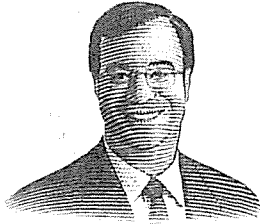


COMMENT

CRA denies disability claim to woman allergic to perfume



JAMIE GOLOMBEK

The disability tax credit (DTC) is a non-refundable tax credit that's intended to recognize the impact of various non-itemizable, disability-related costs. For 2024, the value of the federal credit is \$1,481, but add the provincial or territorial tax savings, and the combined annual value can be worth up to \$3,169, depending on where you live.

To qualify, you must complete the Canada Revenue Agency's Form T2201, Disability Tax Credit Certificate, upon which a medical practitioner must certify that you have a "severe and prolonged impairment in physical or mental function." Once the form is completed, it is sent to the CRA, which will either approve the DTC or deny it. If your application is denied, you can appeal the CRA's decision to the Tax Court, which is exactly what happened in a recent tax case decided late last month.

The taxpayer, a high school history teacher, was diagnosed with multiple chemical sensitivity (MCS) several years ago. As a result of this condition, she has a high degree of sensitivity to numerous triggers, including most perfumes, bleaches, chlorine pools, gases, cosmetics and hand sanitizers. She went to court to appeal the CRA's decision that she was not eligible for the DTC

for the 2022 taxation year.

The taxpayer testified that she has suffered with MCS for a number of years, first becoming aware of the condition in 2011, when her medical practitioner mentioned it as a possible explanation for a collapsed lung she had suffered. She said that, at the time, a diagnosis of MCS was very rare, but she has since received confirmation of this diagnosis from other medical practitioners.

She also testified that exposure to the triggers listed above can be debilitating and even life-threatening as a result of anaphylactic reactions that lead to full or partial closing of her throat. These reactions seriously restrict her ability to breathe, walk and speak until she can escape from the triggering substance. She estimated she has experienced anaphylaxis 20 to 30 times in her lifetime.

The taxpayer said her MCS has a huge impact on her daily living, with the only effective treatment being to avoid chemical triggers. She said the time that she has to spend keeping her environment safe is "overwhelming," requiring accommodations for everything to keep her safe.

For example, in order to be vaccinated against COVID-19, she had to make special arrangements to receive the vaccination outdoors to avoid the hand sanitizers that would otherwise be used by both patients and medical staff at the clinic. She also has to make similar arrangements to get blood work, requiring home-care providers to come to her own residence to draw the blood. Similarly, she has a dental hygienist who does home visits, in order to avoid the

scents typically found in a dental office.

The taxpayer also described the accommodations that have been made by her employer so that she can continue to teach. For example, her school has instituted a scent-free policy for staff and students, and her time is mainly spent assisting students involved in e-learning programs. She wears a mask when at school to reduce the risk of exposure.

She testified that MCS is "a permanent condition," which she's had for about 20 years, and she expects to suffer from it for the rest of her life.

To qualify for the DTC under the Income Tax Act, an individual must have one or more severe and prolonged impairments in physical or mental functions, the effects of which must be such that the individual's ability to perform one or more basic activities of daily living must be markedly restricted. In addition, the individual must provide a medical practitioner's certificate, the T2201, certifying that each of these two requirements has been met.

The certificate is comprised of two parts. Part A, the "Individual's section," is two pages long and captures the taxpayer's identifying information. Part B, the "Medical practitioner's section," comprises pages 3 to 16, on which the medical practitioner certifies and describes how the effects of the taxpayer's impairment(s) "markedly restrict the applying individual's basic activities of daily living."

The problem in this case was that the taxpayer's medical practitioner did not include pages 3 through 14. When asked about this, the taxpayer said, "They do not

reflect ... that I have function except when exposed to chemicals. And so these pages didn't apply to the chemical exposure needs that I have."

The taxpayer's T2201 did, however, include pages 15 and 16, which were completed by her medical practitioner and indicated that her condition was "a lifelong chronic medical illness." But the medical practitioner didn't describe or certify how her ability "to perform basic activities of daily living is markedly restricted."

Prior jurisprudence has concluded that in order to qualify for the DTC, the certificate must specify the activity or activities of daily living that are impaired and that are restricted. In this case, the certificate clearly showed the taxpayer's condition was severe and prolonged, but it did not provide the necessary certification with respect to the effects of such a severe and prolonged condition.

"Although I am sympathetic to the extreme measures which the (taxpayer) must incorporate into and adopt as part of her daily living to avoid exposure to a large list of chemicals so prevalent in our modern society, a certificate signed by a medical practitioner which does not provide certification as to the effects of the (taxpayer's) condition" is not a valid certificate, the judge concluded.

The judge, therefore, ruled that the taxpayer did not qualify for the DTC.

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