



The DTC and Other Supports to Families

November 20, 2001

Appearance before the Sub-Committee on the Status of Persons With Disabilities of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities

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Introduction:

Many families across Canada struggle to meet day-to-day costs for the basic needs of their dependants. Families who care for a person with disabilities have all the financial issues other families do, as well as the additional out of pocket expenses that are required in order to properly care for a person with disabilities. One avenue that the government uses to help alleviate some of the financial strain for these families is through the tax system. The Income Tax Act offers provisions to ensure that persons with disabilities and their families are treated equally and fairly under Canada's tax system. The Disability Tax Credit (DTC) provides a fixed credit to the individual who has "a severe and prolonged mental or physical impairment" to the extent that it "markedly" restricts the individual's "ability to perform a basic activity of daily living" (Income Tax Act, 118.3). As of 1999, there were over 400 000 Canadians receiving the DTC.

Recently, a form letter was sent by the Canada Customs and Revenue Agency (CCRA) to approximately 75 000 Canadians who had been previously registered for the DTC. The letter requires these individuals to re-register for the DTC in order to continue to receive the tax credit. CCRA claims it is conducting a standard revenue check. The restrictive nature of this revenue check is indicative of the overly administrative manner CCRA has handled the DTC. Undoubtedly, thousands of Canadians will be cut from DTC assistance as a result of this latest action. Many of those who will be cut from DTC funding will still be in need of the tax credit. Resources should be made available for those who depend on them.

The Needs of Families and Individuals:

It is the accumulative indirect and direct medical cost for people with disabilities that put them and their families in a position where they struggle to pay for other basic needs such as rent and food. In 1991, 34 per cent of adults with disabilities incurred out-of-pocket expenses that were not reimbursed by any public program or private plan. A 1991 Department of Finance study entitled “Disability Tax Credit: Evaluation of Recent Experience” found that individuals with disabilities incurred approximately \$1, 160 in annual out of pocket expenses.

The Roeher Institute research has found, on the basis of the General Social Survey Cycle 11, that 2.253 million people helped family members with everyday tasks because of disability in 1996. Of those who provided help, 1.658 million reported the amount of time they invested in the reference year in providing such help. Of these 1.658 million people, an average of 316 hours of help per year were invested in helping. The total value of the help provided by family members in present dollars is about 8.3 billion. Well over a million of these people had additional out of pocket expenses as a result of helping family members with disabilities. Of these individuals, 358 000 said that increased measures of financial relief would be welcomed.

One father of a child with disabilities bluntly listed the hardships he and his family have undergone due to the lack of supports (financial or otherwise) available for his son:

“Can’t work; Sold house; Had medical expenses disallowed by Revenue Canada.”

Christine LeClair of Ontario, a mother of a child with disabilities, wrote the following to CACL: “Low income families or families on Social Assistance who are not living in Ontario housing, and have a special needs child should be supplemented as their rent increases.” She urges that the government should, “make more funding available to those on social assistance who have a special needs child.” There are hundreds of thousands of families in Canada that are struggling to come up with the financial means to offer their children a normal life. The need is there

The Disability Tax Credit and Eligibility:

The DTC form states that “a severe mental or physical impairment which causes you to be **markedly restricted** in any of the **basic activities of daily living**, and the impairment is **prolonged**” is the eligibility outline for receiving the DTC. “Markedly restricted” is defined as “if all or almost all the time, you are unable (or it takes you an extremely long time) to perform a basic activity of daily living, even with therapy (other than life-sustaining therapy) and the use of appropriate devices and medication.”

The DTC form continues to outline the following Basic activities of daily living:

- Walking
- Speaking
- Perceiving, thinking, and remembering
- Hearing
- Feeding and dressing
- Eliminating bodily waste

It has been the practice of CCRA to interpret the criteria outlined in the Income Tax Act in a heavily restrictive manner. The 2001 form, which has further restrictive amendments, will only narrow the scope of the credit, which will thus render ineligible a vast number of persons with disabilities whose circumstances which caused them to need the DTC have not changed. The increasingly restrictive interpretation by CCRA of DTC eligibility is alarming. In stark contrast, the courts have adopted a liberal approach to interpretation of the DTC emphasizing need-based rationale instead of being caught up in

the administrative problems that seem to engulf CCRA. The Supreme Court has strongly criticized CCRA on several occasions with regards to its bureaucratic treatment of the DTC eligibility process. David Duff's paper "Disability and the Federal Income Tax Act" provides several examples where the court has found the CCRA to be inappropriately using its administrative position to misinterpret the policy outlined in the Income Tax Act. The policy that exists in the Income Tax Act is clearly being interpreted unfairly by CCRA.

Families Struggle with DTC Eligibility:

Although the courts generally decide favorably for the complainant in DTC cases, not every family or individual has the resources, whether financial or otherwise, to undergo the full process of appeal.

One mother with a son with Fetal Alcohol Syndrome described her struggle in trying to attain the DTC for her son. Her son has periodic fits of erratic and violent behavior that results in a great deal of property damage both to his family and to others, that is incurred as an out of pocket expense. She says her son cannot be left alone as he is unable to take care of himself. The woman's family doctor, someone who understood the needs of the child and the family, filled out the DTC form in good faith to medically certify the woman's claim. The CCRA agent with whom she spoke with on the phone told her not to even send in the form because her son was able to care for himself, according to the CCRA's rigid interpretation of the eligibility guidelines. The family may have a good case against the CCRA, but the boy's mother expressed a sentiment that is all too common amongst family members caring for someone with a disability. She said: "It is just another fight that I do not need. I have enough on my plate to deal with without worrying about the DTC." The woman has very strong connections to her local ACL; she is informed about the issues, but as a mother, she just simply does not have it in her to take on yet another fight.

In some cases people decide to fight. These situations are usually exceptional in terms of the access the family has to a tax lawyer, an accountant, or someone else who knows the

system well. CACL received the following e-mail message from a member of our Alberta office last week: “I just had a conversation with a fellow in Devon who indicated that he was a retired senior investigator for Revenue Canada. A few years ago his 30-year-old son had a severe brain injury that rendered him unable to take care of himself. He tried applying for the tax credits (DTC) around disability and, of course, was turned down. With his experience and knowledge of the system, he was incensed and has decided to fight it. He indicated to me that most applications for this simply get dropped because the applicants (tax payers) get tired of the fight and stop and that's what Revenue Canada is hoping for. It's a cost saving measure according to him – ‘make the fight difficult and they will back down and it's one less that we have to approve’.”

Conclusion:

The eligibility restrictions that state that “only if all or substantially all of the time, even with therapy, medication, or a device, you patient cannot perceive, think, and remember” does not seem to be a restriction that best considers the need of the person applying for the credit. It is not only families and advocacy groups that have trouble with the DTC forms. Many doctors see the form as ill suited for assessing the needs of a person with disability. One doctor said that he filled out DTC forms with his patients, so that he can get a better understanding of the true nature of the needs of his patients. The needs of people with disability often times, go beyond the black and white format presented in the DTC form. The DTC is designed to make the lives of persons with disabilities a little bit easier. The administrative process of the DTC should reflect the social policy platform it was meant to represent.