

Completing the Disability Tax Credit Certificate T2201 Form for Individuals with Serious Mental Illnesses

I have been advocating for reform of the Disability Tax Credit (DTC) Certificate T2201 since March 2001 because the current form discriminates against individuals with mental illnesses. The Canada Customs and Revenue Agency (CCRA) has recognized that the current DTC Certificate T2201 form is inadequate when assessing individuals with all mental impairments and is consulting with the Canadian Psychiatric Association and the Canadian Medical Association as well as the disability community to improve the form.

The question regarding mental functions, “Can your patient perceive, think and remember?” is more than problematic because emotional and behavioural illnesses (such as mood disorders, schizophrenia and other psychiatric disorders) are not covered by the intent of this test. Therefore the question is functionally discriminatory towards individuals with serious mental illnesses.

Once a doctor checks the “yes” box, in the eyes of CCRA, the patient does not meet the test. The patient (or the claimant) is therefore not entitled even though the *Income Tax Act* specifies that individuals who have a “severe and prolonged” **mental or physical** impairment may qualify for the tax credit. Furthermore, case law has provided numerous examples indicating that the question can essentially be read as follows: Can your patient think, perceive or remember in a manner that “conforms reasonably to common human experience.” In *Buchanan v. The Queen 2000*, Judge Diane Campbell concluded that the “Appellant’s condition and resulting behaviour so far exceeds the normal and reasonable ambit that he comes within the otherwise very narrow confines of these sections of the *Act*.”

Tips for Physicians

The legal tests to qualify for the tax credit are the following:

1. The impairment must be “**severe and prolonged,**” expected to last 12 months or more. The severity of the impairment rather than the diagnosis is the determining factor to qualify for the tax credit.
2. The impairment must “**markedly restrict**” one of the “basic activities of daily living” as it is spelled out in the *Income Tax Act*, for example, the ability to “perceive, think and remember.” Other activities of daily living, such as feeding or dressing oneself, personal care, using the toilet or carrying on a simple conversation etc. are not the relevant tests for an individual with a mental illness (*Buchanan v. The Queen*). A **marked** restriction is one in which aides, therapies and/or medications fail to produce sufficient compensation or improvement of the impairment with the result that the individual still experiences considerable limitations in the ability to perceive, think and remember.

3. The impairment must result in the individual's inability to perform the basic activity of daily living, which is the ability to perceive, think and remember, "**all or substantially all of the time.**" Judges have consistently quoted Associate Chief Judge Donald Bowman's ruling in *Radage v. The Queen 1996*, "It cannot be said that that his capacity to think, perceive and remember is non-existent, but it is sufficiently limited to fall within the guidelines..." Judge Bowman thus confirmed that it is sufficiently limited capacity not total incapacity that should be the determining factor
4. In a unanimous decision on May 31, 2002, Federal Court of Appeal Judges Rothstein, Stone and Sexton dismissed an appeal by the Minister of National Revenue seeking to overturn the decision of the Tax Court of Canada (*Attorney General v. Buchanan*). The Judges established the legal standard for all individuals with mental impairments concluding that Mr. Buchanan qualified for the disability tax credit because his "inability to think, perceive or remember was of such severity that the respondent (he) was unable to perform the necessary mental tasks required to live and **function independently and competently in every day life.**"

The court record indicates that Mr. Buchanan (who has been diagnosed with Bipolar Disorder I), is highly functional intellectually, drives a car, sits on the boards of mental health committees and even filed his own Revenue Notice of Objection with CCRA. In *Buchanan v. The Queen*, Judge Diane Campbell stated, "... he (Buchanan) can present himself as quite an intelligent, lucid individual while otherwise being in the midst of irrational and unpredictable behaviour. In fact, Dr. Cooke stated that it would be possible for the Appellant to be quite ill and yet even his own doctor would not necessarily recognize it." The Court ruled that this "is an obvious case" because Mr. Buchanan's judgment is severely impaired in a number of areas by his illness. Furthermore, he is not able to manage his own finances or personal affairs and relies on his wife for "constant supervision, care and support."

It is important for physicians to provide as much detail as possible to clarify the severity of their patient's impairment in addition to the diagnosis and medications required to clinically stabilize their patients. Provide details about the **disabling symptoms and impacts** of the mental illness and indicate whether or not your patient **can function independently and competently in everyday life.**

Supporting documents are extremely important as far as providing objective proof with respect to the severity of the patient's impairment. These documents may include any of the following: psychiatric discharge reports and/or psychological consult reports for the applicable tax year; treatment compliance issues; clinical observations notes of the family doctor; documentation of delusions and hallucinations; illogical thinking and impaired judgment; impulsive and inappropriate behaviour noted by the care giver.

Many doctors are sent a supplementary questionnaire by the Canada Customs and Revenue Agency (CCRA) requesting additional information for "clarification."

Unfortunately, some of the questions are not necessarily conclusive tests to determine the severity of the disability for someone with a serious mental illness such as bipolar disorder though the questions may be very appropriate for an individual with dementia. Furthermore, clerks who review the T2201 forms and the supplementary questionnaires have no medical training and very limited training in the DTC. In the Appeals Division, the clerks who review the Notice of Objection have not had appropriate medical training either. In all likelihood, they don't have a clue what bipolar disorder is, or paranoid schizophrenia. More often than not, they don't know how to interpret medical terminology. They simply make a judgment call based on the numbers of positive and negative responses to the questions.

Some of the contentious questions are the following:

“Does your patient understand the concept of danger?”

“Was your patient oriented to the three spheres (persons, place and time)?”

“Could your patient go out into the community alone?”

“Did your patient's condition restrict the ability to operate a motor vehicle?”

“Can your patient make a simple purchase?”

“Please describe a routine day for your patient.”

If the question is not relevant to your patient's impairment, please indicate the information on the Supplementary Questionnaire.

CCRA employs a number of registered nurses in their Ottawa headquarters who act as medical advisors. They may review more complex claims and contact the doctor directly when necessary.

Tips for claimants

Claims for the DTC for an individual with a serious mental illness should be completed by a family member whenever possible.

Both the individual with the mental illness and the person completing the T2201 form should meet with the doctor to discuss in detail the disabling impacts of the mental illness.

A detailed letter from the person completing the form can also be very helpful. Provide concrete examples to describe incapacity and impact of the mental illness on a day-to-day basis, for example: illogical or dysfunctional thinking should be documented to show how it has effected the individual and those around them; examples and frequency of impaired judgment; impulsive decisions; inability to manage finances; problems with concentration and memory; hallucinations and delusions; disorientation to time and place; inappropriate emotional outbursts; emotional withdrawal and/or isolation; irrational and paranoid behaviour. Also, outline the degree of supervision or assistance the individual requires.

Any legal guardianship documents are also powerful pieces of evidence of entitlement for a person with a serious mental illness. Police reports can be valuable when they document socially disruptive behaviour. Also, reports from social workers, home care agencies and other community services can provide valuable evidence that the individual is not able to function independently and competently because he or she requires outside support services on a regular basis.

Keep a record of every thing and photocopy all documents and letters that you send to CCRA.

Please note: The DTC may be transferred to a supporting person who is related to the person with the disability by blood, marriage or adoption. You may be able to claim all or part of your dependant's disability amount if he or she lived in Canada in the year 2002, and was dependent on you because of his or her mental or physical impairment