BARRIERS TO DISABILITY SUPPORT PENSION ACCESS FOR PEOPLE WITH PSYCHIATRIC IMPAIRMENTS AND THEIR EXPERIENCES ON JOBSEEKER PAYMENT

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In collaboration with Economic Justice Australia
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ABOUT ECONOMIC JUSTICE AUSTRALIA

Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. EJA members across Australia have provided people with free and independent information, advice, education, and representation in the area of social security for over 30 years.

EJA provides expert advice to government on social security reform to make it more effective and accessible. Its law and policy reform work:

- strengthens the effectiveness and integrity of our social security system;
- educates the community; and
- improves people's lives by reducing poverty and inequality.

EJA's policy positions are informed by its members' unique access to client-related experience, and research projects which examine structural and systemic issues affecting access to social security rights and entitlements.

ABOUT THIS RESEARCH REPORT

This report examines the experiences of people with psychiatric disability on JobSeeker Payment who are applying for the Disability Support Pension (DSP), or appealing refusal, and are trying to meet their mutual obligations for JobSeeker Payment (formerly Newstart Allowance) in the interim.

The report's findings are based on an examination of the DSP policy framework, a review of relevant DSP appeal cases heard by the Administrative Appeals Tribunal (AAT), and an analysis of case studies published by EJA in the February 2021 edition of its online publication Social Security Rights Review.[1] The case studies were provided by the Welfare Rights Centre (WRC) in New South Wales (NSW), Basic Rights Queensland and Illawarra Legal Centre – all of which are EJA member centres. The Rights Review article is accessible here and is included in to the APPENDIX of this report.

EXECUTIVE SUMMARY

Our analysis clearly indicates that there are structural and systemic barriers to accessing DSP for people whose primary impairment is psychiatric.

The statutory DSP qualification criteria act as a barrier to accessing DSP for people with psychiatric conditions. In particular, the requirement that a condition be 'fully diagnosed', 'fully treated', and 'fully stabilised' in order to be assigned an impairment rating disadvantages people with a psychiatric condition.

It is clear that the onerous evidence requirements associated with applying for DSP act as a systemic barrier to the claims process for this cohort of people with disability. People with psychiatric impairments experience particular barriers to obtaining medical evidence, and difficulty ensuring that the evidence gathered complies with Departmental guidelines administered by Centrelink Job Capacity Assessors and delegates - and for those who appeal, with AAT members' interpretation of what is required under the legislation, as informed by the Department of Social Services policy guidelines and case law. A lack of understanding of the vagaries of evidence requirements by both applicants and doctors can mean that people with severe psychiatric disability are forced to appeal to the AAT to establish qualification for DSP, while many others struggle on JobSeeker Payment indefinitely.

Our findings also highlight the significant problems experienced by people with psychiatric impairments in meeting JobSeeker Payment mutual obligations. It was found that many people with psychiatric impairments were unable to meet their mutual obligations, and experienced problems negotiating appropriate job plans and temporary medical exemptions from mutual obligations, even where their employment services provider was aware of the impact of their poor mental health on their capacity to comply with requirements.

As a consequence of being unable to meet their mutual obligations many people in the reviewed cases were penalised with periods of non-payment, leading to financial hardship – and many experienced an exacerbation of their psychiatric condition. In some of the case studies examined, people were able to obtain a temporary medical exemption from mutual obligation requirements. However, requiring a DSP claimant to provide evidence of a 'temporary' incapacity could be problematic if they are also trying to access DSP on the grounds that their psychiatric condition is permanent.

Examination of these cases shows that people with psychiatric impairments are not adequately supported economically, mentally, and physically on JobSeeker Payment. Overall, people with psychiatric impairments are structurally and systemically disadvantaged by the social security system.

1. A total of 17 case studies were analysed: the 16 published in Social Security Rights Review, and an additional case study, Sharon, provided after publication.

Senate inquiry and DSP Impairment Tables review

On 13 May 2021, the Senate referred an inquiry into the purpose, intent and adequacy of the Disability Support Pension to the Senate Community Affairs References Committee for inquiry and report by 30 November 2021.[2] This project was undertaken prior to announcement of the inquiry, and also prior to the Department of Social Services' announcement of a Departmental review of the DSP Impairment Tables in light of the sunsetting of the Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 (the Impairment Tables) on 1 April 2022.[3] We very much welcome these two processes. This report will inform EJA's submissions to both the Senate inquiry and the Departmental review.

RECOMMENDATIONS

Based on the findings of this study, we make the following recommendations:

Evidence requirements

1. Completion of a treating doctor report (TDR) should be reintroduced as a mandatory component of DSP claims, with the TDR a pro forma part of the claim package.

2. Completion of the TDR as part of a DSP claim package should be billable under Medicare, with a new Medicare item number introduced for report completion.

3. Clear guidelines should be developed for treating health professionals regarding the type of evidence required for DSP claims, and provided with the TDR as part of the DSP claim package.

4. The Australian Medical Association (AMA) and the Fellowship of the Royal Australian College of General Practitioners (FRACGP) should be consulted about the most effective ways to communicate these guidelines.

5. Department of Social Services policy guidelines for delegates should be reviewed and amended, to clarify that where a condition has been diagnosed by a psychiatrist or clinical psychologist. General Practitioner (GP) evidence which attests that the condition is ongoing, treatment is ongoing, and the condition is stabilised to the extent possible in the circumstances, should suffice.

'Fully' diagnosed, treated and stabilised requirement

6. The preamble to the DSP Impairment Tables should be amended such that the 'fully' qualifier is removed from references to a condition being diagnosed, treated and/or stabilised.

7. The DSP legislation should be amended such that qualification for DSP is not conditional on treatment.

Program of support requirement

8. Amend section 94 of the Social Security Act so as to abolish the DSP program of support requirement; or, in the alternative, amend section 94 so as to include a straightforward exemption policy.

Manifest grant guidelines

9. Revise the policy guidelines regarding grant of DSP to people who are manifestly eligible to enable manifest grants to people whose primary condition is psychiatric.

Support for at-risk groups on activity-tested income support payments

10. Centrelink should provide vulnerable DSP applicants with adequate social worker support, for ongoing assistance and referral to community support services, including for assistance and advocacy regarding social security claims and appeals.

11. Additional Commonwealth funding should be granted to enable community legal centres to provide legal advice and advocacy to DSP applicants and appellants.

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2. See Parliament of Australia, *Purpose, intent and adequacy of the Disability Support Pension* (Web page), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/DisabilitySupportPensio

3. See Department of Social Services, *Review of the Disability Support Pension (DSP) Impairment Tables* (Web page), https://engage.dss.gov.au/review-of-the-disability-support-pension-dsp-impairment-tables/

12. Services Australia should consult with national disability peaks to facilitate its implementation of the Fifth National Mental Health and Suicide Prevention Plan.[4]

13. JobSeeker Payment recipients identified as suffering severe psychiatric impairment and mental distress should be offered support to claim DSP, with referrals to community advocates, particularly where there is a history of suspensions and non-payment penalties.

Cost of disability

14. A cost of disability allowance should be introduced for people with disability in receipt of JobSeeker Payment and other activity tested income support payments.

INCOME SUPPORT FRAMEWORK FOR PEOPLE WITH DISABILITY

DSP is a social security payment targeted to people with disability whose impairments limit ongoing capacity for work to less than 15 hours per week. The DSP qualification criteria are set out in the Social Security Act 1991. DSP claimants include people with psychiatric impairment as a result of a wide range of conditions - including chronic anxiety, clinical depression, drug or alcohol dependency, schizophrenia and bipolar disorder.

Most people with disability of working age who need social security income support and either do not meet the DSP qualification criteria, or may be eligible but are unable to navigate the claims process, claim JobSeeker Payment.[5] JobSeeker Payment is available to people between 22 years and Age Pension age who are unemployed and seeking work - including people with partial capacity to work due to disability. Eligibility criteria for JobSeeker Payment include mutual obligation requirements which ostensibly can take into account limitations on work capacity due to disability. The basic rate of JobSeeker Payment payable to a person is lower than the DSP rate, income testing is harsher and unlike for pensions, there is no graduated assets test.

The DSP qualification criteria are complex and the rationale for some of the provisions is unclear. To inform our analysis of the case studies provided by EJA and our review of relevant AAT decisions, we reviewed the DSP qualification criteria and assessment processes, and mutual obligations policy affecting people with disability in receipt of JobSeeker Payment. An understanding of the complex legislative framework is essential to identifying the structural and systemic issues for DSP claimants in various cohorts.

DSP qualification criteria

To qualify for DSP, a person must be between 16 years of age and Age Pension age (currently 66) and meet residence requirements. Other than for people with vision impairment who meet the criteria for 'DSP - blind', the rate of payment is income and assets tested.

Section 94 of the Social Security Act 1991[6] ('the Act') provides the DSP medical qualification criteria. The key provisions relevant to this study provide that a person is qualified for the DSP 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**; [or]
  (ii) the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system.[7]

A person who is assessed as having an impairment rating of at least 20 points under the Impairment Tables has a 'continuing inability to work' if they have an inability to work independently of a 'program of support' within the next two years because of their impairment, and either:

- they have a **severe impairment**, i.e. they score at least 20 points under a single Impairment Table; **OR**
- they have actively participated in a **program of support**[8] for at least 18 months over the previous three years, i.e., they have participated in a Commonwealth funded program, usually an employment services provider, designed to assist a person

4.National Mental Health Commission, *The Fifth National Mental Health and Suicide Prevention Plan* (Web page) (August 2017) https://www.mentalhealthcommission.gov.au/getmedia/0209d27b-1873-4245-b6e5-49e770084b81/Fifth-National-Mental-Health-and-Suicide-Prevention-Plan.

5.Other social security income support payments for which people with disability of working age may qualify include Youth Allowance, Austudy, and Parenting Payment – each of which have eligibility criteria, activity testing and mutual obligations that can pose particular challenges for people with psychiatric impairments. Our research for this paper solely covered DSP and JobSeeker Payment.

6.Accessible at AustLII, *Social Security Act 1991 – Sect 94* (Web page), http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s94.html

7.Issues regarding the Supported Wage System were not examined in this study.

8.The program of support requirement is outlined here: Department of Social Services, *1.1.A.30 Active participation in a program of support (DSP)* (Web page) (9 February 2015) https://guides.dss.gov.au/guide-social-security-law/1/1/a/30 . The rationale for introduction of the program of support requirement is described here: Parliament of Australia, *Chapter 4* (Web page), https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/familyassistance11/report/c04

> find or prepare for work. This means that a person who has scored in excess of 20 points across more than one Impairment Table but did not score in excess of 20 points under any single Table, will generally not qualify for DSP until they meet this requirement. This criterion is generally referred to as the program of support (POS) requirement.

A person's qualification for DSP under section 94 of the Act is assessed as at the date of claim plus 13 weeks.[9] This means that a person who provides evidence showing that they met the qualification criteria either on the day they claimed or met the criteria within 13 weeks after that day, will meet the section 94 qualification criteria.

The POS requirement

The POS requirement is purely an eligibility criterion for DSP, and does not have a specific funding allocation.[10] There is no actual program named 'program of support'; the requirement can be met by engaging with a government-funded employment services provider such as a Disability Employment Service (DES) or Jobactive.

The requirements and guidelines that must be taken into account in determining whether a person has actively participated in a POS for the purposes of determining DSP qualification are set out in a Ministerial Instrument, the *Social Security (Active Participation for Disability Support Pension) Determination 2014* (the Determination). The Instrument provides that a person who has not yet participated in a POS for at least 18 months during the previous three years can satisfy the POS requirement for DSP if:

> 'their program of support was terminated because the person was unable, solely because of his or her impairment, to improve his or her capacity to prepare for, find or maintain work through continued participation in the program'.[11]

A person who is terminated for this reason can reapply for DSP, and potentially meet the POS requirement in respect of that claim.

Definition of psychiatric impairment

A definition of psychiatric impairment is not prescribed by the Act. The Australian Institute of Health and Welfare (AIHW) defines psychiatric disability as:

> 'clinically recognisable symptoms and behaviour patterns frequently associated with distress that may impair functioning in normal social activity'.[12]

Examples of psychiatric conditions provided by AIHW include schizophrenia, anxiety disorders, addictive behaviours, and adjustment disorders.

DSP Impairment Tables

A DSP applicant's impairment is assessed under the *Social Security (Tables for the Assessment of Work-Related Impairment for Disability Support Pension) Determination 2011* (Impairment Tables). This points-based system is intended to assess an applicant's functional capacity in relation to each relevant table for conditions that are considered to have been 'fully' diagnosed, treated and stabilised, and are considered to be 'permanent'.

The concepts underpinning this points-based system are complex. Given the episodic nature of severe psychiatric conditions, and issues regarding treatment efficacy and treatment adherence, assessment can be particularly problematic for psychiatric impairments. The preamble to the Impairment Tables provides, among other things, that:

- an impairment rating can only be assigned if the condition causing that impairment is **'permanent'**, and the impairment resulting from that permanent condition 'is more likely than not, in light of available evidence, to persist for **more than 2 years'**.
- a condition is 'permanent' if it has been '**fully diagnosed'** by an appropriately qualified medical practitioner; it has been '**fully treated'**; and it has been '**fully stabilised'**. Diagnosis of a psychiatric condition must have been made by a psychiatrist or clinical psychologist.
- in determining whether a condition has been 'fully diagnosed' and 'fully treated' consideration must be given to whether there is corroborating evidence of the condition; what treatment or rehabilitation has occurred in relation to the condition; and whether treatment is continuing or is planned in the next 2 years.

9. Pursuant to the Social Security Administration Act 1999, Schedule 2, Part 2, Clause 4. https://www.legislation.gov.au/Details/C2021C00223/Html/Volume_2#_Toc67991074

10. Parliament of Australia. *Answer to senate question on notice - QUESTION NO: 1552. DATE ASKED: 21 May 2020* (Web page), https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/COVID-19/COVID19/Additional_Documents?docType=Answer%20to%20Question%20on%20Notice

11. Determination accessible at: Australian Government, *Social Security (Active Participation for Disability Support Pension) Determination 2014* (Web page), https://www.legislation.gov.au/Details/F2015L00001

12. Australian Institute of Health and Welfare, *Mental Health Services in Australia* (Web page) (20 July 2021) https://www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/psychiatric-disability-support-services/key-concepts#10_psychiatric_disability

- A condition is 'fully stabilised' if:
    - either the person has undertaken reasonable treatment for the condition and any further reasonable treatment is unlikely to result in 'significant functional improvement' to a level enabling the person to undertake work in the next 2 years;

      OR

    - the person has not undertaken reasonable treatment for the condition and significant functional improvement to a level enabling the person to undertake work in the next 2 years is not expected to result, even if the person undertakes reasonable treatment; or there is a medical or other compelling reason for the person not to undertake reasonable treatment.
- Reasonable treatment is treatment that:
    - is reasonably accessible to the person; and
    - is at a reasonable cost; and
    - can reliably be expected to result in a substantial improvement in functional capacity; and
    - is regularly undertaken or performed; and
    - has a high success rate; and
    - carries a low risk to the person.
- For conditions that have stabilised as episodic or fluctuating a rating must be assigned which reflects the overall functional impact of impairments relating to the condition, taking into account the severity, duration and frequency of the episodes or fluctuations.

Assessment of whether a person's condition is 'permanent', whether related impairments are likely to persist for at least two years, and whether conditions have been 'fully' diagnosed, treated and stabilised, are made by a Centrelink Job Capacity Assessor on the basis of medical evidence submitted with the person's DSP claim.[13][14] Job capacity assessors are medical, health and allied health professionals who are employed by Services Australia, including:

- accredited exercise physiologists,
- doctors,
- registered physiotherapists,
- registered nurses,
- registered occupational therapists,
- registered psychologists,
- rehabilitation counsellors,
- social workers,
- speech pathologists.

Where the job capacity assessor considers that a DSP applicant is eligible for DSP, their assessment is reviewed by a Government-contracted doctor.[15]

Psychiatric impairment is assessed under Table 5 of the Impairment Tables, which lists the factors to consider in the assignment of an impairment rating, namely: self-care and independent living; social/recreational activities and travel; interpersonal relationships; concentration and task completion; behaviour, planning and decision making; and work/training capacity. Consideration of these factors is intended to determine an applicant's functional capacity to work.

Each of the Impairment Tables includes an introduction which sets out rules and guidance for assigning a rating under that table. The introduction to Table 5 states that:

- Table 5 is to be used where the person has a permanent condition resulting in functional impairment due to a mental health condition (including recurring episodes of mental health impairment).
- The diagnosis of the condition must be made by an appropriately qualified medical practitioner (this includes a psychiatrist) with evidence from a clinical psychologist (if the diagnosis has not been made by a psychiatrist).
- Self-report of symptoms alone is insufficient.

13. See Services Australia, *Job Capacity Assessment* (Web page) (10 December 2020) https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-we-assess-your-claim/job-capacity-assessment

14. There is little transparency regarding the applications that are referred for a Job Capacity Assessment (JCA). However, if required the JCA will assess an applicant's ability to work and medical eligibility for the DSP. The purpose of this assessment is further evidence of the Act's conflation of differing conceptualisations of disability. "Medical diagnosis" and "ability to work" are once again synonymised for the purpose of accessing DSP, creating further barriers to economic justice for applicants.

15. See Department of Social Services, *1.1.D.180 Disability medical assessment (DSP)* (Web page) (1 July 2015) https://guides.dss.gov.au/guide-social-security-law/1/1/d/180

- There must be corroborating evidence of the person's impairment.
- Examples of corroborating evidence for the purposes of this Table include, but are not limited to, the following:
    - a report from the person's treating doctor;
    - supporting letters, reports or assessments relating to the person's mental health or psychiatric illness;
    - interviews with the person and those providing care or support to the person.
- In using Table 5 evidence from a range of sources should be considered in determining which rating applies to the person being assessed.
- The person may not have good self-awareness of their mental health impairment or may not be able to accurately describe its effects. This is to be kept in mind when discussing issues with the person and reading supporting evidence.
- The signs and symptoms of mental health impairment may vary over time. The person's presentation on the day of the assessment should not solely be relied upon.
- For mental health conditions that are episodic or fluctuate, the rating that best reflects the person's overall functional ability must be applied, taking into account the severity, duration and frequency of the episodes or fluctuations as appropriate.

Applying for DSP – Evidence requirements

Although the introduction to Table 5 acknowledges that 'the signs and symptoms of mental health impairment may vary over time' and that 'the person's presentation on the day of the assessment should not solely be relied on', there is no tangible recommendation provided to ensure regard is had to these considerations in making an assessment. As shown in the case studies examined for this study, DSP applicants with psychiatric conditions and their treating health professionals are provided with no advice as to how evidence should be presented to support a claim, and new claimants for DSP are generally unaware of the need to explain any fluctuation in their condition.

Prior to 1 January 2015, the primary source of medical evidence for assessment of DSP eligibility was a medical report from a person's treating doctor – referred to as a TDR.[16] This report was a pro forma questionnaire specifically formulated to guide the doctor in providing a report on their patient that addressed the factors relevant to assessing DSP qualification. Treating doctors were under a statutory obligation to complete the form; if a doctor refused to complete their patient's form Centrelink was able to send a formal notice invoking the obligation. From 1 July 2015, along with other changes to the claim and assessment process,[17] people claiming DSP are no longer required to submit a medical report from their treating doctor. Instead, they are requested to provide medical evidence.

Removal of the mandatory TDR means that unless they have previously claimed DSP, new claimants and doctors generally have no guidance as to what reports to provide in a support of a claim, no means of highlighting or drawing attention to the most pertinent evidence, and no practical means of explaining why, e.g., a three year old psychiatrist's report should be accepted as evidence of diagnosis of an ongoing psychiatric condition.[18]

The Claim for Disability Support Pension form SA466 must be either manually or virtually lodged with corroborating evidence in order to commence the application process. Further to this, an Income and Assets form SA369 and a Consent to Disclose Medical Information form SA472 must also be lodged.

Appeal rights

Where a DSP claim is rejected, the person has the right to seek Centrelink internal review by an Authorised Review Officer, thence to the AAT Social Services and Child Support Division (Tier 1). Both the applicant and the Secretary, Department of Social Services, have the right to appeal AAT Tier 1 decisions to the General Division ('Second Review'). AAT decisions may be appealed to the Federal Court on an error of law.

In the 2019/2020 financial year, 102,000 applications for DSP were submitted; 42,000 claims were granted; 60,000 were rejected; and the grant rate was 41.2 per cent.[19] There is no indication of how many of the rejected claims proceeded to appeal.

16. See Department of Social Services, *3.6.2.10 Medical & other evidence for DSP* (Web page) (9 November 2015) https://guides.dss.gov.au/guide-social-security-law/3/6/2/10

17. Please refer to the 2018 Report prepared by Economic Justice Australia for an outline of these ancillary requirements: National Welfare Rights Network, *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes* (January 2018) http://ejaustralia.org.au/wp/wp-content/uploads/2018/02/NSSRN-DSP-Report-2017-BRQ-case-snapshot-2018_01_31.pdf
Accessible at AustLII, *Social Security Act 1991 – Sect 94* (Web page), http://www5.austlii.edu.au/au/legis/cth/consol_act/ssa1991186/s94.html
Issues regarding the Supported Wage System were not examined in this study.

18. Please refer to the 2018 Report prepared by Economic Justice Australia for an outline of these reforms to the Treating Doctors Report: National Welfare Rights Network, *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes* (January 2018) http://ejaustralia.org.au/wp/wp-content/uploads/2018/02/NSSRN-DSP-Report-2017-BRQ-case-snapshot-2018_01_31.pdf

19. Data provided by the Department of Social Services. Figures rounded.

Jobseeker Payment and people with disability

People with disability may qualify for JobSeeker Payment, including people with a DSP claim assessment or appeal pending. JobSeeker Payment recipients who are assessed by Centrelink as having a work capacity of between 15 and 30 hours per week are subject to mutual obligations, and have the right to negotiate activities and mutual obligation requirements that match their assessed 'partial capacity' to work.[20]

All JobSeeker Payment recipients, including people with partial capacity to work, must:

- enter into a Job Plan with their employment services provider
- undertake all the tasks and activities listed in their Job Plan
- attend scheduled appointments with their employment services provider
- complete the required number of job searches and report on job searches to their employment services provider
- accept any offer of suitable paid work.

Failure to undertake Job Plan activities or meet mutual obligation requirements can result in application of payment suspensions, demerits, financial penalties or cancellation of payment. The penalty applied depends on the breach/offence, the number of demerits applied in six months, and the number of penalties applied.[21]

Demographic data from the Department of Social Services indicates that as at March 2021 there were 374,367 people with a partial capacity to work on JobSeeker Payment.[22]

Data from the Department of Social Services obtained through questions on notice indicates that as at 25 September 2020[23]

- the majority of people with a partial capacity to work on JobSeeker Payment were people whose reported impairment type was a psychological/psychiatric condition (approximately 42 per cent), based on the first recorded medical condition on the Centrelink payment system for the purpose of work capacity assessment.
- Of those 42 per cent:
    - 2,656 had an Assessed Work Capacity of 8 to 14 hours per week
    - 153,536 had an Assessed Work Capacity of 15 to 29 hours per week
    - 31,129 had been on JobSeeker Payment for under one year
    - 125,063 had been on JobSeeker Payment for more than one year.

Job seekers who are temporarily incapacitated for at least 8 hours of work a week, including people with partial capacity to work, can apply for a medical exemption from mutual obligation requirements. Applications for a medical exemption must be supported with a medical certificate from an authorised medical professional. Exemptions are generally for no longer than 13 weeks. The certificate must state that the activities cannot be undertaken for at least 8 hours a week and include:

i. what the illness, injury or disability is;
ii. how long recovery will take; and
iii. the period that the person will be unable to work, participate or study.

20. See Services Australia, *Mutual obligation requirements* (Web page) (19 July 2021) https://www.servicesaustralia.gov.au/individuals/services/centrelink/jobseeker-payment/what-your-commitments-are/mutual-obligation-requirements

21. See Services Australia, *Demerits and penalties for not meeting mutual obligation requirements* (Web page) (27 May 2021) https://www.servicesaustralia.gov.au/individuals/topics/demerits-and-penalties-not-meeting-mutual-obligation-requirements/44416

22. Department of Social Services, *DSS Payment Demographic Data* (Web page) (March 2021) https://data.gov.au/data/dataset/dss-payment-demographic-data.

23. Parliament of Australia. *Answer to budget estimates question on notice - QUESTION NO: 279. DATE ASKED: 28 October 2020*, https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

ANALYSIS OF AAT DECISIONS

For this study The University of Notre Dame Australia (UNDA) reviewed DSP AAT appeals that reached the General Division where the DSP claimant's primary condition was psychiatric. Analysis of over 156 decisions[24] of the AAT[25] between 2012[26] and March 2021, revealed recurring issues for applicants with psychiatric impairment:

i. the submission of evidence that cannot be considered, for example a diagnosis by a GP without the supporting evidence of a psychiatrist. This precludes the finding that a condition is 'permanent' and consequently no impairment rating can be assigned;[27]

ii. the applicant lacks evidence to support they are engaging in reasonable treatment programs. This precludes the finding that a condition is 'permanent' and consequently no impairment rating can be assigned;[28]

iii. the submission of evidence that does not specifically articulate an applicant's experience of the factors listed under Table 5. This leads to the assignment of no or low points under the impairment table;[29] and

iv. the submission of evidence that refers to a period outside the 'relevant period', being on or after 13 weeks of the date of claim. This evidence cannot be considered and consequently no impairment rating can be assigned.[30]

Our analysis of these AAT cases indicates that the DSP qualification criteria and assessment processes present a significant barrier to accessing DSP for applicants with psychiatric impairment. The onerous evidentiary requirements are opaque and for many, overwhelming.

Applicants with a psychiatric impairment are prejudiced by two factors, as evidenced by our analysis of AAT cases. Firstly, it is difficult, if not impossible, to calibrate evidence to enable proper consideration of whether a DSP applicant's psychiatric condition is 'permanent', and whether the impairment resulting from that condition is likely to persist for at least 2 years. Secondly, due to the nature of psychiatric conditions, the factors listed in Table 5 are inadequate for assessing the impact of an applicant's impairment.

Our review of DSP cases reaching the General Division of the AAT clearly demonstrates that the DSP qualification criteria, including the Impairment Tables, should be amended to better accommodate for applicants with psychiatric impairment; and that applicants and their treating doctors should be given guidance in providing reports and evidence to support DSP claims. The complexity of the qualification criteria and opacity of evidence requirements results in dehumanising assessment processes and appeals, and disregards the human dignity of individuals living with psychiatric impairment. In the 2020 second review decision of *McKenzie and Secretary, Department of Social Services*, Senior Member Stefaniak concluded his decision with the following statement:

> 'I conclude by reiterating a point I have made in several forums, namely that the Respondent could avoid a lot of wasted time, resources and distress to genuinely sick people, by only processing applications for DSP once the applications include the necessary documentation' (at [5]).

24. This figure encompasses all DSP appeals during the period of 2012-2021, including those that did not relate to psychiatric impairment. Of the cases analysed, only 33 cases included interpretation of Table 5, and 10 interpreted Table 5 as the primary focus of the applicants' DSP claim [Bontes and Secretary, Department of Social Services (Social services second review) [2020] AATA 1910 (16 June 2020); Fuda and Secretary, Department of Social Services (Social services second review) [2020] AATA 1290 (15 April 2020); McKenzie and Secretary, Department of Social Services (Social services second review) [2020] AATA 1120 (1 May 2020); Twining; Secretary, Department of Social Services and (Social services second review) [2019] AATA 5296 (11 December 2019); Chapman and Secretary, Department of Social Services (Social services second review) [2019] AATA 2714 (19 August 2019); Primmer and Secretary, Department of Social Services (Social services second review) [2019] AATA 2508 (7 August 2019); Lowe and Secretary, Department of Social Services (Social services second review) [2016] AATA 236 (14 April 2016); Toki and Secretary, Department of Social Services [2014] AATA 144 (13 March 2014)]. No applicants that applied for DSP primarily on the basis of Table 5 were granted DSP at the AAT level of appeal. This research indicates: firstly, psychiatric impairment is often ancillary to physical impairment, and secondly, at least at this final stage of appeal, it is an insurmountable task to submit a successful application for applicants with psychiatric impairment as the sole basis for their claim.

25. AAT decisions have been reviewed for two primary reasons: firstly, the AAT is the highest stage of appeal for applicants that have been rejected DSP, without having to enter the Court system; and secondly, full copies of the decisions are readily accessible through the AAT bulletins released during the period of 2012 to 2021. These decisions can assist support workers and carers interpret the salient requirements of the Act.

26. In 2011, the Determination was introduced. This came after a distinct push by the Gillard Government to force people with disability into paid employment. 2012 was the first year this shift crystalised, and applicants could appeal decisions to reject a DSP claim based on requirements imposed by the Determination.

27. McKinnon and Secretary, Department of Social Services (Social services second review) [2020] AATA 4207 (20 October 2020); Kirk and Secretary, Department of Social Services (Social services second review) [2020] AATA 2793 (10 August 2020); Armstrong and Secretary, Department of Social Services (Social services second review) [2020] AATA 2417 (22 July 2020); Primmer and Secretary, Department of Social Services (Social services second review) [2019] AATA 2508 (7 August 2019).

28. Cassell and Secretary, Department of Social Services (Social services second review) [2020] AATA 3010 (19 August 2020); Wheatley and Secretary, Department of Social Services (Social services second review) [2020] AATA 2658 (5 August 2020); Lonie; Secretary, Department of Social Services and (Social services second review) [2020] AATA 1366 (22 April 2020); ZSYJ and Secretary, Department of Social Services (Social services second review) [2018] AATA 3969 (22 October 2018).

29. Halimi and Secretary, Department of Social Services (Social services second review) [2020] AATA 2878 (12 August 2020); Bontes and Secretary, Department of Social Services (Social services second review) [2020] AATA 1910 (16 June 2020); Fuda and Secretary, Department of Social Services (Social services second review) [2020] AATA 1290 (15 April 2020); McKenzie and Secretary, Department of Social Services (Social services second review) [2020] AATA 1120 (1 May 2020); Twining; Secretary, Department of Social Services and (Social services second review) [2019] AATA 5296 (11 December 2019); Campbell and Secretary, Department of Social Services (Social services second review) [2019] AATA 903 (12 February 2019); Osborne and Secretary, Department of Social Services (Social services second review) [2016] AATA 988 (5 December 2016); Javed and Secretary, Department of Social Services [2014] AATA 732 (9 October 2014).

30. Chapman and Secretary, Department of Social Services (Social services second review) [2019] AATA 2714 (19 August 2019); Dennis and Secretary, Department of Social Services (Social services second review) [2019] AATA 2347 (18 June 2019); Lowe and Secretary, Department of Social Services (Social services second review) [2016] AATA 236 (14 April 2016).

EXPERIENCE OF EJA MEMBER CENTRES

EJA's member centres[31] provide specialist advice and advocacy to people across urban, regional and remote Australia who have been refused DSP, with assistance ranging from provision of self-help resources such as factsheets to representation in internal Centrelink appeals and appeals to the AAT. Providing advice and advocacy regarding DSP is resource-intensive. NSW WRC runs a DSP clinic for DSP claimants and appellants and provides resources to inform treating doctors of evidence requirements for DSP claims, including report pro forma. Social Security Rights Victoria has developed an innovative, interactive, online resource for DSP applicants – 'DSP Help',[32] which connects the client to a specialist DSP lawyer/legal service, for advice and further legal assistance.

Our members also provide community legal education designed to enhance access to social security entitlements, and identify barriers to access experienced by people in their local community. At a recent community legal education session about Centrelink payments for carers and people with disability run by the WRC NSW, community workers reported that they were consistently seeing people who were stressed and confused by the DSP claim process. Many clients faced great difficulty proving the severity of their disability using the Impairment Tables, including meeting the cost of medical reports and dealing with inconsistency between the language of medical and health experts and the language of Centrelink. Another major issue was becoming 'trapped' by the POS requirement. Community workers reported cases of clients who were clearly unable to work due to multiple medical and psychiatric conditions being forced to endure 18 months of POS activities before they could qualify for the DSP.

A recent review by WRC NSW revealed a significant demand for assistance from people who have a psychiatric impairment or mental health condition. In the period 16 December 2018 to 16 December 2020, 47 per cent of WRC NSW clients had a disability; and of those with a disability, 37 per cent had a psychiatric impairment or other mental health condition. Over that period 31 per cent of all WRC NSW clients seeking advice about claiming DSP had a psychiatric impairment or other mental health condition.[33]

In the experience of EJA member centres, undertaking the DSP claim process while managing a psychiatric impairment or other mental health condition can be extremely onerous for clients. In fact, the difficult process can exacerbate distress associated with a mental health condition. Many people with long-standing psychiatric conditions in this situation end up on JobSeeker Payment long-term, facing ongoing difficulty meeting the mutual obligation requirements and trying to avoid suspensions and penalties.

EJA member centres are clearly inadequately resourced to meet the demand for advice and representation regarding DSP claims and appeals, particularly given the high proportion of people with psychiatric disability seeking assistance.

CASE STUDY ANALYSIS

Project scope

The UNDA commissioned EJA to write up de-identified case studies that demonstrated common and recurring issues faced by DSP applicants whose primary condition is psychiatric. The UNDA also asked for de-identified case studies demonstrating the experiences of people with a psychiatric impairment while on JobSeeker Payment, including their experiences with meeting mutual obligation requirements or seeking temporary medical exemption from their requirements.

Specifically, the UNDA requested case studies on:

i. applicants with psychiatric impairments denied access to the DSP because their condition has not been 'fully' diagnosed, treated and stabilised;
ii. applicants with psychiatric impairments denied access to the DSP because of the Impairment Tables;
iii. instances where people with psychiatric impairments have breached their mutual obligations as job seekers; and
iv. successful and unsuccessful applications for a medical exemption by people with psychiatric impairments.

Methodology

EJA obtained 17 de-identified case studies relevant to the project's scope from the WRC in NSW, Basic Rights Queensland, and Illawarra Legal Centre – all of which are EJA member centres. EJA published an article in the February 2021 edition of its online publication, *Social Security Rights Review,* which included 16 of the case studies, noting issues raised by each case.[34]

The *Social Security Rights Review* article is accessible here and is copied to the APPENDIX of this report.

The 17 case studies were analysed by the UNDA, identifying reoccurring themes, patterns, and ideas emerging across all 17 case studies, and considering the reoccurring themes, patterns, and ideas of existing scholarly and non-scholarly literature in this area.

31. For information regarding EJA member centres and their work, access links here: Economic Justice Australia, *Legal help with Centrelink* (Web page) (2020) https://www.ejaustralia.org.au/wp/legal-help-centrelink/

32. Social Security Rights Victoria, *DSP Help* (Web page), https://www.ssrv.org.au/dsp-help/

33. This data was shared by WRC NSW in this Facebook post: https://www.facebook.com/welfarerightscentre/photos/a.664649610256859/3809151095806679/.

34. A total of 17 case studies were analysed: the 16 published in *Social Security Rights Review*, and an additional case study, Sharon, provided after publication.

The process involved a close reading of the data (case studies) whereby the lead researcher went back and forth between the data analysed and the themes identified. These themes and patterns were then interpreted for what they indicate about the DSP claim process for people with a psychiatric impairment, and their experiences on JobSeeker Payment.

Findings

Evidence requirements

Analysis of the case studies indicates that the onerous DSP application process disadvantages people with psychiatric impairments who may also have intersecting vulnerabilities - including entrenched poverty, social isolation and/or homelessness. Applicants and treating doctors generally have no real understanding of the 'fully' diagnosed, treated and stabilised criteria that must be met for an assessment to be made under the Impairment Tables, and new claimants with psychiatric conditions are generally unaware of the need to present evidence in the context of DSP Impairment Table 5.

For assessment under Impairment Table 5, a DSP applicant needs to provide evidence that their psychiatric condition has been 'fully diagnosed' by either a psychiatrist or clinical psychologist. The introduction to the Table notes that reports provided by other treating medical professionals such as a registered psychologist or GP can be taken into account (in conjunction with evidence of diagnosis by a psychiatrist or clinical psychologist), but our case review showed that such reports are generally given no weight without a recent report confirming diagnosis from a psychiatrist or clinical psychologist. DSP applicants are informed that they must be connected with or connect with a psychiatrist or clinical psychologist, which disadvantages applicants.

For people with a long-standing psychiatric condition, diagnosed some time ago but with ongoing treatment managed by a GP, this can result in GP referrals to a psychiatrist or clinical psychologist merely for confirmation of the past diagnosis and its persistence – despite the fact that it is the GP who is monitoring their patient's treatment. It can take months for applicants to get an appointment with a psychiatrist or clinical psychologist, develop a rapport with the psychiatrist or clinical psychologist, and for the psychiatrist or clinical psychologist to learn the patient's history.

Consultations with psychiatrists and clinical psychologists can be costly, with prohibitive fees charged for reports prepared to support DSP claims.

In addition, the requirement that evidence must relate to the person's condition at a specified time (i.e. within 13 weeks of claim) causes confusion. A person who was diagnosed by a psychiatrist with, for example, schizophrenia three years ago may be undergoing treatment for that condition under the management of their GP. In this case the claimant should be able to claim DSP with a report from their GP attaching evidence of the psychiatrist's diagnosis of the condition, and confirming that the condition is ongoing and being treated, and outlining the extent to which it is stabilised.

Case study – Peter

Peter was told by the last psychiatrist he had seen that psychiatric help would be of no benefit to his diagnosed psychiatric conditions. This meant that the only person able to provide evidence to confirm diagnosis of Peter's mental health conditions and support his DSP application was his GP. Peter and his GP were led to believe by Centrelink that a new report from a psychiatrist or clinical psychologist was essential but this advice was incorrect. A new report from a psychiatrist would certainly be helpful, but not necessarily essential in a case such as Peter's. Access Peter's full case study here.

Medical professionals can be unwilling to provide reports to support DSP applications because report preparation is time consuming but cannot be billed to Medicare. Also, anecdotes from DSP claimants indicate that some GPs and specialists believe that DSP is virtually unobtainable – especially if their patient has a history of failed claims. Furthermore, some specialists are unwilling to provide a report for Centrelink that addresses the DSP qualification criteria and relevant impairment tables, instead expecting the applicant's GP, Centrelink and the AAT to assess their patient's eligibility from the information available. This can disadvantage applicants because specific and specialised evidence by medical professionals is generally required to support an application - to show that a condition has been 'fully diagnosed', 'fully treated' and 'fully stabilised'.

It can be hard, or impossible, for some applicants with psychiatric disability to access medical evidence and medical treatment, particularly people living in rural and remote areas.

Case study – Kirra

Kirra, an Aboriginal woman with diagnosed post-traumatic stress disorder and social anxiety, lives in regional NSW, without internet access. She struggles with the cost of petrol travelling to medical appointments and Centrelink which makes it difficult for her to obtain evidence. Access Kirra's full case study here.

Some recognition needs to be given to the access barriers which people face in obtaining evidence to support a DSP claim. Making DSP treating doctor reports a billable item under Medicare, and introducing a Medicare item number for report completion would alleviate some of the costs of reports which are currently being absorbed by applicants with limited means to pay.

Issues regarding who can provide contemporaneous medical evidence to support a DSP claim particularly affect and disadvantage claimants with a psychiatric condition.

Case study - John

Despite John having been diagnosed with generalised anxiety disorder, obsessive compulsive disorder and major depression, and despite evidence of ongoing and long-lasting psychiatric interventions including hospitalisations, his application for DSP was denied. When Centrelink contacted John's clinical psychologist about his evidence, he stated that he had last seen John a year before his DSP claim and therefore retracted his previous statement about whether John's condition was fully diagnosed, treated and stabilised at the time of his claim. Access John's full case study here.

Case study – Sharon

Sharon has a mental health condition and multiple physical impairments including respiratory issues, and impairments stemming from a workplace injury to her spine. She applied for DSP but was advised that the evidence she had presented to support her claim was not recent enough. Sharon spent several years on waiting lists attempting to get fresh evidence and treatment in her regional area. Access Sharon's full case study here.

The requirement that an impairment rating can only be assessed for a psychiatric condition if the DSP claimant has submitted a recent report to attest to the condition having been 'fully diagnosed', 'fully treated' and 'fully stabilised' is often misapplied. Many people with permanent psychiatric conditions diagnosed by a psychiatrist are managed by their GP, who is best able to confirm persistence of the diagnosed condition. The insistence on a recent report from a psychiatrist or clinical psychologist fails to recognise the barriers to evidence and treatment experienced by people with ongoing psychiatric conditions, particularly in regional and remote areas of Australia.

Many medical professionals asked to provide evidence to support a DSP claim do not understand the evidence requirements and how evidence should ideally be presented. Evidence ideally needs to describe the impact of the impairment on an applicant's functional capacity, rather than purely attest to diagnosis of conditions, and symptoms. JCA assessments can be pointless without reports that expressly address the relevant DSP Impairment Tables.

Provision of insufficient or inappropriate medical evidence at claim can draw out the assessment process, fuel appeals and compound issues regarding the currency of medical evidence. This was clear across several of the case studies.

Case study – Caden

In Caden's case the report provided by his clinical psychologist contained limited information about the functional impact of his impairment on his capacity and instead noted his symptoms. The AAT General Division Member proceeded to consider other evidence, including the fact that Caden lived alone, had travelled overseas on multiple occasions, and could participate in the three-hour phone hearing on his own. As a result, the Member concluded that Caden's impairment had only a mild impact on his functional capacity. Access Caden's full case study here.

Applicants with a psychiatric impairment can also have great difficulty understanding the evidence required for assessment of their DSP application or for an AAT appeal, and can face barriers collecting evidence such as specialist reports held by their GP. This issue is compounded for applicants whose first language is other than English and who cannot speak or read English (e.g. Caden). It can also be impossibly challenging for applicants who are illiterate in English (e.g. Kirra) or who may have lost medical records (e.g. Michelle).

This can mean that DSP applications from people with severe disability often fail to include adequate relevant evidence to demonstrate the functional impact of their impairment on their capacity.

The current onus on people with psychiatric impairments to identify the evidence they need and then collect it, without the assistance of a TDR pro forma to provide guidance to their treating doctor - and often subject to unfounded insistence by Centrelink that a new report from a treating psychiatrist or clinical psychologist is needed - unfairly disadvantages people with psychiatric impairments in the DSP claim process.

The reviewed case studies highlight the importance of the way in which Centrelink assessors and AAT members assess evidence in determining the outcome of applications. For a DSP applicant to have the best chance of a fair outcome, their treating medical professionals must ideally understand the evidence requirements, especially regarding Impairment Table 5, and be very particular about how their reports are worded. For example, in Zara's GP report there was reference to the effects of the COVID-19 pandemic on her psychiatric condition. This may have led Centrelink to conclude that her major depressive disorder was temporary – reactive depression in response to a temporary situation.

It is also important that applicants are familiar with the evidence presented in their treating doctors' reports and can speak to the evidence at the AAT. In Michelle's case at the AAT1, a Member disagreed with the findings of Michelle's psychologist and based their decision on Michelle's answers to certain questions and a narrow interpretation of the psychologist's report.

Recommendations - Evidence requirements

Recommendation 1: *Completion of a TDR should be reintroduced as a mandatory component of DSP claims, with the TDR pro forma part of the claim package.*

Recommendation 2: *Completion of the TDR as part of a DSP claim package should be billable under Medicare, with a new Medicare item number introduced for report completion.*

Recommendation 3: *Clear guidelines should be developed for treating health professionals regarding the type of evidence required for DSP claims, and provided with the TDR as part of the DSP claim package*

Recommendation 4: *The AMA and the FRACGP should be consulted about the most effective ways to communicate these guidelines.*

Recommendation 5: *Department of Social Services policy guidelines for delegates should be reviewed and amended, to clarify that where a condition has been diagnosed by a psychiatrist or clinical psychologist. GP evidence which attests that the condition is ongoing, treatment is ongoing, and the condition is stabilised to the extent possible in the circumstances, should suffice.*

Diagnosed, treated and stabilised criteria

The complex and layered DSP qualification criteria and application process act as barriers to accessing DSP for people with psychiatric impairments – particularly in relation to establishing that a condition has been 'fully diagnosed', 'fully treated' and 'fully stabilised'.

According to data provided by Services Australia in an answer to questions on notice, for the first quarter of the 2021 financial year 1,234 DSP claims were rejected where the impairment was assessed as being not 'fully' diagnosed, treated and stabilised where the primary medical condition was a psychological/psychiatric impairment. Aside from people whose primary medical condition was a musculo-skeletal and connective tissue disorder (at 1,275) or where no primary condition was recorded (1,978), this was highest rejected primary medical condition. Rejections on this basis were significantly lower for other primary medical conditions with the closest to psychological/psychiatric impairment being circulatory system at 226 people, followed by nervous system and neurological at 157 people.[35]

The requirement that a psychiatric impairment be 'fully diagnosed', 'fully treated' and 'fully stabilised' is problematic in respect of psychiatric conditions, given that that they can be episodic with fluctuating levels of impairment. Applicants with a psychiatric condition are not only required to provide evidence that their condition is 'fully diagnosed', 'fully treated' and 'fully stabilised', but misguided application of the thirteen-week rule[36] means that some applicants are asked to show that their condition has not changed during the 13-week relevant period following DSP application. In Alana's case, her DSP application was rejected because her condition was considered to have changed during this thirteen-week period.

The episodic and fluctuating nature of some psychiatric impairments is certainly recognised in the preamble to Table 5 of the Impairment Tables but the cases reviewed indicate that this recognition is not reflected in assessments as to whether a person's psychiatric condition has been 'fully' diagnosed, treated and stabilised. Decision-makers' interpretation of the legislative requirement that a condition be 'fully' diagnosed, treated and stabilised is creating inequities for people with psychiatric impairments in accessing the DSP.

35. Parliament of Australia. *Answer to budget estimates question on notice - QUESTION NO:* 487 (Web page), https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/eqon

36.A person's qualification for DSP under section 94 of the Act is assessed as at the date of claim plus 13 weeks. This means that a person who provides evidence showing that they met the qualification criteria either on the day they claimed or met the criteria within 13 weeks after that day, will meet the section 94 qualification criteria. AustralianG-Government, *Federal Register of Legislation* (Web page), https://www.legislation.gov.au/Details/C2021C00223/Html/Volume_2#_Toc67991074

The requirement that a psychiatric impairment be 'fully' diagnosed, treated and stabilised additionally disregards how psychiatric impairments can be affected by social and environmental contexts external to the individual which can cause a condition to change temporarily or permanently. The requirement operates under the assumption that the medical diagnosis of a psychiatric impairment is a rational, calculated and objective measure where symptoms are read and assessed, a diagnosis is made, and a treatment plan assigned.

Case study – Lee

Lee's diagnosis changed when he saw a second psychiatrist – not uncommon for diagnoses of severe psychiatric conditions. As such, his application for the DSP was denied because even though the symptoms and treatment of his condition were the same as for the condition previously diagnosed, his condition was not deemed to be fully diagnosed, treated and stabilised. Access Lee's full case study here.

The requirement that a psychiatric impairment be 'fully' diagnosed, treated and stabilised also disregards how some psychiatric impairments may be treatment-resistant, and unfairly affects people with a psychiatric impairment who choose not to be treated or are non-compliant.

Case study – Zara

For example, Zara did not want to take the anti-depressants prescribed to her for her major depressive disorder because doing so previously had contributed to her attempting suicide. Access Zara's full case study here.

To meet the 'fully treated' for DSP qualification criterion, the autonomy and agency of people with psychiatric impairments can be ignored in favour of the 'expertise' of the medical professional who decides how the condition should be treated.

This can suggest that psychiatric impairments need to be controlled and managed by the medical profession and that a 'good' DSP applicant has pursued and adhered to all treatment options. Not only is this approach problematic but it could violate Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities, particularly Articles 15, 16 and 17 on the right to freedom from cruel, inhuman or degrading treatment, freedom from exploitation, violence and abuse and protecting the integrity of the person.[37] Receiving the DSP should not be conditional on treatment.

Treatment availability can also impact on whether a condition can be assessed as 'fully' treated and stabilised. For example, in regional, rural and remote areas access to treatment can be affected by service availability and DSP applicants may have to wait until they can be treated. There is some recognition of this in the policy guidelines[38] but given the inflexibility of the 'fully' treated criterion this is rarely taken into account in practice.

Recommendation – 'Fully' diagnosed, treated and stabilised requirement

Recomendation 6: *The preamble to the DSP Impairment Tables should be amended such that the 'fully' qualifier is removed from references to a condition being diagnosed, treated and/or stabilised.*

Recomendation 7: *The DSP legislation should be amended such that qualification for DSP is not conditional on treatment.*

37. While Australia has entered an interpretive declaration that it 'declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards', it could be argued then that the Australian government through the requirement that a psychiatric condition be 'fully diagnosed, treated and stabilised', assumes that for all people whose primary condition is a psychiatric impairment their treatment is seen as necessary even if it causes them harm. United Nations, *Human rights* (Web page), https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec

38. See Department of Social Services, *3.6.2.10 Medical & other evidence for DSP* (Web page) (9 November 2015) https://guides.dss.gov.au/guide-social-security-law/3/6/2/10

POS requirement

EJA has long argued[39] that there is no rational basis for differentiating a person who scores an impairment rating of 20 or more under the DSP Impairment Tables from someone with multiple impairments that, in combination, are equally if not more severe in functional impact. One of the case studies (i.e. Zara) provides insight into the barriers faced in relation to the POS requirement for people whose primary condition is a psychiatric impairment.

Case study – Zara

Zara was diagnosed with a lung condition, major depressive disorder and a brain injury which led to memory loss. Zara's conditions had a significant impact on her functioning, and she required a service dog to be able to leave the house. She had been trying to claim DSP for three years, unsuccessfully. Zara was advised that unless she was given 20 points on at least one impairment table she would need to meet the program of support requirement to qualify for DSP, unless she could start a program and then obtain a report from a program manager stating that the program of support was discontinued due to her medical conditions. Access Zara's full case study here.

The POS requirement should be abolished, or at least reformed to provide a straightforward exemption policy where a person would clearly be unable to participate due to their impairment/s.

Recommendation – POS requirement

Recomendation 8: *Amend section 94 of the Social Security Act so as to abolish the DSP program of support requirement; or, in the alternative, amend section 94 so as to include a straightforward exemption policy.*

Unsuccessful AAT applications

Unsuccessful AAT appeals may also have an impact on a successful DSP application. Caden's situation is a case in point. His DSP appeal was rejected by both levels of the AAT. Caden will likely face substantial challenges complying with JobSeeker Payment mutual obligation requirements. It is also likely that if he reclaims DSP, Centrelink will be reluctant to grant, however strong his evidence may be – in deference to the AAT's decision regarding his previous claim.

Psychiatric impairment as a barrier to pursing DSP claim

The DSP claim process can be impossible for people with a mental health condition - e.g. Peter, Sam and Lee.

The claim process is not designed for people with a psychiatric impairment and its complexity disadvantages applicants with a psychiatric impairment who do not have an experienced advocate. This means that many people with psychiatric impairment remain long-term on JobSeeker Payment, in poverty and struggling with mutual obligation requirements. A mental health condition can also act as a barrier to appealing an application rejection or a cancellation of payment. This further indicates that the process is not designed for people with a psychiatric impairment, for example Sarah, who has dissociative identity disorder and post-traumatic stress disorder, and became disconnected from her feelings, memories and sense of identity every time she attempted to complete the application form for DSP.

Policy guidelines in fact allow the granting of DSP to people whose qualification is manifestly self-evident but the prescriptive guidelines for 'manifest grants' preclude grants to people whose primary condition is psychiatric.[40]

Recommendation – Manifest grant guidelines

Recomendation 9: *Revise the policy guidelines regarding grant of DSP to people who are manifestly eligible to enable manifest grants to people whose primary condition is psychiatric.*

39. See National Welfare Rights Network, *Disability Support Pension (DSP) Project: A snapshot of DSP client experiences of claims and assessments since the 2015 changes* (January 2018) http://ejaustralia.org.au/wp/wp-content/uploads/2018/02/NSSRN-DSP-Report-2017-BRQ-case-snapshot-2018_01_31.pdf page 27, para 6.4.8

40. See Department of Social Services, *3.6.2.20 Manifest grants & rejections for DSP* (Web page) (20 March 2020) https://guides.dss.gov.au/guide-social-security-law/3/6/2/20

Inadequate support during and throughout the application process

Applicants are often unsupported throughout the claims process, including highly vulnerable people with severe mental illness and/or psychiatric conditions. This is reflected in the case studies. For some, their social isolation meant that they had minimal personal and community support when applying for the DSP (e.g. Laura). For others in rural and remote areas, there was no access to support services (e.g. Kirra).

Many of the cases highlight the systemic barriers that preclude vulnerable people from accessing the DSP - e.g. Alana, Sam, Ed - and the lack of access to support to assist with the claim process and appeals.

Michelle and Sharon were reliant on their legal advocates to actively assist in collating and collecting the evidence required for their applications, and encouraging the clients to pursue their applications. In Caden's case, his medical evidence was incomplete and inadequate having not been properly collated and collected. While Caden had been receiving some support from a social worker, they had limited capacity to assist with his DSP claim and appeal.

Recommendations – Support for at-risk grounds on activity-tested income support payments

Recomendation 10: *Centrelink should provide vulnerable DSP applicants with adequate social worker support, for ongoing assistance and referral to community support services, including for assistance and advocacy regarding social security claims and appeals.*

Recomendation 11: *Additional Commonwealth funding should be provided to enable community legal centres to provide legal advice and advocacy to DSP applicants and appellants.*

JobSeeker Payment compliance issues

People with a psychiatric impairment experience significant challenges complying with the mutual obligation requirements for JobSeeker Payment (e.g. Caden, Peter, Sam, Mark). WRC NSW data shows that over the period 16 December 2018 to 16 December 2020, 36 per cent of their clients who were experiencing a problem with meeting mutual obligations had a mental health condition.[41]

People with a psychiatric impairment with intersecting vulnerabilities and complex circumstances can find it difficult to comply with JobSeeker Payment mutual obligations. For example, Aboriginal people in regional and remote areas have disproportionately high rates of suspension and penalties for mutual obligation non-compliance, and disproportionately low DSP appeal rates.

Some people's psychiatric conditions resulted in difficulties with attending appointments (e.g. Kirra, Alicia and Sarah), engaging with Centrelink and their employment service provider (e.g. Stuart, Peter, Sam and Sarah) and applying for jobs (e.g. Sarah) – which resulted in their JobSeeker Payment being suspended or cancelled. For Peter, whose employment service provider was not specifically a disability employment services provider, the deterioration of his mental health meant that it was difficult for him to remain engaged and avoid penalties.

People with a psychiatric impairment were likely to have consistent problems with meeting their mutual obligation requirements which meant that they were regularly being breached (e.g. Kirra) and their payment suspended and cancelled (e.g. Sam). The WRC NSW data analysis showed that 32 per cent of clients contacting the Centre about payment suspension had a mental health condition.

Inadequate consideration of the impact of known mental health conditions on capacity to meet mutual obligation requirements by Job Capacity Assessors can mean that Job Plans include requirements that the person cannot meet. For example, Lee was assessed through a JCA as being capable of work despite being unable to leave the house due to his condition. This meant that he was set up with mutual obligation requirements which he was unlikely to be able to meet.

Particular impairments meant that some people in the reviewed case studies were unable to appeal or challenge decisions about mutual obligation requirements, payment suspensions and cancellations, because they were unable to deal with Centrelink (e.g. Sam). Others were too distraught that their payment had been suspended to appeal the decision or ask Centrelink what was required to begin to receive payment again. Ed, who had been diagnosed with depression, post-traumatic stress disorder and cardiac and respiratory issues, had his payment suspended because he missed a provider appointment when he was attending an appointment with his cardiologist. This left him too distressed to appeal the decision, putting him in an economically, physically and mentally vulnerable position.

Employment service providers were also regularly identified as problematic, making it difficult for people with a psychiatric impairment on JobSeeker Payment to meet their mutual obligation requirements. This is consistent with data from the WRC NSW, which showed that 46 per cent of their clients who had a job network issue had a mental health condition.[42]

41. This data was shared by WRC NSW in this Facebook post: https://www.facebook.com/welfarerightscentre/photos/a.664649610256859/3812118722176583/

42. This data was shared by WRC NSW in this Facebook post: https://www.facebook.com/welfarerightscentre/photos/a.664649610256859/3812118722176583/

Some people with a psychiatric impairment were not placed with a disability employment service provider because the referral was not actioned (e.g. Peter) or because Centrelink did not recognise that the person had a disability (e.g. Alana).

Some employment service providers appear not to understand the impact of psychiatric impairments and mental health conditions (e.g. Mark, Stuart and Peter) on people's ability to comply with their mutual obligations. Mark was shifted to a new employment service provider which imposed activity requirements which he could not comply with – eventually resulting in the cancellation of his payment. Peter's provider was asking him to sign a participation agreement which included 15 hours of activity per week, but he was not capable of completing that many hours.

People with a psychiatric impairment need to have access to supportive employment service providers who understand psychiatric impairments and mental health conditions and support their transition or re-entry into the workforce or other suitable volunteer or community activities. This is even more crucial given the introduction of the Employer Reporting Line which allows prospective employers to report job seekers who decline a suitable job offer, demonstrate inappropriate conduct during a job interview, fail to attend an interview, leave a suitable job, or submit an inappropriate job application. If employment service providers are not supportive of people with a psychiatric impairment, then they could be put in positions which could mean that they are unfairly reported to the Employer Reporting Line by a prospective employer.

Poverty and non-payment

When people with a psychiatric impairment have their payment suspended or cancelled it can mean periods of non-payment and exposure to entrenched poverty (e.g. Peter). For those with unstable and unsupportive living and housing arrangements, non-payment carries an ongoing risk of destitution and homelessness (e.g. Stuart, Sam and Mark).

During periods of non-payment people in the reviewed case studies had to rely on support from friends and community service caseworkers (e.g. Sam).

Where people with a psychiatric impairment find it difficult to comply with their mutual obligation requirements, this should be seen as a trigger for outreach and support rather than punishment.

Exacerbation of impairment

Upholding mutual obligation requirements had an impact on the mental health and wellbeing of people with a psychiatric impairment on JobSeeker Payment. The pressure of upholding their obligations can lead to deterioration in mental health (e.g. Kirra) For Alana, this pressure led to a suicide attempt. (Alana's psychologist filed a claim against the Job Capacity Assessors to the Health Care Complaints Commission and the Ombudsman).

The Federal Government in May 2021 announced a $2.3 billion National Mental Health and Suicide Prevention Plan 'based on the principles of Prevention, Compassion and Care'[43] - the first phase of the response to the findings of the Productivity Commission's (PC) Inquiry into Mental Health and the National Suicide Prevention Adviser's (NSPA) Final Report'. The exacerbation of impairment through requiring people with a psychiatric condition to comply with mutual obligation requirements contradicts the principles and initiatives of the Plan. The tension between the income support system and the health system for people with psychiatric impairments is in urgent need of investigation and reconciliation.

It is also difficult for people with a psychiatric impairment who have partial capacity for work to focus on recovery and generally taking care of their health if they are earning below minimum wage on JobSeeker Payment. The rate of JobSeeker Payment should be raised in recognition of the costs associated with health care, especially in the case of psychiatric conditions, and the impact that living on an impossibly low income has on one's mental health.

The mutual obligation requirements can also mean that people with a psychiatric impairment cannot focus on their health and managing their condition because they are busy attempting to adhere to the requirements.

Medical exemptions from mutual obligations

People on JobSeeker Payment can apply for a medical exemption from some or all their mutual obligations by providing evidence to Centrelink. For people on JobSeeker Payment who are also applying for the DSP there is a contradiction in the evidence requirements for applying for the DSP and seeking a medical exemption from mutual obligations. Applicants applying for the DSP need to demonstrate that their condition is 'permanent', 'fully' diagnosed, treated and stabilised and that they are unable to work 15 hours per week for at least two years. Applicants who are on JobSeeker Payment and applying for a medical exemption from their mutual obligation requirements, need to provide evidence that they are seeking a medical exemption because of a temporary medical condition and that they are temporarily unable to work 8 hours per week.

JobSeeker Payment recipients with a psychiatric impairment who are applying for the DSP can be caught in a double-bind if they need a temporary medical exemption from their mutual obligations: for their DSP claim they need to show that their psychiatric condition is

43. Department of Prime Minister and Cabinet, *National Mental Health and Suicide Prevention Plan announced* (Web page) (12 May 2021) https://pmc.gov.au/news-centre/domestic-policy/national-mental-health-and-suicide-prevention-plan-announced

permanent; but to obtain an exemption from mutual obligations they need to provide evidence that their incapacity is temporary. The need for contradictory evidence can disadvantage people with a psychiatric impairment who may have to seek the evidence (e.g. Alana). Centrelink can also use the evidence provided for a temporary medical exemption from mutual obligations on JobSeeker Payment to indicate that the condition is not 'fully' treated and stabilised and that they therefore do not qualify for DSP. Resolution of this apparent contradiction requires that the applicant and their treating medical professionals understand the DSP eligibility criteria and the medical exemption process for JobSeeker Payment.

Medical exemptions require supporting evidence from medical professionals who can be reluctant to provide it (e.g. Peter). In other cases, medical evidence from treating doctors can be disregarded in favour of an alternative assessment by Centrelink. For example, Alana's further medical exemption was rejected by Centrelink as the medical certificate characterised Alana's symptoms as a temporary exacerbation of an existing condition and the Job Capacity Assessor had assessed her as being able to work 15-22 hours a week. In Alicia's case, Centrelink did not upload the medical certificate to their database which meant that her payment was suspended and later cancelled.

Medical exemptions can be sought by JobSeeker Payment recipients with a psychiatric impairment where their capacity for employment is not at the level assessed by a Job Capacity Assessor and/or they are unable to meet their mutual obligations because of their impairment. Without a medical exemption people with a psychiatric impairment can be vulnerable to destitution while on JobSeeker Payment, given the risk of non-payment penalties or cancellation for inevitable breaches of activity testing and mutual obligation requirements. The system is especially difficult for people who are applying for the DSP, or who have had their claim for the DSP rejected.

In two of the cases reviewed, Centrelink recognised that the person with psychiatric impairment was unable to comply with their mutual obligations and actively assisted them so that they were not penalised. However, in both cases Centrelink did not suggest or support an application for DSP. For example, Centrelink actively assisted Alicia to avoid the need to lodge medical certificates. In Mark's case, both Centrelink and his employment service provider recognised the extent of his disability and excused him from activity testing for many years. However, these exemptions came to an end and Mark was left without a means of support. Mark had sympathetic staff dealing with his case and he clearly had a strong case for DSP and it would have been preferable for Centrelink to have encouraged him to claim DSP, and for Centrelink and his employment service provider to facilitate a grant of DSP on manifest grounds.[44] This would have prevented the distress caused and appeals.

The system's complexity should not be such that a person with a debilitating and long-standing psychiatric impairment is left to struggle long-term with mutual obligation requirements, and impossibly challenging DSP requirements. The system is setting people up to fail.

Support services

Support and advocacy from services such as the WRC NSW provide crucial support for people with psychiatric impairment appealing penalties, re-applying for JobSeeker Payment, obtaining personalised services (e.g. Sam), accessing mental health services (e.g. Mark) or successfully accessing the DSP (e.g. Mark).

Other cases showed that a lack of support meant people's payments were suspended or cancelled (e.g. Ed).

It is crucial that people with a psychiatric impairment on JobSeeker Payment are connected with support services who can support and advocate for them.

Recommendations – Support for at-risk groups on activity-tested income support payments

Recomendation 12: *Services Australia should consult with national disability peaks to facilitate its implementation of the Fifth National Mental Health and Suicide Prevention Plan.45*

Recomendation 13: *JobSeeker Payment recipients identified as suffering severe psychiatric impairment and mental distress should be offered support to claim DSP, with referrals to community advocates, particularly where there is a history of suspensions and non-payment penalties.*

Recommendation – Cost of disability

Recomendation 14: *A cost of disability allowance should be introduced for people with disability in receipt of JobSeeker Payment and other activity tested income support payments.*

44. See Services Australia, Manifest medical rules (Web page) (15 July 2020) https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/who-can-get-it/medical-rules/manifest-medical-rules

45 . National Mental Health Commission, *The Fifth National Mental Health and Suicide Prevention Plan* (Web page) (August 2017) https://www.mentalhealthcommission.gov.au/getmedia/0209d27b-1873-4245-b6e5-49e770084b81/Fifth-National-Mental-Health-and-Suicide-Prevention-Plan

CONCLUDING COMMENTS

There is a growing body of thought regarding the gaps, shortfalls, and blatant inconsistencies in the DSP policy framework. This paper acts as another example of agitation on the growing record of voices calling for reform in this space.

Our analysis of EJA members' case study data clearly indicates that there are structural and systemic barriers to accessing the DSP for people whose primary impairment is psychiatric. In particular, the requirement that a condition be 'fully diagnosed', 'fully treated' and 'fully stabilised' in order to be assigned an impairment rating disadvantages people with severe psychiatric conditions – these conditions often being difficult to diagnose, treat and stabilise.

It is also clear that JobSeeker Payment mutual obligation requirements for people with partial capacity to work due to psychiatric impairments unfairly expose participants to ongoing stress, unfair suspensions and non-payment penalties which can result in entrenched poverty and destitution.

A major overhaul of DSP qualification criteria and assessment processes is needed, and in the context of a review of the Impairment Tables and the Senate's DSP Inquiry it is hoped that this research contributes to both the impetus for change and a better understanding about what needs to change.

APPENDIX – CASE STUDIES[46]

#1

Domestic violence survivor refused DSP after difficulty obtaining psychiatrist report

Laura contacted the Centre for advice about her rejected DSP claim. She had been diagnosed with PTSD, major depressive disorder and generalised anxiety disorder by a registered psychologist. She also had a long history of physical, psychological and financial domestic violence perpetrated by her first husband, second husband and her long-term partner. She had been forced into two arranged marriages by her family and faced family and community pressure to stay in abusive situations in order to avoid the cultural stigma of divorce. Laura had tried to seek police assistance for the abuse perpetrated by her long-term partner but he was released without charges being pressed. Laura had experienced a nervous breakdown as a result of the domestic violence and was alienated from her community.

Laura's conditions were having a severe functional impact on her life. She lived by herself and could not leave the house without anxiety and fatigue setting in straight away. She received help from her adult sons but did not have other social relationships. When she tried to plan her activities or make decisions, she said her brain would go numb and she would become overwhelmed. She had been a housewife all her life and had not been in employment. Laura was receiving Newstart Allowance.

Laura's claim for the DSP had been rejected because she did not meet the required 20 points impairment rating under the Impairment tables. When she expressed a desire to appeal the rejection, Centrelink told her she should obtain a report from a psychiatrist in addition to the existing report from her registered psychologist, which identified the diagnoses previously made by a psychiatrist and the severe functional impact on her activities. Laura had seen the psychiatrist in the previous year but he was retiring soon and refused to spend time filling in a report for Centrelink.

Obstacles to successful DSP claim

- People with long-standing, debilitating mental health conditions can face insurmountable challenges in providing evidence to support DSP claims and appeals unless they are under the ongoing care of doctors who are prepared to support them in the DSP claim and appeal process. Laura had no such support, and was alienated from past social supports.
- Laura's mental health condition had been diagnosed by a psychiatrist and was thereby assessable under Table 5 of the Impairment Tables but the psychiatrist was not prepared to spend time preparing a report for Centrelink.
- Laura's registered psychologist was prepared to provide reports to Centrelink, and did so, but the requirement under the Impairment Tables that mental health diagnoses be either by a psychiatrist or clinical psychologist meant that the report provided by the registered psychologist was given no weight.
- Preparation of reports for Centrelink cannot be billed to Medicare. Doctors were previously under a statutory obligation to complete Treating Doctor Reports for DSP claimants but they are no longer under any obligation to complete reports. The onus is now on the claimant to provide an existing report confirming the diagnosis/diagnoses or approach their doctors and persuade them to provide organise new reports addressing relevant Impairment Table criteria. This can prevent vulnerable people with complex psychosocial conditions from pursuing DSP claims and appeals.

Policy implications

- Completion of Treating Doctor Reports should be a mandatory requirement, with report pro forma issued to DSP claimants when they claim – as was the case previously, but billable under Medicare.
- Centrelink should provide vulnerable clients such as Laura with social worker support, for ongoing assistance and referral to community support services, including for assistance and advocacy regarding social security claims and appeals.

#2

Refugee with severe psychiatric conditions refused re-grant of DSP

Caden had been under clinical care for depression, an anxiety disorder and PTSD since 2012. He also had a number of physical conditions – including a long-standing spinal condition, epilepsy, diabetes, vision problems and asthma. Caden was separated from his family in Afghanistan and experienced short-term memory problems and poor concentration, feelings of hopelessness and helplessness, poor sleeping, intrusive memories and a loss of interest in life. He had been receiving support from the NSW Service for the Treatment and Rehabilitation of Torture and Trauma Survivors since 2014.

46. Economic Justice Australia, *Psychiatric impairments and the disability support pension* (Review, 18 February 2021), https://www.ejaustralia.org.au/wp/social-security-rights-review/psychiatric-impairments-and-the-disability-support-pension/

Caden had been receiving DSP for 11 years before he went overseas for medical treatment. He remained overseas for 2-3 weeks longer than the 13 week portability period and his DSP was cancelled. Caden appealed the DSP cancellation but this appeal was rejected.

When Caden re-applied for DSP, he was rejected on the basis of not meeting the 20 point impairment rating requirement. Caden lodged another application for DSP but this was also rejected. Caden's appeal of the rejection to the AAT1 was unsuccessful – he was not assigned any points for his spinal condition, diabetes, vision problems or asthma, the AAT member citing potential further treatment options indicating that the conditions were not "fully treated, diagnosed and stabilised". Five points were assigned for Caden's epilepsy. The member did not assign any points for Caden's mental health conditions. In assessing the functional impact of these conditions, the member referred to a report by a neurologist which stated that Caden had mild behavioural difficulties. On the basis of this report, the member concluded that Caden did not experience significant functional difficulties.

Caden appealed to the AAT2 and his appeal was again rejected. The member did not assign points for any of Caden's physical conditions, including his epilepsy. He cited the fact that Caden had suffered a seizure due to taking only half of his prescribed dose of medication as evidence that the condition was not fully treated and stabilized. In assessing Caden's mental health conditions, the member considered a new report prepared by Caden's clinical psychologist. The report provided limited detail about Caden's functional capacity beyond describing the symptoms of his conditions. The member referred to the fact that Caden was able to live alone, travel overseas on four occasions from 2013 to 2018 and participate in the Tribunal hearing on his own for three hours by telephone as evidence that the conditions only had a mild functional impact. He therefore assigned 5 points to the conditions. The AAT2 decision did not refer to the full scope of Caden's evidence.

Caden did not speak or read English, which exacerbated his problems navigating the claims system due to his mental health conditions. He had difficulty understanding what evidence was required by Centrelink and the Tribunal. He had a lot of medical evidence which was not properly collated and contained gaps. He had been receiving some support from a social worker but they had limited capacity to assist with his DSP claims and appeals.

Obstacles to successful DSP claim

- Centrelink originally granted Caden DSP accepting that he was a young man with severe psychiatric conditions resulting from his traumatic past, and also had multiple physical impairments.
- When Caden lodged the new claim for DSP on his return to Australia, Centrelink was in a position to review the evidence on file and take into account the fact that he had been paid DSP for 11 years; his DSP had been cancelled only weeks before – solely because it had ceased to be payable under the portability provisions. Instead, a vulnerable young man was treated as a fresh claimant, with the onus on him to obtain evidence to re-establish his DSP eligibility. The result was that Caden ended up at the AAT with inadequate evidence to demonstrate his ongoing psychosocial disability and physical impairments.

Mutual obligation implications

- Caden will inevitably face substantial challenges complying with JobSeeker Payment mutual obligation requirements. It is also likely that if he reclaims DSP, Centrelink will be reluctant to grant, however strong his evidence may be – in deference to the AAT's decision regarding his previous claim.

#3
Survivor of childhood domestic violence struggles with mutual obligation activity requirements and obtaining evidence for DSP claim

Peter had applied for DSP unsuccessfully several times when he contacted the Centre. He had spinal and knee conditions as well as depression and anxiety. His mental health conditions stemmed from domestic violence he had experienced as a child. He struggled with comprehension, short term memory loss and concentration issues, and had difficulty completing daily tasks such as making breakfast. He had had four falls recently which had exacerbated these symptoms. He had few social interactions and had difficulty focussing for long enough to understand new information and pick up new tasks.

When Peter appealed his latest DSP rejection, the Authorised Review Officer (ARO) awarded him 15 points on the impairment tables for his physical and mental conditions. Peter wanted to collect further evidence about his conditions from his GP, but the GP who could provide a report regarding the relevant 13 week period had moved to a country town 4-5 hours away and Peter had not been able to contact him. Peter was not seeing a psychiatrist or psychologist at the time of submitting his DSP claim as the last psychiatrist he saw told Peter that no further psychiatric help would be of benefit.

Peter was on Newstart and subject to mutual obligations. His mental health had been deteriorating and he was having difficulty engaging with his employment services provider. Peter had a conflictual relationship with his employment services provider. The provider was asking him to sign a participation agreement which included 15 hours of activity a week but he was not capable of

completing this many hours. When Peter tried to review his activity agreement on the MyGov website it was blank, and he only had 48 hours to complete it. He had had a medical exemption previously, but his new GP would not provide a medical certificate so he had to continue fulfilling mutual obligations. Centrelink had offered to move him to a disability employment service provider but this had not been actioned.

Obstacles to successful DSP claim, and mutual obligations implications

- Peter's mental health conditions and cognitive impairments make it impossible for him to engage with the requirements of the DSP claim process, and also affect his engagement with his employment services provider.
- Peter would in all likelihood be able to establish eligibility for DSP with comprehensive evidence but he faces multiple barriers that prevent him from gathering this evidence and pursuing a claim. Instead, Peter's disabilities mean that he is likely to remain on JobSeeker Payment but continue to have great difficulty complying with mutual obligations associated with Newstart Allowance/JobSeeker payment unless he can be connected with a supportive provider. Without such support he faces periods of non-payment and ongoing poverty.

#4
Risk of homelessness after DSP cancellation

Stuart contacted the Centre after having had no income for over a year. He had previously received DSP but it was cancelled following a review and began receiving Newstart Allowance. Stuart has mental health conditions and drug addiction problems which manifest in anger management issues, and make it difficult for him to engage with Centrelink and his employment service provider.

At an appointment with his employment service provider over a year previously his conversation with the provider staff member escalated and Stuart walked out. His Newstart Allowance was cancelled immediately and Stuart had received no payment since then. He was living with his parents who were themselves dysfunctional and prone to conflict. Stuart's living situation was not sustainable due to these pressures and he faced the risk of homelessness. Stuart was being assisted by his sister, who was worried that if he did begin receiving Newstart Allowance again he would be breached due to his behavioural issues and lose payment once more.

Mutual obligations implications

- It is clear that due to his long-term, well established mental health conditions, Stuart was unable to appeal the cancellation of his DSP and is unable to comply with ongoing mutual obligation requirements. In the absence of stable income support he is at ongoing risk of destitution.

#5
Suicide attempt after DSP rejection

Alana suffered from chronic pain, carpal tunnel syndrome and panic disorder with severe agoraphobic features. Her symptoms included episodes of depression and anxiety, lack of motivation, social isolation, avoidance of going outdoors and socializing, reduced memory, concentration issues and inability to plan ahead. She had been hospitalized for this condition twice, the last time a year previously, and had been seeing a psychologist for over 5 years. Her symptoms had significantly worsened over the last 2 years, with a prognosis of ongoing symptoms for at least another 24 months. Alana's psychologist and GP had provided evidence to Centrelink that Alana was not fit for any work for 12 months.

Alana had previously worked in aged care but was required to cease work in 2015 and again in 2017 due to her mental health status. Centrelink's Job Capacity Assessor had assessed Alana's work as 8-14 hours a week, with the potential to increase to 15-22 hours per week with specific intervention services.

Alana had been rejected from the DSP. Her appeal to the Administrative Appeals Tribunal Social Services Division was unsuccessful due to evidence that her condition had changed after the 13 week relevant period following her DSP application. Alana did not want to appeal the decision.

Alana was receiving Newstart Allowance and had to complete mutual obligations to keep her payment. Her employment services provider had told her that she could not be placed with a disability-specific employment services provider because Centrelink did not recognise her as having a disability. Due to the pressure of completing mutual obligations, Alana's mental health had deteriorated and she attempted suicide. After this, she was given a medical exemption for 6 months. Alana applied for a further medical exemption, but this was rejected by Centrelink as the medical certificate characterized Alana's symptoms as a temporary exacerbation of an existing condition and the JCA had assessed her as being able to work 15-22 hours a week.

Alana's psychologist expressed concern that having to participate in mutual obligations would make Alana vulnerable to another suicide attempt. Alana's psychologist also filed complaints against the Job Capacity Assessors to the Health Care Complaints Commission and the Ombudsman.

Obstacles to successful DSP claim and mutual obligations implications

- Alana's case points to the complexity of the interplay of the DSP work test (requiring inability to work at least 15 hours per week for at least 2 years due to permanent impairment), compared to the criteria for granting a temporary exemption for mutual obligations (temporary inability to work at least 8 hours a week).
- Alana was advised to reclaim DSP and also appeal the rejection of her medical certificate for Newstart Allowance to an Authorised Review Officer – meaning that she would need to ask her doctor for superficially contradictory reports attesting to her inability to work at least 15 hours a week for at least 2 years, and her temporary inability to work at least 8 hours a week. This a significant ask of anyone let alone a person with severe psychiatric conditions, a recent suicide attempt and ongoing suicidal ideation.

Policy implications

- Alana's case highlights the systemic barriers that can preclude vulnerable people with severe psychiatric conditions from accessing DSP. The complexity of qualification requirements, especially for assessment of psychiatric conditions, is such that treating doctors are confused regarding what needs to be addressed in reports – especially where their patient is both seeking relief from mutual obligations and claiming DSP. Treating doctors need to be provided with standard proforma for relevant Impairment Tables.
- Centrelink should provide vulnerable clients such as Alana with social worker support, for ongoing assistance and referral to community support services, including for assistance and advocacy regarding social security claims and appeals.

#6
At risk of destitution – mental health and constant pain preventing compliance with mutual obligations

Sam had a number of physical and psychiatric conditions. He suffered from constant pain due to shoulder injuries and crushed vertebrae in his neck. He had seen several psychologists and psychiatrists for his mental health issues, but did not agree with the diagnosis given to him by his psychiatrist. Sam had applied for the DSP 3 or 4 times and was waiting for the outcome of the most recent application. Sam had been receiving Newstart for 2 or 3 years. He had problems engaging with his employment service provider and had had medical exemptions from mutual obligations in the past.

Sam's mental health issues made it difficult for him to engage with Centrelink. His payments had been suspended many times. Sam contacted the Centre a few months after his payment was cancelled due to not reporting his income. Sam did not appeal or respond to the letter informing him of the cancellation of his Newstart because he was severely distressed, depressed and unable to deal with Centrelink. He was reluctant to claim a Centrelink payment again due to the adverse impact engaging with Centrelink and employment services had on his mental health.

Sam had been without income for several months. He survived with help from his friends and the assistance of community service caseworkers.

Sam was advised to re-apply for Newstart Allowance and he successfully did so. The centre contacted Centrelink to obtain personalised service for Sam due to his support needs.

Obstacles to successful DSP claim and mutual obligations implications

- Sam's Newstart Allowance was restored but only due to the intervention of an advocate and a receptive Centrelink officer.
- Given his severe mental health issues, Sam remains highly vulnerable, and at ongoing risk of destitution while on JobSeeker Payment. He is likely eligible for DSP but unable to pursue the rigours of claiming due to his fragile mental health.

Policy implications

- Centrelink should provide vulnerable clients such as Sam with social worker support, for ongoing assistance and referral to community support services, including for assistance and advocacy regarding social security claims and appeals.

MEDICAL EXEMPTIONS

#7

"Catch 22" when claiming DSP

Sarah was applying for the DSP on the basis of her heart condition, anxiety and depression. While waiting for the outcome of her application, she was receiving Newstart Allowance. Her health conditions made it difficult for her to engage with mutual obligations, including attending provider appointments and applying for jobs. Sarah supplied Centrelink with a medical certificate to receive a medical exemption from mutual obligations. Centrelink denied the exemption because the medical certificate stated that Sarah's conditions were permanent, explaining that exemptions can only be granted for temporary conditions. Centrelink advised Sarah to get a new medical certificate which described her conditions as temporary.

Mutual obligations implications

- This case demonstrates the 'catch-22' situation for many people on Newstart who are applying for DSP. When they seek an exemption from mutual obligation requirements, they must describe their condition as a temporary flare-up of a permanent condition or associated symptoms – but if they do so, Centrelink regards this as evidence that the condition is not 'fully treated and stabilised', as is required for DSP. As a result, many clients with psychiatric conditions who want to claim DSP risk suspension or cancellation of payments due to non-compliance.

#8

Too distraught and suicidal to appeal DSP rejection or deal with Centrelink

Ed had been diagnosed with depression, PTSD, osteoarthritis, cardiac issues and respiratory issues. His mental health had seriously deteriorated and he was suicidal. Ed's claim for DSP had been rejected and he was awaiting a decision from the Authorised Review Officer while receiving Newstart Allowance. Ed contacted the Centre when his Newstart Allowance was suspended after he missed a provider appointment due to attending an appointment with his cardiologist. Ed's payment was suspended on the same day. The next day he gave his provider proof of the cardiologist appointment, but his provider told him to get a medical certificate from his GP, which Ed did. However, this medical certificate was subsequently rejected by Centrelink who told Ed that he could not get another exemption as he had had a 2 week exemption earlier in the year. Ed was too distraught to appeal the decision or ask Centrelink what he needed to do to get back on payment.

Mutual obligations implications

- Ed was advised to appeal the DSP rejection but then faced the 'catch-22' situation regarding medical exemptions for temporary conditions and the DSP requirement that conditions be 'fully stabilised'.
- Ed was in a fragile mental state, and at ongoing risk of suicide. He was in need of community referrals – and assistance claiming DSP and gathering evidence.

Policy implications

- Centrelink should provide vulnerable clients such as Ed with social worker support, for ongoing assistance and referral to community support services, including for assistance and advocacy regarding social security claims and appeals.

#9

No access to support services to help with DSP claim for Aboriginal woman in remote community

Kirra is an Aboriginal woman living in regional NSW, over 50 kilometres from the nearest town. She is a single parent of two children, 8 and 10 years old, one of whom is developmentally delayed.

Kirra had been diagnosed with PTSD and social anxiety and had recently attempted suicide. Kirra had previously been rejected for DSP and appealed the rejection but did not know the result. She was not sure whether they had received an outcome letter, as she is illiterate.

Kirra had recently made a new claim for DSP with a new psychiatrist report as evidence. Kirra contacted the Centre after this claim was rejected and she had put in a request for review by an Authorised Review Officer and been given more time to submit medical evidence. Kirra had no electronic access and was struggling with the cost of petrol travelling to medical facilities and Centrelink, so her treating medical professionals had offered to send evidence to Centrelink directly.

Kirra had been receiving Newstart Allowance and Parenting Payment and had a medical exemption from mutual obligations. She contacted the Centre because her Newstart Allowance had been suspended twice recently, due to failure to attend appointments. Kirra was very distressed by the pressure of dealing with Centrelink.

Kirra was advised to appeal the DSP rejection, and submit a new medical certificate for Newstart Allowance, describing her symptoms as a temporary flare-up of a permanent condition. Her DSP appeal to the ARO was unsuccessful, and Kirra is still on JobSeeker Payment.

Obstacles to successful DSP claim

- Kirra's case demonstrates the systemic barriers for highly vulnerable people with severe mental illness in navigating the social system – especially for people in rural and remote areas, with no access to support services.
- Aboriginal people in regional and remote areas have disproportionately high rates of suspensions and penalties for mutual obligation non-compliance; disproportionately low rates of DSP grants; and disproportionately low appeal rates. Kirra's case demonstrates the issues at play.

#10

Longstanding mental health issues lead to exemptions from mutual obligations but no advice to claim DSP

Alicia had suffered from panic attacks and agoraphobia for the last 10 years. She had attempted suicide and been admitted to a psychiatric hospital. She had not applied for DSP and was receiving Newstart Allowance. She had an exemption from her mutual obligations from February to May 2019. When her exemption expired at the end of May 2019, she was required to re-engage with her provider by attending an appointment, which she did not do. Her Newstart Allowance was suspended on the same day. Alicia's nominee contacted Centrelink and provided a medical certificate requesting a medical exemption for Alicia on 21 June. However, on 28 June Alicia's payment was cancelled. Centrelink did not upload the medical certificate to their database and Alicia's payments were suspended and later cancelled when she did not attend appointments with her employment service provider. Alicia's appeal of the cancellation to an ARO was not successful. Centrelink told Alicia that her payments would be restored if she made an appointment to see a specialist psychologist from Centrelink. Alicia did so and the Centrelink psychologist recommended she be given an exemption until early 2020. Following this recommendation, Alicia was granted Newstart Allowance again in September 2019 with no mutual obligations until March 2020. When she contacted the Centre, Alicia was in the process of appealing the cancellation of her payment to the AAT1.

Alicia was advised regarding the evidence she would need to present to the AAT1 about her application for an exemption. She was also advised to reclaim DSP.

Obstacles to successful DSP claim

- Given Alicia's circumstances and Centrelink's active assistance to avoid the need to lodge medical certificates, it is surprising that Centrelink did not encourage her to claim DSP.
- Alicia's case demonstrates the systemic barriers in the social security system for people with serious, long-standing mental health conditions.

#11

Confusion about whether GP can provide the necessary evidence to show mental health condition has been fully diagnosed, treated and stabilised after initial psychiatrist's diagnosis

John was diagnosed with generalized anxiety disorder, OCD and major depression. In his DSP claim John provided evidence of his conditions from a mental health support worker, GP and clinical psychologist. He also provided evidence of ongoing and long-lasting psychiatric interventions, including previous episodes of hospitalisation. When Centrelink contacted John's clinical psychologist about his evidence, he stated that he had last seen John a year before his DSP claim and therefore retracted his previous statement about whether John's condition was fully diagnosed, treated and stabilied at the time of his claim. Centrelink rejected John's DSP claim citing a lack of evidence.

John appealed the rejection to an ARO and Centrelink allowed him more time to collect medical evidence. John was asked to seek out a new clinical psychologist for the ARO review and was unsure about whether they would have time to fill out a long report. He wanted to ask his GP to fill out the report instead, as his GP was more familiar with John's condition.

Obstacles to successful DSP claim

- The requirement that a condition has been "fully diagnosed, treated and stabilised" to be assessed under the Impairment Tables is particularly problematic for serious mental health conditions, given that they are often episodic by nature and/or treatment-resistant and/or the patient is non-compliant regarding treatment.

Policy implications

- Claimants, their doctors, Centrelink decision-makers, advocates – and Tribunal members – find this requirement confusing, especially in respect of mental health conditions. What should be required by way of evidence where a condition has been diagnosed by a psychiatrist some time ago but clearly persists, is ongoing treatment by a GP who can attest to the fact that the condition is ongoing, treatment is ongoing and stabilised to the extent possible. The fact that there is so much confusion regarding the interpretation and application of this provision points to the fact that it cannot be administered fairly.

#12

Condition found to not be fully diagnosed, treated and stabilised because diagnosis changed from major depressive disorder to bipolar disorder

Lee had a mental health condition which had a severe impact on his ability to function. Lee contacted the Centre when he received an ARO decision affirming the rejection of his claim for DSP. The ARO found that Lee's condition was not "fully diagnosed, treated and stabilised" because his diagnosis had recently changed. Lee had received a diagnosis of major depressive disorder and anxiety diagnosis in 2016 but in 2019 his new psychiatrist diagnosed him with bipolar disorder, which carried the same symptoms and treatment. Lee had recently started seeing a different psychiatrist.

Lee was receiving Newstart and had to complete mutual obligations per a Job Capacity Assessment which assessed him as having capacity to work, despite Lee being unable to leave the house due to his condition. He had been able to obtain medical exemptions from mutual obligations but exemption at the time was due to expire and he was anxious about whether his new medical certificate, which stated that he would be unable to work for 3-12 months, would not be accepted.

Lee was advised about his appeal rights and it was explained unless he was given 20 points under the a single impairment table, he would need to meet the 'program of support requirement' – i.e., he would need to have completed a program of support for at least 18 months of the previous three years. Lee had been enrolled in a TAFE course but was unable to complete it due to the impact of his condition. Lee was unsure about whether this would be counted as participation in a program of support for the purposes of his DSP application.

Obstacles to successful DSP claim

- Lee has been suffering from debilitating mental illness since 2016. He was initially diagnosed with one disorder but then diagnosed with a different disorder by a second psychiatrist. Whatever the precise diagnosis, it is patently clear that Lee has not only been unable to work at least 15 hours a week since 2016, he has also been unable to meet the program of support requirement.

Policy implications

- The system's complexity should not be such that a person with a debilitating and long-standing psychiatric should be left to struggle long-term with mutual obligation requirements, and impossibly challenging DSP claim requirements. The system is setting people like Lee up to fail.

#13

Too hard for person with psychiatric condition and acquired brain injury to gather evidence

Zara was diagnosed with a lung condition, major depressive disorder and a brain injury which led to memory loss. Zara's conditions had a significant impact on her functioning, and she required a service dog to be able to leave the house. She had been trying to claim DSP for three years, unsuccessfully. Her latest claim for DSP was rejected on the basis of her condition not being fully diagnosed, treated and stabilised. The decision referred to Zara not pursuing anti-depressants as a treatment option. Zara did not want to take anti-depressants because using them in the past had contributed to her attempting suicide.

Zara had previously participated in program of support activities but was unable to complete them due to her mental health conditions.

Zara had obtained a new report from her psychiatrist characterising her condition as fully diagnosed, treated and stabilised, but had not lodged this with Centrelink yet as she had not lodged a request for review.

Zara's GP had prepared a report on her major depressive disorder, which referenced the effects of the COVID-19 pandemic. It seemed that this might have led Centrelink to characterise her condition as temporary. Zara was advised that unless she was given 20 points on at least one impairment table she would need to meet the program of support requirement to eligible for DSP, unless she could obtain a report from a program manager stating that the program of support was discontinued due to her medical conditions.

Obstacles to successful DSP claim

- It is unreasonable to expect a person with a psychiatric condition and acquired brain injury to gather the evidence needed for assessment under the DSP Impairment Tables, as well as regarding exemption from the program of support requirement.

Policy implications

- Zara's case exemplifies the need for legislative reform to address the barriers in place for people with severe mental illness and/or cognitive impairment from accessing DSP.

#14
Treating doctor discouraged patient from claiming DSP

Sarah had been diagnosed with Dissociative Identity Disorder and Post Traumatic Stress Disorder many years previously due to serious childhood trauma. She had a long treatment and management history, ongoing support from a psychiatrist and a regular GP, as well as recent serious and life threatening physical health issues that were still undergoing diagnosis and treatment. When she contacted the Centre, she had stopped work due to her ongoing physical and mental health issues. Sarah had no source of income at the time and was not receiving any Centrelink payments.

Sarah was advised that she was eligible for Newstart Allowance and to also claim DSP. Sarah said that her psychiatrist had advised her to claim Disability Support Pension and had offered to write a report for her. However, Sarah said that she had not claimed the payment because her GP had told her not to bother as 'no one gets DSP any more'.

Sarah was given detailed written information about how to claim, as well as advice about the interaction between Centrelink payments and other income sources including superannuation and income protection. Sarah told us she would think about claiming and get back to us. When the centre did not hear from Sarah for several months, they contacted her to see if she had claimed Newstart Allowance or Disability Support Pension. Sarah said that she had not yet managed to finish her application as she disassociates every time she attempts the application. She found the application process very challenging. She said that her GP was still discouraging her from applying, but her psychiatrist was continuing to support her in the application process. The centre encouraged Sarah to continue with the claim and to accept the support of her psychiatrist, and to contact us immediately if her claim was rejected by Centrelink. Sarah said that she would and that she would persevere with the claim.

A few months later, Sarah received a letter saying her most recent medical exemption application was rejected and she has to comply with mutual obligations. Two months before getting the letter, Centrelink had told Sarah that they would grant her medical exemptions for the next 12 months. Sarah thought their position might have changed because her most recent medical evidence provide to Centrelink contained a new condition that is permanent following a recent diagnosis.

Obstacles to successful DSP claim

- It is not uncommon for treating doctors to discourage patients from applying for DSP, even where they are aware that the person's impairment limits work capacity or precludes work completely – as for Sarah.

Policy implications

- There is a need for mandatory treating doctor reports to be reintroduced as part of the DSP claim process, with a Medicare item number introduced for report completion.

#15

PTSD from childhood trauma but lost medical records made it difficult to show condition was fully diagnosed and treated

Michelle was on Newstart Allowance and living in her car. She suffered from chronic mental health problems which made it difficult for her to sustain rental accommodation and employment. She felt unsafe living in share accommodation and could not afford to rent on her own.

Centrelink had rejected three previous applications for the disability pension on the grounds that they had determined that her mental health conditions were not fully diagnosed and treated. Michelle (now in her late 40's) was first diagnosed as suffering from anxiety and depression more than 20 years ago, and had more recently been diagnosed with PTSD arising from childhood trauma. A psychiatrist had confirmed the diagnosis of each of these conditions in the past, although Michelle had lost most of her medical records.

Michelle was under the supervision of her GP and had a mental health care plan. She was also undergoing cognitive therapy with a psychologist provided through a local community organisation. This centre wrote to the psychologist and requested that they provide a report that addressed the specific requirements of Table 5 of the Impairment Tables. The centre also wrote to the clients GP and requested that they provide copies of any previous reports from psychologists and psychiatrists which they may hold.

Both the GP and psychologist cooperated and we were able to establish that Michelle's mental health onditions had been diagnosed by both a clinical psychologist and psychiatrist. The psychologist provided a report which expressed a clear opinion as to severity of Michelle's mental health condition. We represented the client at the AAT at tier 1, but the member disagreed with the findings of the psychologist based on the client's answers to certain questions and a narrow interpretation of particular comments in the psychologists report. We appealed the matter to the General Division of the AAT with the matter settling after we were able to provide further medical evidence clarifying remarks within the earlier report as well as the client's capacity.

Obstacles to successful DSP claim

- Most doctors and psychologists do not understand the need to provide reports that expressly address the requirements of the impairment tables, and this is a particular issue for mental health conditions.

Policy implications

- There is a need for mandatory treating doctor reports to be reintroduced as part of the DSP claim process, with a Medicare item number introduced for report completion.

#16

Rare grant of DSP where severe mental health or neurological condition was undiagnosed and untreated

Mark initially approached the centre because his Newstart Allowance had been cut off due to non-compliance with activity testing, and he had had no means of support for some time. It was immediately apparent that Mark had either a severe psychiatric or neurological condition. Mark advised that he had never been diagnosed with any such condition.

In assisting Mark with appeals against the decision to cancel his Newstart Allowance, it came to light that he been on Newstart Allowance since the 1990s, and exempted from participation activities throughout that time. Mark presents as severely disabled to everyone he meets. Both his employment service and Centrelink recognised the extent of his disability and excused him from activity testing for many years; however, it seems no attempts were made to help him apply for DSP.

Issues arose when Mark was shifted to a new employment services provider in 2019, which imposed activity requirements that Mark could not comply with – eventually resulting in the cancellation of his Newstart Allowance.

While assisting Mark to appeal to the AAT regarding the cancellation of his Newstart Allowance, the centre solicitor and social worker spent much time connecting Mark with mental health services and assisting him to apply for DSP. Mark originally intended to claim DSP on the basis of shoulder injury but on the centre's advice, he agreed to claim DSP on the basis of an underlying mental health or neurological condition.

The DSP application was initially unsuccessful due to lack of medical evidence. The centre lodged an appeal to ARO at the same time as providing Mark with ongoing assistance regarding his Newstart Allowance appeal.

Mark's DSP appeal did not make it to the ARO. His case went to a Centrelink "subject matter expert" and after sustained advocacy from the centre, Centrelink agreed to grant Mark DSP – despite the fact that he did not have a formal diagnosis of his underlying psychiatric/neurological condition from a clinical psychologist, psychiatrist or other specialist.

This was a remarkable and very rare outcome.

Obstacles to successful DSP claim

- Mark's case demonstrates the systemic barriers in the social security system for people with serious, long-standing mental health conditions.
- As Mark's case demonstrates, people with such conditions are vulnerable to destitution while on Newstart Allowance (now JobSeeker Payment), given the risk of non-payment penalties or cancellation for inevitable breaches of activity testing and mutual obligation requirements. Centrelink responded to Mark's vulnerability by continuously exempting him from mutual obligations (at least until 2019), but these exemptions ultimately came to an end and Mark was left without means of support. It would have been preferable for Centrelink decision-makers to have felt confident in transferring Mark to DSP many years ago – preventing the distress caused to Mark by the cancellation of his payments, and a costly series of appeals.

Policy implications

- Policy guidelines for the grant of DSP in cases where it is manifestly evident that the person is qualified – 'manifest' claims – need to be reviewed to ensure that people with severe psychiatric disability and/or cognitive impairment may be determined to be eligible for DSP despite minimal evidence.

#17
Additional case study added as an addendum to the Rights Review

Sharon contacted the Welfare Rights Centre for advice about her rejected DSP claim. She had already received an Authorised Review Officers decision and had lodged her appeal to the Administrative Appeals Tribunal. Sharon lives in a rural area with limited access to health services, the application that she approached us with was her 6th application over the course of the past 10 years. She has previously applied under a number of different health conditions including mental health issues, respiratory issues, arthritis and a previous workplace injury to her spine. Sharon is currently receiving Jobseeker payment and has been unable to work for many years. She remains engaged with her job network provider as she is aware that if she is ever approved for the DSP she will have needed to complete a Program of Support.

There are no clinical psychologists or psychiatrists in her area that offer bulk billing and she is unable to afford the $200 upfront payment required to attend an appointment (before the limited Medicare rebate), she is also aware that she will need to attend at minimum 6 appointments before a clinical psychologist will write her a report that may be able to be used for a DSP application and that even after the 6 appointments any report written may not state that she is fully treated and stabilised. Sharon has a history of severe anxiety and depression that has involved hospitalisations but she is not undergoing treatment and has not been able to undertake treatment as it is not financially accessible. Sharon struggled to have her Centrelink file amended to reflect that she was not making an application under Table 5 – Mental health, after she initially applied under that table. Many subsequent applications listed issues with her Mental Health evidence even when her application did not list Mental Health as a condition.

Sharon told us she was rejected for one DSP application due to not having adequate points for spinal as the Job Capacity Assessor stated that although her evidence indicated she was eligible for 10 points she would have needed to drive for 40 minutes to get to the appointment with the JCA and that proved she could sit in her car for more than 30 minutes – an incorrect reading of the Tables.

Sharon told us that in her application immediately before the one that the Welfare Rights was assisting her with she was found to be eligible for 10 points on spinal but that her respiratory issues were not fully treated and stabilised. Sharon then spent a number of years on waiting lists and attempting to get treatment and evidence from respiratory specialists in her regional area. When she had gathered the required evidence she made a new application. Centrelink found that she was eligible for 10 points for her respiratory issues but that her evidence for her spinal issues was now out of date and that she was no longer considered fully diagnosed, treated and stabilised.

Sharon attempted to get updated evidence from her spinal specialist before her AAT hearing but the waiting list for her specialist was considerable as they attend her area only one day every 6 weeks. Her appointment was not until after her hearing and the Tribunal was not willing to wait until the appointment to make their decision. Her specialist has also stated that they will not make a report tailored for a DSP application and that they expect Centrelink, the Tribunal and her GP to interpret her report as needed to obtain the information they require.

Sharon was close to withdrawing her application and no longer attempting to receive the DSP but the Welfare Rights Centre is assisting her and are hopeful that she will be granted the pension eventually.

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