Ungar* did not speak to the deductibility of expenses for goods and services that are personal in nature like the ones at issue in this appeal. While it is true that the court allowed the rent expense because the apartment was a short-term substitute for a hospital room, the court did not address whether other expenses incurred by the taxpayer while staying in the room would have been deductible solely based on the premise that they may have been deductible if provided as part of a hospital stay or stay in some other institution. Further, most of the expenses claimed by the Taxpayer were expenses for goods, not services – expenses such as food, clothing, personal care items and toiletries, utilities, and personal transportation costs, and as such do not qualify as long-term care services for the reasons set forth above.

The Taxpayers expenses for dry-cleaning services are also not deductible as personal care expenses. As discussed above, personal care *services* means any *care* the

primary purpose of which is providing the chronically ill individual with needed assistance with his disabilities, including the protection from threats to health and safety due to cognitive impairment. 26 U.S.C. §7702B(c)(3) (emphasis added). In my opinion, personal care services are services rendered to a chronically ill individual that assist the individual with daily life activities – services such as assisting the individual with dressing, eating, bathing and going to the bathroom. The services provided by a dry-cleaner do not fit in that category of services, and as such, are not deductible as qualified long-term care services. Additionally, the Taxpayer would have incurred these expenses regardless of his medical condition because, even if not chronically ill, the Taxpayer would have paid a cleaning service to dry-clean his clothing.

I have no doubt that the Taxpayer and his parents are good, honest people. I thoroughly enjoyed getting to know them at the hearing. I sympathize with the Taxpayer and the unfair circumstances he has had to endure, and I commend the Taxpayer's parents for the exceptional care and unconditional love they provide to the Taxpayer. However, the legislature has spoken and said that §213 prescribes the types of medical expenses that are allowed as deductions from Alabama income tax, and I must adhere to the laws as they are written.

The final assessment, as adjusted, is affirmed. Judgment is entered against the Taxpayer for tax and interest in the amount of $434.42. Additional interest is also due from the date the final assessment was entered, March 17, 2016.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

December 29, 2017.

/s/ C. O. Edwards
CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Mary Martin Mitchell, Esq.
Steve Richardson, CPA