A number of issues have been raised by the ME/FM community concerning the Disability Tax Credit. The Network had a conversation with the official at the Canada Revenue Agency responsible for administering the DTC and sent the following email on August 14, 2016. The key question was whether our issues were administrative (the responsibility of CRA) or legislation-related (the responsibility of the Ministry of Finance). Our analysis showed that there were both administrative and legislative issues.

We received a response on August 22, 2016 stating: "you are correct in that, administratively, the CRA is limited to what they can do. I am not sure who you would contact at the Department of Finance to discuss your concerns with."

Fixing the problems would require changes to the Income Tax Act. The Network has asked that these changes be included in the new Canada Disabilities Act. We will also be raising the issue as part of the Fall 2016 Poverty Review consultations.

Email to CRA

Thank you for calling us on July 13 to identify yourself as the Canada Revenue Agency (CRA) contact for our issues around the Disability Tax Credit (DTC) and thank you also for the subsequent telephone conversation (July 15). You clarified that CRA is responsible for the administration of the DTC while the social policy staff at Finance Canada is responsible for the legislative framework. You asked whether our issues fall within the responsibilities of Finance (legislation) or within the responsibilities of CRA (administration of the legislation).

We have careful considered the Income Tax Act (ITA), Form 2201 and DTC supporting material. We have identified three major issues – highly selective qualification criteria in the ITA, confusing qualifiers on Form 2201 and the requirement for medical certification. These topics are discussed in more detail below. The qualifiers might be changed administratively, but the qualification criteria and medical certification are embedded in the ITA. Our conclusion is therefore that there are changes that CRA could make that would help our situation, but that there are further problems with the legislation itself.

So what is the next step? Should we sit down with CRA in September to work through the issues, recognizing that CRA's ability to help is limited? Should we be contacting the Ministry of

Finance – to whom should we speak? We understand that there is an inter-departmental disability working group – can we plug into this? Or should we raise our issues through the disability consultation that is just getting underway – an amendment to the ITA could be included in the new legislation?

Your advice would be really appreciated. Thank you!

Margaret Parlor
President
National ME/FM Action Network

Problems with the DTC:
Highly-selective qualification criteria.
Conclusion: The theoretical foundation of DTC is weak. The legislation needs to be reviewed and rewritten.

The DTC is, according to the ITA, based on the restrictions in the ability to carry out basic activities of daily living, Traditionally, basic ADLs are self-care activities like feeding, dressing, eliminating and mobility. The concept of basic activities of daily living is appropriate for hospitals and care homes where other needs such as shopping and housekeeping are provided. It is a limited and incomplete model of disability for someone living in the community.

The DTC does not stick to the basic ADL concept. The ITA selectively adds four impairments to the basic ADL list – impairments in seeing, hearing, speaking and mental functions. Then Form 2201 expands feeding to include food preparation and describes mental functions as going well beyond self-care to include health and safety and social interactions.

We are not objecting to expanding the DTC criteria. We think that basic ADLs is a poor starting point for DTC eligibility. We do object to the fact that the additions are selective and piecemeal. Other impairments could be included such as energy impairments or pain impairments.

Qualifying for the DTC is a requirement for opening a registered disability savings plan. The legislation setting up those plans states: The purpose of this Act is to encourage long term savings through registered disability savings plans to provide for the financial security of persons with severe and prolonged impairments in physical or mental functions.

There are two points to note. Firstly, there is nothing in that Act which limits the severe and prolonged impairments to those on the DTC list, yet this is what is effectively done by requiring DTC qualification. Was this intended? Secondly, the purpose of that legislation is financial security could result from both high disability expenses and limited ability to earn income. This seems to be what DTC should be about.

The DTC model of disability is not aligned with the recent UN Convention on the Rights of Persons with Disabilities which describes disability as an evolving concept and states that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others. The DTC focus on impairments and activities rather than participation. The DTC should be reconsidered in light of the CRPD.

Confusing qualifiers

Conclusion: Form 2201 is difficult to interpret and should be clarified.

Form 2201 generally uses the qualifier of being unable or taking an inordinate amount of time to do particular activities.

Being unable to do tasks sounds straightforward, but higher up on the form, there are instructions to health professionals to assess patients in comparison to someone of similar age with no impairment. Is the test absolutely unable or alternately unable at an age-appropriate level? The supporting literature seems to support the former interpretation.

Taking an inordinate amount of time to do tasks is one sign of difficulty doing tasks, but there are many other signs. For example, tasks may get simplified (sweatsuits and slip on shoes to avoid complicated dressing, canned or prepackaged meals to avoid complicated meal preparation), tasks may be avoided (staying in pajamas all day, skipping meals), or someone may step in to help. Further, individuals may be able to do activities but at a price, such as triggering pain episodes or having to forgo other activities. Form 2201 does not allude to these possibilities.

The 90% of time phrase is completely confusing, as is the distinction between significantly restricted and markedly restricted.

Need for medical practitioner certification

Conclusion: Requiring medical certification makes it very difficult for may people with ME/CFS or FM to apply.

It is, or should be, well known that Canadians with ME/CFS and FM receive a poor level of service from the medical system. There is no medical specialty that has ever adopted ME/CFS. The medical specialty that adopted FM is letting go of it. People all across the country have great difficulty finding medical support. It will be years and possibly decades before the situation is resolved. And yet the DTC requires certification by a medical practitioner.

Compounding the problem is the complexity of ME/CFS and FM cases. Documenting these cases is not nearly as easy as filling in vision test results. Many family doctors are not willing to take on the challenge. Then the question of reimbursement arises.

In this scenario, asking for medical certification is putting up a barrier to qualifying.

Strategies are needed to alleviate the problem. Here are a few varied ideas for discussion purposes:

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- automatically approve any application that has been approved by CPP-D or a provincial disability plan. These cases have already been medically supported as having severe and prolonged disabilities so why should someone go another review process?

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- base approval on the functional capacity scale used in our community. Cases at level 7 or below get automatically approved since the applicant's ability to participate fully and effectively in society is severely limited, while cases at higher levels can be put forward for consideration.

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- follow the lead of the passport office which previously require the signature of a recognized professional but changed the criteria to allow regular citizens as references.

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- Reimburse medical practitioners for completing the forms.

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- Support our efforts to get better medical care for patients.