



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 Tax Measures for Persons with Disabilities (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 (essentially psychologists and physicians) 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. The T2201 form is available from the CRA website using the following link <http://www.cra-arc.gc.ca/E/pbg/tf/t2201/README.html> Those interested in reviewing the language of the Income Tax Act can go to <http://www.canlii.org/ca/sta/i-3.3/> and see Section 118.3

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. Prolonged is defined as impairment which lasts, or is expected to last, for a continuous period of at least 12 months.

¹ A qualified person is one of the health professionals deemed qualified by ss118.4(2) of the Income Tax Act to attest to the health impairment of a person apply for the Disability Tax Credit. For the purposes of an impairment in mental function, qualified persons include physicians and psychologists.

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 motor functions). None-the-less, the DTC retains all of its ‘activities’ as historically defined.

Thinking, perceiving, and remembering become mental functions: Prior to 2004, the ‘activity’ used to denote psychological or cognitive impairment was labelled ‘thinking, perceiving and 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’, the TAC 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, should be considered 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).

It is important for the practitioner to note that one can be considered markedly restricted in mental function if the only impairment is memory, if the only impairment is adaptive functioning but not if the only impairment is problem-solving, if the only impairment is goal-setting or if the only impairment is judgment – one must have an impairment in problem-solving, goal-setting **and** judgment.

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.

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.** Members of the Disability Advisory Committee (Note, though, that the Committee no longer has formal status) continue to work with the

CRA and to advocate for the disjunctive rather than conjunctive interpretation of problem-solving, goal-setting and judgment.

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 could be considered eligible for the credit.

Severe, prolonged impairments that are present substantially all the time while not every one of the impairment's defining symptoms are continuously present:

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, the TAC 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. The TAC 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.

Illustrations are not exhaustive: It is important for the qualified person to appreciate that the examples of impairment in mental function used in the T2201 are illustrative and

not exhaustive. There are many more instances or ways in which an impairment in mental function might meet eligibility criteria for the DTC than are referenced in the examples on the T2201.

Mental functions, adaptive functions and social skills: The DTC is accorded to persons with a prolonged impairment that creates a marked restriction in one of the activities of daily living defined by the DTC (i.e. seeing, walking, dressing, feeding, speaking, elimination, or mental functions necessary for everyday life, in addition to life-sustaining therapy). A prolonged impairment that creates a restriction in any activity other than those defined by the DTC (e.g. work or social activity) would not qualify. **However, a prolonged impairment that creates a marked restriction in mental function could be manifest as an impairment in adaptive functioning – the latter which includes social skills.** For example, if a person with autism (prolonged impairment) has a marked restriction in adaptive functioning that manifests as an inability to communicate sufficiently well with others to purchase groceries or pay bills, they could be eligible for the DTC. If, on the other hand, the person with autism can successfully attend to adaptive functioning but has few friendships or does not participate in social activity, he or she would not be eligible for the DTC.

Conclusion: The legislative and administrative changes made to the DTC following the work and recommendations of the TAC were very important to the fair assessment of persons with impairments of mental function. It has been the intention of this article to further clarify these changes so that persons with severe and prolonged impairments in mental function, that create a marked restriction in the activities of daily living defined by the DTC, are supported by qualified persons in establishing their eligibility.

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