

A FAIR AND EFFECTIVE DISABILITY TAX CREDIT

**MULTIPLE SCLEROSIS SOCIETY OF CANADA
SUBMISSION TO THE TECHNICAL ADVISORY COMMITTEE**

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**Multiple Sclerosis
Society of Canada**

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Introduction

The Disability Tax Credit (DTC) is an Income Tax Act provision which recognizes, by providing a tax credit, the extra costs of living that are incurred by persons with disabilities. The DTC is a valuable component of the Government of Canada's measures to support persons with disabilities. It is especially valuable in that it assists many people who work to support themselves. Unlike the Canada Pension Plan, which provides support when work is not possible, the DTC plays an important facilitating role for disabled Canadians who continue to live independently, support themselves through employment and contribute to the economy.

While the DTC is simple in principle, it has proven complex and confusing in application. The Multiple Sclerosis Society of Canada (MS Society) believes that interpretations of the Act and criteria used to determine eligibility are overly restrictive leading to ineligibility for many who merit access to the DTC.

The MS Society is committed to working with the Government of Canada to improve the clarity and accessibility of the DTC to ensure it meets the objectives of supporting Canadians with disabilities.

The Technical Advisory Committee on Tax Measures for Persons with Disabilities

The MS Society welcomes the establishment of the Technical Advisory Committee on Tax Measures for Persons with Disabilities. The Committee has an outstanding opportunity to take a broad and comprehensive look at the DTC and to make recommendations to ensure it more properly meets its stated goals in future years.

We are encouraged that the Committee has an 18-month timeframe to complete its work. This provides time for a thorough review. We urge the Committee to look to first principles and objectives of the DTC to inform its recommendations rather than necessarily working within the parameters of the current legislation and methodologies.

The DTC and the Multiple Sclerosis Society of Canada

The MS Society is a member of the Coalition for Disability Tax Credit Reform, a group of individuals and organizations working on behalf of Canadians with disabilities to improve the disability tax credit program. We will continue to work with the coalition as

a primary form of expressing the needs of the MS community with respect to DTC. The MS Society is very pleased to endorse the issues, concerns and solutions that are addressed in the chart that has been presented already by the coalition to the Technical Advisory Committee. We attach it to our submission for your convenience.

The MS Society has been pleased as well to participate in the consultation held this spring to address specific aspects of the DTC application form (T2201). This has been a useful process, and we feel that we have been able, along with other health organizations and health care professionals, to provide constructive and meaningful input. We hope our contribution during the consultation will lead to a more accessible and user-friendly form. We look forward to the next stages of this process.

Unique Characteristics of Multiple Sclerosis

There are disability characteristics that are common to individuals with Multiple Sclerosis and which are not well addressed in the structure and function of the DTC. We are pleased to have the opportunity to better explain the unique characteristics of MS and the challenges they pose in the DTC context to help inform the Committee as it begins its review. To assist in this, we have included several profiles of individuals to illustrate the types of difficulty that people with MS have encountered with the DTC.

Multiple sclerosis is an often disabling disease of the central nervous system that usually strikes young adults. Studies indicate that Canada has one of the highest rates of MS in the world. An estimated 50,000 Canadians have MS. While MS has been diagnosed in children as young as four and in adults who are over 60 years of age, the average age of diagnosis is 30 – just when people are beginning careers and starting families. The effects of MS can be devastating to them and to their families, partially because MS is unpredictable in the way that it will progress over time and how it will affect people on a day-to-day basis. Periods of spontaneous recovery are interrupted by unpredictable attacks that over time result in most people with MS becoming disabled – unfortunately, many severely.

Most people with MS are eventually unable to work full-time because of increasing progressive disability. In 1991, 44% of adults with disabilities (aged 15-44) were not part of the labour force. With MS, however, this is significantly higher. Seventy per cent of people with MS are not working 5-10 years after they are diagnosed.

DTC Issues Related to Multiple Sclerosis

1. ‘Intermittent’ or ‘episodic’ disabilities

Once diagnosed with MS, the individual will live with the disease for the rest of their life. However, the affects of the disease are often ‘episodic’ in nature. While MS often causes severe disability – such as tremor, problems with balance, spasticity, severe fatigue,

cognitive impairment and paralysis – MS is also unpredictable. This means that those symptoms which make walking a city block so difficult may unpredictably improve over a period of time and then just as unpredictably worsen. Or a person with MS may be able to walk – albeit with an aid such as a cane or walker – in the morning, but in the afternoon be so unsteady that he or she cannot manage the same distance without a great deal of time.

Profile 1

A Nova Scotia man had received the disability tax credit for four years. He has difficulty walking even with a cane and experiences severe fatigue because of MS. His MS has not improved. In 2001 he received a letter from CCRA requiring that his doctor fill out a new form so he could continue to qualify for the DTC.

Unfortunately, his doctor checked “yes” to the question of whether he could walk 50 metres on level ground. He can sometimes walk that far, but not all the time, and with periods of rest. He also cannot climb stairs. As he pointed out, “life doesn’t happen on level ground”—the phrase that was on the DTC application form he was required to fill out.

Because of the checkmark on the form, he received a letter from CCRA telling him he no longer qualified for the DTC. He appealed the ruling and provided documentation with the help of an MS neurologist detailing how his walking problems are severe and prolonged even though they may fluctuate from time to time. He also was able to document how MS fatigue severely impacts all aspects of his life even though it is an “invisible” disability.

The form that the first doctor filled out did not provide an opportunity to explain that his condition is severe and prolonged even though it may fluctuate unpredictably within even short periods of time, as is typical of MS.

DTC Issue

Section 118.3 of the Income Tax Act says that an individual may qualify for the disability tax credit if their impairment is “severe and prolonged”. Section 118.4 defines ‘prolonged’ as “has lasted or can reasonably be expected to last, for a continuous period of at least 12 months”.

An interpretive bulletin prepared by the Canada Customs and Revenue Agency declares “intermittent impairments are not considered prolonged.”

This wording in the legislation and subsequent interpretation have the effect of barring legitimate cases from receiving the disability tax credit and easing the extra costs of having a severe disability.

This issue was also closely reviewed by the House of Commons Committee reviewing the Canada Pension Plan disability provisions. The Committee recommends that the terms severe and prolonged “be amended to take into account cyclical and degenerative mental and physical conditions.”

Solutions

The Income Tax Act should be amended to remove the “continuous period of at least 12 months” condition of eligibility. CCRA interpretive information should also be amended.

DTC criteria must provide enough flexibility to allow individuals with intermittent but severe disability to have their degree of impairment assessed.

2. Severe Fatigue

While MS affects individuals in a myriad of different ways, virtually all people with MS experience severe and debilitating fatigue. In many cases, it is this chronic exhaustion, and not the other physical disabilities associated with the disease that poses the biggest challenge to daily life.

Profile 2

A Saskatchewan man applied, and was turned down for the disability tax credit. He was judged not to be sufficiently disabled to qualify for the DTC. He appealed the ruling in a letter in which he described how multiple sclerosis had impacted his life.

He wrote that MS has affected his life drastically in all aspects. His life used to revolve around work and sports of all kinds. After developing MS, he has severe fatigue and has no energy to carry out simple activities of daily living. Severe depression is also a major problem. He takes antidepressants, sleeping pills and medication to help control tremours. Even taking a shower is hard because of his lack of balance.

He faces additional expenses because he can no longer take the bus and must take taxis whenever he travels outside his home. He can no longer

do simple yard work and has to hire someone to mow the grass and do other gardening.

He receives CPP disability benefits as he had to quit work in 1989 because of MS. He was shocked when he was deemed ineligible to receive the DTC: "I feel humiliated and depressed having to write down this process and trying to answer your questions. My doctor is frustrated with filling out more forms instead of treating patients."

Fortunately, upon appeal he has now learned that he will receive the DTC and it will be retroactive for the time he was disallowed the credit. He still cannot understand why he was disqualified in the first place, since his MS has not changed in the past few years.

He was judged not to be "severely" disabled despite the fact that MS has negatively impacted all of his activities of daily living as well as the many additional costs associated with his balance and fatigue problems.

DTC Issue

Fatigue is not directly measured in the 'daily life' tests for DTC eligibility. It is not uncommon for people living with MS to meet the discrete 'daily living' tests, which are highly specific and adjudicated independently of one another, and yet face severe challenges with daily living in the real world.

This points to the need for flexibility in interpretation and more knowledge among those adjudicating applications. As has been pointed out in repeated comments before the Parliamentary committees, eligibility needs to be based on the impact a disability has on an individual, not on a diagnosis of a specific disability or a set of imperfect questions on the application form. Fatigue is not a disease, but it is a common and debilitating aspect of MS.

Solutions

The 'activities of daily living' tests are too specific and discrete to properly measure an individual's capacity to manage daily living. They should be evaluated together.

3. Interpretation

The MS Society is aware of how important a well-informed CCRA staff is to the appropriate assessment of people with disabilities and the administration of the DTC. This is particularly vital in dealing with diseases such as MS which have a multitude of

symptoms and an unpredictable episodic course which can vary greatly from person to person.

DTC Issue

The CCRA has the responsibility for administering the DTC. To carry out these duties effectively, CCRA staff must have access to appropriate training and resources. Staff should also be made aware of the various important court decisions (such as *Villani v. The Attorney General of Canada*) which have emphasized that benefits-conferring legislation ought to be interpreted in a broad and generous manner and that any doubt arising from the language of such legislation ought to be resolved in favour of the claimant.

This point has been highlighted in the recent study of CPP disability done by the Commons Committee on the Status of Person with Disabilities. Anna Mallin, a member of the CPP Review Tribunals is quoted in the report as follows (page 41 of CPPD report):

“The diagnosis names an illness; it doesn’t tell you what the effect of it is. Indeed, one of our other recommendations is to encourage the department to do much more in that way of providing information on functional capacities evaluation, functional abilities tests, etc. We need more information that focuses on a person’s capacity to function, as opposed to a diagnosis of illness”.

These comments apply equally to the Disability Tax Credit.

Solutions

CCRA administration must continue to train its staff and provide up-to-date training and resource materials. The MS Society would be pleased to assist with the training of CCRA staff about particular aspects of multiple sclerosis.

4. DTC as a Refundable Credit

The disability tax credit is currently non-refundable. It is applied against and thus reduces taxable income. This means it does not assist people who do not have taxable income or dependants of individuals without taxable income. People with disabilities – including many people with MS – generally are in the lowest income levels of all Canadians. In addition, they have disability-related expenses that able-bodied members of society can avoid. These include items such as canes, walkers and wheelchairs which can be claimed in part as a medical expense. Other more intangible expenses such as having to take expensive taxis instead of low-cost public transit, which is unfortunately not usually accessible, are unavoidable and cannot be claimed.

DTC Issue

The DTC as it is presently constituted is not a refundable credit.

Solutions

The Income Tax Act should be amended to make the disability tax credit a refundable credit to benefit people who have severe and prolonged disabilities, requiring them to cover additional costs but who have limited taxable income.

5. Extending the Medical Expenses Tax Credit

The MS Society is pleased that by allowing the cost of an air conditioner as a medical expense the Government of Canada recognizes that heat can have a significant exacerbating effect on the symptoms of MS. It has been well known for many decades that heat can make MS symptoms worse although fortunately this worsening is temporary and responds to a cooled environment. We are grateful that this unique characteristic of MS is accommodated to at least some extent.

Tax Issue

The MS Society proposes that while people with MS can claim up to \$1,000 of the cost of a prescribed air conditioner, there is no relief for the cost of operating an air conditioner for people with MS. This can be a significant burden for people with MS and their families who are challenged with many other disability-related expenses and lack of income. This is especially true for people living on fixed incomes.

Solutions

The MS Society urges that the Technical Advisory Committee consider how this situation might be addressed. The medical expenses tax credit might be the process to capture these expenses, with a portion of electrical bills used to establish the amount which individuals could claim this medical expense, up to a certain level.

6. Building on Other Initiatives

The MS Society is aware of the excellent report on Canada Pension Plan Disability Benefits issued recently by the House of Commons Committee on Human Resources Development and the Status of Persons with Disabilities. We were struck by the many areas of cross-over between this report and the work on which the Technical Advisory Committee has embarked. A number of the important issues outlined in the report on CCP(D) are relevant here as well.

- ***Flexibility*** -- Several experts appearing before the Committee drew attention to the need for more flexibility in the interpretation of the rules to meet individual needs. This testimony was very much like that of witnesses before the Committee when it was examining DTC issues.

Said Sherri Torjman: “We really need to have a program that is far more flexible and far more able to meet a whole range of needs” (report page 27). The Committee agreed, saying “The ‘human lens’ will be ineffective without a flexible approach” (report page 26) and it recommended the establishment of a permanent advisory committee to review and report on the program’s performance.

- ***Eligibility for Cyclical Disabilities*** – As with its DTC review, the Committee examined the issue of cyclical or intermittent disabilities. It recommends amendments to the CPP to ensure fairness to those people with severe but non-continuous disabilities.
- ***Clear Information and Simplified Application*** –Much like the review of the CPP(D) program, the DTC review demonstrates the need to make information clearer and more accessible to individuals, support groups and medical practitioners.

The process of renewal of eligibility for DTC brought this issue into sharp focus, as many people receiving DTC benefits were suddenly advised that they would no longer be eligible despite the fact that their disability had not changed. It is also highlighted by the high degree of appeals of decisions and high degree of success with appeals. Clearly, there is need for more clarity in the objectives and criteria of the program.

- ***Adjudication and Appeals*** -- Both the DTC and CPP(D) programs are characterized by a high rate of appeals. A significant number of appeals are supported upon review. This can be partly explained by the greater amount of information and closer scrutiny generated by the appeal process. . However, in the interests of predictability for all and efficiency of administration, the rate of appeals should be lowered. The Committee reviewing the CPP(D) looked extensively at this issue and made this objective a substantial part of its report and recommendations.

In Conclusion

The MS Society is very pleased to be able to outline some of the major issues facing people with MS in terms of current tax issues. We feel that progress is being made and we look forward to even more positive results because of the work of the Technical Advisory Committee. We have used this paper to focus on issues that are particularly

unique to people with MS. We would like to emphasize again that we also support the issues and solutions brought forward by the Coalition for Disability Tax Credit Reform.

Thank you very much for your consideration of our views.

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Enc. DTC Issues Chart

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