Docket: 2024-905(IT)I

BETWEEN:

GEOFFREY P HALVORSON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

Appeal heard on August 21, 2025 at Kelowna, British Columbia

Before: The Honourable Justice Perry Derksen

Appearances:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Steven Stechly

JUDGMENT

In accordance with the attached Reasons for Judgment:

The appeal from the notice of determination dated September 15, 2023 made under the *Income Tax Act* in respect of the appellant's claim for a disability tax credit for his 2014 to 2023 taxation years is dismissed without costs.

Signed this 12th day of September 2025.

"Perry Derksen"

Derksen J.

Citation: 2025 TCC 124
Date: 20250912
Docket: 2024-905(IT)I

BETWEEN:

GEOFFREY P HALVORSON,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

REASONS FOR JUDGMENT

Derksen J.

I. Overview

[1] The appellant, Mr. Halvorson, suffers from severe obstructive sleep apnea and the impact on his life is significant. He relies on a continuous positive airway pressure (CPAP) device to treat his sleep apnea. The Minister of National Revenue determined that the appellant was not eligible for the disability tax credit in the years in issue because the appellant's daily CPAP therapy was not required to be administered for a total duration averaging not less than 14 hours a week under the rules applicable for determining the time spent on therapy.

[2] The appellant accepts that the time he spent using the CPAP device while sleeping is excluded under the rules applicable for determining the time spent on therapy. However, the appellant argues that the time he spent using the CPAP device while falling asleep and while trying to fall back asleep after a sleep disruption is included in determining whether the therapy is required to be administered for a total

duration averaging not less than 14 hours a week. And if so included, the appellant says that he would be eligible for the disability tax credit.

[3] I am sympathetic to the impact that severe sleep apnea has on the appellant's life. Nonetheless, and based on my interpretation of the relevant provisions, I have concluded that the time spent during the appellant's daily use of the CPAP device while falling asleep and while trying to fall back asleep after a sleep disruption is not included in determining the time spent on therapy. This is because it did not require the appellant to take time away from normal everyday activities in order to receive the CPAP therapy.

[4] In the circumstances, the CPAP therapy was not required to be administered for a total duration averaging not less than 14 hours a week and so the appellant did not satisfy the conditions for eligibility for the disability tax credit. My reasons are set out below.

II. Background and Issue

[5] The appellant asked the Minister to determine his eligibility for what is referred to as the disability tax credit (or DTC) by submitting a Disability Tax Credit Certificate using Form T2201.

[6] The Minister issued a notice of determination informing the appellant that he was not eligible for the disability tax credit in respect of the 2010 to 2023 taxation years. Thereafter, the appellant served a notice of objection and, after the Minister confirmed the determination, he appealed the determination with respect to the 2014 to 2023 taxation years to this Court.[1]

[7] The issue before the Court is whether the appellant's use of a CPAP device meets the condition in s. 118.3(1)(a.1)(ii) of the *Income Tax Act*, R.S.C., c. 1

[1] Under s. 152(1.01) of the Act, an individual may request a determination of disability tax credit eligibility. The provision does not specify whether there is a temporal component or restriction for such a determination. Objection and appeal rights for a determination are established under s. 152(1.2). It would seem that a taxpayer could consent to the Minister reassessing under s. 152(4.2) to allow the credit up to 10 years back, but there are no rights of objection and appeal from an assessment under s. 154(4.2): see s. 165(1.2). The Crown accepted here that 2014 to 2023 are properly before the Court for the purposes of the determination under s. 152(1.01).

(5th Supp.) (the Act) and in particular whether the CPAP therapy is required to be administered for a total duration averaging not less than 14 hours a week.

III. Applicable Statutory Scheme

A. Life-Sustaining Therapy

[8] The appellant seeks to qualify for the disability tax credit in s. 118.3 on the basis that his use of a CPAP device meets the eligibility criteria for what is referred to as "life-sustaining therapy". The expression is not used in the Act but it is a convenient and commonly used expression for the therapy contemplated in s. 118.3(1)(a.1)(i) to (iii).

[9] My analysis focuses on the eligibility criteria for life-sustaining therapy, beginning with ss. 118.3(1)(a) and (a.1), which presently read as follows:

> 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 two 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,
>
> …

[10] There is no issue here that a medical practitioner provided a certificate in prescribed form as required by s. 118.3(1)(a.2) and that the appellant filed the certificate with the Minister as required by s. 118.3(1)(b).

[11] Thus, ignoring the certificate requirements in s. 118.3(1), five conditions must be satisfied to be eligible for the disability tax credit for life-sustaining therapy:

> Condition 1: The individual must have one or more severe and prolonged impairments in physical or mental functions: s. 118.3(1)(a).
>
> Condition 2: The individual is receiving therapy that is essential to sustain a vital function of the individual: 118.3(1)(a.1)(i).
>
> Condition 3: The therapy is required to be administered at least two times each week for a total duration averaging not less than 14 hours a week: 118.3(1)(a.1)(ii).
>
> Condition 4: The therapy cannot reasonably be expected to be of significant benefit to persons who do not have a severe and prolonged impairment in physical or mental functions: 118.3(1)(a.1)(iii).
>
> Condition 5: The effects of the impairment or impairments are such that without the life-sustaining therapy (i) the individual's ability to perform a basic activity of daily living would be markedly restricted or (ii) the individual's ability to perform more than one basic activity of daily living would be 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: see s. 118.1(3)(a.1), and in particular the words, "but for"; and *Mullings v The Queen*, 2017 TCC 133 (*Mullings)* at para. 11 and fn 7.

[12] The requirement in s. 118.3(1)(a.1)(ii) — Condition 3 above — that the therapy is administered at least two times each week arises from an amendment made in 2022 for certificates filed after June 23, 2022, for the 2021 and subsequent taxation years: S.C. 2022, c. 10, s. 6(1). Previously, the therapy was required to be administered at least three times each week. The amendment has no impact on the outcome of this appeal.

[13] The Crown has not put Conditions 1, 2, 4, and 5 in issue. Stated another way, the Minister accepted that the appellant meets Conditions 1, 2, 4, and 5 because of the factual circumstances of this case.

[14] Returning to the statutory scheme, s. 118.3(1.1) provides further rules for determining whether therapy is required to be administered at least two times each week for a total duration averaging not less than an average of 14 hours a week.

[15] Here, the key rule is in s. 118.3(1.1)(a), which provides that the time spent on administering therapy includes only time spent on activities that require the individual to take time away from "normal everyday activities" in order to receive the therapy.

[16] Additional rules are set out in s. 118.3(1.1)(d) which, among other matters, excludes the time spent on recuperation after therapy (other than medically prescribed recuperation).

[17] Paragraphs 118.3(1.1)(a) and (d) presently read as follows:

> 118.3(1.1) Time spent on therapy — For the purpose of paragraph 118.3(1)(a.1), in determining whether therapy is required to be administered at least two times each week for a total duration averaging not less than an average of 14 hours a week, the time spent on administering therapy
>
> > (a) includes only time spent on activities that require the individual to take time away from <u>normal everyday activities</u> in order to receive the therapy;
> >
> > …
> >
> > (d) does not include time spent on
> >
> > > (i) activities (other than activities described in paragraph (b)) related to dietary or exercise restrictions or regimes,
> > >
> > > (ii) travel time,
> > >
> > > (iii) medical appointments (other than medical appointments to receive therapy or to determine the daily dosage of medication, medical food or medical formula),
> > >
> > > (iv) shopping for medication, or
> > >
> > > (v) recuperation after therapy (other than medically required recuperation). [Underlining added]

[18] The preamble of s. 118.3(1.1) was also amended in 2022 to change the reference to at least three times each week to at least two times each week. Paragraph

118.3(1.1)(d) was also amended. Again, nothing in this appeal turns on these amendments and the prior text.

[19] Finally, s. 118.4 sets out circumstances in which an individual is considered to have a severe and prolonged impairment for the purposes of the disability tax credit in s. 118.3(1). Considering the Crown's concessions respecting Conditions 1, 2, and 5, it is not necessary to examine these provisions in detail.

B. The Crown's Concession on Condition 2

[20] The Crown's concession that Condition 2 is satisfied (i.e., that the appellant was receiving therapy that was essential to sustain a vital function of the individual) initially gave me some pause because the issue of whether an individual using a CPAP device was eligible for the disability tax credit has received unfavourable judicial consideration. In particular, prior decisions point toward a finding that the use of a CPAP device is not essential to sustain a vital function within the meaning of s. 118.3(1)(a.1)(i). In the circumstances, I turn briefly to these prior decisions to put this case in context.

[21] In *Biron v. The Queen*, 2004 TCC 154, Lamarre Proulx J. found that essential therapy is one which, if the patient ceased to tolerate it, would result fairly promptly in death (at para. 45). Lamarre Proulx J. also found that CPAP therapy was not a therapy that was essential to sustain a vital function within the meaning of s. 118.3(1)(a.1). In *Boisvert v. The Queen*, 2005 TCC 249, Angers J. concurred with Lamarre Proulx J.'s conclusion in *Biron* (see paras. 10-11).

[22] Along similar lines, in *Girard v. The Queen*, 2005 TCC 104, Paris J. was not satisfied that the taxpayer's life would be in immediate or proximate danger if she was not using the CPAP machine. Paris J. also found that the evidence tended to show that even without the CPAP, the taxpayer could perform basic activities of daily living. The Federal Court of Appeal upheld this finding, stating that this Court was correct in concluding that, even without the CPAP apparatus, the appellant could perform basic activities of daily living and therefore did not meet the requirements under s. 118.3(1)(a.1): *Girard v. Minister of National Revenue*, 2006 FCA 65 at para. 1. Since that was sufficient to dispose of the appeal, the Federal Court of Appeal declined to render a decision on whether the use of the CPAP device was therapy essential to sustain a vital function.

[23] Next, in *Beauchamp v. The Queen*, 2008 TCC 189, Bédard J. said that the taxpayer would have to establish that "his life would have been in immediate or proximate danger if he had not used the CPAP" (at para. 11).

[24] In this case, the Crown emphasizes that the appellant suffers from severe sleep apnea.

[25] In light of the Crown's concession regarding Condition 2 in s. 118.3(1)(a.1)(i), I remind myself that s. 118.3 is to be given a humane and compassionate construction: *Johnston v. Canada*, [1998] 2 CTC 262, 1998 CanLII 7435 (FCA) at para. 10 (*Johnston*) adopting *Radage v. The Queen*, [1996] 3 CTC 2510 (TCC) (*Radage*) at p. 2529.

[26] Plus, more recently, this Court concluded that treatment for phenylketonuria (PKU), which if left untreated can cause permanent severe brain damage, was therapy essential to sustain a vital function (*Mullings* at fn 10; and *Hughes v. The Queen*, 2018 TCC 42 at paras. 6 and 60).

[27] I also presume that the recommendations of the Disability Advisory Committee (which advises the Minister and the Canada Revenue Agency) are informing the Minister's administration of the disability tax credit provisions and interpretation respecting life-sustaining therapy. The Committee has described life-sustaining therapy eligible for the disability tax credit as life-long and continuous, requiring close supervision and without the therapy the individual could not survive or would face serious life-threatening challenges: First Annual Report of the Disability Advisory Committee, *Enabling access to disability tax measures*, 2019 at p. 24, online at: https://www.canada.ca/content/dam/cra-arc/corp-info/aboutcra/dac/dac-report-en.pdf (2019 DAC Report). The Committee has expressed the view that life-sustaining therapies involve the application of a procedure on a regular and frequent basis over an extended period for the duration of the person's life and that only a handful of life-sustaining therapies meet these criteria (2019 DAC Report at p. 24).

[28] In the end, I have not been asked to determine whether the use of a CPAP device to treat severe sleep apnea satisfies the condition in s. 118.3(1)(a.1)(i).

[29] Having set out the applicable statutory scheme, I next provide more factual context and set out my findings of fact.

IV. Factual Context and Findings of Fact

[30] The appellant was the only witness that testified. I found him to be credible, but at the outset acknowledge that the appellant's recent efforts to log data regarding his use of a CPAP device is based in part on his estimates. The estimates include the appellant's subjective assessment of the time when he believed that he was sleeping in contrast to the time that he was in bed attempting to fall asleep. There are inherent weaknesses in the reliability of this data.

[31] By way of background, the appellant is a small business owner and, together with his spouse, he runs a strata management business. At some point, years ago, the appellant's spouse noticed that she was no longer sleeping well because she would be awake observing the appellant's breathing. The appellant described waking up at night, lurching, gasping, and sweating. He was also falling asleep during the day, including while in meetings at work or while eating dinner. The appellant sought medical attention following an incident during which the appellant fell asleep when, as a matter of safety, he needed to be alert.

[32] The appellant's medical doctor, Dr. Lemiski, suspected that the appellant had sleep apnea and arranged for a sleep study with a respiratory services firm. The study involved an overnight oximetry test that was undertaken at home on January 28, 2010, and which involved oxygenation and pulse readings to obtain SpO2 or peripheral oxygen saturation data. The oximetry report provided a data sampling of approximately six hours and registered 363 desaturation events (i.e., a drop in blood oxygen levels) with a SpO2 low of 64% and a mean of 86.6%. Over the sample period, the appellant had an average of 55.9 desaturation events per hour, or almost one per minute. The mean length of the desaturation events was 34.8 seconds.

[33] Dr. Lemiski diagnosed the appellant with obstructive sleep apnea and prescribed CPAP therapy. The prescription indicated that the appellant would require the use of a CPAP device, heated humidifier and nasal mask interface to be worn on an indefinite nightly basis.

[34] The appellant acknowledged his lack of medical expertise but nonetheless said that more than 30 apnea events per hour is considered severe and emphasized that he had averaged 55.9 events per hour.

[35] The oximetry report shows that over the sampling period, the appellant had a SpO2 level below 80% for a total duration of 47 minutes, or 12.7% of the time. Although I do not have expert evidence before me and recognizing that this matter

proceeded in the informal procedure, I have taken some liberty in confirming that a level below 80% is considered severe.

[36] The appellant bought a CPAP machine and started to use it at night. At the risk of oversimplification, a CPAP machine uses a hose connected to a mask or nosepiece to deliver constant and steady air pressure to help an individual breathe while sleeping.

[37] In time, the appellant noticed a significant improvement in his wellbeing and health. His ability to function returned with CPAP therapy; he was no longer waking up lurching and gasping and soaking in sweat.

[38] The appellant also testified that although he was able to obtain sleep with the use of the CPAP device, it was not as simple as putting the mask on and sleeping for eight hours. He described having to spend a lot of time trying to get to sleep with the CPAP mask, which would result in pressurization and bloating. Added to this is that the mask would vent, and the humidity would leave his face wet. When he would roll over, the appellant said water would sometimes run across his face and wake him up, sometimes several times per night. He would sometimes get up to wash his face and then return to bed, place the mask on, and take time to fall back asleep.

[39] The appellant uses the CPAP machine every single day due to his understanding, based on his discussions with Dr. Lemiski, that the risks involved in not using it are severe.

[40] Turning next to the disability tax credit, the appellant submitted a T2201 form to the Minister in June 2023 and asked that the CRA adjust his previous returns for all applicable years.

[41] Dr. Lemiski had completed the portion of the form concerning life-sustaining therapy, which he described as CPAP for the condition of severe obstructive sleep apnea. Dr. Lemiski also recorded 2010 as the year that the appellant began to meet the eligibility criteria.

[42] Dr. Lemiski also provided a letter dated November 22, 2023, in support of the appellant's notice of objection, confirming that the appellant has severe obstructive sleep apnea, which in the absence of treatment "includes daytime hypersomnolence." I understand that to mean an inability to stay awake and alert during major waking episodes, resulting in an irrepressible need for sleep or unintended lapses into drowsiness or sleep. Dr. Lemiski further stated that the

appellant must use CPAP every day for at least eight hours or more to achieve adequate sleep and noted that the appellant often requires time in bed in excess of eight hours to achieve adequate sleep.

[43] The appellant also submitted a letter to the CRA dated November 24, 2023, which was entered as Exhibit A-5 without objection. I will refer to this letter because it helps me distill the thrust of his oral evidence.

[44] In particular, the appellant stated in the letter that he had to use the CPAP at least 8 hours per day, sometimes as much as 10 hours to get adequate sleep. His sleep was regularly broken because of the mask, and he would often get up to drink water due to a dry throat and to clean or adjust the mask if it was venting air due to movement during the night. The appellant often had to go back to bed or stay in bed for an hour or two longer to get adequate rest to function, and that it was not uncommon to lay awake with the mask on trying to get back to sleep for an hour or more after being awakened by the mask. And sometimes, sleep would elude the appellant, and he would just get out of bed. Any sleep deficit had to be resolved by sleeping more during the day on the weekend.

[45] The appellant did not keep logs regarding his use of the CPAP device until after filing his notice of appeal. He eventually began making notes and extracted additional data that was available from his CPAP machine.

[46] Before turning to that data, I note that the appellant acknowledged that it takes minimal time to prepare the CPAP machine for use and to place the mask on. About five minutes a day are devoted to maintenance and setting up the CPAP machine, and a more thorough cleaning is done quarterly, which takes about 15 minutes. Consequently, the appellant devotes about 40 to 50 minutes per week on maintenance and setup.

[47] Turning to the appellant’s data, he introduced reports produced by his main CPAP machine that captures usage hours and events. Exhibit A-7, for example, is a report made on November 1, 2023. The report shows a 30-day average usage of 7 hours and 26 minutes. The 30-day report also indicates “events per hour”, which are recorded when an apnea event occurs despite the use of the CPAP device. The 30-day average usage is in line with the 90-day and 365-day data, which shows averages of seven hours and 23 minutes and seven hours and 15 minutes, respectively, although there are a few data points missing because the appellant used a different device. Exhibit A-8, a report for the 30-day period ending on October 12, 2024, shows an average daily usage of 8 hours and four minutes.

[48] According to the appellant, the difficulty with the reports is that they do not show the number of times the CPAP mask is on or off. And therefore, the appellant began logging his sleep and CPAP usage data, noting the time when he went to bed, the time when he estimated that he was asleep and the duration of the sleep, and the time spent in bed but not sleeping.

[49] The appellant also took screen shots of CPAP machine data (Exhibit A-9) which indicates the number of times the CPAP mask was placed on his face each night. The data for September 2024 indicates that the appellant was able to keep the mask on overnight only once. More typically, the appellant would have to take the mask off during the night and then place it on a second time. On seven occasions in September 2024, the appellant placed the mask on three times over the course of a night.

[50] In logging his sleep and CPAP usage, the appellant sought to demonstrate the time he says is taken away from normal everyday activities. He tried to log the time he went to bed (using the CPAP device), the time when he estimated that he had fallen asleep, the duration of his sleep, and the time he was in bed but not sleeping. This culminated in a dataset for August 26 to September 30, 2024, representing a five-week period (Exhibit A-10).

[51] By way of illustration, for August 26, 2024, the appellant recorded that he went to bed using the CPAP device at 9:45 p.m. and estimated that he fell asleep at 10:15 p.m. The appellant noted that he was awake from 1:00 to 2:00 a.m. (for a duration of one hour). From 2:00 to 2:45 a.m., the appellant recorded that he had the CPAP mask on and was trying to fall asleep. And from 2:45 to 5:00 a.m., the appellant recorded that he was sleeping. Thus, according to the appellant, he slept for five hours (2.75 + 2.25) and spent 2.25 hours not sleeping. It bears repeating, as is evident, the 2.25 hours not sleeping includes time when the appellant was trying to fall asleep.

[52] During some nights within the dataset, the appellant recorded that he had a dry throat and thus his sleep had been interrupted. For example, during the night of August 28, 2024, the appellant recorded that he was in bed at 11:00 p.m. and got up at 7:45 a.m. the following morning. However, the appellant recorded a total of three hours where the mask was off, or he devoted time to trying to fall back asleep with the mask on.

[53] Over the five-week period, the appellant tabulated his “time not sleeping” which when averaged was 2.17 hours per night. Consequently, the appellant said his

data shows that he is spending more than 14 hours per week on average receiving CPAP therapy when he is not sleeping. He also said that the time when he is not asleep during the night receiving CPAP therapy is time taken away from normal everyday activities. This includes time spent preparing the CPAP device for use, time trying to fall asleep, and time trying to fall back asleep after being awakened for one reason or another.

[54] I asked the appellant how he determined when he fell asleep. He said that he tried to estimate or guess when he fell asleep, and in instances where he had difficulty falling asleep and was lying in bed, he would open his phone and adjust the data to record the time trying to fall asleep. As stated earlier, there are reliability concerns with this approach. For this reason, the appellant's data in Exhibit A-10 about the time spent trying to fall asleep should be recognized as a subjective estimate only.

[55] Anticipating that the Crown might challenge his ability to determine the time that he spent trying to fall asleep, the appellant also turned to data available from wearing an Apple watch. His objective was to get a clear log of the time he spent devoted to CPAP therapy that did not include actual sleep.

[56] To that end, the appellant introduced Apple watch data through Exhibits A-14, A-15 and A-16. According to the appellant, he recorded the time when he went to bed and the time when he got up between July 23 and August 4, 2025. He compared the time in bed against the data from his Apple watch that indicates his time asleep.

[57] For example, during the night of July 23, 2025, the appellant recorded that he was in bed at 10:45 p.m. and up at 7:15 a.m. the following morning for a total of 8.5 hours in bed (referred to here as component A). His Apple watch indicated that he had 6 hours and 23 minutes of sleeping time, or 6.38 hours (referred to here as component B). The appellant next determined the "time away" from sleep, computed as A – B, which is this example is 2.12 hours.

[58] When averaged over a 13-day period, the appellant says his data combined with the Apple watch data shows that he spent an average 8.79 hours in bed, an average of 6.56 hours asleep, and an average of 2.23 hours per day on time taken away from sleep. According to the appellant, the CPAP therapy is thus administered for a total duration averaging more than 14 hours per week, excluding time spent asleep.

[59] Under the appellant's approach, the time spent setting up or cleaning the CPAP device, the time spent trying to fall asleep using the CPAP device, the time spent being wakened by the CPAP device, and the time spent trying to get back to sleep after his sleep was disrupted is time away from normal everyday activities.

[60] I am not able to make a specific finding on the usefulness of the appellant's Apple watch data. I would need a better understanding of how an Apple watch delineates sleep (i.e., average REM, average core, and average deep sleep) from average awake time or the time in which a user is attempting to fall asleep. I would also need to better understand where transitional sleep falls within the data.

[61] I asked the appellant whether this recent data was representative of the period between 2014 and 2023. The appellant testified that he had made changes regarding the mask that he uses and said he is more diligent now. Accordingly, and reflecting on the earlier period, the appellant believes his sleep would have been more disrupted in the years in issue. I take this to mean that the appellant believes that his "time away" from sleep would be greater.

[62] I also asked the appellant whether he would reach an average of 14 hours a week if the time that he spent trying to fall asleep (including time spent trying to fall back to sleep) was excluded. In response, the appellant thought that the time devoted to CPAP therapy would be below 14 hours per week if the time he spent trying to fall asleep was not included.

[63] Having provided more factual context, I next turn to my interpretation of the provisions in issue.

V. Normal Everyday Activities — s. 118.3(1.1)(a)

A. Appellant's Position

[64] I reiterate that the appellant accepts that sleep itself is a normal everyday activity and so the time he spent sleeping while using the CPAP machine is not included under s. 118.3(1.1)(a).

[65] Even so, the appellant argues that the time he spent attempting to fall asleep with a CPAP mask on and the time he spent trying to fall back asleep (including after his sleep was disrupted and he cleaned the mask) should be included under s. 118.3(1.1)(a) in determining whether the CPAP therapy was required to be

administered for a total duration averaging not less than 14 hours a week. As such, the outcome of the appeal rests on whether the time spent on these activities required the appellant to take time away from normal everyday activities in order to receive the CPAP therapy within the meaning of s. 118.3(1.1)(a). If the time devoted to these activities is not included, the appellant will not satisfy the average of 14 hours a week requirement in s. 118.3(1)(a.1)(ii).

B. Crown's Position

[66] The Crown argues that the appellant's use of a CPAP device does not take time away from normal everyday activities as determined under s. 118.3(1.1)(a). In support of this position, the Crown simply points to *Beauchamp* where Bédard J. concluded that the use of a CPAP device did not require the individual to interrupt his everyday activities in any way:

> [9] In my opinion, the Appellant's use of the CPAP device did not require him to interrupt his everyday activities in any way. Indeed, I do not see what everyday activity could have been interrupted by wearing a mask at night in the case at bar. Thus, the Appellant did not receive vital function sustaining therapy for the amount of time required by the Act, that is to say, at least three times a week for a total duration averaging not less than 14 hours a week…

[67] Moreover, the Crown argues that the additional time, if any, that the appellant spent in bed to obtain sufficient sleep is "recuperation" as contemplated by s. 118.3(1.1)(d)(v), and is excluded in determining the time spent on therapy.

[68] As such, the Crown says that the appellant did not satisfy the condition in s. 118.3(1)(a.1)(ii) and thus he was not eligible for the disability tax credit.

C. Interpretation of s. 118.3(1.1)(a)

[69] The arguments require me to consider the meaning of s. 118.3(1.1)(a), including the scope of the expression "normal everyday activities".

[70] Statutory interpretation is conducted in accordance with the modern principle under which "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": *Rizzo & Rizzo Shoes Ltd.* (Re), [1998] 1 SCR 27 at para. 21. The modern principle requires courts to interpret legislation "according to a textual, contextual and purposive analysis to find a meaning that is

harmonious with the Act as a whole": *Canada Trustco Mortgage Co. v. Canada*, 2005 SCC 54 at para. 10.

[71] Sometimes it is appropriate to interpret a provision by beginning with its purpose (see for example *R. v. Kloubakov*, 2025 SCC 25 at para. 63). Here, it is helpful to consider Parliament's purpose in enacting the life-sustaining therapy provisions. With that in mind, I consider several extrinsic aids with the view to identifying Parliament's legislative purpose in the provisions in issue.

[72] The disability tax credit recognizes the effect of a severe and prolonged disability on an individual's ability to pay tax: Canada, Department of Finance, *The Budget Plan 2000, Annex 7, Tax Measures: Supplementary Information and Notices of Ways and Means Motions*, February 28, 2000, online: https://budget.canada.ca/archives/budget00/pdf/bpe.pdf (2000 BSI) at p. 239; and see *Johnston* at para. 10.

[73] In the February 2000 Budget, the Government proposed extending eligibility for the disability tax credit to individuals who must undergo therapy several times each week totalling at least 14 hours per week in order to sustain their vital functions (2000 BSI at p. 239). In such cases, the Government stated that the severity of the disability was evident in the requirement for extensive therapy that is essential to the individual's survival. The Government also stated that examples of persons who may be eligible for the DTC under the proposed change include individuals with severe kidney disease requiring dialysis to prevent renal failure, and individuals with severe cystic fibrosis requiring clapping therapy to breathe (2000 BSI at p. 239).

[74] These same objectives were expressed in the March 2001 Explanatory Notes (Canada, Department of Finance, *Explanatory Notes Relating to Income Tax*, Ottawa, March 2001 at p. 385-386, available online at: https://publications.gc.ca/collections/Collection/F2-97-2-2001E.pdf).

[75] Parliament amended s. 118.3(1)(a.1) to extend eligibility for the disability tax credit in respect of life-sustaining therapy for the 2000 and subsequent taxation years: S.C. 2001, c. 17, s. 96(2).

[76] I also note that in a March 2002 report and again in a December 2002 report, the Standing Committee on Human Resources Development and the Status of Persons with Disabilities recommended changes to s. 118.4, including that "breathing" be added to the list of basic activities of daily living (Report of the Standing Committee on Human Resources Development and the Status of Persons

with Disabilities, *Tax Fairness for Persons with Disabilities*, House of Commons, December 2002, p. 15-17, online at: https:www/ourcommons.ca). For more than 20 years, this recommendation has not been adopted, which illustrates that Parliament has created a specific and targeted scheme for eligibility.

[77] In 2004, the Technical Advisory Committee on Tax Measures for Persons with Disabilities described the purpose of the life-sustaining therapy provision as to extend the disability tax credit only to situations in which the amount of time dedicated to the therapy significantly restricted the individual's ability to undertake normal everyday activities (Report of the Technical Advisory Committee on Tax Measures for Persons with Disabilities, *Disability Tax Fairness*, December 2004 at p. 41, online at: https://publications.gc.ca/collections/Collection/F34-1-2004E.pdf). The Technical Advisory Committee noted that the legislation required that the therapy be administered at least three times per week and that individuals spend on average 14 hours per week — the equivalent of two hours each day — receiving therapy. Concerns were expressed, however, about what qualified as therapy and that certain activities necessary to the administration of insulin were not considered to be therapy for some children with Type 1 diabetes and so a recommendation was made, in part, to better define the activities that constitute life-sustaining therapy (at p. 42).

[78] In the 2005 Budget, the Government tabled a response to the recommendations of the Technical Advisory Committee (Canada, Department of Finance, *The Budget Plan 2005, Annex 8, Tax Measures: Supplementary Information and Notices of Ways and Means Motions*, February 2005, p. 372, online at: https://budget.canada.ca/archives/budget05/pdf/bp2005e.pdf (2005 BSI)).

[79] Referring to the life-sustaining therapy provisions, the Government stated that their purpose is to allow individuals to be eligible for the disability tax credit if they must have life-sustaining therapy that requires them to dedicate a significant amount of time away from normal everyday activities to receive the therapy (2005 BSI at p. 376). And in response to the concerns expressed by the Technical Advisory Committee about what activities constitute therapy under the provisions, the Government proposed amendments, which later were enacted by Parliament in s. 118.3(1.1).

[80] It is useful to set out the relevant portion of the Government's response in the 2005 BSI at pages 376-377:

> In its report, the Technical Advisory Committee raised concerns as to what activities constitute therapy under these provisions. In particular, the Committee was concerned that certain activities necessary to the administration of insulin were not considered to be therapy for some children with particularly severe cases of Type 1 diabetes. In these cases, the Committee believed that therapy included monitoring blood sugar levels and determining insulin dosages. In response, the budget proposes amendments to the Income Tax Act to better define the activities that will be considered therapy and will be included as time spent receiving therapy. Specifically:
>
> - Where the therapy has been determined to require a regular dosage of medication that needs to be adjusted on a daily basis, the activities directly involved in determining the appropriate dosage will be considered part of the therapy.
>
> - Therapy does not include activities such as following a dietary restriction or regime, exercise, travel time, medical appointments, shopping for medication or recuperation after therapy.
>
> - The time it takes to administer the therapy must be time dedicated to the therapy—that is, the individual has to take time away from normal, everyday activities in order to receive the therapy. Further, in the case of a child who is unable to perform the activities related to the therapy as a result of his or her age, the time spent by the child's primary caregivers (i.e. parents) performing and supervising these activities for the child can be considered time dedicated to the therapy.
>
> With these proposed changes, it is expected that children with very severe cases of Type 1 diabetes—who require many insulin injections (which requires knowledge of current blood sugar levels at the time of each injection), as well as several additional blood sugar tests to monitor their condition—will become eligible for the DTC.
>
> The life-sustaining therapy provisions, in and of themselves, do not extend eligibility for the DTC to individuals who receive therapy in a manner that does not significantly affect their everyday activities (for example, by means of a portable or implanted device). These measures will apply for the 2005 and subsequent taxation years.

[81] The 2005 BSI thus indicates that the Government sought to better define the activities that would be considered eligible life-sustaining therapy and would be included in determining the time spent receiving therapy.

[82] The emphasis that the time it takes to administer the therapy must be time dedicated to the therapy, "that is, the individual has to take time away from normal everyday activities in order to receive the therapy" suggests the objective is to

recognize the opportunity cost associated with the time spent administering life-sustaining therapy (2005 BSI, p. 377). If the time spent administering the therapy does not require an individual (or a primary caregiver assisting a child) to take time away from normal everyday activities in order to receive the therapy, Parliament has presumed there is no opportunity cost in terms of lost time — and thus no impact on the ability to pay tax — associated with receiving therapy and as such it is not included in determining whether the condition in s. 118.3(1)(a.1)(ii) is satisfied.

[83] The Explanatory Notes relating to s. 118.3(1.1) express similar legislative objectives to those stated in the 2005 BSI (Canada, Department of Finance, *Explanatory Notes Relating to Income Tax*, Ottawa, June 2006 at p. 64, online at: https://publications.gc.ca/collections/Collection/F2-165-2006E.pdf).

[84] Parliament's legislative purpose can be illustrated by two examples that are grounded in the previously mentioned extrinsic aids. First, an individual with severe kidney disease requiring dialysis would be required to attend several weekly appointments for dialysis, which would take time away from normal everyday activities and would result in an opportunity cost measured by an imposition on the individual's time. Second, an individual requiring an implanted device, such as a pacemaker, would generally not be required to take time away from normal everyday activities to use the device and, as such, there would not be the same opportunity cost measured by an imposition on the individual's time.

[85] Parliament enacted s. 118.3(1.1) in 2006, applicable to the 2005 and subsequent taxation years: S.C. 2006, c. 4, s. 63. At the same time, Parliament amended s. 118.3(1)(a.1) so that it would also apply in respect of individuals where the cumulative effect of certain restrictions was equivalent to having a single marked restriction in one basic activity of daily living.

[86] The Disability Advisory Committee has argued that there are serious questions about the empirical basis for the 14-hour minimum weekly requirement (2019 DAC Report at p. 22). The Committee has suggested that the 14-hour condition was originally based on the estimated number of hours involved in weekly dialysis, a clearly recognized life-sustaining therapy. Moreover, the Committee has argued that the then three times per week and 14-hour requirements are not necessarily appropriate for other treatments, even those that would qualify as life-sustaining in their purpose and their effect (2019 DAC Report at p. 22).

[87] It is evident that the Disability Advisory Committee's input played a role in the Government proposing legislation to amend s. 118.3(1)(a.1)(ii) to change the

"three times" to "two times" and to add a deeming rule applicable to individuals with Type 1 diabetes, which was subsequently enacted by Parliament in s. 118.3(1.2): 2022 S.C., c. 10, s. 6(3.1).

[88] My role, however, is to interpret the legislation enacted by Parliament and to apply it to the facts before me regardless of whether the 14-hour minimum weekly requirement might be perceived as arbitrary.

[89] I turn next to the text of s. 118.3(1.1)(a), and in particular the expression "normal everyday activities".

[90] The Oxford English Dictionary defines "normal" as "constituting or conforming to a type or standard; regular, usual, typical; ordinary, conventional" (Online: https://www.oed.com).

[91] The expression "normal" seeks to delineate typical, usual and ordinary daily activities from those that are atypical, unusual and extraordinary.

[92] The Oxford English Dictionary defines "everyday" as "of or relating to every day, daily" (Online: https://www.oed.com).

[93] As such, the expression "normal everyday activities" indicates that Parliament seeks to exclude the time than an individual spends on regular, usual, typical, or ordinary daily activities in determining the time spent on administering therapy. These are routine activities that individuals can be expected to engage in daily.

[94] Sleep is an ordinary or regular daily activity.

[95] In my view, falling asleep and falling back to sleep after a sleep disruption are also regular, usual, typical or ordinary daily activities. Moreover, there is variability in how much time individuals spend falling asleep or returning to sleep after being awakened, and variability in the duration of sleep needed.

[96] Having regard to the purpose of s. 118.3(1.1)(a), Parliament did not want life-saving therapy that does not require the individual to take time away from normal everyday activities to be included in determining whether the 14-hourly weekly average condition in s. 118.3(1)(a.1)(ii) is satisfied. Parliament considered the opportunity cost in terms of time devoted to receiving therapy to be insufficient to justify a tax credit if the time spent on therapy occurs during normal everyday activities. For this reason, Parliament specified that only time spent on activities that

require the individual to take time away from normal everyday activities in order to receive the therapy is included.

[97] The contextual scheme in ss. 118.3 and 118.4 further shows that Parliament established detailed and specific rules for individuals to be eligible for the disability tax credit. The legislative intent is neither to give the credit to everyone who suffers from a disability nor to erect a hurdle that is impossible for every person with a disability to surmount: *Johnston* at para. 10 citing *Radage* at p. 2528.

[98] As such, not all life-sustaining therapy will qualify under s. 118.3(1.1). And I do not need to determine the full scope of s. 118.3(1.1)(a).

[99] Although I am sympathetic to the impact that severe sleep apnea has on the appellant's life and recognize the challenges that sleeping with a CPAP mask creates for the appellant, I must find, based on the meaning of s. 118.3(1.1)(a), that the use of the CPAP device while falling asleep and while attempting to fall back asleep following a sleep disruption did not require the appellant to take time away from normal everyday activities in order to receive the CPAP therapy.

[100] Therefore, the appellant did not receive therapy that was required to be administered for a total duration averaging not less than 14 hours a week as required by s. 118.3(1)(a.1)(ii) and Condition 3 for eligibility is not satisfied. For this reason, the appellant was not eligible for the disability tax credit for the taxation years in issue, with the result that the appeal from the Minister's determination must be dismissed.

[101] In the circumstances, it is not necessary for me to consider the Crown's argument regarding "recuperation" in s. 118.3(1.1)(d).

VI. Conclusion

[102] The appellant's appeal is dismissed without costs.

Signed this 12th day of September 2025.

"Perry Derksen"

Derksen J.

CITATION:	2025 TCC 124
COURT FILE NO.:	2024-905(IT)I
STYLE OF CAUSE:	GEOFFREY P HALVORSON v. HIS MAJESTY THE KING
PLACE OF HEARING:	Kelowna, British Columbia
DATE OF HEARING:	August 21, 2025
REASONS FOR JUDGMENT BY:	The Honourable Justice Perry Derksen
DATE OF JUDGMENT:	September 12, 2025

APPEARANCES:

For the Appellant:	The Appellant himself
Counsel for the Respondent:	Steven Stechly

COUNSEL OF RECORD:

For the Appellant:

Name:	n/a
Firm:	n/a

For the Respondent:	Shalene Curtis-Micallef Deputy Attorney General of Canada Ottawa, Canada