

Disability Tax Credit (DTC): Case Studies

A number of case studies are attached to provide information regarding the:

1. difficulties with the interpretation of the questions in the T2201 form by health professionals;
2. concerns about the efficiency of the T2201 forms when additional information is requested from health professionals in approximately 25 % of the claims;
3. concerns about the questions in the supplementary questionnaire sent to doctors for medical clarification;
4. inconsistencies in the administration of the DTC; and
5. inconsistencies in the appeal process.

Most of the individuals in the case studies were part of a mass audit conducted by Canada Customs and Revenue Agency (CCRA) in September/October 2001. CCRA sent letters to 106,000 Canadians with disabilities who received the DTC prior to 1997, asking them to requalify for the DTC by having a health professional complete a new T2201 form. The letter states the following: “After reviewing your file we’ve determined that we do not have enough information to continue to allow your claim for the 2001 and future years.”

The disability community was outraged. “This is a hunting expedition of the lowest form. It scares and intimidates people... this is extremely painful to people with disabilities to be continually trying to hold onto their eligibility for something they have no control over.”¹

CCRA officials testified² that the audit was based on a pilot project conducted in 2000 indicating that the documentation of many of the individuals receiving the DTC did not support their entitlement. Mr. Alain Jolicoeur, Deputy Commissioner for CCRA explained: “During the 12-year period between 1985 and 1996, clients who applied for the DTC were accepted on assessment. Subsequently, a small percentage were selected for post-assessing review.”

However, there were major revisions to the T2201 form in the 1990s and the wording of some of the questions and examples have become increasingly more restrictive. As a result, approximately 20,000 claims were denied for individuals who previously received the DTC. “From our experience, 100% of the new applications for this form with people with schizophrenia have been rejected.”³ Another 36,000 individuals did not file a new T2201 form. “Many psychiatrists report anecdotally, that the criteria, as presented in the instructions to the form T2201, mean that their patients do not qualify, regardless of the severity of their illness.”⁴

¹ Colin Cantile, Canadian Hard of Hearing Association, hearing held on December 4, 2001 by the Subcommittee on the Status of Persons with Disabilities

² Hearing held on December 11, 2001

³ Len Wall, Schizophrenia Society of Canada, hearing held on November 27, 2001

⁴ Dr. Blake Woodside, Canadian Psychiatric Association, hearing held on January 29, 2002

Coalition members are concerned that the current DTC form does not accurately assess the functional limitations that are a result of devastating and destructive mental and physical impairments. Many individuals with severe and prolonged disabilities are also discriminated against when they struggle to be as independent and self-supporting as possible. Coalition members believe that attention must be paid to the physical, emotional, psycho-social and financial aspects of disabling impairments in order to evaluate these individuals fairly and equitably.

When severely impaired individuals are denied the DTC, they feel assaulted and further marginalized within the disability community because a CCRA clerk has decided they are not eligible. Regardless of the impairment, a common response in the letter disallowing the DTC is the following: “Based on our review of your Form T2201, ‘Disability Tax Credit Certificate,’ there is no indication that you are markedly restricted all or substantially all of the time.”

Even when the T2201 form is properly completed and certified by the health professional as required by the legislation and CCRA guidelines, too many persons with severe and prolonged disabilities are denied the DTC. More often than not, these individuals are not provided with any further details than the standard explanation for all impairments and therefore, they are at a significant disadvantage when appealing the decision.

Most Canadians with disabilities are simply too discouraged to appeal. Furthermore, persons with serious mental impairments do not always have the intellectual capacity or the mental stamina to pursue a reassessment of their claim. “Appeal rights... (are) an uphill battle for most individuals and families...tax court... many people...find this just too daunting a prospect and won’t try.”⁵

⁵ Harry Beatty, ARCH, hearing held on November 20, 2001

Case Studies

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(Please note: pseudonyms have been used for all case studies to protect identities of the individuals who have given permission to the Coalition to share their experiences.)

Case Study

Name: Alice

Age: 69

Claimant: Daughter

Diagnosis: Alzheimer's disease and dementia

Basic activity of daily living markedly restricted: Perceiving, thinking and remembering

Tax years DTC received: N/A

Tax year appealed: 2000

Reason for rejection:

“Based on our review of Form T2201, ‘Disability Tax Credit Certificate,’ there is no indication that you were markedly restricted all or substantially all of the time.”

Summary:

The T2201 form was correctly completed by the doctor and all of the appropriate boxes were checked to certify the claim. The diagnosis indicates that Alice's mental functions are severely impaired by the disease. The doctor also indicated that Alice had been markedly restricted since July 2000.

Follow-up:

The claim was subsequently reviewed by CCRA and the DTC was allowed. However, no one at CCRA was able to explain why Alice's claim was denied initially except for the fact that “it fell through the cracks.”

Case Study

Name: Fran

Age: 51

Claimant: Self

Diagnosis: Bipolar affective disorder – rapid cycling

Basic activity of daily living markedly restricted: Perceiving, thinking and remembering

Tax years DTC received: 1992 to 2000

Tax year appealed: 2001

Reason for rejection:

“Although we do not question the seriousness of your medical condition, based on your doctor’s response to our letter... you do not meet the criteria for the disability amount.”

Summary:

Fran’s doctor ticked the “yes” box responding to the question, “Can your patient perceive, think and remember?” However, he put an asterisk beside the box indicating that the question may not be appropriate and noted on the next page that Fran had been “markedly restricted in a daily activity” since she was 28 years old.

Fran’s sister filed a Notice of Objection on her behalf. Subsequently, Fran’s doctor was sent a questionnaire for “medical clarification.” He was very specific in his description of the disabling impacts of Fran’s mental illness. The CCRA appeal’s officer admitted that he had no knowledge about mental illnesses, such as bipolar affective disorder. Instead, he relied on the doctor’s “yes” and “no” responses to questions, such as “Could your patient go out in the community on her own?” and “Did your patient understand the concept of danger?” Many of the questions were more appropriate for persons with cognitive and neurological disorders than a serious psychiatric illness. The appeal’s officer believed Fran did not qualify for the DTC since she could go out on her own. He refused to reassess the claim unless her doctor provided further details to substantiate the severity of her illness.

Follow-up

Fran’s doctor reluctantly agreed to write a letter but he stated the following: “Fran has been severely disabled by her illness... She has marked mood reactivity to life environments and as a result, has great difficulty functioning independently and competently in everyday life. Even with aggressive pharmacology and psychotherapy, of individual and group modalities, she remains symptomatic and has difficulty managing her life and maintaining her function.”

When the appeal’s officer disregarded the doctor’s letter, Fran’s claim was brought to the attention of the Minister of National Revenue and the DTC was allowed from 2001 to 2006.

Case Study

Name: Rob

Age: 52

Claimant: Self

Diagnosis: Chronic paranoid schizophrenia

Basic activity of daily living markedly restricted: Perceiving, thinking and remembering

Tax years DTC received: 1993 to 2000

Tax year appealed: 2001

Reason for rejection:

“As Department officials are not qualified to make medical determinations, the *Income Tax Act* requires that a medical doctor/physician is responsible for certifying, on a form T2201, if one meets the requirements of Sections 118.3 and 118.4 of the *Act* before an individual may claim a Disability Credit.

“The T2201 original, signed by Dr. B. January 31, 2002 answered ‘YES’ to all questions #1 through #8 (including, ‘Can your patient perceive, think and remember?’). Consequently, though your brother suffers from a severe impairment, for purposes of paragraph 118.3(1)(a) of the *Act*, Dr. B. has certified however, that the impairment does not restrict his ability to perform the basic activities of daily living as required by paragraph 118.3(a)(a.1) and as defined by paragraph 118.4(1)(c) of the *Act*.”

Summary:

Rob was severely disabled for more than 10 years by his mental illness. During that period of time, there were many setbacks and hospitalizations. He was incapable of taking care of both his personal and financial affairs due to his mental disability.

CCRA disregarded the fact that Dr. B. placed an asterisk beside the question “Can your patient perceive, think and remember” and another asterisk when he checked the “yes” box indicating that his patient’s “marked restriction in a basic activity of daily living has lasted or is expected to last for a continuous period of at least 12 months.”

Rob’s sister filed a Notice of Objection, appealing on the basis that her brother, like Mr. Buchanan (*Attorney General v. James Buchanan*), was “unable to perform the necessary mental tasks required to live and function independently and competently in everyday life.” CCRA disregarded the Federal Court of Appeal ruling and refused to reassess the claim.

Follow-up

Rob’s condition continued to deteriorate. On October 16, 2002 at 3:00 a.m., he ended his life by jumping off an overpass in Brampton onto Highway 410. CCRA refused to accept the fact that Rob’s suicide was an indication that he was severely impaired by his mental illness.

Case Study

Name: Susan

Age: 18

Claimant: Father

Diagnosis: Left hemiplegia (hydroencephalus - water on the brain)

Basic activity of daily living markedly restricted: Perceiving, thinking and remembering

Tax year DTC received: 1998

Tax years appealed: 1986-1997

Reason for rejection:

Although the T2201 form was completed correctly with all of the appropriate boxes checked to certify eligibility for the tax credit, the appeals officer disregarded the certification by the doctor. Instead, he focused on the responses to the questions in the supplementary questionnaire. In his letter to Susan's father, he stated that her claim was denied because: "According to the medical clarification (questionnaire), Susan... was unable to think, perceive and remember, even with the use of therapy (only) 5% of the time."

Summary:

Susan is developmentally delayed and is unable to live independently because she requires constant supervision. She is unable to grasp the concepts of danger, managing money and cooking. She also has difficulties dressing herself and is unable to make her own bed. At school, she requires an educational assistant and has a modified study program.

When Susan became eligible for the DTC in 1998, an accountant informed her mother that she could request the DTC for the years from 1986 to 1997 under CCRA's Fairness Provision.

A supplementary questionnaire was sent to the neurosurgeon (who completed the T2201 form). However, he was not the appropriate medical professional to answer the more detailed questions for medical clarification because he did not see Susan on a regular basis. Furthermore, he had not treated her during her infancy and therefore had no knowledge of her mental functions at that stage of her life. Just the same, he answered all of the questions, including, "*For the years 1986 to 1999, what percentage of time was your patient UNABLE to think, perceive and remember, even with the use of medication of therapy?*" The doctor's response of 5% did not meet CCRA's accepted guideline of 90%.

Follow-up:

The claim was subsequently reviewed by CCRA and the DTC was allowed for the taxation years 1986 to 2001. Susan will not be required to file T2201 forms in the future.

Case Study

Name: Peter

Age: 53

Claimant: Self

Diagnosis: HIV/AIDs

Basic activity of daily living markedly restricted: Perceiving thinking and remembering; bowel functions

Tax years DTC received: 1990 - 2000

Summary:

Peter suffers from fatigue, anxiety, depression (has been hospitalized because he was suicidal) and residual neurological deficit (can no longer function at work because his cognitive functions have been affected). He also has severe asthma and occasional fecal incontinence. His condition will continue to deteriorate. However, Peter's doctor refused to complete the revised T2201 form. The doctor did not feel that Peter met the eligibility criteria as it was presented in the current T2201 form.

Follow-up

Peter sought out a HIV/AIDs specialist in another city who was willing to complete the T2201 form for him. The DTC was re-instated.

Case Study

Name: Murray

Age: 57

Claimant: Self

Diagnosis: Amputee – lost his arm due to a logging accident 27 years ago.

Basic activity of daily living markedly restricted: Ability to feed and dress oneself

Tax years DTC received: 1986 to 2000

Tax year appealed: 2001

Reason for rejection:

“Based on our review of your Form T220, ‘Disability Tax Credit Certificate,’ there is an indication that you can perform the basic activities of daily living without needing an extremely long time.”

Summary:

Murray wears a prosthetic device and is able to continue to drive his vehicle and work although in a different capacity than prior to his accident. Murray also suffers from depression and takes medication in order to function well enough to continue working.

Follow-up:

Murray wrote a very impassioned letter to the Fairness Committee at the regional Tax Services Centre and as a result, the decision to deny the credit was reassessed.

Case Study

Name: Harry

Age: 47

Claimant: Self

Diagnosis: Above the knee amputation

Basic activity of daily living markedly restricted: Walking

Tax years DTC received: 1991 to 2000

Tax year appealed: 2001

Reason for rejection:

“We cannot allow your claim for the disability amount. Based on our review of your Form T2201, ‘Disability Tax Credit Certificate,’ and the additional information provided by your doctor, there is an indication that you can perform the basic activities of daily living without needing an extremely long time.”

Summary:

In 1981, Harry’s leg was amputated above the knee to prevent the spread of sarcoma in his ankle and he was fitted with a prostheses. When he moved to Canada in 1991, he qualified for the DTC. At the time, persons with a prosthetic leg automatically qualified for the DTC.

In the supplementary questionnaire for medical clarification, the doctor is asked the following question: “Could your patient walk 50 metres on level ground, with rest periods, using a device if necessary?” However, there is nothing in the T2201 form about “rest periods.” The question in the T2201 form reads as follows: “Can your patient walk? Answer no only if, all or almost all the time, even with therapy, medication or a device, your patient cannot walk 50 metres on level ground, or he or she takes an inordinate amount of time to do so.”

Follow-up:

Client sent a FAX message to the DTC Unit at the regional Tax Services Office inquiring about the legitimacy of some of the questions because they clearly misinterpret the legislation of the *Income Tax Act* and disregard rulings in a number of Tax Court cases (*Conner v. The Queen 1995*; *Murphy v. The Queen 1995*; and *Jeanlouis v. The Queen 1995*). Harry is still waiting for a response.

Case Study

Name: Roger

Age: 56

Claimant: Self

Diagnosis: Multiple sclerosis (MS)

Basic Activity of Daily Living markedly restricted: walking

Tax years DTC received: 1997 to 2000

Tax year appealed: 2001

Reason for rejection:

Roger received a letter from CCRA telling him he no longer qualified for the DTC because the doctor had indicated on the T2201 form that Roger is capable of walking 50 metres.

Summary:

Although Roger's primary disability is walking, his doctor checked "YES" to the question "Can your patient walk?" The form did not provide an opportunity for the doctor to explain that his condition is severe and prolonged even though it may fluctuate within a period of time, as is typical of MS. Sometimes Roger can walk 50 metres, but not all the time. Also, he covers that distance very slowly with periods of rest. Fatigue as well as balance problems impede his ability to walk. He also cannot climb stairs. As Roger pointed out, "life doesn't happen on level ground."

Follow-up

With the help of an MS neurologist, Roger provided documentation detailing how his disability is severe and prolonged even though his ability to walk varies from day to day. Roger was also able to document how MS fatigue severely impacts all aspects of his life even though it is an "invisible" disability. The DTC was re-instated.

Case Study

Name: Lorena

Age: 54

Claimant: Self

Diagnosis: Rheumatoid arthritis, osteoporosis

Basic Activity of Daily Living markedly restricted: Walking, dressing, feeding oneself.

Tax years DTC received: 1992 - present

Tax years appealed: 1992 to 1996 in the Tax Court of Canada.

Reason for rejection:

Lorena believes she was rejected after a post-assessment review because she was working.

Summary:

Lorena was diagnosed with adult-type Rheumatoid Arthritis at age 19. It is an aggressive and progressive disease with poor response to prescribed medication. Lorena has also had a partial knee replacement in 1985. Lorena has difficulty with most activities that require fine motor movement and strength, good balance and physical agility such as lifting, reaching, opening jars, turning taps, keys and door knobs and vacuuming.

Lorena applied for the DTC in March 1993. Her physician described her condition as severe with progressive joint destruction and generalized dysfunction, and associated fatigue, as well as severe, progressive osteoporosis. The DTC was granted. In June 1994, Lorena attempted to claim the DTC for previous years, because her activities of daily living had been largely affected for more than two decades. Her request was referred to the Disability Advisory Services (DAS) of HRDC to reevaluate the medical information for 1992 and 1993. Additional medical information was requested from her doctor.

On the basis of the recommendation by DAS, Revenue Canada disallowed the DTC for the 1992 and 1993 taxation years. Lorena had also applied for the DTC for the 1994 taxation year and it was denied as well. She was asked to pay back the previously granted DTC (total \$3835.65) and the disallowed DTC claim for 1994. Lorena filed Notice of Objections for both claims and continued to receive notices for back-payment. Revenue Canada also requested that her wages be garnisheed.

Lorena successfully appealed to the Tax Court of Canada in April 1996. However, she says that it was a “humiliating, upsetting, demeaning and exhausting experience.

In 2001, Lorena received a letter asking her to requalify for the DTC. She called CCRA enquiring about the review because she had already appealed to the Tax Court of Canada. After Lorena submitted information regarding the court ruling, the DTC was allowed.

Case Study

Name: Sharon

Age: 31:

Claimant: Self

Diagnosis: Learning Disabilities, AD/HD – Combined Type

Basic activity of daily living markedly restricted: Perceiving, thinking, and remembering

Tax years DTC received: none

Tax year Form T2201 filed: 1997

Reason for rejection:

“Your claim for a disability amount for yourself was not supported by Form T2201...”

Summary:

The family’s experience of dealing with CCRA was very negative and the claimant’s family did not appeal. The doctor did not properly complete the T2201 form. He did not check the “mental functions” box indicating that Sharon is “markedly restricted” but stated, “see letter from Sharon’s mother,” supporting her description of the disabling impacts of her daughter’s learning disability. The doctor did not check the “YES” or “NO” box to the question, “Can your patient perceive, think and remember?” Instead, he underlined the areas where the patient has difficulties, including personal care and once again stated, “see attached letter.” There is no indication that the information in the letter was taken into consideration.

Sharon is a young woman, of average intelligence but she has had a very difficult life, including: a pre-natal history of drug and alcohol use; adoption; school struggles both before and after her diagnosis of learning disabilities; sexual abuse/rape while still in elementary school; depression; and self destructive social behaviour.

Although Sharon is capable of many activities including shopping, housekeeping, carrying on a conversation and dating, she has severe limitations and requires considerable support and supervision in everyday affairs. Sharon is not able to manage her finances and spends money impulsively rather than allocating the required amount of funds for rent, bus passes and groceries. She can tell time (i.e. read a clock) but has major problems with concepts of time such as: how early do you have to leave home to get there by bus? She has a severe short and long-term memory dysfunctions and can't remember appointments. She has a severe disability in the written language and mathematical concepts.

Sharon has great difficulty getting organized, getting started on work-related tasks, sustaining attention to work-related tasks, managing and controlling her mood, and memorizing or recalling learned materials. As a result, she has had a very difficult time finding and retaining employment. In 1997, she had and lost three jobs and started and discontinued post-secondary job training.