Surrogacy Expenses and the Medical Expense Tax Credit

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Zanatta v The Queen, 2014 TCC 293

Pearen v The Queen, 2014 TCC 294

The Court once again confirmed that medical expenses that relate to the surrogate or surrogacy do not qualify for the medical expense tax credit under paragraph 118.2(2)(a) or subsection 118(6) of the *Income Tax Act*.

Specifically, fees paid to the surrogate to carry an embryo and deliver the baby do not qualify as eligible medical expenses under 118.2(2)(a), and expenses paid on behalf of the surrogate are not medical expenses in respect to services provided to the taxpayer, the taxpayer's spouse or common-law partner, or the taxpayer's dependent as defined in 118(6).

However, the expenses related to the in-vitro process are allowable medical expenses.

The court stated that the informal decision in *Zieber v. The Queen*, 2008 TCC 328 is not good law when it qualified expenses related to surrogacy arrangements as qualified as an organ transplant under 118.2(2)(l.l). See also *Warnock v. The Queen*, 2014 TCC 240 and *Carlson v. The Queen*, 2012-3063 (IT)I, unreported oral reasons for judgment dated June 13, 2013.

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