



Eligibility of Persons with Impairments in Mental Functions for the Disability Tax Credit: What Qualified Persons Need to Know about Attesting to Eligibility

Many 'qualified persons'¹ are aware by now of the report and recommendations of the Technical Advisory Committee on Disability Tax (TAC) and the implications the recommendations have had upon legislation and the administration of the Disability Tax Credit (DTC). Following the 2004 recommendations of the TAC, the Canada Revenue Agency (CRA) had been administering the DTC in concert with those of the TAC recommendations that were approved by the federal government prior to the fall of 2005. Even with the change in government in the fall of 2005, the implementation of the recommended legislative changes, made by the TAC in 2004, proceeded in 2006.

One of the original charges to the TAC generated from the difficulties and inequities in assessing disabilities relating to psychological as compared to physical impairments. This article is intended as guidance to qualified persons who complete the T2201 on behalf of their patients, with impairment in mental function, who are applying for the DTC. Those of the implemented changes to the DTC that bear directly on impairment in mental functions are highlighted. We note that the T2201 form is available from the CRA website using the following link <http://www.cra-arc.gc.ca/E/pbg/tf/t2201/t2201-06e.pdf>. Those interested in reviewing the language of the Income Tax Act can go to <http://lois.justice.gc.ca/en/I-3.3/index.html>.

Changes to the DTC since 2004 as concerns impairments related to mental function

What follows is a summary of the comments and recommendations made by the TAC as concerns impairments in mental function, as well as the outcome of these recommendations.

Qualified persons will know that a person is eligible for the DTC if his or her impairment creates a marked restriction in the following activities: seeing, walking, dressing, feeding, speaking, elimination, or mental functions necessary for everyday life. A marked restriction means that the impairment is severe and prolonged and results in the person being unable to do the activity or results in the person requiring an inordinate amount of time to do the activity.

There has been considerable conceptual confusion, however, about what is and is not an 'activity'. Some of the disabilities which qualify for the credit are in fact 'functions' (i.e. seeing, hearing) and others are activities (e.g. feeding, dressing) which are dependent on functions (e.g. feeding and dressing depends on several inter-related neurological, cognitive, visual and motoric functions). None-the-less, the DTC retains all of its 'activities' as historically defined.

¹ A qualified person is one of the health professionals deemed qualified by the Canada Revenue Agency to attest to the health impairment of a person apply for the Disability Tax Credit. For the purposes of impairment in mental function, qualified persons include physicians and psychologists.

Thinking, perceiving, remembering becomes mental function: Prior to 2004, the 'activity' used to denote psychological or cognitive impairment was labelled 'thinking, perceiving, remembering'. The TAC judged that this label was inaccurate and confusing. Perceiving and remembering are aspects of cognition or thinking and 'thinking, perceiving, and remembering' do not obviously encompass potentially disabling disturbances in mood. For this reason, the TAC recommended that **impairments in thinking, perceiving, and remembering be renamed impairments in mental function and that is in fact the activity label used in the current T2201 form.**

In recommending that 'thinking, perceiving and remembering' be replaced by the 'mental functions necessary for everyday life', we defined the functions as memory (simple instructions, basic personal information, material of importance and interest), problem-solving, goal-setting and judgement, and adaptive functioning. Adaptive functioning includes those abilities related to self-care, health and safety, social skills and common simple transactions. In this way, any disorder related to mental functions which is severe and prolonged and restricts the mental functions necessary for everyday life as defined above, would obviously be eligible (e.g. affective and anxiety disorders, learning disabilities) and not just those defined by disturbances in thinking, perceiving and remembering (e.g. head injury, major mental illnesses, dementia).

No impairment, be it physical or mental, is ineligible for the DTC on the basis of a diagnosis alone: It is very important for qualified persons to keep in mind that **there is no disorder of mental function which renders a person categorically ineligible for the DTC.** Although it may be the case that some disorders may be, by their nature, less likely to result in a marked restriction in mental functioning as defined by the DTC than are other disorders, the CRA does not rule out eligibility on the basis of the type of disorder alone. For example, many persons with learning disabilities will not have a sufficiently marked restriction in the mental functions necessary for everyday life, as defined by the DTC, to qualify for the credit. However, if someone had a learning disability, attested to by the qualified person, that created a marked restriction in mental function (e.g. the learning disability was so severe that the person could not manage money sufficiently well to make a simple purchase or could not navigate streets signs to travel to a new location) then the person should be considered eligible for the credit.

Severe, prolonged impairments that are present substantially all the time while every one of the impairment's defining symptoms may not be: Although a mental illness might be severe, prolonged and present substantially all the time (an eligibility requirement of the DTC), all of its symptoms might not be. Confusion abounded about whether the disorder, or its defining symptoms, had to be present substantially all the time. For example, someone with a major mental illness is not constantly psychotic but the disorder might still create a marked restriction in mental function that is severe, prolonged and present substantially all the time (e.g. the person with a major mental illness, although not always psychotic, may be unable to attend to adaptive functioning because of depressed mood, unpredictability of decompensation, poor problem solving etc.) Consequently, we made the recommendation that **it is the disorder, and not each and every of its defining symptoms, that must be present substantially all the time. The disorder must none-the-less cause a marked restriction in function.** This recommendation was also implemented in administration of the DTC.

Many disabilities of a psychological or neurological nature have multiple symptoms which combine to restrict several activities even though each activity is not markedly restricted on its own. We recommended that **the cumulative effects of an impairment on multiple activities of daily living render a person eligible for the DTC even if there is not a marked restriction on a single activity independently.** For example, the motor problems, fatigue and depression of MS might combine to create restrictions in walking, dressing and mental functions. The sum total of these restrictions is marked even though the restrictions in walking, dressing and mental functions may not be marked on their own. This recommendation was changed in legislation and implemented in the administration of the DTC.

Outstanding issues as concerns the application of the DTC to mental functions.

With the work of the Technical Advisory Committee, the Disability Advisory Committee which succeeded it, as well as the hard work and commitment of the staff of the CRA assigned to the DTC file, we have seen significant and positive changes to the legislation and administration of the Disability Tax Credit. That being said, there is room for further improvement as detailed below.

Conjunctive interpretation of problem-solving, goal-setting and judgement: Whereas adaptive functioning and memory are mental functions which, when markedly restricted, can qualify a person for the DTC, problem-solving, goal-setting and judgment must all be markedly restricted in order to establish eligibility. Although it was the TAC recommendations that led to the inclusion of problem-solving, goal-setting and judgement among mental functions, it was never our intention that there must be a marked restriction in all three areas in order for a person to qualify for the DTC. A person with impairment in mood, for example, might be markedly restricted in the mental functions necessary for everyday life because he or she cannot solve problems or set goals but his or her judgment might be intact.

Strictly speaking, the person in the foregoing example would not qualify for the DTC. However, it **is important for the qualified practitioner to understand that if a person has impaired problem-solving, goal-setting or judgment (one, two or all three of these), they will likely also have impaired adaptive functioning and, hence, may qualify for the DTC on that basis.** That being said, we continue to treat persons with impairments related to mental function unfairly if we set up more stringent criteria for eligibility for them than we do for persons with physical impairments. For example, we do not require that a person with an impairment in walking be neurologically as well as motorically impaired. We require only that they have a marked restriction in walking, however caused. However, we do require that a person with an impairment in mental functions be impaired in problem-solving, goal-setting and judgment.

Activities and qualified practitioners: The latter assertion raises another issue for future consideration by the DTC. A person might be markedly restricted in dressing because of a brain injury or disorder. In this case, does the qualified person have to be expert in diagnosing the brain disorder (e.g. a physician or psychologist) or the dressing (a physician or occupational therapist)?

Disbandment of DAC: One of the recommendations of the TAC was that the CRA develop a Disability Advisory Committee (DAC) to aid in the implementation of administrative changes to the DTC. In the fall of 2005, the DAC was formed and became operational under the co-chairship of

Mr. Peter Weissman (tax professional) and Ms. Barbara Slater (CRA). Unfortunately, upon direction of the Minister of the CRA, the DAC was disbanded in the fall of 2006. With the disbandment of the DAC, the formal opportunity for professional input (e.g. from the health professionals, tax professionals, consumers and consumer groups, lawyers) into the fair administration of the DTC has been curtailed. Although CRA staff continue to seek informal input from former members of the DAC about the DTC and the T2201, there is no longer a formal mechanism to redress outstanding issues or concerns such as the unfair conjunctive interpretation of problem-solving, goal-setting and judgment.

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