



**54TACD2019**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction and Background**

1. This is an appeal against amended P21 assessments for the tax years 2017 and 2018, issued by the Respondent in relation to the withdrawal from the Appellant of income tax relief for Nursing Home Expenses pursuant to S.469 TCA 1997 ('relief').
2. The Appellant claimed relief in the amount of €7,589 and €8,217 for the tax years 2017 and 2018 respectively. The Appellant contends that he defrayed the costs of his father's Nursing Home fees in these years and that he is entitled to relief for the full amounts claimed.
3. The Appellant was subject to a compliance audit by the Respondent and was requested to provide supporting evidence for the relief claimed.
4. The supporting evidence provided indicated that the nursing home fees for his father were paid directly to the Nursing Home from the joint bank account of the Appellant's



parents ('joint bank account'). The joint bank account also indicated that during 2017 and 2018, his parents were in receipt of €30 weekly standing orders from the Appellant's bank account. The total weekly €30 transfers from the Appellant to the joint bank account according to the Respondent was €1,380 and €1,530 for 2017 and 2018, respectively.

5. The Respondent withdrew relief for the amounts of €6,209 and €6,687 for 2017 and 2018 respectively, on the basis that the documentation and the payment structure in respect of the Nursing Home fees could not support the Appellant's claim that he defrayed the cost of these fees. The Respondent allowed relief for the amounts evidenced by the weekly €30 transfers.
6. Amended P21 assessments were issued showing income tax due of €2,483 and €2,673 for the tax years 2017 and 2018. The Appellant duly appealed both of the amended assessments.
7. The following table shows the amounts by year claimed by the Appellant as eligible tax relieved nursing home costs compared with the amounts allowed by the Respondent in the P21 Assessments.

	Nursing Home fees			Respondent		
Year	Claimed by Appellant			Expenses	Expenses	
				Allowed	Disallowed	Tax due
2017	€7,589.24			€1,380	€6,209.24	€ 2,484
2018	€8,217.56			1,530	€6,687.56	€ 2,674

8. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of S.949U TCA 1997.

## Legislation

### Section 469 TCA 1997 – Relief for health expenses



*“(2)(a) Subject to this section, where an individual for a year of assessment proves that in the year of assessment he or she defrayed health expenses incurred for the provision of health care, the income tax to be charged on the individual, other than in accordance with section 16(2), for that year of assessment shall be reduced by the lesser of—*

*(i) the amount equal to the appropriate percentage of the specified amount, and*

*(ii) the amount which reduces that income tax to nil,*

*but, where an individual proves that he or she defrayed health expenses incurred for the provision of health care in the nature of maintenance or treatment in a nursing home, other than a nursing home which does not provide access to 24 hour nursing care on-site, the individual shall be entitled for the purpose of ascertaining the amount of the income on which he or she is to be charged to income tax, to have a deduction made from his or her total income of the amount proved to have been so defrayed.”*

## **Submissions**

9. The Appellant asserted that in accordance with the table above he defrayed a portion of the nursing home costs associated with the care of his Father. This was arranged by the Appellant making a weekly standing order payment of €30 into the joint bank account of his parents. (It was from this joint bank account that all nursing home costs were paid in 2017 and 2018). The Appellant submitted that the shortfall between the weekly standing order amounts to the joint bank account and the amount claimed for tax relief is made up of weekly cash payments of between €150 or €200 to his mother. The Appellant submitted copies of his own bank accounts for the relevant years showing weekly ATM cash withdrawals. He also provided an analysis summarising by date the weekly amounts of €150 or €200 which the Appellant says he gave to his mother. These analysis sheets are signed by his mother confirming that total cash of €7,010 and €7,500 was received by her from the Appellant for the 2017 and 2018 tax years respectively and that €6,210 and €6,910, respectively, of that cash was ‘as payment for Nursing Home Expenses for my husband’.



10. The Appellant also submitted a letter from the Nursing Home, X Healthcare, stating that the total payments received from the Appellant for the years 2017 and 2018 towards the cost of his father's care were €7,589 and €8,217 respectively.
11. The Respondent does not accept that the analysis of the Appellant's cash withdrawals and the signed statement by his mother is sufficient proof that he defrayed the nursing home costs claimed for tax relief in 2017 and 2018. Furthermore, the Respondent further asserts that cash allegedly given to her by her son in lieu of the Nursing Home costs was not lodged to the joint bank account of the parents, from which all the payments to X Healthcare were made. The Respondent does accept, however, that the weekly standing order of €30, amounting to €1,380 in 2017 and €1,530 in 2018, evidenced as received from the Appellant into the parents' joint bank account, are transfers made by the Appellant in lieu of the payments for the Nursing Home fees and so qualify for relief.
12. The Appellant submits that "Revenue have only allowed payments which were transferred directly to my parents bank account. The balance was paid by way of cash to my mother... It is of my opinion that cash is a legal form of tender."

### **Analysis and findings**

13. The Appellant has provided evidence that cash was withdrawn each week from his bank account by way of ATM withdrawal.
14. He has also provided the following evidence that the monies were paid to his mother to defray the Nursing Home costs:
- A signed statement from his mother that she received weekly cash amounts varying between amounts of €150, €200 and €250 during 2017 and 2018.
  - A signed letter from X Healthcare confirming that the Appellant paid them nursing home fees of €7,589 in 2017 and €8,217 in 2018.
15. The Appellant was directed by the Tax Appeals Commission ("TAC") under S.949E TCA 1997 to provide the additional evidence of payment of nursing home costs including:



- to explain the rationale why €30 weekly was transferred from his bank account while the remainder of the costs he asserts were defrayed by him, were paid to his mother by means of varying weekly cash payments?
- to explain how X Healthcare could assert that they had received from the Appellant amounts of €7,589 (in 2017) and €8,217 (in 2018) given that all amounts paid to the Nursing home each month came from the joint account of the Appellant's parents?

16. The Appellant responded in the following terms:

- the cash payments were made “to avoid there not being enough funds in the current account to cover the monthly cost of the Nursing Home”.
- in relation to the X Healthcare letter, he “requested that the receipt be made out to me as I covered the costs of the expenses incurred by our family”.

16. My analysis of the evidence presented is as follows:

I have no doubt that the Appellant did make some payments to his mother during 2017 and 2018. What I am less clear on is what payments went towards defraying his parent's expense of providing nursing home care for the Appellant's father.

17. If the evidence presented, that weekly payments to the Appellant's mother of cash derived from cash withdrawals from the Appellant's bank account were intended by the Appellant “to avoid there not being enough funds in the current account to cover the monthly cost of the Nursing Home”, were to be relied upon, you might expect to see regular lodgements into the parents' joint bank account in respect of these weekly cash donations from the Appellant. There is no such evidence of regular lodgement to the parents' joint bank account.

18. The receipt form X Healthcare cannot be relied upon as its contents appear to derive more from the advocacy of the Appellant than the factual evidence of the parents' joint bank accounts.

19. I fully accept the Appellants assertion that caring for the health needs of an ill parent can be very stressful for a family. I have no doubt that the Appellant has made some



payments in cash to his mother in the years in question and that some of these were intended to ease the financial burden on his mother in meeting the nursing home care costs. However, based on a review of both the Appellant's bank accounts and the parents' joint bank account, I am not satisfied that the Appellant has proved that he has defrayed the amounts claimed by him.

*The burden of proof*

20. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

21. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated:

*'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.'*

22. The TAC agrees with the Respondent that the weekly direct debits of €30 from the bank account of the Appellant to the joint bank account are substantial evidence that those amounts were paid by the Appellant to defray the costs of his father's Nursing Home costs.

23. I am satisfied as a matter of fact that the Appellant has made some contribution to the nursing home costs in the form of cash payments, but I am unable to quantify the extent of those payments based on the evidence presented. On the balance of probabilities, it is reasonable to assume that where there are ATM lodgements into the parents' bank account and where there are correlated comparable ATM cash withdrawals from the Appellant's bank account that such withdrawals represent the defraying of nursing home costs by the Appellant.



24. In my analysis of the bank accounts of his parents, I found four such lodgements in 2017, totalling €650 and one in 2018 in the amount of €200. Accordingly, I believe the Appellant should obtain relief for these amounts.
25. I have also estimated, based on a review of the Appellant's bank accounts, that relief for the weekly €30 contributions amounted to €1,410 in 2017 and €1590 in 2018.
26. Accordingly, I have set out below my determination of the amount of relief the Appellant should receive in 2017 and 2018, respectively. In summary €2,060 is to be allowed in 2017 and €1,790 in 2018.

Year	Nursing Home fees defrayed		Determination	
	Claimed by Appellant		Defrayed	Defrayed
	Allowed	Disallowed	Allowed	Disallowed
2017	€7,589.24	€0.00	€2,060.00	€5,529.24
2018	€8,217.56	€0.00	€1,790.00	€6,427.56

### Determination

27. I determine that the amended assessments raised by the Respondent in respect of Income Tax for the tax years 2017 and 2018 under this appeal should be further amended in accordance with the above table.
26. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**1st November 2019.**

