

Docket: 2024-375(IT)I

BETWEEN:

BRODIE GRANT,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on October 24, 2024, at Toronto, Ontario

Before: The Honourable Deputy Judge R. Villeneuve

Appearances:

Agent for the Appellant: Alan Rowell  
Counsel for the Respondent: Niloofar Sharif  
Jamey Irwin (Student at Law)

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**JUDGMENT**

The appeal from the assessment made under the *Income Tax Act* with respect to the Appellant's 2022 taxation year is dismissed, without costs.

Signed at Blind River, Ontario, this 24th day of March 2025.

“R. Villeneuve”

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Villeneuve D.J.

Citation: 2025TCC46  
Date: 20250324  
Docket: 2024-375(IT)I

BETWEEN:

BRODIE GRANT,

Appellant,

and

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Respondent.

### **REASONS FOR JUDGMENT**

Villeneuve D.J.

[1] This judgment pertains to the Appellant's Notice of Appeal dated February 23, 2024 wherein the Appellant appeals to this Court the Minister's denial of a claimed medical tax credit relating to the Appellant's purchase and installation of a Pro EP-15 Exercise Pool.

[2] The exercise pool in question was purchased by the Appellant and his spouse as an exercise aid for their now 7 year old son Benjamin who was diagnosed with Duchenne Muscular Dystrophy on February 9, 2021 at the age of 3 ½ years old.

[3] A brief chronology of the assessment and subsequent objection and confirmation of the assessment is in order:

- 1) June 15, 2023 - Original Notice of Assessment denying the medical expense claim.
- 2) June 7, 2023 - Notice of Objection filed.
- 3) November 28, 2023 - Notice of Confirmation confirming the Minister's Notice of Assessment dated June 15, 2023.
- 4) February 23, 2024 - Notice of Appeal filed.

[4] It is unclear from the evidence filed on the appeal why the Notice of Objection was filed before the dating of the original Notice of Assessment however it appears that the Appellant's agent was in regular contact with Canada Revenue Agency (CRA) and that the decision to disallow the medical expense claim may have been communicated verbally prior to the Notice of Assessment being released in writing.

[5] The facts of this case as pleaded and supported in *viva voce* evidence are tragic in that the Appellant's now 7 year old son Benjamin is afflicted with this horrible disease known as Duchenne Muscular Dystrophy. The Appellant outlined in evidence the timelines that are expected to severely affect their child whose life expectancy is not expected to extend beyond 20 years of age.

[6] Benjamin has been undergoing treatment through The Hospital for Sick Children (Sick Kids) since his diagnosis. Elisa Nigro, a nurse practitioner at Sick Kids in a letter dated September 8, 2022 outlined the symptoms and implications of a diagnosis of Duchenne Muscular Dystrophy. She indicated as follows in that letter which was filed as an exhibit in this appeal: "We strongly recommend swimming as a safe and effective therapy to help promote muscle strength and functioning".

[7] This was in reference to her support for Benjamin's family purchasing a pool for Benjamin to exercise in, in light of Covid restrictions imposed in March 2020. The Appellant testified that prior to the purchase of the exercise pool Benjamin would swim in community pools or in friends' pools.

[8] Alison Bonnyman is a physiotherapist whom the Appellant's agent sought to have testify as an expert in hydrotherapy. The Respondent's counsel at the conclusion of a voir-dire agreed that Ms. Bonnyman could testify as to the principles of hydrotherapy and the benefits of such therapy to individuals. Of note, her research has been limited to adults. She has never conducted research on children with muscular dystrophy and the use of hydrotherapy. She has never met Benjamin. She conceded in cross-examination that all people can derive a benefit from exercise in water as a form of low impact exercise.

[9] The Appellant, Mr. Brodie, testified about the family's decision to purchase the exercise pool in question.

[10] The pool was purchased from Pioneer Family Pools in Barrie, Ontario by way of a contract dated June 25, 2022. That contract was amended twice resulting in a final version dated August 24, 2022. It was purchased for \$53,673.87 and was installed on October 6, 2022. Upon examination of pictures of the pool one can say

that it resembles a large hot tub. It is longer than it is wide. It has grab bars and is heated. In addition, it has jets that enable a person to swim in place against the current generated.

[11] He testified that the pool was used almost exclusively by Benjamin. Mr. Grant would sometimes enter the pool with his son and on occasion Benjamin's mother and grandparents might be in the pool with him. He agreed that this pool could be used by able-bodied individuals who could exercise by swimming against the current generated by the pool's jets.

[12] He agreed that the purchase of this pool was made from a pool retailer and that there were similar pools for sale by this business. In fact, the Grants originally purchased a different model that was in stock, hence the previously referred to amended contracts. The pool was installed partially in ground but with a bit of manual labour on his part could be relocated to a new residence if the family moved.

#### I. Reason for the Appeal

[13] By way of a Notice of Assessment dated June 15, 2023 the Appellant's claim for a medical expense deduction in the amount of \$53,673.87 was denied. The Appellant filed a Notice of Objection within the time prescribed but the assessment was confirmed by the Minister by way of a Notice of Confirmation dated November 28, 2023. The reason for this decision was as follows:

“A review of the facts and documents shows that the Pro-EP Exercise Pool by Tidal Fit is not considered a medical device, and are of a type that would normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment, therefore, in accordance with section 118.2(2)(1.2)(ii) of the Income Tax Act, you are not eligible to claim medical expenses for \$53,673.00”

#### A. The Law

[14] Section 118.2(2) of the *Income Tax Act* addresses allowable medical expenses.

[15] Sub-paragraph (1.2) sets out as follows:

“...for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling, provided that such expenses

- i. are not of the type that would typically be expected to increase the value of the dwelling, and
- ii. are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

[16] Regulation 5700 of the *Income Tax Regulations* defines a device or equipment referred to in s.118(2)(m). This was one of the grounds of appeal raised by the Appellant.

[17] The list of included devices or equipment is set out in that Regulation. The pool in question is not listed in the Regulation. Furthermore, in applying s.118.2(2)(m) for the pool purchased by the Appellant, this was not a device or piece of equipment that could be said to have been prescribed by a medical practitioner. That subsection is the saving part of the *Income Tax Act* that could potentially include this pool as a medical expense.

[18] The pool was not purchased from a medical supply company. It was available for purchase to any member of the general public. It was not prescribed by a medical practitioner. While nurse practitioner, Elisa Nigro, may qualify as a medical practitioner, the most that can be said in her letter to the Appellant was that she recommended swimming as a helpful form of exercise for Benjamin. There was no mention of this type of pool being recommended by her or any other medical practitioner. Ms. Bonnyman certainly testified as to the benefit of hydrotherapy for people with physical impairment but she was not in a position to offer an opinion on this device or Benjamin for that matter.

[19] Regulation 7500 combined with s.118.2(m) does not assist the Appellant in this case.

[20] Furthermore, “medical expense” for purposes of calculating a medical expense credit under s.118.2(1) is further defined in s.118.2(2) and in this case specifically s.118.2(2)(1.2) which reads as follows:

(1.2) for reasonable expenses relating to renovations or alterations to a dwelling of the patient who lacks normal physical development or has a severe and prolonged

mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling, provided that such expenses

(i) are not of a type that would normally be expected to increase the value of the dwelling, and

(ii) are of a type that would not normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment;

[21] There was a time that an expenditure such as this one may have fallen within the definition of “medical expense”. The Appellant’s agent submitted a list of authorities among them *Radage v The Queen*, 1996 CanLII 21472 (TCC), 50 DTC 1615. That line of cases led to courts accepting renovations to a home such as hot tubs and hardwood floors as valid medical expenses.

[22] Justice Boyle in *Barnes v The Queen*, 2009 TCC 429, [2009] DTC 1282, addressed the state of the law prior to Parliament’s amendments to the METC provisions of the *Income Tax Act* in 2005. Subparagraphs (i) and (ii) were added to s.118.2 (2)(1.2). This he concluded was in response to this Court and the Federal Court of Appeal permitting expenses for hot tubs and hardwood flooring among other things in the appropriate circumstances.

[23] I accept the Appellant’s evidence that this pool was installed in such a way that it could be moved to a new residence if they chose to move. That being said, I can accept that this pool may not be of a type that would normally be expected to increase the value of the dwelling.

[24] The Appellant’s position must fail however in that the very nature of this pool and the fact that it was offered for sale at a pool store, accessible to any member of the public, is of a type that would normally be incurred by persons who have normal physical development or who do not have a severe and prolonged mobility impairment as set out in s. 118.2(2)(1.2)(ii). This pool was available for purchase by any member of the public and could as admitted by the Appellant in evidence be used by able-bodied individuals as a swimming training aid.

[25] While I accept that Benjamin makes use of this pool on a regular basis and that he no doubt benefits from its use, the 2005 amendments referred to above lead to the conclusion that this pool in question does not qualify as a medical expense for purposes of the medical expense credit.

[26] Accordingly, the Appellant's appeal of the Notice of Assessment dated June 15, 2023 is dismissed without costs.

Signed at Blind River, Ontario, this 24th day of March 2025.

“R. Villeneuve”

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Villeneuve D.J.

CITATION: 2025TCC46  
COURT FILE NO.: 2024-375(IT)I  
STYLE OF CAUSE: BRODIE GRANT AND HIS MAJESTY  
THE KING  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: October 24, 2024  
REASONS FOR JUDGMENT BY: The Honourable Deputy Judge R.  
Villeneuve  
DATE OF JUDGMENT: March 24, 2025

APPEARANCES:

Agent for the Appellant: Alan Rowell  
Counsel for the Respondent: Niloofar Sharif  
Jamey Irwin (Student at Law)

COUNSEL OF RECORD:

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