



Addressing Conflicting Definitions of Disability

Comments on the draft legislative proposals

Submitted to:
Tax Policy Branch, Department of Finance,
140 O'Connor Street, Ottawa, ON, K1A 0G5

And:
Office of Disability Issues,
Human Resources and Social Development Canada,
355 North River Road, 12th Floor,
Room 033, Ottawa, ON, K1A 0L1

Author:
Canadian Working Group on HIV and Rehabilitation (CWGHR)
1240 Bay Street, Suite 600
Toronto, Ontario M5R 2A7
info@hivandrehab.ca
www.hivandrehab.ca
Telephone: 416.513.0440 x234

Summary of Recommendations

- The Government extend the definition of disability for the purposes of the WITB-Disability to include episodic disabilities. (See below for definition of *episodic disabilities* and examples.)
- In so doing, the Government use the same and consistent definition of disability to the Income Tax Act and the Canada Pension Plan, so as to include episodic disabilities.

Notes Related to Recommendations

This submission contains four sections in its argument for changing the definition of disability to be consistent and more flexible to include episodic disabilities:

1. The existing definitions and their contradiction
2. Episodic disabilities and their relationship to employment
3. Work to date on the subject of episodic disabilities, employment and disability income support
4. Conclusions.

1. Existing Definitions

The Income Tax Act defines disability to mean 'severe and prolonged mental or physical impairment'

The *Canada Pension Plan Act* in subsection 42(2) defines who is considered disabled and when a person is deemed to have become or ceased to be disabled. It also defines severe and prolonged:

- a) a person shall be considered to be disabled only if he is determined in prescribed manner to have a severe and prolonged mental or physical disability, and for the purposes of this paragraph,
- (i) a disability is severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful occupation, and
 - (ii) a disability is prolonged only if it is determined in prescribed manner that the disability is likely to be long continued and of indefinite duration or is likely to result in death; and
- b) a person shall be deemed to have become or to have ceased to be disabled at such time as is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

Further, in subsection 42(2), CPP policy guidelines define "severe" for the purpose of subsection 42(2) of the Act as meaning that the disability regularly prevents the individual from working in any substantially gainful occupation, and "prolonged" as meaning that the disability is likely to be long-continued and of indefinite duration or likely to result in death. "Incapable" is defined as not being able to work in any substantially gainful occupation as a result of the disability. "Regularly" means that the disability is persistent almost to the point of being continuous or uninterrupted so that the capacity for any substantially gainful work is not demonstrated. "Pursuing" is actually engaging in an occupation, not just looking for work. "Any" work means an occupation in which the applicant might reasonably be expected to be employed whether or not it is in their previous occupation. Finally "substantially gainful occupation" means the ability to perform employment that is productive and profitable, measured in part by a dollar amount which is set annually. Earnings alone do not determine the capacity to work on a regular basis; functional capacity, productivity and performance are also assessed.

The Contradiction

The Canadian Working Group on HIV and Rehabilitation (CWGHR)¹ agrees with the statement in the submission by John Stapleton, *A Tale of Two New Benefits: the WITB and the RDSP*, to the Department of Finance on October 17, 2007, that the WITB, in its supplement for Canadians with disabilities, provides an important new vehicle to improve the income security of adults with disabilities.

The WITB also assumes that Canadians with disabilities may have the ability to work.

However, this recognition of the ability of many Canadians with disabilities to work is in contradiction to the definition of disability as provided under the Income Tax Act and the Canada Pension Plan Act.

Furthermore, the current definitions of disability under the Income Tax Act and Canada Pension Plan Act present disincentives to Canadians with *episodic disabilities* (see below) to participate to their capacity in the labour market, thereby reducing access to the labour market for Canadians with episodic disabilities. Allowing Canadians with episodic disabilities to work part-time to their capacity and obtain partial CPP-D benefits for the period of time they are not able to work, may be one of the methods by which the disincentive could be addressed.

2. Episodic Disabilities

Due to a range of developments such as medical advances and technical supports, many people with disabilities are living longer and with greater capacity to participate in society. In contrast, according to a January 2006 bulletin prepared by the Council of Canadians with Disabilities:

- 56.5% of persons with disabilities are currently unemployed or out of the labour market
- Persons with disabilities face levels of poverty almost twice that of persons without disabilities.²

'Episodic disabilities' is a term used to describe conditions such as multiple sclerosis, HIV/AIDS, lupus, Hepatitis C, and some forms of mental illness, cancers and arthritis. Features that distinguish episodic disabilities from 'traditional' disabilities are their unpredictability, and alternating episodes and degrees of illness and wellness, both of which can force people out of the workforce without warning and then resolve to once again allow people to return to work.

A cross-disability approach has been shown to be an effective way to address policy issues of mutual interest. For instance, the Episodic Disabilities Network³ has identified income support and labour force participation as key priorities and has collaborated to address policy issues relevant to these priorities. Several government departments have supported this cross-disability approach to relevant policies and programming. In a Public Health Agency of Canada⁴ (PHAC)

¹ Canadian Working Group on HIV and Rehabilitation (CWGHR) is a national, multi-sector, multi-disciplinary, charitable organization of stakeholders involved in rehabilitation in the context of HIV. CWGHR works to bridge the traditionally separate worlds of HIV, disability and rehabilitation and to promote quality of life through rehabilitation research, education and cross-sector partnerships. All of CWGHR's work is undertaken at a national or international level and is centred on and includes people living with HIV and other disabilities.

² [First Disability Strategy in Election 2006 on the Right Track](#)

³ The Episodic Disabilities Network includes participation of the *Canadian Mental Health Association*, *Lupus Canada*, *Multiple Sclerosis Society of Canada*, the *Canadian Breast Cancer Network*, *The Arthritis Society* and other national disability organizations including people living with episodic disabilities. It provides a forum to exchange information amongst participants to enhance their ability to respond in a coordinated way to inform policies and programs to improve quality of life and promote inclusion for people with episodic disabilities.

⁴ As of September 1, 2004, the HIV/AIDS Division of *Health Canada* moved to the new *Public Health Agency of Canada*

document, PHAC “encourage[s] greater integration of HIV/AIDS prevention, care and treatment interventions with those of other diseases”⁵

Although there are no official statistics on the number of people living with episodic conditions, Social Development Canada (SDC)⁶ stated in its November 2003 report that “recurrent and episodic disabilities are becoming more prevalent in Canadian society.”⁷

This increasing prevalence was supported in a recent economic analysis of Canada Pension Plan Disability (CPP-D) recipients with episodic disabilities⁸. Episodic disability groups estimated the percentage of CPP-D recipients who would re-engage in the labour force if partial CPP-D benefits were paid for the episodes when their health prevented them from working. The results were as follows:

Period	Cumulative from 2007 to 2011	Cumulative from 2007 to 2016	Yearly Average 2007 to 2030
Expected Re-engagement	262,150	589,835	69,782

In addition to the projected increase in number, the economic analysis demonstrated that a flexible CPP-D policy that included episodic disabilities and allowed for partial CPP-D benefits would have significant gross employee, workplace and economic benefits. *It is important to note that the results are for the gross economic gain expected from a changed CPP-D policy. This analysis did not address the implications that this increase in flexibility of definition would have on other income support programs.*

The following example illustrates how these restrictive definitions of disabilities present challenges for Canadians with episodic disabilities. Many Canadians with episodic disabilities are eligible for coverage and/or currently receive disability benefits through the CPP-D Program and / or private insurance. However, some people with episodic disabilities on full disability benefits may be able and want to work part time or during periods of good health, but cannot because there is no mechanism for partial disability benefits. In fact, the experience of many people with episodic disabilities is that these programs trap them in poverty by creating barriers to staying on the job or returning to work.

Why should Canada address policy and program reform to increase access to the labour market for people living with episodic disabilities?

Access to income security and appropriate employment are key determinants of health⁹.

At the same time, there are increased opportunities for people with lifelong episodic disabilities to work:

- medical and treatment (including rehabilitation) advances result in more people with manageable episodic disabilities (e.g. HIV/AIDS)
- with the aging of Canada’s population and the decreasing dependency ratio, as recognized by SDC, there is an increasing number of Canadians with episodic disabilities
- technology allows for virtual and flexible access to work

⁵ Public Health Agency of Canada. *The Federal Initiative to Address HIV/AIDS in Canada: Strengthening Federal Action in the Canadian Response to HIV/AIDS*. 2004. p. 7

⁶ In December 2003, Human Resources Development Canada divided into two departments: *Human Resources and Skills Development Canada* and *Social Development Canada*. In 2006, the two departments were combined to form Human Resources and Social Development Canada.

⁷ Government of Canada. *Government Response to ‘Listening to Canadians: A First View of the Future of the Canada Pension Plan Disability Program: The Fifth Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities’*. November 2003. p22.

⁸ Smetatin, Paul (RiskAnalytica). *A Population-Based Economic Analysis of Episodic Work Benefits*. CWGHR, 2006.

⁹ Wellesley Central Hospital and Health Canada. *Rehabilitation Services: A Comprehensive Guide for the Care of Persons with HIV Disease: Module 7*, p79. 1998.

- technology (including rehabilitation) can enable accommodation in the workplace
- the concept of work has changed dramatically since the definitions of disability was established (no longer necessarily a 9-5 physical assignment that cannot accommodate episodic disabilities).

Canadians with episodic disabilities want to work and have a right to access to employment.

The more secure route of remaining on disability benefits when they are able to work restricts these Canadians to live on disability income and interrupt, if not end, their contributions to the workforce and Canadian paid economy. The risk of taking paid employment when one's health is unpredictable is often simply too high.

The value of employment cannot be overestimated. As a key determinant of health, employment can help people living with episodic disabilities to:

- increase their ability to live a satisfying, productive and meaningful life and to earn income (another determinant of health)
- stay healthier for longer and improve their overall quality of life
- lessen isolation thereby improve mental health
- promote social integration
- reduce health care costs
- contribute to the economy
- stay active, both at home and at work
- access medications and rehabilitation.

With the impending labour shortage, employers, disability plans providers, people living with episodic disabilities and the Canadian economy all stand to gain when a comprehensive strategy to reform current or develop more accommodating as well as coordinated definitions and policies is implemented.

3. Work to Date

Since 2001, CWGHR has undertaken research on episodic disabilities which has shown that the episodic nature of HIV and other disabilities wreaks havoc with the work lives and income for people living with episodic disabilities. In addition, CWGHR's research has determined that many people with episodic disabilities are able, willing and eager to work; however, systemic and practical disincentives, specifically, lack of partial disability income support if one works part-time, leave few alternatives for recipients except to remain disengaged from paid employment in order to maintain critical disability income and health care supports.

In addition to the research that CWGHR has undertaken on this issue, other organizations have published their findings of barriers to labour force participation faced by people with episodic disabilities:

- CWGHR, in collaboration with the Canadian AIDS Society, presented a brief to the *Parliamentary Sub-Committee on the Status of Persons with Disabilities* outlining the challenges for people with episodic disabilities such as HIV in the existing CPPD Program, such as: the unpredictability of recurring episodes; resulting difficulty maintaining long-term work and contribution requirements; location of supports; differing definitions of 'disability'.¹⁰
- The Institute for Work and Health in 2003 explored the impact of fluctuating disability on labour force participation for people living with HIV. Recommendations clearly indicate the

¹⁰ Canadian AIDS Society and The Canadian Working Group on HIV and Rehabilitation. HIV as an Episodic Illness: Revising the CPP(D) Program, 2003.

need for further exploration of flexible models of labour force participation to lessen the risk and provide greater options for people to engage in the labour force.¹¹

- Research related to vocational rehabilitation has found that “people look to the workplace to meet their needs for primary social interaction and as a surrogate family system.”¹² This same report found that long term unemployment may have a devastating impact on self-esteem.¹³ This in turn often leads to isolation and depression and other mental health problems.
- Systemic and practical barriers within disability income support programs prevent people with HIV/AIDS who are able to work from participating in the labour force in a meaningful way.¹⁴
- In the report *Improving the Odds*¹⁵, the barriers to labour force participation for people with disabilities are explored. The lack of integration across ministries and jurisdictions is identified as one of these barriers.
- A quote from the seminal report, *Listening to Canadians*¹⁶, illustrates the barrier presented by the restrictive definition of disability that precludes the ability to contribute to the labour force: “— our systems (legal & financial) are focused too much on “permanent disability” which puts too much emphasis on having an individual prove how unable they are, versus finding flexibility to focus on their abilities and adaptations... (Anonymous, E-Consultation Participant).”

Listening to Canadians also notes a gap between current services and the needs of persons with disabilities. This gap in services includes the episodic disability communities. For example, the report recommended that the current eligibility requirement for Canada Pension Plan Disability (CPP-D) benefits, namely that a disability be both “severe” and “prolonged”, needed revision to incorporate “real life circumstances”, including the episodic nature of many disabilities.

4. Conclusions

As has been shown in this submission,

- There is a contradiction in the definition of disability in the CPP-D and the Income Tax Act, compared with the assumption of employment of Canadians with disabilities in the Benefit Implementation Act.
- The existing definition used by CPP-D, and the policy of full CPP-D benefits only, excludes Canadians with episodic disabilities from working to their capacity while receiving partial CPP-D disability benefits during the episodes when health does not permit them to work
- An economic analysis has demonstrated that
 - there are CPP-D recipients who would re-engage in the labour force to their ability if a more flexible definition and policy allowed partial CPP-D benefits when health did not permit them to work
 - the number who would re-engage is an increasing number until 2033
 - there would be savings in every single year from 2006 – 2033 if partial CPP-D benefits were implemented

The implementation of the WITB-Disability Supplement presents an ideal opportunity to strategically align these existing benefits for Canadians with disabilities. The first step is to

¹¹ Ferrier, S. and Lavis, J. *With Health Comes Work? People Living with HIV Consider Returning to Work*. AIDS Care. Vol 15 (3). June 2003, 433-434.

¹² Harder, Henry. *Early Intervention in Disability Management: Factors that Influence Successful Return to Work*. International Journal of Disability, Community and Rehabilitation. Vol. 2 (2) 2003, p2.

¹³ Ibid, p4.

¹⁴ Anderson, Joan & Glen Brown. *HIV & Disability Insurance in Canada: An Environmental Scan, 2005*. CWGHR.

¹⁵ Crawford, Cameron. *Improving the Odds: Employment, Disability and Public Programs in Canada*. Roeher Institute.

¹⁶ *Listening to Canadians: A first view of the future of the Canada Pension Plan Disability Program*. Report of the Standing Committee on Human Resources Development and the Status of Persons with Disabilities. April 2003.p. 27.

coordinate the definitions so as to remove the barriers for Canadians with episodic disabilities to participate in the labour force.

Appendix

About The Canadian Working Group on HIV and Rehabilitation

The Canadian Working Group on HIV and Rehabilitation (CWGHR) is a national, multi-sector, multi-disciplinary, charitable organization of stakeholders involved in rehabilitation in the context of HIV. CWGHR was founded in 1998 in response to the increasing disability and rehabilitation needs of people living with HIV. CWGHR works to bridge the traditionally separate worlds of HIV, disability and rehabilitation and to promote quality of life through rehabilitation research, education and cross-sector partnerships.

CWGHR's membership includes individuals and organizations who have an interest in HIV, other disabilities and rehabilitation. The membership includes health care professionals, disability and other community groups, people living with HIV and other disabilities, government representatives, HR professionals and other employment stakeholders, public and private insurance programs, and private sector companies.

CWGHR is governed by a national, voluntary Board of Directors including people living with HIV and other disabilities, health care professionals and private sector stakeholders. All of CWGHR's work is undertaken at a national or international level and is centred on and includes people living with HIV and other disabilities.

In order to establish an ongoing platform for the exchange of ideas and collaboration on issues specific to episodic disabilities with national disability organizations, CWGHR has developed, and continues to coordinate and support the Episodic Disabilities Network ([Episodic Disabilities Network](#)) since 2003. The Episodic Disabilities Network (EDN) has identified income support and labour force participation as key priorities. In response, CWGHR coordinated a national multi-phase project, the 'Episodic Disabilities' Project, funded by Human Resources and Social Development Canada. The project has researched policies internationally, recommended models to accommodate episodic disabilities and implemented a cost-benefit analysis of these models. A proposed demonstration project will test and evaluate the models in a Canadian context, with the intention of producing evidence – based recommendations for policy improvements that will contribute to opportunities for labour force participation and social inclusion of people living with episodic disabilities. In this manner, Canadians with episodic disabilities will have increased opportunities to participate in the labour force and earn income when able instead of subsisting solely on disability income support in order to access critical income, health care and other benefits. This in turn will lessen the isolation of unemployment and promote greater inclusion and stronger communities.

CWGHR continues to be a national leader in the field of episodic disabilities and continues to support initiatives to promote improved quality of life and social inclusion for people living with episodic disabilities.