

Disability Tax Credit - Ensuring that the Certificate is Correct

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McDermid v The Queen, [2014 TCC 264](#)

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The Taxpayer claimed the Disability Tax Credit pursuant to section 118.3 for two of the taxpayer's children. The certification requirement was met, but the court stated that it must still ensure that the certificates are correct. In other words, the court must ensure that the statutory requirements are met:

[7] The relevant statutory requirements are:

- a) the impairment is severe,
- b) the impairment is prolonged, in the sense of lasting for at least 12 months,
- c) the person is unable, all or substantially all of the time, to perform the mental functions necessary for everyday life, or can only do so by taking an inordinate amount of time, and
- d) a medical doctor or psychologist has certified in prescribed form that the above conditions are satisfied.

These provisions have to be interpreted liberally, humanely, and compassionately: *Radage v The Queen*, 96 DTC 1615. The impairment, to qualify for the credit, must be of such severity that the person is rendered incapable of performing such mental tasks that will enable the person to function independently and with reasonable competency in everyday life (para 9): *Radage v The Queen*, 96 DTC 1615 . The court stated at paragraph 15:

[15] The legislation does not require a severe impairment with respect to all daily activities. It merely requires that mental functions be severely impaired all or substantially all of the time. For example, a child may qualify for the DTC with a severe impairment with respect to remembering, and yet be able to eat and dress herself. To qualify, it is not necessary that the child be unable to perform any activity on her own

The Court commented (as the court has on many other occasions) that the check-the-box form used by the CRA is capable of representing a misleading picture of the disability (para 14). The court held that the Minister's reliance on the form was misplaced (para 16).

The evidence convinced the Court only that one of the children met all the statutory conditions. The son's disability, mainly due to the auditory working memory problems, required significant support. The daughter, however, was held not to be so impaired in her daily activities to qualify for the credit. Justice Woods was clear to say that this does not mean that the daughter will not qualify in the future when she is older and her daily activities become more complex (para 24).

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