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BOARD OF EQUALIZATION

STATE OF CALIFORNIA

In the Matter of the Appeals of:	**HEARING SUMMARY**
	HOMEOWNERS AND RENTERS PROPERTY TAX ASSISTANCE APPEAL
CHRISTINE DIANE PETERSON[1]	Case Nos. 422998; 416186[2]

Years	Claim Amount
2003[3]	$332.50
2004	$332.50
2005	$332.50

Representing the Parties:

For Appellant: Alyssa Gendron, TAAP[4]

For Franchise Tax Board: Lisa Lawson, Administrator II[5]

[1] Appellant resides in Richmond, Contra Costa County, California.

[2] These two appeals have been consolidated.

[3] In appellant's final reply brief, dated March 11, 2009, she concedes that she is not eligible for homeowner assistance for the 2003 claim year because she did not meet the extended deadline.

[4] Appellant filed her own appeal letters. Subsequent representation has been provided by the Tax Appeals Assistance Program representatives Chris Stafford, Nitya Bala, Harpaul Nahal, and Alyssa Gendron.

[5] Rachel Abston, Legal Analyst, provided the opening brief and additional brief (dated July 11, 2008) for respondent in appeal 422998. Subsequent briefing was completed by Lisa Lawson, who provided all the briefing for appeal 416186.

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QUESTIONS: (1) Whether appellant's homeowner assistance claim for 2003 is barred by the statute of limitations; and

(2) Whether appellant was medically incapacitated for the appropriate period of time so that her homeowner assistance claims for 2004 and 2005 are timely.

HEARING SUMMARY

Background

Appellant filed Homeowner and Renter Assistance (HRA) claims after the standard deadline for the 2003, 2004, and 2005 claim years. Appellant filed her 2003 claim on May 29, 2007, her 2004 claim on February 22, 2007, and her 2005 claim on April 12, 2007. Respondent reviewed the claims and subsequently denied them for being untimely. (App. Reply Br. (Nov. 7, 2008) p. 1.) This timely appeal followed.

Contentions

Appellant concedes that her 2003 claim is barred by the statute of limitations, even with any extensions for medical incapacity. (App. Reply Br. (Mar. 11, 2009) p. 2.) Appellant contends that she was medically incapacitated for the requisite time period that would require respondent to accept her 2004 and 2005 claims on account of the severity of her ongoing disability, the nature of her disability, and the exigent stresses imposed upon her during that time. (*Id*. at p. 3.) Appellant asserts that the supplied evidence of her maladies sufficiently proves her medical incapacity for the years at issue and that the Revenue and Taxation Code (R&TC) does not require an affidavit from a doctor specifically stating that she was medically incapacitated for the time span at issue. Appellant indicates that she visited several clinics and doctors throughout the time period for which she was medically incapacitated and that it would therefore be impossible to find a single doctor who can attest to her condition for all the years that she was incapacitated. (*Id*. at pp. 4-5.)

Respondent concedes that appellant was disabled for the claim years at issue. (Resp. Reply Br. (Jan. 6, 2009) p. 2.) Respondent states that the claim for 2003 was received after the last possible day for acceptance, even with all available extensions. (*Id*.) Respondent contends that appellant has not provided sufficient evidence to show that she was medically incapacitated for the

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requisite time period that would allow it to accept her 2004 and 2005 claims as timely. (*Id*. at p. 4.) Respondent asserts that the classifications of disabled and medically incapacitated for purposes of HRA law have different definitions, and therefore even if appellant met the definition of "disabled" under HRA law, it does not mean that she was medically incapacitated. (*Id*. at p. 2.) Respondent asserts that it is not a physician who can decipher the medical documents and extrapolate whether they substantiate that she was medically incapacitated for the requisite time period. (*Id*. at p. 3.)

Applicable Law

R&TC section 20541 permits certain owners of residential dwellings to claim property tax assistance from the State of California. Under R&TC section 20543 the amount of assistance for an owner-claimant is a specified percentage of tax on the first $34,000 of full value of the dwelling, determined according to the claimant's total household income for the time period specified in R&TC section 20503. (Rev. & Tax. Code, § 20543, subds. (a)(1) & (a)(2).) In order to be eligible to claim assistance for the claim year in question, the claimant must have been at least 62 years of age, blind, or disabled on December 31st of the year preceding the claim year. (Rev. & Tax. Code, § 20505, subd. (a).) In addition, pursuant to R&TC section 20561, subdivision (a), a claimant must supply evidence of age, blindness, or disability. Respondent does not dispute that appellant was disabled for the appropriate period during each of the claim years.

R&TC section 20563 states that homeowner assistance claims must be filed between the first of July and the end of June of the fiscal year succeeding the fiscal year for which assistance is claimed.[6] The only exception to the R&TC section 20563, subdivision (a), filing deadline is in the case of a medical incapacity. Subdivision (c) of R&TC section 20563 provides that, when medical incapacity prevents timely filing, the claimant may file a claim within six months after the end of the medical incapacity or three years succeeding the end of the fiscal year for which the assistance is claimed, whichever is earlier.[7] The pertinent regulation explains that a "medically incapacitated" individual is

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[6] For 2003, the filing period was July 1, 2003 through June 30, 2004. The filing period for the 2004 claim year was July 1, 2004 through June 30, 2005, and for 2005 the period was July 1, 2005 through June 30, 2006.

[7] For example, if an applicant is medically incapacitated for the filing period for the 2003 claim year, the last day on which that applicant can file a claim would be June 30, 2006, three years from the end of the fiscal year for which assistance is claimed.

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one who is unable:

> . . . to attend to his or her own personal needs and activities of daily life, including, but not limited to, matters such as their own personal hygiene or nutritional needs.

(Cal. Code Regs., tit. 18, § 20501.)

While the applicable statute and regulation do not explicitly require a statement from a physician, respondent is generally authorized to request information in the form and manner it prescribes to prove the required elements of a successful HRA claim. (Rev. & Tax. Code, § 20561, subd. (a).) The Board must presume the FTB's denial of assistance is correct, and appellant shoulders the burden of proving error. (*Appeals of Jeremiah Xavier Spicer, et al.*, 2001-SBE-003, May 31, 2001.)

STAFF COMMENTS

Both parties agree that the claim submitted for the 2003 claim year was untimely, leaving the 2004 and 2005 claim years still at issue. Respondent has conceded that appellant was disabled for HRA purposes during the 2004 and 2005 claim years. (Resp. Reply Br. (Jan. 6, 2009) p. 2.) Appellant contends that for both the 2004 and 2005 claim years she was medically incapacitated from (at least) the original date of filing until after she submitted her claims. (App. Reply Br. (Mar. 11, 2009) p. 2.) Since appellant filed her claims within three years of the end of the respective fiscal years, for her claims to be valid, she must show that she was prevented from filing a claim due to medical incapacity from at least the original due date until no less than six months prior to when she filed the claims. (Rev. & Tax. Code, § 20563, subd. (c).) For 2004, this range includes June 30, 2005 through approximately August 23, 2006; and for 2005, this period is from June 30, 2006 through approximately October 13, 2006.

Both parties cite the definition of medical incapacity provided in the applicable law above, but differ on the evidence required to prove medical incapacity in both form and content. (See App. Reply Br. (March 11, 2009) p. 3; Resp. Reply Br. (Jan. 6, 2009) p. 3.) Respondent requests that claimants who desire to have an extension of the filing period due to medical incapacity have their physician complete a Medical Incapacity Affidavit, and provided appellant with blank forms for her physician to complete for each claim year. (Resp. Reply Br. (Jan. 6, 2009) p. 5.) Appellant, on the other hand, has provided various medical reports and forms describing her condition and states that forcing her to submit a completed Medical Incapacity Affidavit is not required by law and would be very

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difficult for her. (App. Reply Br. (March 11, 2009) p. 5.)

While R&TC section 20561, subdivision (a), provides that a valid claim will include the information in the form and manner prescribed by respondent to establish eligibility under HRA law, subdivision (c) mentions that respondent is authorized to prescribe what information is necessary to constitute a valid claim by regulation. The parties may wish to discuss whether respondent may only prescribe what information, and in what form, is necessary to establish a valid claim by regulation, or if other methods are allowable. In addition, the parties should be prepared to discuss whether information regarding medical incapacity is considered information that establishes appellant's eligibility for assistance under HRA law, and thereby falls within the limits of R&TC section 20561.

Both parties should be prepared to discuss whether appellant's submitted records substantiate her medical incapacity for the requisite time periods for each claim year, should the Board accepts appellant's submitted records as a valid means of showing medical incapacity. In particular, both parties will need to address whether the ailments and maladies listed (namely fibromyalgia and stress from various sources) prove that appellant was "unable to attend to her own personal needs and activities in daily life, including, but not limited to, matters such as [her] personal hygiene or nutritional needs," and for what time period she was medically incapacitated. Respondent should be prepared to discuss whether they contest the veracity of the conditions and events listed in appellant's evidence, or whether they contend that those afflictions do not constitute medical incapacity.

Both parties should be prepared to discuss the activities that appellant engaged in during the time period in question, and whether those activities demonstrate she was able to attend to her own personal needs and activities of daily life, such as her own personal hygiene and nutritional needs. Appellant contends that she was physically unable to attend to her personal needs, but was nevertheless engaged in her mother's eviction proceedings by contesting her inclusion and later filing a lawsuit, regularly visited her mother and aunt and attended medical appointments, and timely filed her 2006 claim prior to filing her claims for the years at issue. The parties should discuss the difficulty and costs appellant would incur in acquiring a physician's affidavit regarding her medical incapacity, and the significance of the assertion that the costs incurred would negate any economic advantage available in this appeal.

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Both parties should discuss the residence status of appellant during the 2004 and 2005 claim years. The record alludes to evictions, but does not clarify who was evicted and when (although at least one eviction reference appears to be for appellant's mother when she was not living with her).[8] Appellant must satisfy the residence requirement of HRA law in order to receive assistance. (Rev. & Tax. Code, § 20508 & 20501.)[9]

Respondent indicates that many of the documents appellant provided are not legible, are written in shorthand that requires a physician to decipher, have been completed by the appellant herself or other persons who are not medical doctors, and that at least one document was fraudulently forged. (Resp. Reply Br. (Jan 6, 2009) pp. 2-3.) With regard to the fraudulent document, appellant states that she was handed a blank doctor's form at her clinic and unwittingly submitted a fraudulent form.[10] (App. Resp. Br. (March 11, 2009) pp. 6-7.) Both parties should be prepared to discuss the apparently fraudulent doctor's document originally provided to respondent and the effect that has on this appeal.

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[8] Appellant states that "appellant was evicted or in the process of two evictions… between 2000-2005," and that appellant and her mother were being evicted from their premises, but also states that the address listed on her 2004 and 2005 claims was and continues to be accurate. (App. Reply Br. (Nov. 7, 2008) pp. 7-8; App. Reply Br. (Mar. 11, 2009) p. 7.)

[9] Appellant initiated the appeals for the claim years at issue as homeowner assistance claims. (App. Appeal Letter (July 19, 2007) p. 1; App. Appeal Letter (Aug. 21, 2007) p. 1.) It appears as though respondent decided that appellant was disabled, but dismissed the appeals as untimely prior to determining the other required factors of HRA law. (See Resp. Reply Br. (Jan. 6, 2009) p. 4.)

[10] It is unclear from the briefing, but it appears as though the parties are suggesting that appellant completed the form herself.

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