

# Eligibility for Disability Tax Credit - Brasard 2014 TCC 82

## Eligibility for the Disability Tax Credit - Allergies

*Brassard v The Queen*, [2014 CC 82](#)

The Court stated that a positive medical condition is a condition precedent for granting the disability tax credit - see *Canada (Attorney General) v. Buchanan*, [2002 FCA 231](#). The eligibility criteria for the DTC in 118.3(1) of the ITA and stated that an individual qualifies if the following conditions are set out:

- (a) the individual has one or more severe and prolonged impairments in physical or mental functions;
- (b) the effects of the impairment or impairments are such that the taxpayer is either:
  - (i) markedly restricted in the ability to perform a basic activity of daily living or would be without life-sustaining therapy; or
  - (ii) significantly restricted in the ability to perform more than one basic activity of daily living and the cumulative effect of the restriction is equivalent to being markedly restricted in the person's ability to perform a basic activity of daily living; and
  - (iii) a medical practitioner certifies that the individual meets the requirements set out above.

A basic activity of daily living is defined in paragraph 118.4(1)(c) of the ITA as being:

- (a) the mental functions necessary for everyday life;
- (b) feeding or dressing oneself;
- (c) speaking so as to be understood, in a quiet setting, by another person familiar with the individual;
- (d) hearing so as to understand, in a quiet setting, another person familiar with the individual;
- (e) eliminating; or
- (f) walking.

In this case the taxpayer's doctor determined that the taxpayer's severe allergies, often resulting in eczema, although qualifying for purposes of the *Canada Pension Plan*, does not meet the conditions for the DTC.

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