

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. INC. 87-123

LORETTA M. COLBURN
2004 Opal Drive
Huntsville, AL 35810,

§
§

Taxpayer.

§

ORDER

The Department assessed income tax against Loretta M. Colburn("Taxpayer") for the calendar years 1983, 1984 and 1985. The Taxpayer appealed to the Administrative Law Division and the matter was submitted for decision on a joint stipulation of facts entered into by CPA Dwight Daniell, Jr., for the Taxpayer, and assistant counsel Nancy I. Cottle, for the Department. Based on the undisputed facts of the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Department audited the Taxpayer's income tax returns for 1983, 1984 and 1985 and disallowed various medical expenses paid by the Taxpayer for the care, lodging, education and welfare of her 34-year-old severely retarded daughter, Sherry Colburn.

Sherry contracted tuberculosis meningitis at the age of eleven months, which caused severe mental retardation and spastic extremities. Sherry's condition includes a spastic type speech, a marked flexion deformity of the left wrist and a flaccid left hand, and left leg atrophy which causes a limping walk. Her I.Q. is less

than 50.

During the subject years, Sherry resided at Mountainview Development Program, Inc. ("Mountainview") a full-time care facility for retarded adults. Sherry was placed in Mountainview on the recommendation of her physician because of her need for constant supervision and assistance. Such care is necessary to alleviate Sherry's handicaps and to allow proper education, training and exercise.

Mountainview has full-time trained staff on around-the-clock duty. A physician is on call 24 hours a day. All programs and daily activities are supervised by a staff member, who also participates in and instructs during the activity. Each patient has individual goals for learning as necessitated by the patient's individual needs and special problems.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(13) provides a deduction for medical expenses to the same extent as allowed by federal law, 26 U.S.C., §213.

26 U.S.C., §213 defines "medical care" as the amount paid "for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body".

I.R.C. Reg. 1.213-1(e) further defines qualified "medical care", and at subsection (e)(1)(v) states that in-patient institutional

care is an allowable expense. However, each situation must be decided on a case-by-case basis, depending on the condition of the individual and the nature of the services rendered.

Subsection (e)(1)(v)(a) reads in pertinent part as follows:

. . . For example, medical care includes the entire cost of institutional care for a person who is mentally ill and unsafe when left alone. While ordinary education is not medical care, the cost of medical care includes the cost of attending a special school for a mentally or physically handicapped individual, if his condition is such that the resources of the institution for alleviating such mental or physical handicap are a principal reason for his presence there. In such a case, the cost of attending such a special school will include the cost of meals and lodging, if supplied, and the cost of ordinary education furnished which is incidental to the special services furnished by the school

* * *

. . . Similarly, the cost of care and supervision, or of treatment and training of a mentally retarded or physically handicapped individual at an institution is with the meaning of the term "medical care".
(emphasis supplied)

In the present case, Sherry was placed in Mountainview at the behest of her physician. The constant care and attention provided by Mountainview alleviated Sherry's handicaps and facilitated her daily well-being and education.

From the limited evidence presented in the case, it does not appear that Mountainview is merely a "home" for the mentally retarded. Rather, it provides daily, scheduled activities designed to alleviate the patient's special problems. In Sherry's case, constant care and supervision is also necessary.

The above considered, it is hereby determined that the expenses paid by the Taxpayer for the case of her daughter are allowable medical care expenses under §40-18-15(13). Accordingly, the final assessments in issue should be reduced and made final showing no additional tax due.

Done this the 14th day of March, 1988.

BILL THOMPSON
Chief Administrative Law Judge