

Docket: 2008-3652(IT)I

BETWEEN:

W. ADDY MAJEWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Appeal heard on April 15, 2009 at Toronto, Ontario

Before: The Honourable Justice G. A. Sheridan

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Diana Aird

JUDGMENT

The appeal from the reassessment made under the *Income Tax Act* for the 2006 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 11th day of June, 2009.

“G. A. Sheridan”

Sheridan J.

Citation: 2009TCC317
Date: 20090611
Docket: 2008-3652(IT)I

BETWEEN:

W. ADDY MAJEWSKI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Sheridan, J.

[1] The Appellant is appealing the reassessment by the Minister of National Revenue of his 2006 taxation year disallowing his claim for a medical expense credit under subsection 118.2(1) of the *Income Tax Act*. The term “medical expenses” is defined in subsection 118.2(2). In 2006, the Appellant renovated the family home where he and his wife lived with their (then) 22-year-old daughter, a “dependant”¹ who suffered from “a severe and prolonged mobility impairment” within the meaning of paragraph 118.2(2)(l.2) of *Act*. The Appellant was self-represented at the hearing and was the only witness to testify. His evidence of the nature and purpose of the various renovations and alterations challenged by the Minister was clear and entirely credible.

[2] However, the disposition of this appeal turns on the applicability of the monetary limitation in the formula for the calculation of the amount that may be deducted under subsection 118.2(1). The relevant provisions of the formula are factors D, E and F which briefly summarized, permit the taxpayer to claim the lesser of \$10,000; and receipted medical expenses less a threshold amount linked to the dependant’s income.

¹ Subsection 118(6).

[3] By way of background, the Appellant had originally claimed a medical expense credit in respect of the renovation costs of \$47,948 and after various discussions with Canada Revenue Agency officials, was ultimately allowed a non-refundable tax credit of \$32,816. For reasons that were not clear at the hearing, that amount was allowed even though it was well in excess of the \$10,000 limit which the Minister now says must be imposed under subsection 118.2(1). However, because the Minister cannot appeal his own reassessment², the Crown could not and did not seek to have the non-refundable tax credit of \$32,816 reduced to conform to the monetary limitation in subsection 118.2(1). Thus, this appeal concerns the Appellant's entitlement to a credit in respect of the balance of \$15,132.

[4] The Minister's position is that because the Appellant has already been allowed an amount in excess of \$10,000, subsection 118.2(1) precludes the Minister from allowing any further amounts.

[5] On my reading of subsection 118.2(1), the Minister correctly applied the provision to disallow the additional \$15,132 at issue in this appeal. Given this conclusion, it serves little purpose to review the details of the Appellant's evidence in respect of the Minister's alternative position that the Appellant did not meet the qualifying criteria for a deduction under subparagraphs 118.2(2)(1.2)(i) and (ii) of the *Act*:

(1.2) [alterations to home] – for reasonable expenses relating to renovations or alterations to a dwelling of the patient who ... has a severe and prolonged mobility impairment, to enable the patient to gain access to, or to be mobile or functional within, the dwelling, provided that such expenses

- (i) are not of a type that would typically be expected to increase the value of the dwelling, and
- (ii) are of a type that would not normally be incurred by persons who ... do not have a severe and prolonged mobility impairment;

[6] Accordingly, the appeal of the reassessment of the 2006 taxation year is dismissed.

² *Harris v. Minister of National Revenue* [1964] C.T.C 562 (Ex. Ct.), affirmed on other grounds, [1966] C.T.C 226 (S.C.C.).

Signed at Ottawa, Canada, this 11th day of June, 2009.

“G. A. Sheridan”

Sheridan J.

CITATION: 2009TCC317

COURT FILE NO.: 2008-3652(IT)I

STYLE OF CAUSE: W. ADDY MAJEWSKI AND HER
MAJESTY THE QUEEN

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: April 15, 2009

REASONS FOR JUDGMENT BY: The Honourable Justice G. A. Sheridan

DATE OF JUDGMENT: June 11, 2009

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Diana Aird

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: John H. Sims, Q.C.
Deputy Attorney General of Canada
Ottawa, Canada