

The Disability Tax Credit (DTC) and Medical Expenses

WHAT THE LAW SAYS

The DTC has very definite criteria with regards to who qualifies and who does not. Individuals with arthritis who are not bed-ridden or wheelchair-bound or unable to perform their basic activities of daily living do not qualify according to the letter of the law. Despite this fact, many patients who do not meet the criteria still approach their physician to complete the form.

The *CRA Journal* approached **Keith W. Pitzel CA, CBV** to ask him his thoughts on the DTC and medical expenses. His responses are herein. Mr. Pitzel is a partner with Deloitte and is based in Winnipeg, Manitoba.

If the DTC form is completed by the physician indicating that the patient does not meet the criteria, is there any benefit for the physician to add a note stating that the person has arthritis and difficulties? Will he/she qualify for a portion of this tax credit?

The DTC is an all-or-nothing application. If the taxpayer/patient does not meet the criteria for the credit, there is no partial claim available. Therefore, the doctor's comments added to the form have no relevance.

The status of patients does change. Individuals may deteriorate over time but sometimes will markedly improve after surgery or with the introduction of a more effective therapy. Do physicians have an obligation to report to the Canada Customs and Revenue Agency that a patient who previously met the qualifications for the DTC now no longer meets them?

The DTC is an income tax issue solely. The taxpayer is making the claim, and the doctor's comments and preparation of the form are only to support the claim. The Canadian tax system is based on a self-assessment principle where the onus is on the taxpayer to prepare his/her return accurately and completely. In submitting a claim for disability on his/her tax return, the taxpayer is responsible to determine if the criteria for the credit is met. The onus is solely on the taxpayer to review the credit claim in every year.

Some new disease-modifying drugs may cost more than \$15,000 per year. Are health deductions based on the income of the individual and is there a maximum deduction?

The medical expense credit, which is separate from the DTC, is based on the following calculation:

Medical expenses for the year

Less the lesser of:

- a) 3% of net income or
- b) \$1,755

There is no maximum amount for the credit calculation.

Patients may approach their physicians stating that their new hot-tub really relieves their pain and discomfort. A physician may suggest that a patient purchase a treadmill or an exercise bicycle to improve their health. Can any of these devices be deducted as a health expense, like the costs for prescription medications, custom orthotics, etc? When, if ever, would a hot-tub, sauna, or exercise equipment be allowed as a deduction?

The Income Tax Act has regulations that list the types of equipment that are prescribed medical devices and equipment which qualifies for medical-expense purposes. The list is contained in the Canada Revenue Agency interpretation bulletin IT-519R2, which can be obtained at any Canada Revenue Agency office, or at their website (www.ccr-a-drc.gc.ca/menu-e.html).

Hot-tub or whirlpool bathes prescribed by a medical doctor will qualify if paid to a public or licensed private hospital. Purchase of a hot-tub or whirlpool bath is specifically excluded in IT-519R2, paragraph 58.

How can physicians best help their patients with regards to health deductions for income tax?

The most beneficial help a physician can give to the patient is knowledge. Having a copy of the disability certificate—which explains the criteria needed to be met together with the prescribed list of medical devices available—in the reception area would help patients gain knowledge as to what criteria need to be met to claim the DTC, or what expenses are eligible for the medical expense claim.

THE ARTHRITIS SOCIETY

At tax time, Canadians with arthritis will present their DTC forms to their rheumatologists. Yet, since 2001, the criteria to qualify have become more stringent and less people with arthritis are being approved for this benefit. Has The Arthritis Society (TAS) been involved in any advocacy effort to improve the DTC program on behalf of people with arthritis?

TAS has been a member of The Coalition for DTC Reform since its inception in the fall of 2001. The DTC coalition is comprised of leading national patient organizations and individuals representing Canadians with disabilities. The goal of the coalition is to improve the structure, design and delivery of the DTC program to ensure that it is meeting its legislative objectives.

What have been the historical shortcomings of the DTC program?

The historical shortcomings have included:

- language of the Income Tax Act;
- interpretation of the Act by the Department of Finance and the Canada Customs and Revenue Agency (CCRA);
- content of the DTC certificate form T2201, which is completed by a healthcare professional
- administrative appeal process within the CCRA

Who are the current members of the DTC coalition?

- ARCH: A Legal Resource Centre for Persons with Disabilities
- Alzheimer Society of Canada
- The Arthritis Society (TAS)
- Canadian Arthritis Patient Alliance (CAPA)
- Canadian Association for Community Living
- Canadian Hard of Hearing Association
- Canadian Mental Health Association
- Council of Canadians with Disabilities
- Easter Seals / March of Dimes National Council
- FAME (Family Association for Mental Health Everywhere)
- Family Mental Health Alliance
- Learning Disabilities Association of Canada
- Mood Disorders Association of Ontario
- Multiple Sclerosis Society of Canada
- National Network for Mental Health
- Ontario Brain Injury Association

- Ontario Federation of Community Mental Health & Addictions Program
- Parkinson Society Canada
- Schizophrenia Society of Canada

Please note, CAPA works with TAS to implement our national advocacy strategies. CAPA is a national organization which creates links between Canadians with arthritis, assists them to become more effective advocates and seeks to improve the quality of life of all people living with arthritis.


Have there been any recent strides made in DTC reform?

Yes, including the federal government's establishment of an independent technical advisory committee. A press release was circulated in March 2003 by the federal government:

- John Manley, Deputy Prime Minister and Minister of Finance, and Elinor Caplan, Minister of National Revenue, announced the appointment of Sherri Torjman and Robert Brown as co-chairs of the Technical Advisory Committee on Tax Measures for Persons With Disabilities. The establishment of the committee was announced in the February 2003 budget.
- Targeting eligibility for the DTC involves the difficult task of identifying those most in need. In the Budget 2003 speech, Minister Manley said the Government would "work directly with these groups [representing the disability community] through a new, independent advisory committee."
- Over the next 18 months, the committee will advise the Minister of Finance and the Minister of National Revenue on the eligibility criteria for the DTC as well as other tax issues affecting persons with disabilities. Please refer to the DTC coalition's June 2003 recommendations that address many of the problems individuals and health professional experience with the DTC certificate form T2201. The recommendations are on the Internet at <http://www.disabilitytax.ca/subs/cdte.html>.

What improvements have been made to the DTC certificate form T2201 since the 2003 consultations have occurred?

The Canada Customs and Revenue Agency has made significant improvements to the T2201 form for the 2003 taxation year as a result of the consultations held in 2003 with a number of organizations representing persons with disabilities and health professionals. Although the



form is considerably longer (eight pages), only two pages need to be completed by the qualified person. The new T2201 form is available at regional tax offices or on the Internet at:

<http://www.ccraadrc.gc.ca/E/pbg/tf/t2201/t2201-03e.pdf>.

Should patients who were denied the DTC as a result of the October 2001 Canada Customs and Revenue Agency (CCRA) review reapply?

Absolutely. In October of 2001, the CCRA carried out an extensive review of its files. The CCRA sent letters to 106,000 taxpayers in October 2001 informing them that they no longer qualified for the DTC. To claim the DTC for the 2001 and future taxation years, they were required to submit a new T2201 form. The letter resulted in a great deal of misunderstanding and confusion. Many DTC recipients did not respond. For those who did respond, there are numerous examples of successful appeals. We believe this indicates that among those who did not respond, for whatever reason, there are many who would also win an appeal.

Thus, those individuals who lost their DTC, when the CCRA carried out an extensive review of its files in October 2001, are encouraged to reapply with the new form. We also suggest attaching a letter to the T2201 form titled, "Request for an Adjustment;" ask for a reassessment of the 2001 and 2002 taxation years based on the fact that "your doctor indicated that you became 'markedly restricted' in a basic activity of daily living such as walking, speaking, hearing, dressing, feeding, elimination, or perceiving, thinking and remembering," during or prior to the 2001 taxation year.

What are the next steps?

The government has agreed that more needs to be done to ensure that the DTC effectively meets its intended purpose. The Technical Advisory Committee (est. spring 2003) is responsible to advise the Ministers of Finance and National Revenue on tax measures for persons with disabilities. The Committee supports the extension of eligibility to individuals with mood disorders and other episodic conditions, such as multiple sclerosis and arthritis, that substantially impair their ability to carry out a basic activity of daily living. The final report of this Committee is due by October 31, 2004.

The physician is the one who must fill out the portion of the DTC as the "qualified individual." In view of the large numbers of patients that you are advising to reapply, and the time required of the physician to do this paperwork, has TAS or the DTC coalition asked the government to remunerate the physicians for their time in completing these forms?

The Committee recommends that:

- a) The CCRA send a letter to every individual who received the letter, dated 19 October 2001, requesting DTC recertification. This correspondence should apologize for the tone of the letter and provide a complete explanation as to why the CCRA requested recertification.
- b) All individuals who obtain recertification as a result of the October 19 letter be compensated upon the production of receipt for any costs incurred in obtaining the services of a qualified person to complete Form T2201 or for providing the CCRA with any supplementary information.
- c) The CCRA inform all recipients of the October 19 letter that anyone who has been reassessed and refused the DTC can reapply once Form T2201 is redesigned (See Recommendation 5). In the meantime, the CCRA should also advise these individuals of their right to appeal the decision.

The Government of Canada's response to the seventh Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities was as follows:

- a) No letter of apology. The CCRA contends that "it made every effort to ensure that the tone and content of the recertification letter were sensitive and appropriate. It is unfortunate that, despite these efforts, some people who received the letter were offended." In the future, the CCRA will ask for input from members of disability groups regarding the "wording of these types of letters."
- b) No compensation to be offered because it will be "inequitable for government to compensate only individuals who were involved in the review of the pre-1996 DTC claims for these expenses."
- c) No response.

For further information about the initiative to reform the DTC, visit www.disabilitytaxcredit.com. For further information on the Technical Advisory Committee, visit www.disabilitytax.ca.