

Docket: 2016-5094(IT)I

BETWEEN:

TYLA-LEE VRANTSIDIS,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on June 19, 2017, at Belleville, Ontario.

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the Appellant: William McDiarmid (student-at-law)

Counsel for the Respondent: Cédric Renaud Lafrance

JUDGMENT

The appeal from the determination dated October 26, 2015 made under the *Income Tax Act* by the Minister of National Revenue concerning the appellant's entitlement to the disability tax credit for Jon-Douglas Vrantsidis for the 2015 taxation, is dismissed in accordance with the attached reasons for judgment.

Signed at Ottawa, Canada, this 5th day of October 2017.

“Réal Favreau”

Favreau J.

Citation: 2017 TCC 204

Date: 20171005

Docket: 2016-5094(IT)I

BETWEEN:

TYLA-LEE VRANTSIDIS,

Appellant,

and

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Respondent.

REASONS FOR JUDGMENT

Favreau J.

[1] This is an appeal from a determination dated October 26, 2015, made under the *Income Tax Act*, R.S.C. 1985, c. 1, (5th supp.), as amended (the “*Act*”), by the Minister of National Revenue (the “Minister”) concerning the appellant’s entitlement to the disability tax credit (“DTC”) for Jon-Douglas Vrantsidis (Jon-Douglas”), for the 2015 taxation year.

[2] By way of the determination, notice of which is dated October 26, 2015, the Minister determined that the appellant’s son was not eligible for the DTC because he does not meet the criteria outlined in subsection 118.4(1) of the *Act*.

[3] In determining entitlement to the DTC under subsection 152(1.01) of the *Act*, the Minister made the following assumptions of fact, set out in paragraph 7 of the Reply to the Notice of Appeal:

- a) JonDouglas is the son and dependant of the Appellant;
- b) JonDouglas did not have one or more severe mental or physical impairments reasonably expected to continue without interruption for at least 12 months;
- c) JonDouglas did not have one or more severe mental or physical impairments whose effects were such as to markedly restrict his ability to perform a basic activity of daily living;
- d) JonDouglas did not have one or more severe mental or physical impairments whose cumulative effects were such as to markedly restrict his ability to

- perform more than one basic activity of daily living to the same extent as one activity of daily living;
- e) JonDouglas did not have certified (*sic*) in prescribed form that one or more mental or physical impairments was severe and had the effects as described in subparagraph 7(c) or 7(d) above.

[4] The appellant testified. She works as a school bus driver and as a part-time supervisor on Saturdays and Sundays, at a Dairy Queen close to her house. She explained that her son has been diagnosed with attention deficit hyperactivity disorder and has had a learning disability since he was six years old.

[5] Her son is now 19 years old. In the summer of 2016, he graduated from Grade 12 within the usual timeframe, with the assistance and supervision of his school teachers. He is taking driving lessons but does not yet have his driver's licence. In November 2016, he started working at the Dairy Queen close to his mother's house. He works three days a week for a total of five to six hours per week. He helps in the kitchen, takes care of the garbage and cleans the tables but does not interact with customers.

[6] He does not do any sport but he likes to play video games. He particularly enjoys playing with his Xbox online with his three friends.

[7] The appellant's son has enrolled in a music and digital media academic program at the St-Lawrence College for the 2017 fall session. The Confirmation of Disability Form filled by the appellant on May 19, 2017 contains the following information:

- (a) under section 2 – Type of Disability and/or Diagnosis: the diagnosis is ADHD (attention/concentration disability);
- (b) under section 3a – Functional Limitations: Effects on Physical Functioning: no effect;
- (c) under section 3b – Functional Limitations: Effects on Cognitive and/or Behavioural Functioning: the following boxes were checked:
 - attention and concentration;
 - stress management;
 - information processing (verbal/written);
 - communication;
 - memory (short term);
 - social interactions;
 - organization and time management; and

- emotional regulation; and
- the description of effects were as follows:
 - difficulty with sustained attention and concentration;
 - difficulty in learning, reading and writing;
 - can get easily frustrated, fidgets a lot; and
 - easily distracted in group settings.
- (d) under section 4 – Effects of medication on Functioning: the box “yes” is checked to the question: is the patient currently taking any prescription medications that may affect the patient’s participation in an educational environment and the effect described is that “Functioning much improved with medication”;
- (e) under section 5 – Recommended Supports: the answers are:
 - the patient may need a reduced course load; and
 - the patient requires specialized equipment and/or services in order to participate in post-secondary education;
- (f) under section 6 – Disability Status: the Health Care Practitioner, (Nurse) Melissa Maurus-Liben, confirmed that the student has been a patient of the Napanee Area Community Centre for more than two years and that the patient’s disability is permanent.

[8] The Disability Tax Credit Certificate (Form T2201) filed by the appellant with the Canada Revenue Agency (“CRA”) on July 15, 2015 contains the following medical information of Jon-Douglas Vratsidis which was provided by medical doctor, R. van Wylick:

- (a) no impairment for vision, speaking, hearing, walking, eliminating (bowel or bladder functions), feeding and dressing;
- (b) under the section titled “Mental functions necessary for everyday life”, the answer “Yes” was given to the following questions:
 - (i) Is your patient **markedly restricted** in performing the mental functions necessary for everyday life, as described above?
 - (ii) Is the marked restriction in performing the mental functions necessary for everyday life present **all or substantially all of the time** (at least 90% of the time)?

and the answer to the question “when did your patient’s marked restriction in the mental functions necessary for everyday life begin?” was “Year 2006”;

- (c) the sections entitled “Life-sustaining therapy” and “Cumulative effect of significant restrictions” were filled as “not applicable”;
- (d) the section “Effects of impairment” was redacted as follows: “Takes longer to make independent decisions, requires longer & assistance to complete school tasks. Attention is much shorter than expected for age” and the diagnosis was “ADHD & learning disabilities”;
- (e) under the section “Duration”, the answer to the question “Has your patient’s impairment lasted, or is it expected to last, for a continuous period of at least 12 months?” was “No”.

[9] As Dr. R. Van Wylick did not provide sufficient information in the section “Effects of impairment” on the Disability Tax Credit Certificate, the CRA sent him a letter dated August 21, 2015 along with a questionnaire and asked him to provide additional information that may help to clarify the effects of his patient’s impairment on his ability to perform each of the basic activities of daily living that are or were markedly or significantly restricted; in this case, the mental functions necessary for everyday life. The questions and the answers were the following:

Q.1 Can your patient perform his daily living skills at a level expected for a teenager of the same age (e.g., personal hygiene, go out in the community, make a simple purchase)?

A. Yes

Q.2 Can your patient express his basic needs and respond to social interactions appropriately as compared to a teenager of the same age?

A. Yes

Q.3 Can your patient make appropriate decisions and judgements in day-to-day situations, at a level expected for a teenager of the same age?

A. No

Examples specific to your patient:

A. He can be very impulsive, which can jeopardize his relationships

Q.4 Does your patient require one-on-one support to function at home and at school?

A. No

Q.5 Does your patient have a severe memory impairment (e.g., unable to remember basic personal information such as his street address or telephone number, impaired concept of time)?

A. No

Q.6 Can your patient adapt to minor changes in his environment or daily routine?

A. Yes

Q.7 Please answer the year when the limitations indicated in the responses to the previous questions began?

A. 2003

Q.8 Is your patient's ability to perform the mental functions necessary for everyday life likely to improve (e.g. with medication and/or therapy)?

A. Unsure

Q.9 Has your patient's impairment lasted, or is it expected to last, for a continuous period of at least 12 months?

A. Yes

Legislation

[10] The credit for mental or physical impairment is in section 118.3 of the *Act* and the nature of the impairment required for the purpose of the credit is described in section 118.4 of the *Act*. The relevant parts of sections 118.3 and 118.4 are reproduced at the end of this document as an appendix.

Analysis

[11] In order to be eligible for the DTC, a person must have:

- (a) a severe and prolonged impairment in physical or mental functions;
- (b) the impairment must result in a "marked" or "significant restriction" in one or more "basic activities of daily living"; and
- (c) a medical practitioner must provide a certificate of the impairment in the form prescribed.

[12] The DTC is intended for severely disabled persons who have difficulties with basic activities of daily living such as feeding or dressing themselves, eliminating (bowel or bladder functions), walking or carrying out a simple

conversation. The disability can be with mental functions necessary for everyday life including memory, problem solving, goal-setting and judgement (taken together) and adaptive functioning to the extent that they are severe enough to interfere with very basic self-care activities. The legislation further provides that in order to be markedly restricted in his or her mental functions necessary for everyday life, the person must be unable or require an inordinate amount of time to perform those mental functions all or substantially all of the time.

[13] Based on the evidence before me, I am unable to conclude that Jon-Douglas has one or more severe and prolonged mental or physical impairments whose effects are such as to markedly restrict his ability to perform mental functions necessary for everyday life, all or substantially all of the time.

[14] Jon-Douglas graduated from Grade 12 on time. He has a part-time job, plays guitar and video games, is enrolled in a music and digital media academic program and is taking driving lessons. He has no vision, speaking, hearing, walking, eliminating (bowel or bladder functions), feeding and dressing impairment. His functioning has much improved with the prescribed medications.

[15] Jon-Douglas and his mother have developed strategies to alleviate his difficulty remembering things or processing information by way of spending more time on his studies and by posting notes or lists of things to do.

[16] In the circumstances, the effects of Jon-Douglas' ADHD are not severe enough to meet the meaning of "markedly restricted" required to qualify for the DTC.

[17] As Jon-Douglas is not entitled to the DTC pursuant to subsection 118.3(1) of the *Act* in computing his tax payable for any taxation year, no amount of DTC can be claimed by the appellant in computing her tax payable for any taxation year, pursuant to subsection 118.3(2) of the *Act*.

[18] The appeal is therefore dismissed.

Signed at Ottawa, Canada, this 5th day of October 2017.

“Réal Favreau”

Favreau J.

CITATION: 2017 TCC 204
COURT FILE NO.: 2016-5094(IT)I
STYLE OF CAUSE: Tyla-Lee Vrantsidis and HMQ
PLACE OF HEARING: Belleville, Ontario
DATE OF HEARING: June 19, 2017
REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau
DATE OF JUDGMENT: October 5, 2017

APPEARANCES:

Agent for the Appellant: William McDiarmid
Counsel for the Respondent: C  dric Renaud Lafrance

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Nathalie G. Drouin
Deputy Attorney General of Canada
Ottawa, Canada

APPENDIX

118.3(1) Credit for mental or physical impairment. Where

- (a) an individual has one or more severe and prolonged impairments in physical or mental functions,
 - (a.1) the effects of the impairment or impairments are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted where the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a basic activity of daily living or are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted but for therapy that
 - (i) is essential to sustain a vital function of the individual,
 - (ii) is required to be administered at least three times each week for a total duration averaging not less than 14 hours a week, and
 - (iii) cannot reasonably be expected to be of significant benefit to persons who are not so impaired,
 - (a.2) in the case of an impairment in physical or mental functions the effects of which are such that the individual's ability to perform a single basic activity of daily living is markedly restricted or would be so restricted but for therapy referred to in paragraph (a.1), a medical practitioner has certified in prescribed form that the impairment is a severe and prolonged impairment in physical or mental functions the effects of which are such that the individual's ability to perform a basic activity of daily living is markedly restricted or would be markedly restricted, but for therapy referred to in paragraph (a.1), where the medical practitioner is a medical doctor, a nurse practitioner or, in the case of
 - (i) a sight impairment, an optometrist,
 - (ii) a speech impairment, a speech-language pathologist,
 - (iii) a hearing impairment, an audiologist,
 - (iv) an impairment with respect to an individual's ability in feeding or dressing themselves, an
 - (v) an impairment with respect to an individual's ability in walking, an occupational therapist, or after February 22, 2005, a physiotherapist, and
 - (vi) an impairment with respect to an individual's ability in mental functions necessary for everyday life, a psychologist,
 - (a.3) in the case of one or more impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted, a medical practitioner has certified in prescribed form that the impairment or impairments are severe and prolonged impairments in physical or mental functions the effects of which are such that the individual's ability to perform more than one basic activity of daily living is significantly restricted and that the cumulative effect of those restrictions is equivalent to having a marked restriction in the ability to perform a single basic activity of daily living, where the medical practitioner is, in the case of
 - (i) an impairment with respect to the individual's ability in feeding or dressing themselves, or in walking, a medical doctor, a nurse practitioner or an occupational therapist, and
 - (ii) in the case of any other impairment, a medical doctor or nurse practitioner,

- (b) the individual has filed for a taxation year with the Minister the certificate described in paragraph (a.2) or (a.3), and
- (c) no amount in respect of remuneration for an attendant or care in a nursing home, in respect of the individual, is included in calculating a deduction under section 118.2 (otherwise than because of paragraph 118.2(2)(b.1)) for the year by the individual or by any other person, there may be deducted in computing the individual's tax payable under this Part for the year the amount determined by the formula

$$A \times (B + C)$$

where

A is the appropriate percentage for the year,

B is \$6,000, and

C is

- (a) where the individual has not attained the age of 18 years before the end of the year, the amount, if any, by which
 - (i) \$3,500 exceeds
 - (ii) the amount, if any, by which
 - (A) the total of all amounts each of which is an amount paid in the year for the care or supervision of the individual and included in computing a deduction under section 63, 64 or 118.2 for a taxation year exceeds
 - (B) \$2,050, and
- (b) in any other case, zero.

118.3(2) Dependent having impairment. Where

- (a) an individual has, in respect of a person (other than a person in respect of whom the person's spouse or common-law partner deducts for a taxation year an amount under section 118 or 118.8) who is resident in Canada at any time in the year and who is entitled to deduct an amount under subsection (1) for the year,
 - (i) claimed for the year a deduction under subsection 118(1) because of
 - (A) paragraph (b) of the description of B in that subsection, or
 - (B) paragraph (c.1) or (d) of that description where the person is a parent, grandparent, child, grandchild, brother, sister, aunt, uncle, nephew or niece of the individual, or of the individual's spouse or common-law partner, or
 - (ii) could have claimed for the year a deduction referred to in subparagraph (i) in respect of the person if
 - (A) the person had no income for the year and had attained the age of 18 years before the end of the year, and
 - (B) in the case of a deduction referred to in clause (i)(A), the individual were not married or not in a common-law partnership, and
- (b) no amount in respect of remuneration for an attendant, or care in a nursing home, because of that person's mental or physical impairment, is included in calculating a deduction under section 118.2 (otherwise than under paragraph 118.2(2)(b.1)) for the year by the individual or by any other person,

there may be deducted, for the purpose of computing the tax payable under this Part by the individual for the year, the amount, if any, by which

(c) the amount deductible under subsection (1) in computing that person's tax payable under this Part for the year exceeds

(d) the amount of that person's tax payable under this Part for the year computed before any deductions under this Division (other than under sections 118 to 118.07 and 118.7).

...

118.3(4) Additional information. Where a claim under this section or under section 118.8 is made in respect of an individual's impairment

(a) if the Minister requests in writing information with respect to the individual's impairment, its effects on the individual and, where applicable, the therapy referred to in paragraph (1)(a.1) that is required to be administered, from any person referred to in subsection (1) or (2) or section 118.8 in connection with such a claim, that person shall provide the information so requested to the Minister in writing; and

(b) if the information referred to in paragraph (a) is provided by a person referred to in paragraph (1)(a.2) or (a.3), the information so provided is deemed to be included in a certificate in prescribed form.

118.4(1) Nature of impairment. For the purposes of subsection 6(16), sections 118.2 and 118.3 and this subsection,

(a) an impairment is prolonged where it has lasted, or can reasonably be expected to last, for a continuous period of at least 12 months;

(b) an individual's ability to perform a basic activity of daily living is markedly restricted only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual is blind or is unable (or requires an inordinate amount of time) to perform a basic activity of daily living;

(b.1) an individual is considered to have the equivalent of a marked restriction in a basic activity of daily living only where all or substantially all of the time, even with therapy and the use of appropriate devices and medication, the individual's ability to perform more than one basic activity of daily living (including for this purpose, the ability to see) is significantly restricted, and the cumulative effect of those restrictions is tantamount to the individual's ability to perform a basic activity of daily living being markedly restricted;

(c) a basic activity of daily living in relation to an individual means

(i) mental functions necessary for everyday life,

(ii) feeding oneself or dressing oneself,

(iii) so as to be understood, in a quiet setting, by another person familiar with the individual,

(iv) hearing so as to understand, in a quiet setting, another person familiar with the individual,

(v) eliminating (bowel or bladder functions), or

(vi) walking;

(c.1) mental functions necessary for everyday life include

- (i) memory,
- (ii) problem solving, goal-setting and judgement (taken together),
- (iii) adaptive functioning;
- (d) for greater certainty, no other activity, including working, housekeeping or a social or recreational activity, shall be considered as a basic activity of daily living;
- (e) feeding oneself does not include
 - (i) any of the activities of identifying, finding, shopping for or otherwise procuring food, or
 - (ii) the activity of preparing food to the extent that the time associated with the activity would not have been necessary in the absence of a dietary restriction or regime; and
- (f) dressing oneself does not include any of the activities of identifying, finding, shopping for or otherwise procuring clothing.

118.4(2) Reference to medical practitioners, etc. For the purposes of sections 63, 64, 118.2, 118.3 and 118.6, a reference to an audiologist, dentist, medical doctor, medical practitioner, nurse, nurse practitioner, occupational therapist, optometrist, pharmacist, physiotherapist, psychologist or speech-language pathologist is a reference to a person authorized to practise as such,

- (a) where the reference is used in respect of a service rendered to a taxpayer, pursuant to the laws of the jurisdiction in which the service is rendered;
- (b) where the reference is used in respect of a certificate issued by the person in respect of a taxpayer, pursuant to the laws of the jurisdiction in which the taxpayer resides or of a province; and
- (c) where the reference is used in respect of a prescription issued by the person for property to be provided to or for the use of a taxpayer, pursuant to the laws of the jurisdiction in which the taxpayer resides, of a province or of the jurisdiction in which the property is provided.