

Disability Support Pension: Program of Support – Briefing and Reform Recommendations

Introduction

1. Economic Justice Australia (EJA) is the peak organisation for community legal centres providing specialist advice to people on their social security issues and rights. Our 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.
2. This briefing provides background on the Program of Support element of the Disability Support Pension eligibility criteria, including the current state of issues and suggestions for reform. Please do not share this without first obtaining consent from EJA.

Disability Support Pension: Eligibility Criteria and Program of Support

3. To qualify for Disability Support Pension (DSP), a person must be between 16 years of age and Age Pension age and meet residence requirements. Section 94 of the *Social Security Act 1991* (Cth) (‘the Act’) provides the DSP medical qualification criteria, key provisions requiring that:
 - (a) the person has a physical, intellectual or psychiatric impairment; and
 - (b) the person’s impairment is of 20 points or more under the Impairment Tables; and
 - (c) one of the following applies:
 - (i) the person has a continuing inability to work;
 - (ii) the Secretary is satisfied that the person is participating in the program administered by the Commonwealth known as the supported wage system.
4. A person 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 have been assigned at least 20 points under a single Impairment Table; OR
 - they have actively participated in a program of support 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 find or prepare for work.
5. This means that a person who has scored in excess of 20 points across more than one Impairment Table but did not score 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 requirement.
6. There is no actual program called ‘program of support’; the term is only relevant when considering the eligibility criteria for DSP. The kinds of activities accepted as being POS include those provided by a Disability Employment Service, jobactive, ParentsNext, or

otherwise fulfilling mutual obligations for an activity tested payment such as JobSeeker Payment.

7. *Social Security (Active Participation for Disability Support Pension) Determination 2014* provides rules and guidance as to how the requirement can be met, and in particular, the meaning of active participation. The DSP POS requirement can be met any of the following applies:
 - (a) The person has participated in an approved program for at least 18 months in the three years before applying for DSP.
 - (b) The person has completed a program with a duration of less than 18 months.
 - (c) The person has actively participated in a program, but has been exited from it because their disability prevents it from improving their ability to work.
 - (d) The person has actively participated in a program, and has medical evidence that their disability will prevent it from improving their ability to work.
8. Importantly, only periods of *active* participation contribute to the 18 month requirement. Time spent exempt from mutual obligations with a medical certificate do not count.

Systemic Issues with Program of Support

The requirement is poorly targeted

9. In EJA members' experience, people with significant disability and little or no work capacity are excluded from DSP as a result of the POS requirement and effectively consigned to serve a waiting period on JobSeeker Payment. In our view the POS requirement creates an unfair barrier to accessing DSP, particularly for older people with numerous chronic health conditions where it is the effect of the conditions combined that limits or precludes work, rather than any single condition assessed in isolation. For these people, the POS requirement constitutes a hidden criterion that by definition they are only privy to once they have applied for DSP, had an assessment under the Impairment Tables, and been rejected.

The requirement is unfair for people who have not accessed, or cannot access, Jobseeker Payment

10. For people who have received DSP for many years and are reviewed, and then have their DSP cancelled (e.g. on medical review, due to partner income, or due to absence overseas), the POS requirement can represent a catch-22. If they appeal and are found to have an impairment rating of more than 20 but do not score at least 20 under a single table, they need to meet the POS requirement. However, they will not be able to meet the POS requirement at that point because they have been on DSP for the last three years; and they are unlikely to benefit from participation in a POS.
11. Several EJA member clients in this position have been advised by Centrelink to claim JobSeeker Payment, start engaging in a POS, obtain medical evidence that the program will be of no benefit, apply to exit the program, and once exited then reapply for DSP – all while they proceed with appeals. This is clearly a convoluted solution, and not in the best interests of the client, their doctor, the Employment Services Provider, or Centrelink.

12. There is also no clear POS pathway to DSP for people who are not entitled to JobSeeker Payment because of personal or partner income. People in this position can potentially seek to engage in a POS but this option, and how to proceed, is in our members' experience rarely conveyed to people who are refused DSP.

The requirement is not adequately communicated to potential DSP applicants

13. In our experience new claimants for DSP generally have no idea that the POS requirement will apply unless they score 20 points under a single Impairment Table, and that despite significant incapacity failure to meet the requirement may effectively delay eligibility for DSP for up to three years from the date of claim. This means that many people proceed to both appeal against the rejection of their claim, and try to obtain medical evidence to secure a 20 point rating under one of the Impairment Tables; and/or obtain medical evidence to support a request to exit their POS, then reapply for DSP. Most people remain on JobSeeker Payment – and face a range of issues attempting to meet the POS requirement.

People with chronic illness are often trapped by the requirement

14. In practice, chronically ill people on JobSeeker Payment are often permitted to lodge multiple medical certificates exempting them from the need to participate in a PoS which creates its own problems as illustrated in the following example.

Case study – Michael

When he contacted our member centre, Michael had been in receipt of Newstart/JobSeeker Payment for five years. Prior to this he was primary carer for his mother who was terminally ill. Michael suffered from multiple health problems. When he applied for the DSP his conditions were assigned 35 points under four separate impairment tables. Michael also suffered from other conditions which were not assigned an impairment rating because they had not been adequately diagnosed and treated. His application for DSP was rejected because none of his conditions was assigned a 20 point rating on its own, and he had not fulfilled the POS requirement. A review of Michael's medical evidence was undertaken by his GP, with assistance from our member centre. On the evidence it appeared that the JCA assessment was correct given that Michael had three moderate impairments and one mild.

Michael was engaged with a Disability Employment Service job network provider for the entire period in which he was in receipt of Newstart/JobSeeker payments, and was granted ongoing exemptions from mutual obligations because of his chronic health problems. This was reasonable because the medical evidence made it clear that Michael was unable to work. However, it also served as a barrier to Michael ever being granted DSP.

Michael obtained a referral to another Disability Employment Service. The new provider was supportive of his application for the DSP. At the member centre's suggestion, the new provider organised for Michael to be exited from the POS after he had been engaged as a participant in the PoS for a month. Michael was fortunate that his provider facilitated his exit from the POS. Michael now receives DSP. If his caseworker had not been cooperative he would have been stuck in a program which could not be of benefit to him, and unable to access DSP because of his inability to engage in the POS.

15. Our member centres have represented many clients in similar situations who have been on Newstart/JobSeeker Payment for years, with regular if not ongoing medical exemptions, but have not been exited from their POS despite it being clear that they cannot participate and

will not benefit from engagement. There is a flawed logic loop in this situation as many long-term DSP recipients have impairment levels that preclude participation in a POS and there is no purpose to be served by requiring that they enroll in a POS and then go through the process of exiting.

16. A member centre in NSW notes that a major issue reported by community workers assisting DSP claimants was clients 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.
17. In EJA's view, the culling effect of the POS requirement is iniquitous and excludes many people with disability from accessing DSP purely because they cannot meet the rigors of the processes. The result is that there is an expanding pool of people with disability on JobSeeker Payment who are unable to comply with mutual obligation requirements for the very same reasons they lack the wherewithal to pursue DSP claims and appeals.

The requirement is likely not cost effective, nor does it deliver purported benefits

18. EJA is unaware of any detailed cost/benefit data analysis regarding this culling effect. However, it is reasonable to assume that there are significant costs associated with administering JobSeeker Payment and other activity-tested entitlements to people with disability who have been refused DSP due to the POS requirement, and then struggle with mutual obligation requirements long-term. These payments involve close monitoring and implementation of a complex compliance regime by Services Australia and Employment Services Providers. That significant administration and compliance cost may actually negate any savings achieved by having a person would be on DSP if not for the POS requirement, on a lower rate activity-tested payment.
19. If Services Australia and the Department of Employment and Workplace Relations (DEWR) were to undertake and report on such modelling, EJA suggests examining the costs of maintaining a person with disability of 50 years of age on activity-tested JobSeeker Payment for 18 months, compared to the cost of granting a person Disability Support Pension without a POS requirement.

Recommendations

- That section 94 of the Social Security Act be amended so as to remove the program of support requirement.
- That Services Australia and DEWR undertake and report modelling examining the costs of maintaining a person with disability on activity-tested JobSeeker Payment, compared to the cost of granting a person Disability Support Pension without a POS requirement.

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