



Disability Support Pension: Eligibility, Challenges and Resources

Disclaimer: The content of this presentation is information for educational purposes.

It is not to be interpreted or used as legal advice.

ACKNOWLEDGEMENT OF COUNTRY

We acknowledge the Traditional Owners of the lands on which we are meeting. We pay respects to their Elders, past, present and emerging, and the Aboriginal Elders who may be here today.

THANKS AND OTHER ACKNOWLEDGEMENTS

- Economic Justice Australia
- CLCs Queensland
- Everyone involved in the DSP Help Project

Social Security Rights Victoria

- We are an independent, state-wide Community Legal Centre.
- We specialise in social security law, policy and procedure.
- We assist vulnerable and disadvantaged Victorians to understand their rights and obligations in relation to Centrelink payments and challenge unfair decisions.
- We work with others to highlight and change unfair laws and processes.
- We offer secondary consultation and training to other professionals and work with them in integrated ways to improve client services and outcomes.

Social Security: A Human Right

Universal Declaration of Human Rights

Article 22: *“Everyone, as a member of society, has the right to social security ...”*

Article 25: *“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control...”*

International Covenant on Economic Social and Cultural Rights

Article 9 recognizes: *“the right of everyone to social security, including social insurance”*.

SESSION OVERVIEW

Purpose: Build the confidence and capability of support workers to assist clients with DSP applications and appeals.

We'll be covering:

1. DSP Eligibility and Challenges
2. Resources for Applicants and Support Workers: DSP Help
3. Systemic and Policy Activities: Senate Inquiry and review of the Impairment Tables

DISABILITY SUPPORT PENSION

To be eligible for Disability Support Pension (DSP) a person must:

1. Have a physical, intellectual or psychiatric condition that is *permanent*
2. Get *20 points* on the Impairment tables; AND
3. Have a *continuing inability to work*

Permanent Condition = Fully Diagnosed, Treated & Stabilised

Permanent condition: Must be fully diagnosed, treated and stabilised (FDTS)

- Fully diagnosed:
 - Has a diagnosis been made?
 - Is any further investigation required?
- Fully treated:
 - What treatment or rehabilitation has occurred?
 - Is treatment continuing/planned within next 2 years?
- Fully stabilised:
 - Reasonable treatment unlikely to result in significant functional improvement that would allow person to work in next 2 years.

Permanent Condition - Challenges

- Fully diagnosed:
 - Formal requirements for diagnosis? E.g. assessment of an ABI.
 - For mental health conditions, diagnosis must come from a clinical psychologist or psychiatrist.
- Fully treated:
 - What is ‘reasonable treatment’?
 - Waiting lists?
 - Inaccessible due to Covid restrictions?
 - Is NDIS support ‘treatment’?
- Fully stabilised:
 - What is the prognosis?
 - Is the prognosis optimistic or realistic?
- Generally:
 - Cost. What can someone on JobSeeker actually afford?

20 points in Impairment Tables

Impairment Tables:

- Table 1 - Functions requiring Physical Exertion and Stamina
- Table 2 – Upper Limb Function
- Table 3 – Lower Limb Function
- Table 4 – Spinal Function
- Table 5 – Mental Health Function
- Table 6 – Functioning related to Alcohol, Drug and Other Substance Use
- Table 7 – Brain Function
- Table 8 – Communication Function
- Table 9 – Intellectual Function
- Table 10 – Digestive and Reproductive Function
- Table 11 – Hearing and other Functions of the Ear
- Table 12 – Visual Function
- Table 13 – Continence Function
- Table 14 – Functions of the Skin
- Table 15 - Functions of Consciousness

20 points in Impairment Tables

Example: Table 3 - Lower Limb Function

*20 Points - There is a **severe** functional impact on activities using lower limbs.*

- (1) The person:
 - a) is unable to do any of the following:
 - i. walk around a shopping centre or supermarket without assistance;
 - ii. walk from the carpark into a shopping centre or supermarket without assistance;
 - iii. stand up from a sitting position without assistance; and
 - b) requires assistance to use public transport.
- (2) This impairment rating level includes a person who requires assistance to:
 - a) move around in, or transfer to and from a wheelchair (e.g. the person needs personal care assistance to use a toilet); or
 - b) move around using walking aids (e.g. a quad stick, crutches or walking frame), that is, the person needs assistance from another person to walk on some surfaces and could not move independently around a workplace or training facility, even when using a walking aid.

20 points in Impairment Tables

Example: Table 5 – Mental Health Function

*20 Points - There is a **severe** functional impact on activities involving mental health function.*

(1) The person has severe difficulties with most of the following:

a) self care and independent living;

Example: The person needs regular support to live independently, that is, needs visits or assistance at least twice a week from a family member, friend, health worker or support worker.

b) social/recreational activities and travel;

c) interpersonal relationships;

d) concentration and task completion;

e) behaviour, planning and decision-making;

Example: The person's behaviour, thoughts and conversation are significantly and frequently disturbed.

f) work/training capacity.

Multiple Conditions/Impairments

- Where one condition causes multiple impairments, each *impairment* should be given an impairment rating (*Impairment Tables s 10(3).*)
- Multiple conditions causing a combined impairment should be assigned a single impairment rating (*Impairment Tables s 10(5).*)
- In other words, impairment ratings are given for impairments, not conditions.

Impairment Tables - Challenges

- Opacity and interpretation
 - What is ‘assistance’?
- Gathering medical evidence in support of an impairment rating

Continuing Inability to Work

Continuing Inability to Work (CITW)

- Impairment prevents return to work in next 2 years
 - ‘Work’ means work of at least 15 hours a week at minimum wage or better
- Where not a ‘severe impairment’ the person must also have participated in a *Program of Support*

Program of Support

- Program completed through an employment service provider (JSA, DES, etc).
- Might include looking for jobs or doing training.
- Medical exemptions will not count towards 18 months.
 - Example: Sam has a back injury and depression and had to stop working. He has been on Newstart and enrolled in a Program of Support for 18 months. Sam got a medical exemption for about 6 months because he didn't feel up to going into his employment service provider for the training.
 - Sam will need to do a further 6 months of program of support before claiming DSP.
 - Source: VLA Website

Program of Support

Exceptions to Completing POS

- Has a 'severe impairment'.
 - Scores at least 20 points on a single Impairment Table.
- Enrolled, but person unable to improve their ability to find work through POS solely because of impairment
- Employment service provider terminated participation in the program because they could not improve person's ability to find work.

NB: Important to be enrolled in POS

Medical Evidence

Medical evidence vital to likely success of application/appeal

Medical Evidence

Qualification period: date of application, and 13 weeks following

Medical documentation must be *referrable* to condition during qualification period.

DSP Help



DSP Help is a free resource to help people understand the Disability Support Pension and make better applications and appeals.

dsphelp.org.au



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Systemic and Policy Activities

Senate Inquiry into the DSP (25 June 2021)

[https://www.aph.gov.au/Parliamentary Business/Committees/Senate/Community Affairs/DisabilitySupportPension](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DisabilitySupportPension)

Review of the DSP Impairment Tables (31 July 2021)

<https://engage.dss.gov.au/review-of-the-disability-support-pension-dsp-impairment-tables/>

SUMMING UP

- DSP eligibility is complex and can be challenging.
- Understanding the criteria and gathering appropriate medical evidence are both key to successful applications and appeals
- There are resources available to help. For example, DSP Help.
- Submissions are open for the DSP Senate Inquiry and Impairment Table Review right now.

QUESTIONS?

Useful links

- DSP Help

<https://dsphelp.org.au/>

- Centrelink Payment and Service Finder

https://www.centrelink.gov.au/custsite_pfe/pymtfinderest/paymentFinderEstimatorPage.jsf?wec-appid=pymtfinderest&wec-locale=en_US#stay

- Guide to Government Payments

<https://www.servicesaustralia.gov.au/organisations/about-us/publications-and-resources/guide-australian-government-payments>

- Guide to Social Security

<http://guides.dss.gov.au/guide-social-security-law>

- Social Security Act 1991

http://www.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/

- Social Security (Administration) Act 1999

http://classic.austlii.edu.au/au/legis/cth/consol_act/ssa1999338/

- Austlii – AAT cases

<http://www.austlii.edu.au/cgi-bin/viewdb/au/cases/cth/AATA/>

- Economic Justice Australia Fact Sheets

<http://ejaustralia.org.au/self-help/>

