

# Disability Tax Credit - Certification Requirements

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*Gibson v The Queen*, [2014 TCC 236](#)

The taxpayer applied for, but was denied, the disability tax credit under the Income Tax Act. She appealed.

The TCC set out the legislative requirements for claiming the disability tax credit, found in Paragraphs 118.3(1)(a), (a.1) and (a.2):

1. the taxpayer must have a severe or prolonged impairment in physical or mental functions,
2. The impairment must result in a "marked" or "significant" restriction in one or more "basic activities of daily life" (as described in the ITA), and
3. a medical practitioner must provide a positive certificate of the impairment in the form prescribed.

The Court observed that a certificate by a medical practitioner is not sufficient if the evidence does not support the doctor's opinion, and that even if a positive certificate is not provided *viva voce* evidence of a medical practitioner can be taken into account (though the court cannot substitute its own judgment for that of the Doctor): *The Queen v Buchanan*, [2002 FCA 231](#).

The Court went on to state:

[13] The certificate is a prescribed form requiring that the doctor state:

- (a) whether the patient is markedly restricted in one basic activity of daily living (as defined) and whether this impairment is present all or substantially all of the time, or
- (b) whether the patient is significantly restricted in at least two basic activities of daily living (as defined), and whether these impairments are present all or substantially all of the time and taken together are tantamount to a marked restriction in one basic activity of daily living.

The court highlighted the importance for providing details of the effects of the impairment in the certificate.

The Crown argued that impairments in judgment and planning daily activated are not sufficient,

relying on paragraph 118.4(1)(c.1) that inclusively defined "mental functions necessary for daily life" as: memory, problem solving, goal-setting and judgment (taken together), and adaptive functioning. The Crown argued that having 2 of the 3, impairments in subparagraph 118.4(1)(c.1)(ii) not all 3, made the taxpayer ineligible. The court disagreed, and noted that the phrase "taken together" only meant that one need to look at listed functions together and decide whether the combination results in severe impairment (parer 24).

The Court also made three additional observations: (A) the CRA forms are not ideal, and does not allow for the transmission of an accurate picture in some cases (para 25); (B) that physical may be reluctant to give an opinion as to the effect on a person's daily activities (they cannot observe it and have to rely on information provided by the patient), and this should be taken into account appropriately (para 26); and (C) that the disability tax credit provisions should be interpreted in a compassionate manner (para 28).

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