

Docket: 2022-1357(IT)I

BETWEEN:

MICHÈLE-JANICK SAUVAGE,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on December 10, 2024, at Montreal, Quebec.

Before: The Honourable Justice Guy R. Smith

Appearances:

Counsel for the Appellant: Stéfany Paré

Counsel for the Respondent: Valentina G. Danielova

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**JUDGMENT**

In accordance with the attached Reasons for Judgment, the appeal in respect of the determination made under the *Income Tax Act* for the 2007 to 2021 taxation years is dismissed without costs.

Signed at Ottawa, Ontario, this 10th day of January 2025.

“Guy R. Smith”

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Smith J.

Citation: 2025 TCC 2  
Date: 20250110  
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### **REASONS FOR JUDGMENT**

Smith J.

#### **I. Overview**

[1] Michèle-Janick Sauvage, the Appellant in these proceedings, is the mother of child “A”, who was born in 2007. She has instituted an appeal of a determination (the determination) made on July 26, 2021, by the Minister of National Revenue (the Minister) pursuant to the federal *Income Tax Act* (the Act), in terms of which A is not eligible for the disability tax credit for any of the taxation years in which it was claimed, from 2007 to 2021.

[2] The disability tax credit (the DTC) is a non-refundable tax credit available to people with one or more physical or mental impairments. For the person to be entitled to the DTC during a given taxation year, a medical practitioner must certify that the person had one or more severe and prolonged impairments in physical or mental functions, pursuant to subsections 118.3(1) and 118.4(1) of the Act.

[3] The Minister acknowledges that A has autism spectrum disorder. However, the DTC was not granted because the medical certificate does not certify that the impairment is sufficiently severe within the meaning of the Act.

[4] The only matter in question is whether the child is entitled to the DTC for any of the taxation years from 2007 to 2021. In other words, did the Minister commit an error by not granting him the credit for these years?

## II. Background

[5] Only the Appellant testified to describe her son's impairments and the effects on his daily life. I will not restate the entirety of her testimony, but it is apparent that her son suffers from cognitive problems that emerged at a young age. Many assessment reports were presented to this effect.

[6] The child was assessed when he was around six years old. At that time, a [TRANSLATION] "moderate to mild intellectual impairment" was noted, as well as attention deficit hyperactivity disorder (ADHD) and possibly autism spectrum disorder (ASD). When he was about 10 years old, a report stated that he had [TRANSLATION] "trouble with change", that he [TRANSLATION] "needs constant support" and that he can become [TRANSLATION] "rigid and oppositional when confronted with something new".

[7] Owing to these difficulties and certain familial conflicts, A was placed at a youth centre and a specialized school for two years. In an assessment report written in February 2017, disparities in his development are noted, there being on the one hand [TRANSLATION] "an intellectual development that is between average and high" and, [TRANSLATION] "on the other hand, considerable emotional immaturity". It was recommended that he be educated in a specialized environment.

[8] In an assessment report that dates from March 13, 2020, psychologists Dr. Valérie Michaud and Dr. Marie Arsenault confirmed [TRANSLATION] "the presence of an autism spectrum disorder (mild)" regarding A. They found that he [TRANSLATION] "seems to need more support than would be expected of a child his age for certain abilities", primarily in a school setting. They recommended, among other things, a request for specialized autism spectrum disorder rehabilitation services and specialized rehabilitation services in a school environment.

[9] In form T2201 – *Disability Tax Credit Certificate*, which the Appellant signed as the legal representative, she included the following handwritten notes:

[TRANSLATION]

“It is impossible to leave the child alone; he cannot carry out his daily tasks to prepare meals or maintain his hygiene autonomously. He cannot use public transportation to go places alone and he is unable to buy things at stores.”

[10] In view of the Appellant’s testimony and the reports entered into evidence, it is clear, and this Court acknowledges this, that the impairment that the child has had since birth has an impact on various aspects of his daily life.

### III. Analysis

#### A. **What about the provisions of the applicable Act?**

[11] According to subsection 118.3(1), the person claiming the DTC must have one or more “severe and prolonged” impairments the effects of which are such that the person’s ability to perform one or more basic activities of daily living is significantly restricted. In the case of an impairment in the mental functions needed for basic activities of daily living, a psychologist must certify in the prescribed form that it is a severe and prolonged impairment the effects of which are such that the person’s ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy.

[12] What constitutes a “basic activity of daily living” is listed in paragraph 118.4(1)(c), and includes, primarily:

- (i) mental functions necessary for everyday life,
- (ii) feeding oneself or dressing oneself,
- (iii) speaking so as to be understood . . . ,
- (iv) hearing so as to understand . . . ,
- (v) eliminating (bowel or bladder functions), or
- (vi) walking.

[13] Paragraph 118.4(1)(d) clarifies, however, that housekeeping and social or recreational activities are not considered as basic activities of daily living.

[14] Paragraph 118.4(1)(c.1), in the version in force at the time, adds that, “mental functions necessary for everyday life include (i) memory, (ii) problem solving, goal-setting and judgement (taken together), and (iii) adaptive functioning”.

[15] As is stated previously, the effects of the impairment on basic activities of daily living must be severe and prolonged. Subsection 118.4(1) clarifies that:

(a) an impairment is prolonged **where it has lasted . . . for a continuous period of at least 12 months;**

(b) an individual’s ability to perform a basic activity of daily living is markedly restricted only where **all or substantially all of the time**, even with therapy and the use of appropriate devices and medication, **the individual . . . is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;**

[Emphasis added.]

[16] Paragraph 118.4(1)(b.1) adds that a person “is considered to have the equivalent of a marked restriction in a basic activity of daily living only where **all or substantially all of the time**, even with therapy . . . , **the individual’s ability to perform more than one basic activity of daily living . . . is significantly restricted, and the cumulative effect of those restrictions is tantamount to the individual’s ability to perform a basic activity of daily living being markedly restricted**” (emphasis added).

## **B. What about Form T2201?**

[17] The purpose of Part A of the form is to record the relevant information to identify the person who has the impairment, whereas Part B must be completed by the health care professional. Detailed explanations are required in the form.

[18] In Part B, which was completed and signed by Dr. Michaud on March 19, 2021, she states that A is not [TRANSLATION] “markedly restricted” in his ability to carry out each of the basic activities of daily living identified in paragraph 118.4(1)(c).

[19] Specifically, in the section entitled “Mental functions necessary for everyday life”, she was required to state, according to the instructions, whether A is [TRANSLATION] “unable or takes an inordinate amount of time to perform” the basic activities for daily living or if [TRANSLATION] “this is the case all or substantially all

of the time (at least 90% of the time)”. In light of these explanations, she was required to indicate whether A is “markedly restricted in performing the mental functions necessary for everyday life”. She responded in the negative.

[20] In the section [TRANSLATION] “Effect of the impairment”, Dr. Michaud was to ask herself whether A [TRANSLATION] “is always or almost always (at least 90% of the time) restricted” in his basic activities of daily living, or whether he is [TRANSLATION] “markedly restricted” or “significantly restricted”. In her handwritten comments, she confirmed the [TRANSLATION] “psychological diagnosis of autism spectrum disorder (mild)” and stated that, in terms of adaptation, [TRANSLATION] “his abilities are situated between average low and average”. Later on, she remarks on [TRANSLATION] “a personal weakness relative to abilities of domestic life”. She attached the assessment report from March 13, 2020, to the certificate.

[21] The Minister requested additional information, which are deemed to be included in the certificate in prescribed form pursuant to subsection 118.3(4). In her response dated June 22, 2021, Dr. Michaud confirmed that the child presents [TRANSLATION] “no marked restrictions in the mental functions necessary for everyday life”. However, she noted deficiencies and gave examples, stating that he [TRANSLATION] “needs individual support to function, both at home and at school” and that he is not [TRANSLATION] “able to adapt to minor changes in his environment or in his daily routine”. She concluded that these difficulties are expected to abate in 2025 when A reaches the age of 18.

[22] The Appellant argues that the additional responses mean that the negative certificate is now positive and that the DTC should be granted.

[23] I am not of the same opinion. Dr. Michaud’s conclusion remains unequivocal, and, in my view, the DTC can only be granted if there is a positive certificate. This Court must reflect the wording of the Act and cannot simply substitute its opinion for that of the medical practitioner: *Canada (Attorney General) v. Buchanan*, 2002 FCA 231 (paragraphs 19 and 25).

[24] In this judgment, the Federal Court of Appeal states the following:

[22] . . . In the absence of conflicting testimony from another physician, **it is difficult to envision a case in which the Tax Court Judge, in these circumstances, could find that a negative certificate should be treated as a positive certificate.** In this type of case, it would seem that if the Tax Court Judge was doubtful as to the correctness of the negative certificate, **at most**, the recourse

would be to remit the matter to the Minister for reassessment on the basis that the taxpayer file a new positive certificate, if one could be obtained.

[Emphasis added.]

[25] In this case, no physician or psychologist provided any testimony to contradict the conclusions established in the Form T2201 submitted in support of the DTC application, and the Appellant’s testimony does not allow me to envisage that a positive certificate from another psychologist is on the way.

[26] See *Guo v. The Queen*, 2021 TCC 78 (paragraphs 10 to 12), and *Major v. The King*, 2024 TCC 106 (paragraphs 28 and 31), in which this Court arrived at a similar conclusion.

#### IV. Conclusion

[27] Although this is not relevant to this appeal, I see that paragraph 118.4(1)(c.1) was amended in June 2022, but not retroactively, thereby broadening considerably the definition of “mental functions necessary for everyday life”, so as to include attention, concentration, perception of reality, verbal and non-verbal comprehension and regulation of behaviour and emotions. In my view, this broadened definition certainly includes ASD and ADHD. Without expressing a definitive opinion, the Appellant could potentially submit a new application for the years following 2022, providing that the certificate is positive.

[28] That being said, even if full consideration is given to the serious disorders from which he suffers, the evidence indicates that A suffers from autism spectrum disorder, but to a mild degree and not markedly, as is required by the Act. For these reasons, this Court must find that the Minister acted correctly in refusing the DTC application.

[29] Consequently, the appeal is dismissed without costs.

Signed at Ottawa, Ontario, this 10th day of January 2025.

“Guy R. Smith”

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Smith J.

CITATION: 2025 TCC 2

COURT FILE NO.: 2022-1357(IT)I

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APPEARANCES:

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