

Submission
to
Senate Select Committee on
Mental Health

from

Welfare Rights Centre, Sydney

Background

Welfare Rights Centre contributed to the submission to the Inquiry prepared by the Combined Community Legal Centres Group (NSW), which highlighted the issues affecting Community Legal Centres across NSW, both generalist and specialist. Welfare Rights Centre, Sydney, is providing this separate submission to focus on some of the particular issues affecting Social Security clients and claimants with a mental illness.

Welfare Rights Centre is a community legal centre specialising in Social Security and Family Assistance law and policy, and ABSTUDY. Our advice and casework service is available for residents of NSW. Ongoing advocacy for individuals can range from liaison with Centrelink on behalf of clients, to representation in respect of internal Centrelink reviews, appeals to the Social Security Appeals Tribunal and Administrative Appeals Tribunal, and in Federal Court appeals.

In providing ongoing assistance, priority is given to clients who may not have the capacity to pursue the administrative processes involved or to adequately represent their own interests. Of our ongoing clients, we would estimate that at any point more than 30 per cent have a psychiatric disability and/or are mentally ill. We deal on a daily basis with clients who have been diagnosed as having a long-term psychiatric disability, such as:

- depression, from reactive to clinical - acute symptoms to chronically destabilising;
- bipolar disorder;
- various types of psychotic conditions, most commonly (or obviously) paranoid schizophrenia - diagnosed and managed; diagnosed and not adequately managed and symptomatic. (If not diagnosed or if the client is not disclosing or is not insightful, they may be manifestly psychotic);
- various types of anxiety disorders, obsessive-compulsive disorder, neuroses;
- various types of phobias, most commonly agoraphobia;
- various personality disorders;
- mental illness stemming from pain management issues;
- behavioural problems, such as disinhibited behaviour associated with mild psychiatric disability combined with intellectual disability or acquired brain injury.

Our submission covers Terms of Reference (e) and (j), focussing on the fundamental need for people with a mental illness to have access to stable income security and to advocacy services. Our comments relate to:

- issues faced by people with a mental illness in dealing with Centrelink;
- particular Social Security policies which impact adversely on people with a mental illness; and
- referral options for clients of our Centre who have a mental illness.

In considering these issues, it should be borne in mind that people with other disabilities affecting cognition, emotions and behaviour (such as intellectual disability and acquired brain injury), are similarly affected, as is our capacity to provide an accessible and effective casework service.

(e) the extent to which unmet need in supported accommodation, employment, family and social support services, is a barrier to better mental health outcomes

Comments are restricted to the extent to which unmet need in social support services is a barrier to better mental health outcomes.

It is rare for clients with a mental illness seeking the Centre's assistance to have a community advocate or case manager to assist in dealing with government agencies. As discussed in the Combined Community Legal Centres Group submission, this means that we must obtain factual information directly from clients with severe mental illnesses (including information regarding their psychiatric disability/mental illness), which can pose difficulties in taking instructions, in giving advice that can be followed, and in obtaining medical/psychiatric evidence that may assist in resolving a Social Security issue. These issues can be impossible to address where the person has no insight into their mental illness.

In addition, where our probing regarding a person's background highlights ongoing mental health problems, we are obliged to offer referrals to other agencies. This is not only so that the client may seek treatment and/or support, but also in the hope that we can obtain assistance from a mental health professional in establishing the person's eligibility for a payment, or for the purposes of an appeal against, for example, refusal of Disability Support Pension or recovery of a Social Security debt.

Welfare Rights caseworkers regularly ask clients who seem to be chronically depressed, anxious or delusional whether they have discussed the "stress" they are under with their GP - reference to "stress" being the most innocuous way of broaching the subject of possible mental illness. If the client is resistant ("my doctor's useless - just gives me prescriptions" or "doesn't believe me"), we refer them to their local Area Health Service to seek counselling.

Our observation is that unless a person with a mental illness expresses suicidal ideation or delusional thoughts suggesting psychosis, resource constraints of community health services mean that assistance can be ad hoc and uncoordinated. It is understandable that strained resources are directed to those people who are at risk of harming themselves or others, but in many cases a wider range of support services for people with less acute mental health problems would prevent the development of more severe problems.

For clients who are clearly in crisis and at immediate risk due to mental illness (either posing a danger to themselves or others), we have attempted on occasions to enlist the assistance of the client's local Area Health Service Mental Health Crisis Team. Clients who are suicidal are also referred to Lifeline. However, if the client is not agreeable or compliant, it can be impossible to link the client with a service. We are particularly at a loss regarding people who are delusional and without insight into their condition. We regularly advise such clients (who often have been referred to us after a string of referrals to other community legal centres, the Ombudsman, HREOC, the Privacy Commissioner, their MP, or the Federal Court), as we can tend to be identified as an organisation that can offer some concrete help with something - even though that "something" may be a minor Centrelink problem.

The effect of all of this on our service is that our caseworkers become quasi-expert in identifying psychiatric disability. We make referrals as best we can but we are generally left feeling that we have failed the client and that they remain either lost to the health system, or completely outside it. We may succeed in advocating on a client's behalf to Centrelink in order to solve the immediate Social Security issue, but the lack of referral options means that the client remains at risk of further Centrelink problems, with consequential risks to maintaining secure housing and general social stability. We have some clients with severe mental illnesses whose files we never close, purely because of the inevitability that they will be in regular contact with us for assistance with suspensions of Social Security payments, breaches, debts and ongoing difficulties dealing with the Centrelink bureaucracy. For some of these clients the request for assistance is appropriate; in other cases the client has merely become dependent on a particular caseworker (or the service), in the absence of other services they trust.

Recommendations:

- that the Commonwealth take action to ensure that the states and territories fund a wider range of mental health treatment and support services, both within the public hospital system and in community health programs funded from other Commonwealth or State sources;

- that the Commonwealth develop training programs to raise the awareness of mental health issues among Centrelink and Job Network staff involved in the activity testing of Social Security recipients.

(j) the over-representation of people with a mental illness in the criminal justice system and in custody, the extent to which these environments give rise to mental illness, the adequacy of legislation and processes in protecting their human rights and the use of diversion programs for such people

Our comments relate to criminal matters, where the alleged offence relates to a Social Security debt; and to Social Security legislation that does not adequately protect the rights of people with a mental illness to stable income support

Social Security criminal matters

Mental health issues can be a significant factor in Social Security debt accrual. The raising of debts can, in turn, precipitate episodes of mental illness in people with episodic conditions, and exacerbate symptoms in people with an ongoing psychiatric disability.

A major component of Welfare Rights Centre's casework is advising and representing clients in appeals against recovery of large Social Security debts, where the client also faces criminal charges in relation to the debt. The fact that we do not have the resources or expertise to represent clients in these criminal matters is a major limitation on our service - particularly for clients with a mental illness (and also for clients with an intellectual disability or an acquired brain injury).

Centrelink policy is that Social Security debts in excess of \$5,000 are considered for referral to the Commonwealth Director of Public Prosecutions (DPP). Centrelink Prosecution Unit officers scrutinise relevant documents to identify any false statements or documents, and generally invite the debtor to an interview.

In our experience, scant regard is given at this stage to the fact that a particular debtor may be known by Centrelink to have a severe disability such as schizophrenia characterised by psychotic episodes. Cases are regularly referred to the DPP, and charges laid, where a person with a past or current mental illness has "admitted" that they "did the wrong thing" - when their "admission" is really that they now understand that they would not have been overpaid if they had complied with obligations which they only now understand. In other cases the "admission" can be a misguided attempt to say whatever the client thinks the Centrelink officer wants them to say, to placate them.

Even where a person with psychiatric disability/mental illness appeals against recovery of a debt, the fact that their mental health problems may be highly relevant to consideration of whether there are "special circumstances" to waive recovery of the debt, or of whether their mental state during the period the debt accrued was such that they could not be said to have "knowingly" been overpaid, may never be raised. In our experience, unless a client has a community or Welfare Rights advocate, mental health issues are generally not considered in Centrelink internal reviews of debt recovery. This can be due to lack of knowledge of mental illness and psychiatric disability on the part of Centrelink officers, or to the awkwardness of raising the issue with the client, or to the client's refusal to

discuss the issue with a Centrelink officer.

For a range of reasons, many people with Social Security debts either do not initially dispute repayment or are dissuaded by Centrelink staff from pursuing appeals. Given the subtleties that can arise in establishing Social Security offences other than the most blatant fraud, our experience is that people with Social Security debts can easily be led to conclude, inappropriately, that they have no choice but to pay back a Social Security debt and no choice but to plead guilty if charged with an offence in relation to the debt. People in this situation generally need legal advice based on examination of Centrelink's evidence, and scrutiny of the legislation under which the charges have been laid. However, current Legal Aid guidelines, and private practice lack of expertise (and interest), mean that many people go unrepresented.

People with a mental illness (and people with an intellectual disability or an acquired brain injury), are highly vulnerable to inappropriate prosecution and/or sentences for Social Security offences. It may be only when a debtor is made aware that their case is being considered for prosecution or that they receive a summons regarding an alleged offence in relation to the debt, that they approach the Centre or another agency or advocate for assistance.

We regularly deal with clients with a mental illness who may have had a strong case for waiver of their Social Security debt, for whom we can do nothing - because they have already been convicted of a criminal offence in relation to the debt. In many cases our clients in this situation were unrepresented (or poorly represented) in the criminal matter, and they inappropriately pleaded guilty. These people now have undeserved criminal convictions as well as the burden of repaying a debt - both of which exacerbate their mental illness.

For other clients with a mental illness, the decision to plead guilty may have been well-founded but mental health issues that may have meant that the DPP would not have pursued the case for reasons of "public interest" (if, for example, the person is at risk of suicide), have not been aired. Similarly, mental health issues relevant to sentencing are often not raised - either because the client was unrepresented, or their solicitor was not made aware of the client's mental health problems.

Legal Aid resource constraints are such that most NSW Legal Aid services generally will not arrange appointments for people with summons relating to Social Security offences until after their first court appearance - the Legal Aid Duty Solicitor often assisting the person to seek an adjournment so as to obtain legal advice regarding their plea, and hopefully obtain legal representation in the matter. This process is probably a sensible means of regulating intake given resource constraints but delaying Legal Aid's active intervention until this point can make it impossible for Legal Aid lawyers to properly research the matter - to obtain complete copies of Centrelink client records under Freedom of Information, and to obtain evidence such as psychiatric reports.

Legal Aid resource constraints and private practice short-comings mean that psychiatric evidence that may impact on consideration of whether a Social Security debtor was truly "reckless" in their completion of a form or whether they "knowingly" made a false statement, and/or whether there are cogent public interest arguments against prosecution, are often not being considered. In our experience, a solicitor may be successful in having prosecution action withdrawn on public interest grounds, but this is often only after charges have been laid and a summons served. For people with a psychiatric disability the stress of the process means that much damage may already have been done.

There are few private practitioners who are prepared to take on Social Security cases - due both to lack of expertise in Social Security law and also due to the fact that the work is not lucrative. We are aware of only a few private solicitors in NSW who are expert in Social Security law and who readily accept Social Security criminal and civil matters. There are also serious misconceptions regarding Social Security criminal offences - many solicitors believing that that they are strict liability offences and often inappropriately advising clients to plead guilty or not appreciating the fact that there would be strong merit in appealing against recovery of the debt via administrative review, and that the criminal matter could be adjourned pending that review.

In assisting clients in appeals against recovery of Social Security debts, Welfare Rights Centre regularly seek reports from Community Health Services regarding the extent to which a person's mental illness was a contributory factor in the accrual of a Social Security debt, and on the impact of the debt and prosecution on their mental health. Community mental health services are obliged to charge us for such reports but we can only be granted Legal Aid for such reports in limited circumstances. We and criminal solicitors are also constrained in these cases by the speed with which Centrelink can move in referring cases to the Director of Public Prosecutions. Community mental health services are not adequately resourced such that they can readily prepare background reports for people with large Social Security debts and/or facing criminal charges.

Recommendations:

- that the Commonwealth require Centrelink to ensure that its staff receive training to raise awareness of mental health issues, particularly those staff involved in the raising of debts, administrative review of debt recovery and in the consideration of referrals to the Director of Public Prosecutions;

- that the Commonwealth increase substantially Legal Aid funding for Commonwealth matters, taking into account current resourcing and training needs in respect of Social Security criminal matters - particularly regarding the defence of matters where mental illness/psychiatric disability may be a relevant consideration;

- that the Commonwealth provide additional Welfare Rights funding such that Welfare Rights is adequately resourced to develop the expertise and capacity to run Social Security criminal matters for selected clients.

"Activity testing" people with a mental illness

Many of our clients who have a mental illness or have a long-term and debilitating psychiatric disability, may acknowledge nothing more to our caseworkers than temporary anxiety caused by Centrelink's treatment, or they may fail to recognise that they are ill at all. Such clients may present to Centrelink (and our service) as eccentric, aggressive, neurotic or paranoid but without psychiatric evidence many clients with severe psychiatric disabilities face a future of unstable income support due to problems satisfying Social Security activity tests and obligations regarding when and how to notify Centrelink of changed circumstances.

Recent research has shown that there are substantial levels of psychiatric disability across Social Security income support payment types, with around 34 percent of Social Security income support recipients having experienced mental illness or substance abuse problems in the previous twelve months, compared to 19 percent of non-recipients. Only about one quarter of these income support recipients receive Disability Support Pension or Sickness Allowance, the remainder being on payments such as Newstart Allowance, Youth Allowance, Austudy or Parenting Payment. For sole parent women in receipt of income support, 45 percent reported episodes of mental illness in the previous twelve months. (*Mental Health Problems, Disability and Income Support Receipt: A Replication and Extension Using the HILDA Survey*, Butterworth, Crosier and Rodgers, Australian Journal of Labour Economics, Vol 7, No.2, June 2004, pp 151-174.)

We regularly advocate for clients who are clearly suffering from a firmly entrenched mental illness due to which they cannot comply with their obligations on Newstart or Youth Allowance (a payment which requires recipients to undertake an "activity test"), and who should be on Disability Support Pension (which is not currently activity tested). Such clients face endless interruptions to payments. If the client has no fixed address, this adds to administrative problems. Many homeless people who are mentally ill end up without income support for long periods merely because they have been struggling, unsuccessfully to comply with activity tests and have not been able to claim Disability Support Pension.

Initiatives announced in the recent Federal Budget, if passed, will create a wider pool of people subject to job-seeking requirements. The proposed tightening of Disability Support Pension eligibility criteria, and the abolition of Parenting Payment Single (i.e. sole parent pension) for single parents with school age children, will mean that many people with a psychiatric disability or episodic mental illness that would be eligible for a pension (either Disability Support Pension or Parenting Payment Single) under the current rules, will be on Newstart Allowance with job-search requirements.

The fact that mental illness severely impacts on a person's ability to comply with mutual obligations and that treatment options are limited, are factors which must be understood when considering labour force barriers - particularly given the ramifications of the Federal Budget proposals. Until Centrelink and Job Network staff understand the prevalence of mental illness and the effect it has on capacity to apply for and maintain

even part-time work, clients with a mental illness will remain at a severe disadvantage in maintaining stable income support.

Recommendations:

- that the Commonwealth develop training programs to raise the awareness of mental health issues among Centrelink and Job Network staff involved in the activity testing of Social Security recipients;

- that the Commonwealth develop training programs to raise the awareness of mental health issues among Departmental staff involved in the development of activity test policies.