



WELFARE RIGHTS & ADVOCACY SERVICE

Disability Support Pension

If you have an ongoing physical, intellectual or psychiatric condition which stops you from working or reduces the amount of work you can do, you may be eligible for Disability Support Pension (DSP).

Who is eligible for Disability Support Pension?

To be eligible for Disability Support Pension you must be 16 or over and under Age Pension age and:

- meet the residence criteria; and
- the income and assets criteria; and
- have a permanent medical condition which impacts on your ability to work more than 15 hours per week; and
- score at least 20 points for the functional impact that your medical conditions have on you under the *Tables for the Assessment of Work-related Impairment for DSP* (Impairment Tables); and
- have a continuing inability to work; and
- have actively participated in a Program of Support (POS), unless exempt from this requirement.

A separate set of conditions applies for people who satisfy the criteria for “permanent blindness”. For information about this contact Centrelink or your local Welfare Rights Centre whose contact details are at : <http://www.ejaustralia.org.au/legal-help-centrelink/>

What are the Residence Requirements for DSP?

You must have:

- been an Australian permanent resident at the time when the medical condition occurred and there was a functional impact on your ability to work or retrain (for people with severe congenital abnormalities this was at birth); or
- 10 years of qualifying residence in Australia if the condition occurred prior to you becoming an Australian permanent resident; or
- a Qualifying Residence Exemption (i.e. reside in Australia and are either a refugee or a former refugee); or
- been born outside Australia and be a dependent child of an Australian resident at the time when the continuing inability to work or permanent blindness occurred, and have become an Australian resident while still a dependent child of an Australian resident.

If you were born overseas you may be eligible to receive DSP if you qualify under an International Agreement between Australia and an Agreement country.

What are Permanent Medical Conditions?

The medical conditions may be physical, psychological or intellectual. To be considered permanent the medical condition must also be fully diagnosed, treated and stabilised and unlikely to improve within the next 2 years.

In deciding whether a condition has been fully diagnosed, treated and stabilised, Centrelink will consider the following factors:

- the date of diagnosis and who made the diagnosis;
- the nature and effectiveness of past treatment;
- the expected outcome of current treatment;
- any plans for further treatment;
- whether past, current or future treatment can be considered reasonable; and
- whether even further reasonable treatment is unlikely to result in significant functional improvement in the next 2 years e.g. the person will not be able to undertake training or work for more than 14 hours per week.

Further information about this issue is contained in the *Guidelines to the Tables for the Assessment of Work-related Impairment for DSP* in the Guide to Social Security Law which is an interpretation of the law. These Guidelines can be found on the Department of Social Services website at: http://guides.dss.gov.au/sites/default/files/files/3_6_3_impairment.pdf

What are the Impairment Tables?

The Impairment Tables are used to decide your impairment rating. They look at the functional impact your medical conditions have on your ability to do certain things. You need 20 impairment points or more in either one table or across a number of the tables.

If you have more than one medical condition, each condition is assessed separately under the appropriate table and awarded its own impairment rating. The total of all the points gives the overall impairment rating.

There are currently 15 separate tables and a person may be given points under one or more tables.

The Impairment Tables are contained in the legislative instrument - Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011 and can be downloaded from the Department of Social Services website at: <http://www.dss.gov.au/our-responsibilities/disability-and-carers/benefits-payments/disability-support-pension-dsp-better-and-fairer-assessments/review-of-the-tables-for-the-assessment-of-work-related-impairment-for-disability-support-pension/social-security-tables-for-the>

The Impairment Tables can also be accessed through the Comlaw website at: <http://www.comlaw.gov.au/Series/F2011L02716>

What is a Continuing Inability to Work (CITW)?

The permanent medical conditions must have a functional impact on you that prevents you from:

- undertaking work for at least 15 hours per week; and
- being retrained for alternative work within the next two years.

“Work” means any type of work. It does not mean work in the type of job you previously did.

Even if your medical conditions may cause problems in a work situation, you could still be considered to be able to work 15 hours per week if reasonable adjustments could be made in a workplace e.g. modifications, aides etc. Employers cannot discriminate against a person with a disability.

What if you are currently studying?

If you have been participating in a mainstream training course for at least 15 hours per week and you intend to continue your course without modification, it is unlikely that you would be considered to have a continuing inability to work regardless of what your disability is and so you would not qualify for DSP.

If you are undertaking a modified course of study, the following factors will be considered in determining whether you have a continuing inability to work 15 hours per week:

- your study-load (including the number of contact hours to attend lectures, practicals and tutorials and the number of hours of private study);
- the method of study e.g. on-campus, via correspondence or on the internet;
- whether because of your disability you have been given extra time to complete your course or assignments;
- whether you have an aide or tutor because of your disability; and
- whether you could participate in alternative training activities if your current course of study is unlikely to enable you to work within the next 2 years.

Most academic institutions have a Disability or Equity Officer who may be able to provide you with information for Centrelink if you claim DSP.

What is a Program of Support (POS)?

A Program of Support (POS) means a program set up to assist you to prepare for job seeking, as well as finding and maintaining employment. To be eligible for DSP there is a requirement that you have:

- actively participated in a program of support for at least 18 months in the preceding 3 years;
- completed a program of support; or
- been with a program of support which had to be terminated because your medical conditions alone meant that continuing would not improve your capacity to work;
- been undertaking a program of support at the time of your claim for DSP but continuing it would not improve your chances of obtaining and maintaining employment.

If you have a 'severe impairment' you will not be required to have met the participation in a program of support criterion. You are considered to have a severe impairment if you have a rating of at least 20 points on a single impairment table.

If you have been registered as a jobseeker and trying to find work with the assistance of a Job Active provider, Disability Employment Service (DES) provider or the Community Development Programme (CDP) (formerly known as the Remote Jobs and Communities Program) for 18 months prior to your claim for DSP this may satisfy the program of support requirement for DSP. Working in Australian Disability Enterprises is also considered to be participation in a Program of Support.

Are there Income and Asset Tests for DSP?

Even if you qualify for DSP you will only be able to be paid if you meet the Income and Asset Tests criteria.

How to Claim Disability Support Pension?

What do I do first?

Lodge a Claim

To claim DSP you need to lodge a claim for Disability Support Pension. You can claim online if you have a myGov account linked to Centrelink. If you don't have a myGov account or a Centrelink account you will need to set one up. If you are not able to claim online there is a claim form on the DHS website at: <https://www.servicesaustralia.gov.au/individuals/forms/sa466>

If you don't have a printer then you can either go into a Centrelink Office or ring the Disability Line on 132 717. You will be required to lodge paperwork in support of the application and it is important to do that within the time frame specified. If you are not able to do it within the time frame you need to contact Centrelink to ask for an extension of time to lodge the information/paperwork.

If you are not already receiving a payment from Centrelink you may be able to be paid Jobseeker Payment whilst you are awaiting the outcome of your DSP claim. Eligibility for Jobseeker Payment is subject to the relevant income and assets test.

What information will be needed for my DSP claim?

When lodging a claim for DSP you will need to fill in a claim form and provide Centrelink with medical evidence about all of your medical conditions and evidence that you have participated in a Program of Support.

You will be asked to complete a consent to disclose medical information form if Centrelink need to speak to your treating health professional. You do not have to complete this form but if you don't Centrelink may not have enough information to assess your claim.

The relevant forms can be downloaded from the Services Australia website at: <https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension/how-claim>

Medical Evidence

You may not be required to provide a Treating Doctor Report as part of your DSP claim. Centrelink has a Claim for Disability Support Pension Medical Evidence Checklist form (SA473) which explains the information which may be helpful for your claim. The checklist can be accessed at: <https://www.servicesaustralia.gov.au/individuals/forms/sa473>

You will need to provide existing medical evidence which can include:

- compensation reports;
- details of any current or planned treatment from your treating health professional;
- hospital or outpatient records;
- medical history report;
- medical imaging reports;
- reports from any operations;
- physical examination report;
- rehabilitation reports;
- specialist medical reports;
- report from your ophthalmologist or ophthalmic surgeon if you have eyesight problems;
- report from either a clinical psychologist or psychiatrist confirming that you have been diagnosed with a mental health condition;
- report or evidence from an audiologist or an Ear, Nose and Throat specialist that you have been diagnosed as having hearing loss.

You should take a copy of the most relevant impairment tables relating to your condition to your doctor for an opinion about how many points your doctor would award you in relation to your condition.

You can ask your nearest Welfare Rights Agency to provide you with copies of the Impairment Tables if you are unable to access them (see links above).

Evidence that you have participated in a Program of Support

You will need to get information about your current and previous participation with a Job Active provider, Disability Employment Service (DES) provider or the Community Development Programme (CDP) within the 3 years prior to you lodging your claim for DSP.

If you have been working in an Australian Disability Enterprises program you will also need to provide evidence of how long you worked there within the 3 years prior to lodging your claim for DSP.

What is a Job Capacity Assessment (JCA)?

After you have supplied all of your evidence you will be referred for a Job Capacity Assessment (JCA), unless you do not meet the non-medical eligibility requirements for DSP such as residency or the income and assets tests or have been assessed as being manifestly eligible.

Following a JCA, you may be referred for a face-to-face Disability Medical Assessment with a government-contracted doctor. The doctor will review your medical evidence to confirm:

- your diagnosis is supported by the evidence;
- your condition is fully diagnosed, treated and stabilised;
- your condition is permanent for the purpose of DSP qualification; and
- the impairment rating assigned by the JCA using the Impairment Tables is supported by the evidence.

They will then provide the assessment to Centrelink and Centrelink will decide if you are eligible for DSP.

What is a manifest impairment?

Centrelink may accept you have a manifest impairment if your qualification for payment is manifestly evident. Some examples of impairments that Centrelink will accept as being manifest are:

- Terminal illness with a life expectancy of less than two years;
- Intellectual disability with IQ of less than 70;
- Category IV HIV/AIDS; and
- Where a person requires nursing home level care.

What are my Appeal Rights?

You can appeal a decision to reject your claim for DSP. You must lodge a request for a review within 13 weeks of receiving the letter from the original decision maker rejecting your DSP claim if you want to be back paid to the date of your claim. If you lodge your appeal outside the 13 weeks you can only be paid from the date you lodged your appeal if you are successful.

When you appeal, Centrelink will first refer your case to another Centrelink officer called a subject matter expert (SME). The SME must either make a decision completely in your favour or pass your

case on to an Authorised Review Officer (ARO). Sometimes the SME will call you to ask if you have more evidence or talk about the decision with you. It is important to remember that if the SME is not going to make a fully favourable decision and you still do not think the Centrelink decision is correct, you are entitled to have your appeal looked at by an ARO.

If you are unsuccessful at the ARO level you have further appeal rights to the Social Security and Child Support Division of the AAT (SSCSD) (AAT Tier 1) which is an independent Tribunal of review (outside Centrelink). Again you have 13 weeks from the date you receive the ARO decision to lodge your appeal at the AAT (Tier 1) if you want to be back paid to the date you lodged your claim. If you lodge your appeal to the AAT (Tier 1) outside the 13 weeks you can only be paid from the date you lodged your appeal if you are successful.

When the AAT (Tier 1) hears DSP appeals there will be 1 or 2 members making up the tribunal. There is usually one member and they are a doctor. Centrelink will not be present at this hearing. You will have an opportunity to explain why you think the Centrelink decision is wrong.

AAT (Tier 1) decisions are usually made within 14 days of the hearing. The decision may take longer if the Tribunal needs more information to make its decision. Decisions are usually in writing. If you are given an oral decision you need to ask for written reasons for the decision within 14 days.

Either disappointed party (you or Centrelink) has the right to appeal to the General Division of the Administrative Appeal Tribunal (AAT Tier 2) which is the next level of appeal. Appeals to the AAT (Tier 2) must be lodged within 28 days of receiving the AAT Tier 1 decision.

New information supporting the claim can be provided at any stage of the appeals process but will only be considered if it relates to your conditions during the period starting from the date you first lodged your DSP claim and for the next 13 weeks from the date of the claim.

Other Resources

There are a number of resources that are available on the internet about DSP.

The Department of Human Services website has information about Disability Support Pension at: <https://www.servicesaustralia.gov.au/individuals/services/centrelink/disability-support-pension>

The Guide to Social Security Law (The Guide) is an interpretation of Social Security Law and is used by Centrelink. It is useful to look at section 3.6.1 DSP - Qualification & Payability in the Guide which can be found the Department of Social Services website at: <http://guides.dss.gov.au/guide-social-security-law/3/6/1>

Where can I get assistance?

If you have any questions about applying for DSP or appealing you should contact your local Welfare Rights Centre (contact details at: <http://www.ejaustralia.org.au/legal-help-centrelink/>).

Please note: This information contains general information only and is accurate at October 2020. It does not constitute legal advice. If you need legal advice about social security entitlements, please contact your local Welfare Rights Centre/Advocate. Welfare Rights Centres are community legal centres, which specialise in social security law, administration and policy. They are entirely independent of Centrelink. All assistance is free. Contact Welfare Rights & Advocacy Service on (08) 93281751 or by email at welfare@wraswa.org.au