

PART 2.3 — DISABILITY SUPPORT PENSION

History

Pt 2.3 substituted by No 141 of 1991, s 10.

Division 1 — Qualification for and payability of disability support pension

Subdivision A — Qualification

SECTION 94 QUALIFICATION FOR DISABILITY SUPPORT PENSION — CONTINUING INABILITY TO WORK

94(1) A person is qualified for disability support pension if:

- (a) the person has a physical, intellectual or psychiatric impairment; and
- (b) the person's impairment is of 20 points or more under the Impairment Tables; and
- (c) one of the following applies:
 - (i) the person has a continuing inability to work;
 - (ii) the Health Secretary has informed the Secretary that the person is participating in the supported wage system administered by the Health Department, stating the period for which the person is to participate in the system; and

(d) the person has turned 16; and

(da) in a case where the following apply:

- (i) the person is under 35 years of age;
- (ii) the Secretary is satisfied that the person is able to do work that is for at least 8 hours per week on wages at or above the relevant minimum wage and that exists in Australia, even if not within the person's locally accessible labour market;
- (iii) if the person has one or more dependent children — the youngest dependent child is 6 years of age or over;

the person meets any participation requirements that apply to the person under section 94A; and

(e) the person either:

- (i) is an Australian resident at the time when the person first satisfies paragraph (c); or
- (ii) has 10 years qualifying Australian residence or has a qualifying residence exemption for a disability support pension; or
- (iii) is born outside Australia and, at the time when the person first satisfies paragraph (c) the person:
 - (A) is not an Australian resident; and
 - (B) is a dependent child of an Australian resident; and the person becomes an Australian resident while a dependent child of an Australian resident; and

- (ea) one of the following applies:
- (i) the person is an Australian resident;
 - (ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);
 - (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.
- (f) (Repealed)

Note 1: for “Australian resident”, “qualifying Australian residence” and “qualifying residence exemption” see section 7.

Note 2: For *Impairment Tables* see subsection 23(1) and sections 26 and 27.

History

S 94(1) substituted by No 141 of 1991, s 10; amended by No 229 of 1992, s 153, Sch 3(11), (12); No 161 of 1994, s 4, Sch 2(7); No 104 of 1995, s 4, Sch 4(1); No 202 of 1997, s 3, Sch 15(16)-(18), Sch 16(1); No 154 of 2005, s 3, Sch 2(1), commenced 1 July 2006; No 34 of 2011, Sch 2(1), commenced 1 July 2011; No 52 of 2011, Sch 3(1) and (2), commenced 3 September 2011.

S 94(1) amended by No 51 of 2012, Sch 2(1) and Sch 3(1)-(3), applicable for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.

Note 1 substituted by No 161 of 1994, s 4, Sch 2(8).

Note 2 inserted by No 141 of 1991, s 10; amended by No 104 of 1995, s 4, Sch 19(30); substituted by No 145 of 2011, Sch 3(3), effective 1 January 2012.

No 154 of 2005, Sch 2(13), contained the following provision:

“13 Application and transitional provisions”

(1) The amendments of the *Social Security Act 1991* made by this Part apply in relation to any claim, and any payment of pension as a result of such a claim, by a person for a disability support pension made on or after 1 July 2006.

(2) Subject to subitem (3), the *Social Security Act 1991* applies to any claim by a person for a disability support pension made before 1 July 2006, and any payment of

pension as a result of such a claim, as if the amendments referred to in subitem (1) had not been made.

(3) If:

(a) on or after 1 July 2006, a notice under subsection 63(2) or 64(2) of the *Administration Act* is given to a person who made a claim for a disability support pension on or after 11 May 2005 and before 1 July 2006; and

(b) under the notice, the person is required to undertake a specified activity for the purpose of reviewing his or her capacity to perform work;

then the amendments of the *Social Security Act 1991* referred to in subitem (1) apply to the person from the date of the notice.”

No 52 of 2011, Sch 3(12), contained the following provision:

“12 Application and saving

(1) The amendments made by items 1 to 9 apply in relation to a person who makes a claim, or who is taken to have made a claim, for disability support pension on or after the commencement of those items.

Sections 12, 13 and 15 of the *Administration Act* and clause 4 of Schedule 2 to that Act deal with claims for disability support pension that are taken to have been made.”

94(1A)–(1B) (Repealed by No 202 of 1997, s 3, Sch 15(19).)

Continuing inability to work

94(2) A person has a *continuing inability to work* because of an impairment if the Secretary is satisfied that:

- (aa) in a case where the person's impairment is not a severe impairment within the meaning of subsection (3B) — the person has actively participated in a program of support within the meaning of subsection (3C); and
- (a) in all cases — the impairment is of itself sufficient to prevent the person from doing any work independently of a program of support within the next 2 years; and
- (b) in all cases — either:
 - (i) the impairment is of itself sufficient to prevent the person from undertaking a training activity during the next 2 years; or

Sec 94(1A)–(1B)

CCH Australia Limited

- (ii) if the impairment does not prevent the person from undertaking a training activity — such activity is unlikely (because of the impairment) to enable the person to do any work independently of a program of support within the next 2 years.

Note: For *work* see subsection (5).

History

S 94(2) substituted by No 154 of 2005, s 3, Sch 2(2), commenced 1 July 2006; amended by No 52 of 2011, Sch 3(3)–(5), commenced 3 September 2011.

For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).

94(3) In deciding whether or not a person has a **continuing inability to work** because of an impairment, the Secretary is not to have regard to:

- (a) the availability to the person of a training activity; or
- (b) the availability to the person of work in the person's locally accessible labour market.

History

S 94(3) substituted by No 104 of 1995, s 4, Sch 4(3); amended by No 154 of 2005, s 3, Sch 2(3)–(4), commenced 1 July 2006.

For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).

94(3A) If:

- (a) a person is receiving disability support pension; and
- (b) the Secretary gives the person a notice under subsection 63(2) or (4) of the Administration Act in relation to assessing the person's qualification for that pension;

then paragraph (2)(aa) of this section does not apply in relation to that assessment.

History

S 94(3A) inserted by No 52 of 2011, Sch 3(6), commenced 3 September 2011.

For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

Severe impairment

94(3B) A person's impairment is a **severe impairment** if the person's impairment is of 20 points or more under the Impairment Tables, of which 20 points or more are under a single Impairment Table.

Example 1:

A person's impairment is of 30 points under the Impairment Tables, made up of 20 points under one Impairment Table and 10 points under another Impairment Table. The person has a severe impairment.

Example 2:

A person's impairment is of 40 points under the Impairment Tables, made up of 20 points under one Impairment Table and 20 points under another Impairment Table. The person has a severe impairment.

Example 3:

A person's impairment is of 20 points under the Impairment Tables, made up of 10 points each under 2 separate Impairment Tables. The person does not have a severe impairment.

History

S 94(3B) inserted by No 52 of 2011, Sch 3(6), commenced 3 September 2011.

For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

Active participation in a program of support

94(3C) A person has *actively participated* in a program of support if the person has satisfied the requirements specified in a legislative instrument made by the Minister for the purposes of this subsection.

History

S 94(3C) inserted by No 52 of 2011, Sch 3(6), commenced 3 September 2011. For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

94(3D) The Secretary must comply with any guidelines in force under subsection (3E) in deciding whether the Secretary is satisfied as mentioned in paragraph (2)(aa).

History

S 94(3D) inserted by No 52 of 2011, Sch 3(6), commenced 3 September 2011. For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

94(3E) The Minister may, by legislative instrument, make guidelines for the purposes of subsection (3D).

History

S 94(3E) inserted by No 52 of 2011, Sch 3(6), commenced 3 September 2011. For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

Doing work independently of a program of support

94(4) A person is treated as doing work *independently of a program of support* if the Secretary is satisfied that to do the work the person:

- (a) is unlikely to need a program of support; or
- (b) is likely to need a program of support provided occasionally; or
- (c) is likely to need a program of support that is not ongoing.

History

S 94(4) substituted by No 154 of 2005, s 3, Sch 2(5), commenced 1 July 2006; amended by No 52 of 2011, Sch 3(7) and (8), commenced 3 September 2011. For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).

94(4A) (Repealed by No 38 of 2010, s 3, Sch 7(27), commenced 14 April 2010.)

94(4B) (Repealed by No 38 of 2010, s 3, Sch 7(27), commenced 14 April 2010.)

Other definitions

94(5) In this section:

[educational or vocational training] (Omitted by No 154 of 2005, s 3, Sch 2(6), commenced 1 July 2006. For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).)

[on-the-job training] (Omitted by No 154 of 2005, s 3, Sch 2(7), commenced 1 July 2006. For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).)

program of support means a program that:

- (a) is designed to assist persons to prepare for, find or maintain work; and
- (b) either:
 - (i) is funded (wholly or partly) by the Commonwealth; or

- (ii) is of a type that the Secretary considers is similar to a program that is designed to assist persons to prepare for, find or maintain work and that is funded (wholly or partly) by the Commonwealth.

History

Definition of "program of support" inserted by No 52 of 2011, Sch 3(9), commenced 3 September 2011. For application and transitional provisions relevant to No 52 of 2011, Sch 3(12), see Note at the end of s 94(1).

training activity means one or more of the following activities, whether or not the activity is designed specifically for people with physical, intellectual or psychiatric impairments:

- (a) education;
- (b) pre-vocational training;
- (c) vocational training;
- (d) vocational rehabilitation;
- (e) work-related training (including on-the-job training).

History

Definition of "training activity" inserted by No 154 of 2005, s 3, Sch 2(8), commenced 1 July 2006. For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).

work means work:

- (a) that is for at least 15 hours per week at award wages or above; and
- (b) that exists in Australia, even if not within the person's locally accessible labour market.

History

Definition of "work" amended by No 154 of 2005, s 3, Sch 2(9), commenced 1 July 2006. S 94(5) inserted by No 141 of 1991, s 10; amended by No 104 of 1995, s 4, Sch 4(5).

For application and transitional provisions relevant to No 154 of 2005, Sch 2(13), see Note at the end of s 94(1).

94(6) Person not qualified in certain circumstances. A person is not qualified for a disability support pension on the basis of a continuing inability to work if the person brought about the inability with a view to obtaining a disability support pension or a sickness allowance or with a view to obtaining an exemption, because of the person's incapacity, from the requirement to satisfy the activity test for the purposes of job search allowance, newstart allowance, youth training allowance, youth allowance or austudy payment.

History

S 94(6) inserted by No 141 of 1991, s 10; amended by No 109 of 1994, s 19, Sch 1(3); No 1 of 1996, s 3(1), Sch 2(75); No 202 of 1997, s 3, Sch 15(20); No 45 of 1998, s 3 and Sch 9(286); amended by No 173 of 2007, s 9, Sch 1, commenced 1 January 2008. Note inserted by No 81 of 1992, s 116, Sch 1.

SECTION 94A PARTICIPATION REQUIREMENTS

94A(1) The participation requirements are as follows:

- (a) the person must enter into a participation plan when the person is required by the Secretary under section 94B to do so;

94C(3) In deciding whether he or she is satisfied as mentioned in subsection (1), the Secretary may request the person to give the Secretary a certificate from a medical practitioner.

94C(4) Subsection (3) does not limit subsection (1).

94C(5) A determination under subsection (2) is not a legislative instrument.

History

S 94C inserted by No 51 of 2012, Sch 2(2), applicable for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.

SECTION 94D PRE-NATAL AND POST-NATAL RELIEF

94D(1) A pregnant woman is covered by a participation exemption for the period that starts 6 weeks before the woman's expected date of confinement and ends on the day on which the woman gives birth to the child (whether or not the child is born alive).

94D(2) If a woman gives birth to a child (whether or not the child is born alive), the woman is covered by a participation exemption for the period that starts on the day on which she gives birth to the child and ends 6 weeks after that day.

History

S 94D inserted by No 51 of 2012, Sch 2(2), applicable for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.

SECTION 94E SUPPORTED EMPLOYMENT

94E(1) A person is covered by a participation exemption for a period if:

- (a) the person is employed throughout the period; and
- (b) the work undertaken by the person in the course of that employment is for wages set in accordance with the program administered by the Commonwealth known as the supported wage system.

94E(2) A person is covered by a participation exemption for a period if the person is, throughout the period, in employment that is supported by supported employment services within the meaning of section 7 of the *Disability Services Act 1986*.

History

S 94E inserted by No 51 of 2012, Sch 2(2), applicable for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.

SECTION 94F SPECIAL CIRCUMSTANCES

94F(1) A person is covered by a participation exemption for a period determined by the Secretary if:

- (a) the Secretary is satisfied that special circumstances, beyond the person's control, exist; and
- (b) the Secretary is satisfied that in those circumstances it would be unreasonable to expect the person to meet the participation requirements for that period.

94F(2) The period determined under subsection (1) must not exceed 13 weeks.

94F(3) A determination under subsection (1) is not a legislative instrument.

History

S 94F inserted by No 51 of 2012, Sch 2(2), applicable for the purposes of working out a person's qualification for disability support pension in respect of days occurring on or after 1 July 2012.

SECTION 95 QUALIFICATION FOR DISABILITY SUPPORT PENSION — PERMANENT BLINDNESS

95(1) A person is qualified for a disability support pension if:

- (a) the person is permanently blind; and
- (b) the person has turned 16; and
- (c) the person:
 - (i) is an Australian resident at the time when the person first satisfies paragraph (a); or
 - (ii) has 10 years qualifying Australian residence; or
 - (iii) has a qualifying residence exemption for a disability support pension; or
 - (iii) is born outside Australia and, at the time when the person first satisfies paragraph (a), the person:
 - (A) is not an Australian resident; and
 - (B) is a dependent child of an Australian resident; and the person becomes an Australian resident while a dependent child of an Australian resident; and

Note: for “Australian resident” and “qualifying Australian residence” see section 7.

- (d) one of the following applies:
 - (i) the person is an Australian resident;
 - (ia) the person is absent from Australia and the Secretary has made a determination in relation to the person under subsection 1218AAA(1);
 - (ii) the person is absent from Australia and all the circumstances described in paragraphs 1218AA(1)(a), (b), (c), (d) and (e) exist in relation to the person.

History

S 95(1) substituted by No 141 of 1991, s 10; amended by No 202 of 1997, s 3, Sch 12(1)-(2); No 34 of 2011, Sch 2(4), commenced 1 July 2011.

disability support pension in respect of days occurring on or after 1 July 2012.

S 95(1) amended by No 51 of 2012, Sch 3(4)-(6), applicable for the purposes of working out a person's qualification for

Note inserted by No 141 of 1991, s 10.

95(2) Person not qualified in certain circumstances. A person is not qualified for a disability support pension on the basis of blindness if the person brought about the blindness with a view to obtaining a disability support pension or a sickness allowance or with a view to obtaining an exemption, because of the person's blindness, from the requirement to satisfy the activity test for the purposes of job search allowance, newstart allowance, youth training allowance, youth allowance or austudy payment.

History

S 95(2) substituted by No 141 of 1991, s 10; amended by No 109 of 1994, s 19, Sch 1(4); No 1 of 1996, s 3(1), Sch 2(76); No 202 of 1997, s 3, Sch 15(21); No 45 of 1998, s 3 and Sch 9(286); No 173 of 2007, s 3, Sch 1(12), commenced 1 January 2008.

Note inserted by No 81 of 1992, s 116, Sch 1.

SECTION 96 CONTINUATION OF DISABILITY SUPPORT PENSION

96(1) This section applies to a person if:

- (a) the person is receiving disability support pension; and

Sec 95(1)

- (b) the person would, apart from this section, cease to be qualified for disability support pension because the person obtains paid work that is for:
- (i) at least 15 hours per week; and
 - (ii) not more than 30 hours per week.

96(2) A person to whom this section applies continues to be qualified for disability support pension.

History

S 96 inserted by No 51 of 2012, Sch 1(1), commenced 1 July 2012. For a transitional provision relevant to 51 of 2012, Sch 1(1), see CCH Note 8 at the beginning of this Act.

SECTION 97 DEPARTURE CERTIFICATE REQUIREMENTS APPLY

97 (Repealed by No 94 of 2000, s 3, Sch 1(3).)

SECTION 97A-97B

97A-97B (Repealed by No 141 of 1991, s 10.)

SECTION 97B REPEALED

97B (Repealed by No 141 of 1991, s 10.)

Subdivision B — Payability

SECTION 98 DISABILITY SUPPORT PENSION NOT PAYABLE IF PENSION RATE NIL

98(1) [Effect of nil pension rate] Subject to subsection (2), a disability support pension is not payable to a person if the person's disability support pension rate would be nil.

98(2) [Exceptions to subsection (1)] Subsection (1) does not apply to a person if the person's rate would be nil merely because an election by the person under subsection 1061VA(1) is in force.

History

S 98(2) substituted by No 60 of 2009, Sch 4(56), commenced 20 September 2009; No 81 of 2009, Sch 4(82), commenced 20 September 2009. S 98 substituted by No 192 of 1999, s 3, Sch 1(24).

SECTIONS 99-102

99-102 (Repealed by No 192 of 1999, s 3, Sch 1(24).)

SECTION 103 MULTIPLE ENTITLEMENT EXCLUSION

103(1) [Person already receiving service pension] A disability support pension is not payable to a person if the person is already receiving a service pension.