

Docket: 2008-2279(IT)I

BETWEEN:

FRED HUTCHINGS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

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Appeal heard on July 20, 2009, at Prince Rupert, British Columbia

Before: The Honourable Justice D.W. Beaubier

Appearances:

Agent for the Appellant: Praveen K. Vohora  
Counsel for the Respondent: Whitney Dunn

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**JUDGMENT**

The appeals from the assessments made under the *Income Tax Act* for the 2005 and 2006 taxation years are dismissed.

Signed at Vancouver, British Columbia, this 21<sup>st</sup> day of July 2009.

“D.W. Beaubier”

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Beaubier D.J.

Citation: 2009TCC375  
Date: 20090721  
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FRED HUTCHINGS,

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Respondent.

### **REASONS FOR JUDGMENT**

Beaubier, D.J.

[1] This appeal pursuant to the Informal Procedure was heard at Prince Rupert, British Columbia on July 20, 2009. The Appellant testified and called Tiffany Hutchings. The Respondent called Dr. Michael Ikari, Tiffany's physician since 2000.

[2] The particulars in appeal are set out in paragraphs 10 to 22 inclusive of the Reply. They read:

10. On November 23, 2007, the Minister received an application for an extension of time within which the Appellant may object to the 2005 taxation year.

11. By letter dated January 29, 2008, the Minister advised the Appellant that his application for an extension of time to object to the 2005 taxation year was granted.

12. On May 28, 2008, the Minister confirmed the assessment of the Appellant's 2005 and 2006 taxation years. Accordingly, a Notification of Confirmation was issued to the Appellant.

13. In computing the Appellant's non-refundable tax credits for the 2005 and 2006 taxation years, the Minister made the following assumptions of fact:

a) the Appellant is Tiffany's father;

b) Tiffany was born on August 18, 1983;

- c) Tiffany resides with the Appellant;
- d) Tiffany has Type 1 diabetes;
- e) Tiffany's medical condition did not cause her to be markedly restricted in her basic activities of daily living in 2005 and 2006;
- f) at all material times, Tiffany was able to see, speak, hear, walk, eliminate, feed, dress and function mentally without requiring an inordinate amount of time to do so; and
- g) at all material times, Tiffany did not require life-sustaining therapy to be administered at least three times each week for a total duration averaging not less than fourteen hours a week.

**B. OTHER MATERIAL FACTS**

14. For the 2005 taxation year, Tiffany reported total income of \$19,595.05, comprised of employment earnings totalling \$18,888.82 and other income of \$706.23.

15. Tiffany's taxable income in the 2005 taxation year was \$18,784.53.

16. For the 2006 taxation year 2006, Tiffany reported total income of \$13,365.65 derived entirely from employment earnings.

17. Tiffany's taxable income in the 2006 taxation year was \$12,865.65.

18. Tiffany claimed federal non-refundable tax credits for the 2005 and 2006 taxation years, as follows:

	<u>2005</u>	<u>2006</u>
Basic personal amount	\$ 8,648.00	\$8,839.00
CPP contributions	730.13	431.58
EI premiums	363.78	249.94
Canada employment credit		250.00
Medical expenses	<u>99.22</u>	<u>1,466.00</u>
Federal non-refundable tax credits	<u>\$ 9,841.13</u>	<u>\$11,236.52</u>

**C. ISSUE TO BE DECIDED**

19. The issue is whether the Appellant is entitled to claim a transfer of a disability tax credit in respect of Tiffany for the 2005 and 2006 taxation years.

**D. STATUTORY PROVISIONS RELIED ON**

20. He relies on sections 118.3, 118.4 and 252 of the *Income Tax Act*, R.S.C. 1985, c.1 (5<sup>th</sup> Supp.), as amended (the “*Act*”).

**E. GROUNDS RELIED ON AND RELIEF SOUGHT**

21. He submits that the Minister properly assessed the Appellant’s 2005 and 2006 taxation years not to allow a transfer of a disability tax credit in respect of Tiffany, pursuant to sections 118.3 and 118.4 of the *Act*, because:

- a) Tiffany was not markedly restricted in her basic activities of daily living in regard to vision, walking, speaking, mental functions, hearing, feeding, dressing or elimination; and
- b) Tiffany did not require life-sustaining therapy to be administered at least three times each week for a total duration averaging not less than fourteen hours a week.

22. In the alternative, if it is determined that Tiffany qualifies for a disability tax credit, which he does not admit but expressly denies, he submits that the amount transferable to the Appellant for the 2005 taxation year is nil because Tiffany’s taxable income was \$18,784.53.

[3] All of the assumptions in paragraph 13 of the Reply are correct. In essence the appeal came down to subparagraph 13(g) of the Reply.

[4] On February 9, 2007 Dr. Ikari had completed Exhibit R-2 in which he stated that the administration of insulin to Tiffany required 2 hours per week and the adjustment of the dosage to Tiffany required another 2 hours per week in 2005 and 2006. Dr. Ikari quite honestly stated on the stand that these were “guestimates.” He also testified that the average young woman would require about 1 hour per day to perform these tasks.

[5] Fred Hutchings, the Appellant, testified that the administration and dosage required 14 hours per week and that he, a retired firefighter and “first responder” trained medical aid fireman, did a great deal of this for Tiffany because she finds administering needles frightening.

[6] Tiffany testified that in 2005 and 2006 the administration and adjustment of the dosage on average required 1 hour per day. Occasionally they could require 2 hours per day or more because she fluctuates in her need.

[7] Subparagraph 118.3(1)(a.1) and subsection 118.3(1.1) read as follows:

**118.3** (1) Where

(a) an individual has one or more severe and prolonged impairments in physical or mental functions,

(a.1) the effects of the impairment or impairments are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted where the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a basic activity of daily living or are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that

(i) is essential to sustain a vital function of the individual,

(ii) is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week, and

(iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired,

...

Time spent on therapy

(1.1) For the purpose of paragraph 118.3(1)(a.1), in determining whether therapy is required to be administered at least three times each week for a total duration averaging not less than an average of 14 hours a week, the time spent on administering therapy

(a) includes only time spent on activities that require the individual to take time away from normal everyday activities in order to receive the therapy;

(b) in the case of therapy that requires a regular dosage of medication that is required to be adjusted on a daily basis, includes (subject to paragraph (d)) time spent on activities that are directly related to the determination of the dosage of the medication;

(c) in the case of a child who is unable to perform the activities related to the administration of the therapy as a result of the child's age, includes the time, if any, spent by the child's primary caregivers performing or supervising those activities for the child; and

(d) does not include time spent on activities related to dietary or exercise restrictions or regimes (even if those restrictions or regimes are a factor in determining the daily dosage of medication), travel time, medical appointments, shopping for medication or recuperation after therapy.

[8] Thus, the infirm person who is not a child must be the person who spends the time spent on activities that are directly related to the determination of the dosage of the medication for a duration averaging not less than 14 hours a week.

[9] Tiffany is the sufferer of Type I diabetes who best knows the amount of time she spent in 2005 and 2006. She was completely credible and her evidence is accepted. On that basis, her average time spent was 7 hours per week for administration of the dosage and adjusting the dosage. It did not take 14 hours per week on average.

[10] For this reason, the appeal is dismissed.

Signed at Vancouver, British Columbia, this 21<sup>st</sup> day of July 2009.

“D.W. Beaubier”

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Beaubier D.J.

CITATION: 2009TCC375  
COURT FILE NO.: 2008-2279(IT)I  
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PLACE OF HEARING: Prince Rupert, British Columbia  
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REASONS FOR JUDGMENT BY: The Honourable Justice D.W. Beaubier  
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APPEARANCES:

Agent for the Appellant: Praveen K. Vohora  
Counsel for the Respondent: Whitney Dunn

COUNSEL OF RECORD:

For the Appellant:

Name:  
Firm:

For the Respondent:

John H. Sims, Q.C.  
Deputy Attorney General of Canada  
Ottawa, Canada