



Disability Support Pension Self-Help Kit

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Disclaimer

Legal issues affecting a person are complex. Individual circumstances vary. If expert legal or other assistance is required professional advice should be sought. Social security is an ever changing area of law. While every effort has been made to ensure accuracy as at 17th July 2007, legal exactness is not always possible in a publication of this nature. The book should not be used as a substitute for legal advice. No responsibility is accepted for any loss, damage or injury, financial or otherwise, suffered by any person acting or relying on information contained in it or omitted from it.

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WHO IS THIS SELF-HELP KIT FOR?

Disability Support Pension (DSP) is a payment for people whose physical, intellectual or psychiatric impairment prevents them from working within the next two years, or for people who are permanently blind.

DSP recipients can also receive additional allowances including the Pensioner Concession Card, Pharmaceutical Allowance, Telephone Allowance and Mobility Allowance.

This kit has been developed to assist people applying for DSP and those who are about to have their DSP reviewed.

The kit explains:

- Qualifications for DSP.
- The appeal processes for those seeking a review of a Centrelink decision.
- Helpful information for GPs and allied health professionals.

The Welfare Rights Centre Inc. fully supports the notion that all people are better off financially, socially and emotionally when they are engaged in fair, safe and meaningful work. However we are aware that many Australians have impairments and ongoing medical conditions that make it difficult or impossible to participate in the workforce. In a civil society these people have access to an adequate, secure income through the welfare system. The Australian system has a payment known as The Disability Support Pension. There have been recent changes to this form of Social Security.

WHAT HAPPENS WHEN I CLAIM DISABILITY SUPPORT PENSION?

Contact Centrelink if you have a medical condition or disability preventing you from working. Ask to lodge a claim for DSP. The following should happen:

- Centrelink gives you a *Claim for Payments for people with disabilities, illnesses or injuries* form. This is the DSP claim form. Like almost all other pensions, it includes a form to declare your *income and assets*.
- The form contains a *Treating Doctor's Report* for your doctor to complete.

In addition to the Treating Doctor's Report, it is also a good idea to take a copy of the "Impairment Tables" (see page 10) to your doctor so they can give appropriate comments that will support your application. Having your own doctor give an impairment rating is very useful, if, further down the track, a Centrelink decision needs to be appealed (see the sections *Job Capacity Assessments, Impairment Ratings, and Improving Your Chances of a Successful Appeal*).

- When claiming DSP you may be asked to see an employment assistance provider. They help people find work or prepare to enter the workforce. At this stage it is **not compulsory** to see an employment assistance provider. You can choose not to.
- Return the completed claim form to Centrelink within 14 days. Tell Centrelink if you are not able to.
- In most cases, Centrelink will make an appointment for you to see a *Job Capacity Assessor* (JCA) (see pages 6 & 7).

If your completed claim form is returned within 14 days from when you first contacted Centrelink, and the claim is ultimately successful, the DSP payment will be backdated to the date of first contact. It is important to stay in touch with Centrelink throughout the application process.

- DSP can be granted straight away and without referral to a JCA if the applicant has met one of some very narrow criteria. The criteria includes people who live with: a terminal illness; permanent blindness; category 4 HIV/AIDS; an intellectual impairment (that has at least a 20 point Impairment Rating); or, people who are in need of nursing home level care. Appropriate medical evidence and documentation must be provided.
- After assessments have taken place the JCA will return their reports to Centrelink.
- Centrelink will consider these and make a decision about whether to grant DSP.
- Centrelink is required to send a letter to you outlining their decision. If you do not receive a written response within about two weeks after lodging your claim, ask Centrelink what is happening. If you are not satisfied with their response, call the Centrelink Customer Relations Unit to enquire on your behalf.

If Centrelink decides not to pay DSP and you disagree with its decision you can appeal. This Kit has been designed to help you with the appeals process (see pages 17 - 26).



JOB CAPACITY ASSESSMENTS

The Job Capacity Assessment is an assessment that Centrelink uses to consider a person's capacity to work. It is part of a process which determines whether a person is eligible for the Disability Support Pension. Job Capacity Assessments are also used to work out if a person can be granted an exemption from the activity requirements of payments like Newstart Allowance.

Most people lodging a claim require a Job Capacity Assessment. The assessments are conducted by Centrelink, or by private and community based providers. Job Capacity Assessors (JCAs) are not usually doctors but should be an allied health professional. JCAs **do not diagnose** your medical condition, but look at your capacity to work.

At the interview you will usually be asked questions about your disability and how it affects your ability to work. You can take along a support person or arrange to have an interpreter present to assist you throughout this interview.

You must tell Centrelink if you are unable to attend the interview.

The JCA completes *Impairment Tables* which rate a disability or medical condition using a points-based system. The rating will be based on what you say about the condition during the interview, and any medical reports (including doctors' letters) you have provided in the interview (see *Impairment Ratings*).

The JCA does not make the decision about your eligibility for DSP. Centrelink uses the information gathered by the JCA to make the decision.

The JCA may refer people to service providers they believe can provide appropriate support to obtain employment. If appealing a DSP decision you can tell Centrelink you would prefer to wait until the appeal is finalised before being referred to a service provider.

The Impairment Tables are part of the Social Security Act. To find a copy of the tables, we suggest you type 'Impairment tables social security' into an internet search engine and select a site that suits you.

Q What should you do before a Job Capacity Assessment?

A: Make sure you **understand the purpose of the assessment**. It is important that both you and your doctor understand the eligibility criteria for DSP.

Document your history. Don't just consider your medical history, but your education, work history, current skills, the effects of your disability, and attempts at treatment and rehabilitation. Think about your future in terms of how your condition may affect your ability to look for and undertake work.

Get all relevant medical evidence and bring it with you. Centrelink should tell you what to bring when making the appointment. **Make sure your evidence is up-to-date.** If necessary, get your doctor to order tests to get current information about your condition. If you don't see a doctor regularly, you should rectify this. In general, the longer you see the same doctor, the more Centrelink will value their opinion.

If you think the Job Capacity Assessment is incorrect, it can be appealed indirectly. Technically, the JCA's report is only a source of information used by Centrelink. State that you are appealing the Centrelink decision (e.g. to cut off the DSP) that was based on the JCA's report. (See Point 2 under *How to Lodge an Appeal*).

Centrelink undertakes medical and non-medical reviews of all DSP recipients to see if they are still eligible for DSP. Centrelink calls these reviews

"service update contacts", and they can occur either by phone or face-to-face. Centrelink usually conducts these reviews every two or five years depending on the severity of your condition. However, there is nothing in the social security legislation which prevents Centrelink conducting a review at any other time.



DSP QUALIFICATION CRITERIA

In order to qualify for DSP the applicant must meet certain criteria which are set down in law.

Some people will qualify for DSP but not receive any money because they or their family have too many assets or too high an income. Other issues affecting eligibility include age and Australian residency. These matters can be complex - more information is available on the Centrelink or Welfare Rights websites.

There are two main DSP qualification criteria which must be applied, and are explained in this Self-Help Kit:

1. Impairment Rating
2. Continuing Inability to Work.

Rule Changes to DSP

Unless stated otherwise, all information provided in this Kit is based on the new DSP rules which came into effect on 1 July 2006.

The previous Federal government made changes to the rules and eligibility criteria for DSP that came into full effect on 1 July 2006. There are now at least three sets of rules that apply to people on DSP. The date a person claims DSP determines which set of rules apply to them. The most significant change to come about with the new rules is the qualification criteria (see pages 10 - 13), which places more restrictions on who can receive DSP.

People in receipt of DSP prior to the changes being announced will not be affected by the new rules unless their DSP has been cancelled - any subsequent new application for DSP will then be assessed under the **new rules**. The exception to this is when a person loses eligibility for DSP due to an increase in their employment income, and the person advises Centrelink about this within 14 days. In this situation the person's DSP may be suspended, rather than cancelled, for up to two years. If they claim DSP again within the two years, they will be paid under the **old rules**.

People who applied for DSP after **10 May 2005** would have been initially assessed under the **old rules**, but they will be reviewed under the **new rules**. Usually, people are reviewed every two to five years.

People who applied for DSP on or after 1 July 2006 will be assessed and reviewed under the **new rules**.

Under the new rules, you may be put on **Newstart Allowance (NSA)** instead of DSP. NSA is a lower-paying allowance than DSP and it is aimed at job-seekers. Welfare Rights can give you a fact-sheet explaining NSA more fully (see also the section in this booklet *Frequently Asked Questions* for more about NSA).

You can appeal Centrelink's decision to put you on a NSA instead of DSP (see the section *The Process of Appeal*).

Regardless of the rule changes, your appeal rights remain the same. This kit is designed to help.



CRITERIA 1: IMPAIRMENT RATINGS

Impairment ratings measure how a disability or medical condition affects a person's ability to work. Centrelink uses tables contained in legislation that relate to different medical conditions.

A claimant must attract at least **20 points** on the Impairment Ratings Table to be eligible for DSP.

The Impairment Tables are part of the Social Security Act. To find a copy of the tables, we suggest you type into an internet search engine 'Impairment Tables social security' and select a site that suits you.

It is important all medical conditions or disabilities are assessed and not just the main condition. Each different condition can be rated separately and the ratings are then added together. The combined total must equal at least 20 points.

If an impairment rating of less than 20 is given, and you believe Centrelink has under-assessed it, obtain further medical evidence from your doctor. Use this new medical evidence to lodge an appeal against the decision

Welfare Rights Centre can provide you with a copy of the Impairment Tables.

A 20-plus rating on the Impairment Tables will not alone guarantee that DSP will be granted. It is possible to have an impairment rating of 20 or more, AND be assessed as having a continuing ability to work 15 hours per week.

Requirements for a Condition to be Considered Permanent

Prior to getting an impairment rating, the condition must first be found to be "permanent". If Centrelink decides that the condition is "temporary" the legislation prevents them from using the Impairment Tables, and DSP will not be granted.

"Permanent" does not have the same meaning in this context as in everyday language (i.e. to last forever). For DSP purposes a permanent condition has been **diagnosed, treated** and **stabilised** and is likely to last at least **two years**.

On the next page a series of questions will help explain these specific requirements. These questions can help you and your doctor assess your eligibility for DSP.

Q If Centrelink said your condition is not fully diagnosed?

A: In most cases there is agreement on diagnosis between Centrelink and a person's doctor. There can be problems when Centrelink believes one condition is secondary to another undiagnosed underlying problem - for example, Chronic Fatigue Syndrome could be secondary to depression or hypothyroidism. If Centrelink makes a decision about your condition that you don't agree with, you can appeal the decision. You can argue that *your* treating doctor's report should be preferred.

Q If Centrelink said your condition is not fully treated?

A: The issues which must be considered in determining whether a condition has been fully treated are:

1. Has a person received all reasonable treatment for the condition;
2. Reasonable treatment is treatment that is feasible and accessible, (i.e. it is available locally - not in another state or country), at a reasonable cost; and
3. Treatment needs to be of the type that is regularly undertaken or performed. (i.e., not experimental or not yet widely accepted by the general medical community).

Q If Centrelink said your condition is not fully stabilised?

A: The term "stabilised" has a specific meaning for DSP. It means that with or without treatment, significant functional improvement is unlikely to occur within the next two years. It does not mean that it won't deteriorate further or that a person won't experience ups and downs. This is particularly important for people with episodic conditions such as Bipolar Disorder or Epilepsy. These conditions are stabilised if a person is receiving treatment and their work ability is unlikely to improve significantly within the next two years.

Centrelink might reject an initial claim for DSP if, for example, the onset of the condition is relatively recent and there hasn't been time to arrive at a full diagnosis, or undertake available treatment. If this happens don't give up. You can re-apply for DSP when new diagnostic reports and medical evidence comes to hand.



CRITERIA 2: CONTINUING INABILITY TO WORK

The Continuing Inability to Work (CITW) qualification criteria tries to establish a person's capacity to work over a two year time period.

A *Continuing Inability to Work* is when an impairment:

1. Prevents someone from doing their usual work independently of a **program of support** (see below), for at least two years. Work is defined as employment of at least **15 hours per week** at the relevant minimum wage or above existing anywhere in Australia, not only work available in your local area; AND
2. Prevents a person from participating in a training activity (see next page) within the next two years; OR
3. If a person could undertake a training activity, the training activity would still not enable them, because of their impairment, to do work for which they are currently unskilled.

"A Program of Support":

- Is specialised assistance for a person with an impairment funded by the Commonwealth or is similar to a Commonwealth program;
- Its purpose is to help prepare for, find or maintain work;
- The program of support must be "ongoing" - that is, the specialised assistance is required to not only find work but also to maintain a person's participation in work;
- Therefore support is "ongoing" and not only needed "occasionally".

Centrelink does not consider the actual availability of work or training courses in a person's local area when assessing their ability to work or undertake training.

Example
 Mary has an intellectual impairment and been given 40 points on the Impairment Tables. She has been assessed as being able to work for more than 15 hours per week. This would ordinarily exclude her from receiving DSP. However Mary has been given a place in the Disability Open Employment Service (DOES). It has been determined that due to her intellectual impairment Mary will need ongoing support from DOES to help her work. She is therefore assessed as not being able to maintain a job without ongoing support and is granted DSP, even though she is going to be working for more than 15 hours per week.

“Training Activity”

This does not mean ‘mainstream’ training programs but refers to training courses that are tailored for people with disabilities and their specific needs. Centrelink may decide that a person does have a continuing ability to work if they are able to participate in a specialised training activity.

A “training activity” has been defined as:

- Education;
- Pre-vocational training;
- Vocational training;
- Vocational rehabilitation; and/or
- Work-related training (including on-the-job).

Centrelink does not give special regard as to whether or not a training program will lead to jobs that are locally available.

Remember - Old Rules apply to people receiving or who lodged a claim for DSP on or before **May 10, 2005**.

Under the old rules a *Continuing Inability to Work* is when an impairment:

1. Prevents someone from doing their usual work for at least two years. Work is defined as open employment of at least **30 hours per week** at award wages or above, that exists anywhere in Australia, not only work that is available in your local area, AND
2. Prevents a person from participating in educational, vocational or on-the-job training* within the next two years, OR
3. If a person could undertake educational, vocational or on-the-job training it would still not enable them, because of their impairment, to do work for which they are currently unskilled.**

**Educational, vocational or on-the-job training is defined as mainstream training courses. This provision allows people doing courses designed specifically for those with an intellectual, physical or psychiatric impairment to still be considered as having a continuing inability to work.*

*** Special Rule - For people aged 55 years and over
If an impairment does not prevent a person from undertaking a training course, and they are aged 55 years or over, Centrelink must take into account whether the training is designed for work available in that person's local labour market.*

To consider if you have a Continuing Inability to Work, answer questions under *Continuing Inability to Work – Questions for all DSP Claimants*.

CONTINUING INABILITY TO WORK: QUESTIONS FOR ALL DSP CLAIMANTS

Q Does the impairment, by itself, prevent you from doing your usual work within the next two years?

A: Centrelink considers how an impairment affects a person's ability to function. Your doctor would have provided information about this in the *Treating Doctor's Report*. It includes things such as your ability to sit, stand and move, as well as endurance, communication and cognitive function.

- Centrelink considers a person's work history - that is, how the impairment affected their previous work.
- Non-medical factors such as education or English language skills cannot be taken into account. "Usual work" means work for which you are currently skilled.

Centrelink will consider a range of jobs a person can perform and how their current skill level could be applied in different types of work, for instance, in less physically demanding work.

Q Does the impairment, by itself, prevent you doing training in the next two years to enable you to do different type of work?

A: If unable to perform your usual work because of an impairment, Centrelink must consider if you can be trained for different work. Again, non-medical factors such as language cannot be taken into account.

For Example:

If your usual work involves physical labour and you are now unable to do this because of your impairment, are you able to be retrained to do lighter work?

OR

If you have acquired a cognitive impairment and you have usually done office work could you be retrained to perform more manual labour?

Factors taken into account to assess ability to re-train may include ability to concentrate or the ability to participate in training on a regular basis.

Example:

Mr Jones has a back injury preventing him doing his 'usual' work as a bricklayer. Centrelink has suggested he participate in training to give him skills to work in an office. Mr Jones has the intellectual ability to complete the course but his back injury prevents him from sitting for long periods. He experiences high levels of pain which often affects his ability to concentrate. Mr Jones is appealing Centrelink's decision to reject his application. He believes his impairment prevents him doing training to take up different types of work.

Q Will the training enable you to do work you are currently unskilled to do within the next two years?

A: While it may theoretically be possible to undertake training for a different type of work it must also be possible, based on the person's current capabilities, to gain the skills within two years to do the work.

Factors which should be taken into account include a person's language and numeracy skills, their level of education and time it would normally take to complete the training.

Q Will the training equip you to do work of more than 15 hours per week (or 30 hours under the old rules) within the next two years?

A: This issue relates to the outcome of the training. For example, if you can do training but at the end you will still be unable to work for 15 hours or more you are still eligible for DSP.

You have the right to appeal Centrelink decisions in relation to the areas of "continuing inability to work" and training. See page 17 onwards for advice on the appeal process.



WORKING OR LOOKING FOR WORK WHILE ON DSP.

Can I work and still have a “continuing inability to work?”

This depends on Centrelink’s assessment of the amount of work a person is *capable* of, which is not the same as the work they are actually doing. If a person is doing ten hours work and getting a partial rate of DSP, but Centrelink decides they can work fifteen hours, their DSP will be cancelled.

Volunteer Work and DSP

Many DSP recipients work in community organisations as volunteers because these workplaces provide suitable conditions for people with impairments. Centrelink will factor volunteer work into their assessment of “continuing inability to work” and a person’s capacity to take up paid employment. In short, doing volunteer work *may* affect a person’s eligibility for DSP.

Looking for work

If you are in receipt of DSP and want to seek work, Centrelink will refer you to a Job Capacity Assessment if you’ve not had one in the last two years. The JCA will then recommend an employment service for you.

The Job Capacity Assessment will start a review of your entitlement to DSP. The JCA may find that your work capacity extends beyond the hours allowed (30 or 15 hours) or that your impairment rating has decreased under 20 points. If this happens, Centrelink will cancel your DSP.

Seeking work will start a review of your eligibility for DSP.

THE PROCESS OF APPEAL

The laws about who can receive DSP are contained in Social Security legislation. This legislation guarantees you a right to appeal Centrelink decisions. It also outlines a process for other decision-makers to check Centrelink decisions.

The next few sections of the Self-Help Kit will explain some of the features of the appeal process, and give suggestions to help you with an appeal process.

There are four basic stages to the process:

Stage 1

13 weeks to lodge appeal from the date a decision is received.

Original Decision Maker (ODM) Reconsideration

The first person to review the decision you are appealing will usually be the Centrelink officer who made the decision in the first place. You should receive a letter from the ODM about their reconsideration within one to two weeks. If not, contact Centrelink to check on the progress of the appeal.

This step is optional and can be skipped. You can ask to go straight to the Authorised Review Officer (see below). An ARO decision is necessary before proceeding to the Social Security Appeals Tribunal.

Stage 2

13 weeks to lodge appeal from the date a decision is received.

Authorised Review Officer (ARO)

This is a senior Centrelink officer who deals only with reviews. They review ODM decisions and are required to provide you with a written decision. You should receive this within about 28 days of lodging your appeal. Sometimes the ARO make contact by phone.

Stage 3

13 weeks to lodge appeal from the date a decision is received.

Social Security Appeals Tribunal (SSAT)

This is an independent Tribunal external to Centrelink. It reviews ARO decisions. The SSAT is meant to be informal and can conduct hearings within a short period of time. Centrelink is not represented in person at the hearing. The only person present at the hearing will be you, a support person if you like, and the Tribunal members. It's your opportunity to put your side of the story and provide supporting medical evidence. The SSAT will have a copy of your Centrelink file.

Stage 4

28 days to lodge appeal from the date a decision is received.

Administrative Appeals Tribunal (AAT)

This is a higher and more formal Tribunal. Unlike the SSAT, Centrelink is represented in person. The AAT hears appeals lodged by either Centrelink or the person affected by the Centrelink decision. If you are successful at the SSAT, Centrelink has the right to appeal to the AAT. If you are unsuccessful at SSAT you have the right to appeal to the AAT. If Welfare Rights Centre is not representing you sometimes you can obtain representation from Legal Aid for AAT appeals.



TIME LIMITS IN THE APPEAL PROCESS

What do the time limits mean and how are they calculated?

The 13 week time limit applies at each stage of the appeal process except between the Social Security Appeals Tribunal (SSAT) and Administrative Appeals Tribunal (AAT), when a 28 day time limit applies.

The time limit means that an appeal should be lodged within 13 weeks of you being notified of a Centrelink decision if you are to receive back pay of a Centrelink payment. Usually, this 13 week time period begins four working days *after* the date displayed on the Centrelink letter notifying you of the decision.

In the case of a successful appeal, Centrelink will back pay from the date of the original decision rejecting your claim, or from when your payment was cancelled. Arrears are only paid if the appeal is lodged within the time limit.

You might receive another Centrelink payment - for instance, Newstart Allowance - for the period when you are not receiving DSP. If your appeal is successful the back payment will be the difference between Newstart and DSP.

Requests for review at the AAT need to be lodged within **28 days** of receiving the SSAT's decision. Appeals at the AAT cannot be lodged outside of this time limit unless the AAT first grants special leave. An SSAT decision is deemed to be 'received' four working days after it was sent by post.

What happens if I lodge my appeal outside the 13 week time limit?

Appeals can still be lodged outside of the 13 weeks. If the appeal is successful, in most cases, a full back payment won't be paid. Instead, arrears will be paid from the date the appeal was lodged.

The appeal process does not need to be carried out within 13 weeks. You simply need to lodge your appeal with Centrelink within 13 weeks.

The legislation provides some exceptions. However the rules are very strict and can be complex.

If the 13 week time limit has passed and you wish to appeal, contact Centrelink immediately and lodge an appeal. You may wish to seek further advice from Welfare Rights Centre about the effect of the time limit.



HOW TO LODGE AN APPEAL WITH CENTRELINK

It is important to understand a few key things about lodging a Centrelink appeal:

The words “appeal of a decision” and “review of a decision” mean the same thing.

1. There are no hard and fast rules about how to lodge an appeal. It can be done over the phone, in person, as a verbal request, or in writing. If lodging an appeal over the phone and Centrelink wants the request in writing, ask them to send you the appropriate form, or write your own letter.
2. The process will be much easier if you use certain key words. First, you are appealing “a decision” - so you need to identify and name the decision. This could be a decision to reject your claim for DSP or a decision to cancel DSP. Second, say you disagree with the decision and you want it reviewed by the Authorised Review Officer (ARO).
3. Keep a photocopy of your written appeal. It should be date stamped by Centrelink. Centrelink will usually make a photocopy for you. File it with your Centrelink papers.
4. If the appeal is lodged over the phone, ask for a receipt number. Record the date and receipt number. Keep it with your Centrelink papers.
5. A Centrelink officer has no authority to refuse a request to lodge an appeal. Contact Centrelink’s Customer Relations Unit or WRC Inc. immediately if your appeal has been refused. Centrelink Customer Relations or Welfare Rights will act to resolve this situation.
6. Centrelink’s form to lodge an appeal will ask why you disagree with the decision. You may also be asked this if you lodge an appeal over the phone. At this stage there is no need to have a detailed answer or to provide a reason other than you’re seeking a second opinion about a decision.
7. Gather all the relevant information as the appeal proceeds. You do not need to provide evidence from your doctor when you lodge the appeal. If you have information at hand you can provide it, otherwise it can be provided at a later date (see the section *Improving your chances of a successful appeal*).

It is important to keep records (in chronological order) during the appeal process.



IMPROVING YOUR CHANCES OF A SUCCESSFUL APPEAL

There are three main steps to improve the chances of a successful DSP appeal:

- Step 1** Understand the rules (qualification criteria) about who can receive DSP
- Step 2** Understand why Centrelink has refused your claim for DSP
- Step 3** Obtain supporting medical evidence for each qualification criteria

Step 1 - Understand DSP Rules (Qualification Criteria)

If you understand the rules, you'll be able to provide and explain the information most relevant and necessary for the appeal. You'll be able to speak the same "language" as Centrelink, making conversations with Centrelink and Tribunal members easier.

The SSAT will ask you questions during your hearing. These questions help give the right information to make the right decision. This means that you should try to prepare for your case by following the steps in this section. The Tribunal members will guide you through the hearing.

For example, you might want to argue that you should receive DSP because jobs aren't available for people with back injuries. Under DSP rules, this would not be an acceptable reason because the qualification criteria does not assess the availability of jobs.

DSP rules are complex. If you don't understand them all don't let this stop you appealing. Contact the Welfare Rights Centre if you need help.

Step 2 - Understand why Centrelink has said you cannot receive DSP

If Centrelink rejects your DSP claim or cancels an existing claim you need to understand their reasons in order to increase the chances of a successful appeal.

If you know their reasons you then know what to focus on when appealing.

For example, Centrelink might say:

- The condition/s is not fully treated and therefore can not be considered permanent.
- The condition/s have not warranted 20 points on the Impairment Tables.

- The condition/s does not prevent you from doing work (30 or 15 hours per week).
- You could do a training course which would enable you to work within the next two years.

Example:

Centrelink may have refused you DSP because you weren't given a 20-point impairment rating. Being clear on this reason will make you better able to argue your case. For instance, a good argument to make is that Centrelink has underestimated your condition and that you should have been assigned more points. Provide your doctor with a copy of the Impairment Tables and seek a recommendation from your doctor about how many points they would give you.

Centrelink should give you reasons for their decision in writing. Ask Centrelink to provide reasons in writing if they have not done so.

At each stage the decision-maker should provide reasons in writing. It is important to read and understand the reasons to increase your chances of success at the next stage.

An appeal can still be lodged within the 13 weeks, even if it is not entirely clear to you why Centrelink made the decision.

By understanding Centrelink's reasons for the decision, you'll then be able to ask your doctor for relevant medical information to assist with the appeal. This will help you to complete Step 3.

Step 3 – Obtaining supporting medical evidence from your doctor/s

When claiming DSP your doctor completes a *Treating Doctor's Report*. Centrelink considers this when assessing your claim. However, you can supply additional medical information during the appeal process.

Do this by asking your doctor to write a letter. Most are prepared to write a supporting letter during a long consultation. When making the appointment, advise the medical practice that a double-appointment is needed so you are allocated enough time with your doctor. A long consultation may attract a higher fee.

It is very useful for your doctor to recommend how many Impairment Table points they think should be assigned. They are not asked this question in the Treating Doctor's Report.

It can be useful to obtain a letter from a specialist as well. Specialists will often charge so discuss their fee beforehand and let them know if you're in financial hardship. They may be prepared to provide a brief report at no or reduced cost.

USEFUL INFORMATION FOR GPs AND ALLIED HEALTH PROFESSIONALS.

Below are sample questions you may like to ask your doctor to address in the letter you will use in the appeal. It would be good to show your doctor this section, as well provide him/her with the relevant Impairment Tables.

It is important for your doctor to provide information relevant to DSP criteria, and which addresses Centrelink's reasons for refusing DSP.

Questions for your doctor:

1. What is the diagnosis for your patient? When and how was this determined?
2. What treatment/s have you prescribed and what were the outcomes?
3. Are you aware of any other available treatment and what was the outcome of this?
4. How many points would you assign on the relevant Impairment Tables?
5. What is the level of pain or impairment experienced as a result of the condition/s?
6. Would the pain or impairment prevent the patient from working within the next two years? *
7. What side effects will your patient experience resulting from treating the condition/s?
8. Would any treatment side effects prevent the patient from working within two years? *
9. Would the pain, treatment or side effects prevent your patient from undertaking training?
10. Is there any other treatment you believe would assist? If so, would this change your patient's ability to work within the next two years?*

** Note - Know which set of DSP rules apply so you can ask your doctor to consider the appropriate number of working hours (30 or 15 hours) being applied.*

Continuing Inability to Work – Allied Medical Support

If refused DSP because you've been assessed as not having a *Continuing Inability to Work* (that is, Centrelink say you can work more than 15 or 30 hours per week), this means your work capacity is under question. You might need information from a specialist to help your appeal.

Your general practitioner may be able to provide information about what they believe is your capacity to work. You might also consider obtaining an Occupational Therapist (OT) report.

OT's conduct specialised assessments of work capacity. There will be a fee involved. You should carefully consider if this is the right course of action. Factors to take into account:

- Has Centrelink refused DSP because they say you have capacity to work for more than 15 or 30 hours per week?
- Have you been given an impairment rating of 20 or more points (and therefore your case appears to be resting on whether you have CITW)? If you don't have 20 or more points you should first address this question with your general practitioner.
- Do you disagree with Centrelink's assessment of how many hours you can work?

Provide the OT with medical information from your treating doctor - including the letter responding to questions 1 to 10 from the previous page.

Ask your OT to respond to questions 5 to 10, and to carefully consider how many hours you can work. Provide them with the criteria as it applies to you (either 15 or 30 hours per week).

PLUS

Qualification for DSP depends not only on a person's capacity to work but also if a person can do a training course to improve their capacity. Therefore, ask the OT to consider your ability to participate in training, and, if you were to do training, whether the impairment would still prevent you from working. Ask the OT: to consider a course that Centrelink has recommended to you; to examine your ability to participate in it; and, to express an opinion about whether this training would enable you to work.



ACCESSING CENTRELINK RECORDS

Freedom of Information

Freedom of Information (FOI) allows you to access your files. Read the FOI fact sheet, or contact your advocate or the WRC if you require support.

FOI Request Forms are available at Centrelink or from a Welfare Rights Centre.

Papers provided by the SSAT and AAT

If appealing a decision to the Social Security Appeals Tribunal (SSAT) you will receive papers from your Centrelink file relevant to your appeal.

When lodging an appeal at the SSAT, Centrelink must provide the SSAT with a copy of your file to assist you and the SSAT conduct the appeal. SSAT goes through the file and selects all documents relevant to the appeal. You and the SSAT members who hear your appeal will be provided with a copy of these papers.

You should receive all relevant papers when you are appealing to the SSAT. It is unlikely you would also need a FOI request. It is not recommended you lodge an appeal at the SSAT and make a FOI request at the same time. This is because two departments will need your file at the same time, and recalling a file will slow down the processes considerably.

After reading your SSAT papers if you feel something is missing contact the SSAT. They will look for the documents you believe exist, but have not been provided in the SSAT papers.

If you appeal to the Administrative Appeals Tribunal (AAT) you will be provided with a similar set of papers called the "T-documents".



FREQUENTLY ASKED QUESTIONS

Q Can I receive another payment while waiting for a decision on my DSP?

A: You can lodge a claim for a different type of payment, such as Newstart Allowance (NSA), when appealing a Centrelink decision about DSP. Centrelink will issue you a NSA claim form while you are waiting on a DSP decision. If not, ask to lodge a claim for NSA *immediately*.

There are complex rules concerning activity requirements for NSA's Activity Test. Some people can receive an *exemption* from activity requirements because of their impairment. When exemptions aren't granted, Centrelink requires people to undertake activities such as linking in with a Job Network Provider. Contact Welfare Rights Centre for advice if you disagree with this decision.

Q What if my condition deteriorates since the Centrelink decision to not pay me DSP?

A: A person can lodge a new DSP claim any time. Centrelink cannot refuse to assess another claim because you had a previous unsuccessful claim.

You can even lodge a new claim while appealing the first decision. This is a good idea if you have a new medical report that states you meet the criteria for DSP, but your eligibility is *later than* the date of your first application.

Be aware that any DSP claim made on or after 1 July 2006 will be assessed under the new, more restrictive rules.

It may be useful to lodge a new claim if your impairment has deteriorated, or, if you have undergone further treatment since lodging your previous claim, and your current condition can now be identified by Centrelink as being 'fully treated' (see the section *DSP Qualification Criteria*).

Under the new legislation, abandoning an appeal in favour of lodging a new claim may disadvantage you, particularly if you once received or made a claim for DSP before May 10 2005. Get independent advice first.

Q What are my chances of a successful appeal?

A: The SSAT changes approximately 28 - 30% of Centrelink decisions. Many are successful due to poor or incomplete Centrelink or medical assessments. To maximise your chances it's important that you read this Self-Help Kit.

Q What does it cost to appeal?

A: Appealing to Centrelink, the SSAT and the AAT is free. No fees are charged by Centrelink or the tribunals to lodge an appeal. SSAT will provide financial assistance to help with travel costs to attend your hearing.

Q How does the Welfare Rights Centre help? Is there a fee?

A: The Welfare Rights Centre (WRC) is a community legal centre specialising in social security and disability discrimination law. Initial legal advice or assistance is always free.

WRC is sometimes also able to offer legal representation. Casework guidelines determine which cases receive an offer. Regardless of whether you are represented by us, oral advice and support is always available. It is highly recommended that this kit is used in conjunction with any other advice we offer.

The WRC *Client Charter* outlines clients rights and complaints process. If you wish to make a complaint about the level of service provided, follow the procedures outlined in the *Client Charter*.

Q What if I don't understand or have trouble reading this Self-Help Kit?

A: If you have questions about information in this kit contact the Welfare Rights Centre. Please say you have read the Kit and have a question about it. We will attempt to answer your question and help you understand information appearing here.

If you have trouble reading this kit you may be able to find someone at your local Neighbourhood or Community Centre to assist.



USEFUL CONTACTS AND RESOURCES

Welfare Rights Centre Inc.

The Welfare Rights Centre in Brisbane services the coastal and central areas of Queensland south of Rockhampton as well as the northern coastal and inland regions of New South Wales.

Ph: (07) 3847 5532

TTY: (07) 3847 5533

Freecall (outside metro area): 1800 358 511

www.wrcqld.org.au

Townsville Community Legal Service

The Townsville Community Legal Service incorporates a Welfare Rights Service which provides services in north Queensland.

Ph: (07) 4721 5511

Centre closed to the public on Fridays.

National Welfare Rights Network

The National Welfare Rights Network (NWRN) is a network of community legal centre's throughout Australia specialising in Social Security law.

www.welfarerights.org.au

Independent Social Security Handbook

The Queensland Government has purchased the on line version of the Social Security Guide from the Sydney Welfare Rights Centre for all Community Sector Organisations to access free of charge. There is a link to this publication from the National Welfare Rights Network website.

www.welfarerights.org.au

Centrelink

A dedicated Centrelink number for enquiries about Disability Support Pension:

Disability Support Pension: 13 27 17

Customer Relations Unit: 1800 050 004

TTY Customer Relations: 1800 000 567

Multilingual Call: 13 1202

TTY Freecall: 1800 810 586

www.centrelink.gov.au

Social Security Appeals Tribunal (SSAT)

Brisbane area: (07) 3005 6200

TTY Freecall: 1800 060 116 - *For people with a hearing impairment*

Freecall (outside metro area): 1800 011 140

www.ssat.gov.au

Administrative Appeals Tribunal (AAT)

Brisbane area: (07) 3361 3000

Outside Brisbane metro area for cost of local call: 1300 366 700

TTY Freecall: 1800 650 662

Translating and Interpreter Service: 13 1450

www.aat.gov.au

Commonwealth Ombudsman

The Ombudsman can investigate complaints about government departments, including Centrelink. The Ombudsman does not provide people with legal advice but can provide information about Centrelink processes and your appeal rights.

Ph: 1300 362 072

www.comb.gov.au

Legal Aid Queensland

Legal Aid can not provide you with general advice about your DSP appeal. However if you appeal to the level of the Administrative Appeals Tribunal sometimes Legal Aid can provide representation.

Ph: 1300 651 188

www.legalaid.qld.gov.au

Federal Members of Parliament

You can contact your Federal Member of Parliament for general information or assistance about a Centrelink problem.

www.aph.gov.au

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