

BETWEEN:

VINCENZO ARCIRESI,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

[OFFICIAL ENGLISH TRANSLATION]

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Appeal heard on August 22, 2013, at Montréal, Quebec.

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the appellant:	André Dumont
Counsel for the respondent:	Claude Lamoureux Diana Leopardi (student-at-law)

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**JUDGMENT**

The appeal from the reassessment made by the Minister of National Revenue under the *Income Tax Act* dated September 16, 2010, in respect of the 2009 taxation year is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 22nd day of October 2013.

“Réal Favreau”

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Favreau J.

Citation: 2013 TCC 331  
Date: 20131022  
Docket: 2012-2840(IT)I

BETWEEN:

VINCENZO ARCIRESI,

Appellant,

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### **REASONS FOR JUDGMENT**

Favreau J.

[1] This is an appeal, under the informal procedure, from a reassessment made by Minister of National Revenue (the Minister) under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.), as amended (the Act), dated September 16, 2010, in respect of the 2009 taxation year.

[2] By the reassessment of September 16, 2010, the Minister disallowed \$20,002 in medical expenses used for computing a non-refundable tax credit that the appellant claimed as remuneration for one full-time attendant to care for his spouse.

[3] In determining the tax payable by the appellant, the Minister relied on the following assumptions of fact, set out at paragraph 9 of the Reply to the Notice of Appeal:

[TRANSLATION]

- (a) In filing his tax return for 2009, the appellant claimed \$20,002 in medical expenses as remuneration for one full-time attendant to care for his spouse, Francesca Arciresi;
- (b) On or around October 30, 2010, the appellant submitted Form T2201, "Disability Tax Credit Certificate", duly completed and signed by Dr. H  l  ne Mangamas, who indicated that her patient suffers from asthma, sleep apnea, nocturnal hyperventilation and exercise-induced hypoxemia upon testing only (decreased level of oxygen in the blood) and that she has an inability to perform strenuous activities such as housework. The form indicates that the patient's ability to perform basic activities of daily living are not markedly restricted and that it is reasonable to expect her disability to last at least 12 consecutive months;
- (c) In response to a request for clarification sent to the treating physician on or around November 24, 2011, it was confirmed that the patient's health had improved and that the patient's ability to perform basic activities of daily living were not markedly restricted.

[4] The issue is whether the Minister was justified in disallowing the \$20,002 the appellant had claimed, for the 2009 taxation year, in medical expenses as remuneration for one full-time attendant to care for his spouse because the spouse did not have a serious and prolonged physical impairment allowing him to claim such amount pursuant to paragraph 118.2(2)(b) and 118.3(1)(c) and section 118.4 of the Act.

[5] The statutory provisions relevant to this case read as follows:

118.2(2) **Medical expenses.** For the purposes of subsection 118.2(1), a medical expense of an individual is an amount paid

(a) . . .

(b) as remuneration for one full-time attendant (other than a person who, at the time the remuneration is paid, is the individual's spouse or common-law partner or is under 18 years of age) on, or for the full-time care in a nursing home of, the patient in respect of whom an amount would, but for paragraph 118.3(1)(c), be deductible under section 118.3 in computing a taxpayer's tax payable under this Part for the taxation year in which the expense was incurred;

. . .

118.3(1) Where

(a) an individual has one or more severe and prolonged impairments in physical or mental functions,

...

(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 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 occupational therapist,
- (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,

(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

...

**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) speaking 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), and
  - (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; and
- (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.

[6] The appellant's spouse began experiencing physical limitations in 2007. She had fainting episodes during air travel and suffered broken vertebrae falling down the stairs at home. She was under the care of two doctors from the Jewish General Hospital of Montréal who prescribed high doses of cortisone to her to alleviate the pain. In 2009, she could no longer walk and spent her days lying on the couch. Since she could not perform housework, the appellant retained the services of a full-time attendant (5 days per week) to take care of his spouse. She could dress herself, feed herself and walk by herself in the home.

[7] In 2010, the appellant changed doctors and she was under the care of doctors H el ene Mangamas (respirologist) and Ferrer (oncologist) of the Royal Victoria Hospital. Her health subsequently improved and she is functioning well.

[8] To support his application for a disability tax credit, the appellant filed with the Canada Revenue Agency (the CRA) two (2) disability tax credit certificates completed and signed by Doctor Mangamas (T2201), one dated October 30, 2010, and the other dated October 14, 2011.

[9] In the certificate of October 30, 2010, it is indicated that the appellant's spouse suffers from asthma, sleep apnea, nocturnal hyperventilation and exercise-induced hypoxemia upon testing only and that she has an inability to perform strenuous activities such as housework.

[10] In the certificate of October 14, 2011, it is indicated that the appellant's spouse suffers from asthma, obesity syndrome and hyperventilation. The effects of the disability are limitations of exercise tolerance.

[11] The medical certificates mentioned above are required by paragraph 118.3(1)(a.2) of the Act, which makes it a prerequisite to obtaining a credit for impairment. Or at least that is the view expressed by the Federal Court of Appeal in *MacIsaac v. Canada and Morrison v. Canada*, 2000 D.T.C. 6020:

[5] . . .

Section 118.3(1)(a.2) of the *Income Tax Act* is not merely directory.

It is mandatory. . . .

[12] Given that no medical certificate was supplied for the 2009 taxation year, the appellant cannot be entitled to the credit for impairment. Furthermore, since Doctor Mangamas was not the treating physician of the appellant's spouse in 2009, the medical certificates supplied are not relevant to this case.

[13] The testimonies heard and the documents submitted do not make it possible to conclude that the appellant's spouse could reasonably be considered to be a person with a severe and prolonged mental or physical impairment within the meaning of paragraph 118.4(1)(a) of the Act, namely, a disability lasting for a continuous period of at least twelve (12) months. The appellant's spouse certainly suffered from a serious physical impairment but I do not believe that it can be characterized as a severe impairment. Even though she could not perform daily activities, the

appellant's spouse could still dress herself, feed herself and walk by herself. Moreover, the physical impairment of the appellant's spouse was of limited duration.

[14] In the circumstances, the appellant is not entitled to a deduction as remuneration for one full-time attendant to care for his spouse within the meaning of paragraph 118.2 of the Act.

[15] For these reasons, the appeal is dismissed.

Signed at Ottawa, Canada, this 22nd day of October 2013.

“Réal Favreau”

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Favreau J.

Translation certified true  
on this 6th day of December 2013  
Daniela Guglietta, Translator

CITATION: 2013 TCC 331

COURT FILE NO.: 2012-2840(IT)I

STYLE OF CAUSE: Vincenzo Arciresi and Her Majesty The Queen

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: August 22, 2013

REASONS FOR JUDGMENT BY: The Honourable Justice Réal Favreau

DATE OF JUDGMENT: October 22, 2013

APPEARANCES:

Agent for the appellant: André Dumont  
Counsel for the respondent: Claude Lamoureux  
Diana Leopardi (student-at-law)

COUNSEL OF RECORD:

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