



SPOTLIGHT ON *Disability Tax Credit*

Reference re “mental functions”

Brought to you by:

- ✦ ACT team (FOCUS), Income Security Advocacy Centre and Neighbourhood Legal Services & the Health Justice Program

TEN TIPS for Form T2201

1. Tell a story of impairment – compassion and storytelling plays an important role in deciding entitlement to the DTC.
2. Don't let the “yes/no” format of the form limit you – even if your response is “No”, it may be helpful to clarify or give more details of limitations.
3. Remember the impairment may be present all or substantially all the time, even if the symptoms/ impairments are not visible to other people.
4. Another way to think about adaptive functioning is “how well someone handles the common demands in life (self-care, health and safety, social skills and common simple transactions) and how independent they are compared to others of similar age and background.”
5. Give details about the effects of the impairments. If you include symptoms like low mood, irritability, transient dysphoric mood, anhedonia, sleep difficulties, fatigue, inappropriate guilt, concentration difficulties, anxiety, include how it markedly restricts abilities to perform a basic activity.
6. Don't get stuck on “90% of the time” - it's not determinative. Some judges have recognized that a mathematical formula isn't the best way to measure this. It's still is a high threshold: “all or substantially all” means significantly more than a majority of the time.
7. Focus on the “basic activities of daily life” as CRA defines them. That doesn't include working, housekeeping, shopping, cooking, or social or recreational activities.
8. An “inordinate and excessive amount of time” generally means a disproportionately large amount of time. Some interpret this as 3x as long as someone similar age, etc.
9. Consider problem solving, goal-setting and judgment individually first. “Taken together” may include looking at all three together and decide whether the combination results in severe impairment.
10. If the Public Guardian and Trustee (PGT) is involved, inform CRA that the client has been found incapable of managing their own affairs and give details. For example, the OPGT makes all of the client's financial decisions - depositing income, applying for benefits, filing tax returns, paying bills - because the client is incapable of doing so. (See also next page.)

3 Criteria for DTC Eligibility

- ✦ The client must have one or more **severe and prolonged impairments** in physical or mental functions (*prolonged impairment* = one that lasts, or can be expected to last, at least twelve continuous months)
- ✦ A **medical doctor** must certify this (in the form)
- ✦ The client's impairments **must markedly restrict their ability to perform one or more basic activities of daily living, all or substantially all of the time** (even with therapy, medication or the use of devices) or it requires an inordinate amount of time.

*NB: The **third criteria** is usually the biggest challenge. A client often receives a denial letter stating that “mental impairments did not affect your ability to perform the necessary basic activity for everyday life all or substantially all of the time.”*

“CUMULATIVE EFFECTS ELIGIBILITY”

If an impairment has the effect (even with therapy, medication or use of devices) of significantly restricting someone's ability to perform **more than one activity of daily living, and two or more unrelated restrictions are present all or substantially all the time**, and the cumulative effect is equal to being marked restricted in one basic activity of daily living.

Basic Activities of Daily Living

- ✦ **Physical:** feeding or dressing oneself; speaking; hearing; eliminating (bowel or bladder functions) or walking.
- ✦ **Mental: (1)** memory; **(2)** problem solving, goal setting and judgment (taken together) or **(3)** adaptive functioning.

(See the following pages for some examples of impairments to these functions.)

A note about the Office of the Public Guardian and Trustee ...

For DTC claimants with impairments to mental functions, involvement of the OPGT (if any) is relevant evidence of the effects of those impairments. Indicate capacity assessor findings in detail and relate it to all three mental functions necessary for everyday life.

- ❖ A person is incapable of managing property if they are not able to understand information that is relevant to making a decision in the management of their property, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.
- ❖ A person is incapable of personal care if they are not able to understand information that is relevant to making a decision concerning their own health care, nutrition, shelter, clothing, hygiene or safety, or is not able to appreciate the reasonably foreseeable consequences of a decision or lack of decision.

(Source: <https://www.attorneygeneral.jus.gov.on.ca/english/family/pgt/capacityoffice.php#defined>)

Examples of the effects of impairment to physical or mental functions

The following pages have examples of the effects of impairments to physical functions, which may be helpful in assessing your client. Remember the “cumulative effects” eligibility: where an impairment has the effect that, all or substantially all the time (even with therapy, devices and medication) the client’s ability to perform more than one such activity is significantly restricted (greatly restricted), the cumulative effect of two or more unrelated restrictions may be equivalent to being markedly restricted in one’s ability to perform a basic activity of daily living.

Ensure you include a direct link to the activity and the client’s specific restriction. Examples are included in the following pages related to these functions:

Mental

- ❖ Adaptive functioning: abilities related to self-care, health and safety, initiating/responding to social interactions, and common, simple transactions)
- ❖ Memory: the ability to remember simple instructions, basic personal information, or material of importance and interest
- ❖ Problem solving, goal setting and judgment (taken together): the ability to solve problems, set and keep goals, and make appropriate decisions and judgments

Physical

- ❖ Speaking
- ❖ Walking
- ❖ Hearing
- ❖ Dressing
- ❖ Feeding
- ❖ Eliminating (bowel or bladder functions)

Note that the 2021 Federal Budget proposed to expand the range of mental functions necessary for everyday life to also include attention, concentration, perception of reality, regulation of behaviour and emotions, and verbal and non-verbal comprehension. That change has not yet happened, but include this information now if applicable.

EXTERNAL GUIDES

Eligibility for the Disability Tax Credit – Information for Medical Practitioners (CRA):

<https://www.canada.ca/en/revenue-agency/services/tax/individuals/segments/tax-credits-deductions-persons-disabilities/information-medical-practitioners/eligibility-criteria-disability-tax-credit.html>

A Physician’s Guide to the Disability Tax Credit:

<https://www.rdsp.com/wp-content/uploads/2018/09/DTC-PHYSICIANSGuideSEPT2018.pdf>

EXAMPLES

Note: The guidelines require an individual to be markedly restricted “**all or substantially all of the time**” or it takes “**an inordinate amount of time**” to carry out one or more of the following basic activities of daily living, even with therapy, use of devices and medication.

Examples of the effects of impairments to mental functions

ADAPTIVE FUNCTIONING

- | | |
|--|---|
| <ul style="list-style-type: none"> ❖ Client experiences thought blocking which causes difficulty for them when communicating with people in the community, trying to attend school, social interaction or attending appointments. Communication with others takes more than three times the amount of time it would take the average person to have the same conversation. ❖ Client experiences paranoia regarding nix treatments causing inability to get rid of lice. This leaves the client prone to infections, sores and social isolation. The need for prompting and reality checking causes the lice treatment process to take several months rather than the few days it would take the average person. ❖ Client’s auditory hallucinations cause them anxiety about being in large public places. This significantly increase the amount time it (3x) takes to get daily errands completed and to communicate in any social setting. ❖ When being accompanied to an appointment client’s need for emotional support due to anxiety will often make what should be a short outing take several hours. Client avoids busy places and public transportation, and has difficulty in communicating. | <ul style="list-style-type: none"> ❖ Client is lacking ability in social interactions. Client has difficulties managing emotional and behavioural impulsive, frequently loses their temper, is restless and angry, refuses to comply with requests, intentionally annoys others, is unable to interact appropriately with others and withdraws, lacks the necessary insight to solve problems and feels overwhelmed and has poor insight into impairments. ❖ Client is socially isolated, with a fear of strangers and a history of altercations. Common stressors include attendance, making decisions, scheduling, completing tasks, and interacting with professionals or peers. ❖ Client needs cueing to take showers, basic hygiene and grooming. Because of mental impairment, client has fear, distracted, it takes in excessive amount of time to decide to shower and complete the task. ❖ Client is a risk to own safety as a result of impairment. For example, as a result of distracted thoughts, cognitive impairment, poor memory and judgment, client has left water running, door unlocked, loses and/or misplaces important items such as ID, keys, stays in unsafe places, mixes up medication and/or dosages. |
|--|---|

MEMORY

- | | |
|--|---|
| <ul style="list-style-type: none"> ❖ Client’s inability to memorize simple instructions causes them to miss appointments, lose benefits and fail to do medical follow up for health care needs. ❖ Client cannot remember simple instructions relating to managing medications and requires assistance from family members in order to manage meds. | <ul style="list-style-type: none"> ❖ Client needs support from others in multi-step instructions. ❖ Client’s inability to sustain focused attention undermine their ability to cope, remember and adjust to basic information sharing. ❖ Client’s chronic sleep deprivation causes a markedly restricted ability to sustain useful activity and poor memory. |
|--|---|

PROBLEM-SOLVING, GOAL-SETTING, AND JUDGMENT (taken together)

- | | |
|--|--|
| <ul style="list-style-type: none"> ❖ Client cannot navigate independently and must be accompanied to scheduled appointments due to illness-related paranoia and disorganized thoughts. ❖ Client is unable to manage basic affairs and solve basic problems or live on their own due to thought disorganization, memory difficulties, and poor organizational skills and self-monitoring. Client is easily distracted and overwhelmed, and has difficulty with initiation and follow-through of tasks, even though client intends to do it. ❖ Client lacks awareness and insight to solve problems or make decisions. Client exhibits poor judgment in an inability to manage and make financial decisions. ❖ A capacity assessment was performed and it was determined that Client did not have the mental capacity to make decisions about property (or personal care). | <ul style="list-style-type: none"> ❖ Client cannot sustain focused attention (loses train of thought, confused by background noise or easily distracted) resulting in unreasonably long time to problem solve and make decisions. ❖ Client is impulsive and makes decisions based on impairment rather than logical reasoning; difficulty managing impulses and cannot make appropriate financial decisions. ❖ Client withdraws from basic problem solving or avoid it due to distracted thoughts, fatigue, low-mood/self-confidence, tearful affect and perception of reality. ❖ Client’s behaviour is not logical but their choices are affected by their anxiety: procrastination, avoidance, withdrawal, inability to make day today decisions. Client feels overwhelmed in crowded situations (e.g. vehicles, elevators or closed space). |
|--|--|

EXAMPLES

Note: The guidelines require an individual to be markedly restricted “all or substantially all of the time” or it takes “an inordinate amount of time” to carry out one or more of the following basic activities of daily living, even with therapy, use of devices and medication.

Important: Some disabling restrictions are overlapping. Document them repeatedly in all areas of mental function. Be specific to your client. <http://fightingforfairness.ca> list is below

- ❖ Inability to live independently without the daily supervision and support of others
- ❖ Lack of initiative or motivation in routine activities
- ❖ Requires intensive case management from ACT teams
- ❖ Inability to leave the house due to severe anxiety or debilitating depression
- ❖ Inability to manage or initiate personal hygiene without constant supervision
- ❖ Inability to initiate and/or respond to social interactions
- ❖ Lack of insight into the concept of harm or danger to oneself and/or others
- ❖ Grandiose delusions, poor insight, judgement, impulsivity and agitation
- ❖ Requires daily supervision for the administration of psychiatric medications
- ❖ Inability to handle common, simple financial transactions or inappropriate managing
- ❖ Inability (or requiring an inordinate amount of time) to solve practical problems such as changing a medical appointment, set goals such as reviewing instructions and make appropriate decisions (all three must be present)
- ❖ Inability to remember basic personal information (e.g. address, phone number) or recall material of importance (e.g. names of medical professionals, appointments)
- ❖ Inability (or requiring an inordinate amount of time) to express oneself; must repeat multiple times and still at times is frustrated and not understood

Other examples may include:

- ❖ Volatile mood swings and erratic behaviour
- ❖ Paranoia about other people and their actions, including delusional thinking such as being followed or plotted against
- ❖ Inability to make appropriate decisions about personal finances, pay bills, understand implication
- ❖ Little insight on limitations
- ❖ Withdrawal from family and friends
- ❖ Overwhelming feelings of panic and fear
- ❖ Physical agitation, racing thoughts, disorganized behaviour
- ❖ Unpredictable intrusive auditory hallucinations
- ❖ Inability to react appropriately to environment
- ❖ Feelings of worthlessness, hopelessness and poor cognitive function
- ❖ Uncontrollable obsessive thoughts, compulsive behaviours
- ❖ Uncontrollable intrusive memories, repeated flashbacks and/or constant worries
- ❖ Risky behaviours including drug or alcohol abuse, unsafe sex, spending sprees, gambling or risky investments
- ❖ Self-injury (e.g. deliberately cutting or harming one's body)
- ❖ Frequent hospitalizations (list all)

Examples of the effects of impairments to physical functions

SPEAKING	WALKING
<ul style="list-style-type: none"> ❖ Client relies on other means of communication, such as sign language or a symbol board. ❖ Client needs to repeat words and sentences several times in order to be understood. ❖ Client does not understand what is being said to them and has difficulty processing their thoughts, concentrating on what is being said, following conversations or being understood. 	<ul style="list-style-type: none"> ❖ Client relies on a wheelchair or scooter outside the home, even for short distances. ❖ Client takes an inordinate amount of time to walk 100 metres, about a city block, since they need to stop because of pain or shortness of breath. ❖ Client experiences severe episodes of fatigue, and problems with coordination and balance. Several days at a time, client cannot walk more than a few steps. Between episodes, client continues to have these symptoms, but to a lesser degree.
HEARING	DRESSING
<ul style="list-style-type: none"> ❖ Client relies completely on lip reading or sign language to understand speech despite use of hearing aids. ❖ Client relies on others raising their voice and repeating words and sentences in order to understand, despite the use of hearing aids. 	<ul style="list-style-type: none"> ❖ Client cannot get dressed without help of another person. ❖ Client takes an inordinate amount of time to get dressed because of pain, stiffness or decreased dexterity in arms and legs.
FEEDING	ELIMINATING
<ul style="list-style-type: none"> ❖ Client takes an inordinate amount of time to eat due to pain/decreased strength and dexterity in hands. 	<ul style="list-style-type: none"> ❖ Client is incontinent and requires incontinence pads; needs ostomy products or catheters or similar appliances to manage bowel and bladder functions.