

## Medical Expense Tax Credit - Cord Blood

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*Shapiro v The Queen*, [2014 TCC 74](#)

At issue was whether the processing and storage of cord blood was an eligible medical expense to allow for a credit pursuant to 118.2(1) of the [Income Tax Act](#).

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The Court concluded that cord blood was eligible for the medical expense tax credit were it is "prescribed" by a medical professional. Here, the appeal failed because the evidence did not show that the medical practitioner had a role in recommending the procedure, but rather it was the parents who made the decision on their own.

### FACTS

The Appellant gave birth in 2009 and, having a family history of cancer, chose to store her child's cord blood at a lab operated by a for-profit private enterprise (Progenics). In 2009 and 2010 the child was healthy and the cord blood was not needed to treat an illness.

### ANALYSIS

The appellant argued that the cord-blood-banking fell within paragraph 118.2(2)(o), which includes "laboratory, radiological, or other diagnostic procedure or service [...] for maintaining health, preventing disease or assisting in the diagnosis or treatment [...] as prescribed by a medical practitioner or dentist" as a medical expense.

The Court identified 4 conditions for this paragraph to apply:

[9] Four conditions must be satisfied in order for an expense to be deductible under this provision. The expense must be incurred:

(a) in respect of a laboratory, radiological or other diagnostic procedure or service together with necessary interpretations;

(b) for maintaining health, preventing disease or assisting in the diagnosis or

treatment of any injury, illness or disability;

(c) for the patient; and

(d) as prescribed by a medical practitioner.

The court held that:

- Given the ambiguity of the phrase "together with any necessary interpretations", the storage of placental or cord blood stem cells qualifies as a medical procedure or service similar in nature to laboratory or radiologists test (para 11);
- The second condition d does not require the person to be sick or to wait to be diagnosed, or have to be genetically predisposed to an illness - but the question is whether the extracted stem cells would ever be needed to treat an illness;
- The person need not be a "patient" in that the person is suffering from an illness during the taxation year in question, and the provision allows for deductions to maintain health and prevent disease;
- the requirement of having a medical practitioner direct or recommend the procedure is NOT met by having a medical practitioner perform the procedure.

In this case, the final condition was not met because the evidence showed that the parents made the choice to have cord blood extracted on their own, and not on the recommendation of a medical practitioner.

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