



# AAT Ruling - Access to the NDIS with Obesity, Pain and Depression

We are often asked about how to support someone to access the NDIS with pain, obesity and mental health conditions. In particular what is considered a disability in the NDIS and what evidence would satisfy the access criteria. Weight management can be a challenge for some people living with physical and mental health conditions, and it can be a consequence of impairments, medications or other challenges. Consequently, it can be difficult to determine which conditions to focus on in access applications. A recent [AAT ruling](#) may help shed some light on the topic.

## The Case

MKYV is in his late 50's and lives with his wife in regional Victoria. He applied to the NDIS in November 2018 listing his disabilities as: chronic pain resulting from hip osteoarthritis and prolapsed disc, and psychosocial disability. MKYV stated that the combined impact his disabilities had on his functional impairment was sufficiently significant and there was little or no prospect of an improvement in his pain or weight sufficient to remedy is mental health condition. He further stated that there were no treatments available that would remedy his chronic pain condition.

The NDIA rejected his application on the basis that the Applicant did not satisfy 24(1)(b) of the NDIS Act as he did not demonstrate that his impairments were likely to be permanent.

## The evidence

In reviewing the decision, the AAT considered evidence from:

- MKYV's written personal statement – focusing on his impairments and their impact on his life
- Carer statement from MKYV's wife
- Nine doctors and specialists who have examined or treated MKYV – regarding the diagnoses, treatments recommended and tried, and likely permanence of the impairments
- An OT- regarding the impact of the impairments on his daily life

In addition, MKYV provided oral evidence on the history of his chronic pain, depression and weight gain stating that he ceased work as a result of increasing pain rather than increased weight.

On the request of the NDIA the tribunal also heard expert evidence about from a pain specialist and psychiatrist on the likely permanence and treatment options for MKYV's conditions.



## Relationship between pain and obesity

NDIA argued that the pain being experienced by MKYV would be reduced if he reduced his weight and the evidence provided did not support a conclusion that all treatments for obesity had been considered and recommendations for weight loss strategies had not been adequately addressed. This argument was supported by evidence from pain specialists.

Through his personal statement and oral evidence MKYV was able to show that he first experienced back pain in his early 20s when he was not overweight and that the increasing weight was a consequence of his pain restricting the amount of activity he was able to undertake. In this scenario it was argued that the obesity was a result of the pain. Through evidence provided by doctors and specialists treating MKYV it was established that the cause of the chronic pain was degenerative conditions of disc prolapse and osteoarthritis of the spine and hips.

## Psychosocial disability and pain

The evidence provided clearly demonstrated that MKYV had a diagnosis of a major depressive disorder but arguments centered around whether his chronic pain and obesity was related to his depressive symptoms and would his mental health condition improve if he were able to lose weight and manage his pain more effectively. The NDIA specialist psychiatrist argued that MKYV was suffering from an adjustment disorder which he described as less severe than a major depressive disorder and stated that it was *"likely to improve once his pain improves"*.

However, MKYV was able to provide evidence that his well-documented history of depressive episodes occurred before he started experiencing pain.

## Psychosocial disability and obesity

The final part of the puzzle was the link between his mental health condition and his obesity. Evidence was provided that weight loss would lead to an improvement in skeletal pain and this would in turn improve MKYV's level of depression. However, he had a complicated medical history that makes losing weight challenging with evidence provided to demonstrate that weight loss surgery was not a viable option.

The available evidence demonstrated that it was MKYV's low mood and lack of motivation that had led to his weight gain and was a barrier to any weight loss. Obesity was more likely an outcome of his depression and not the way around. The tribunal was not satisfied that given MKYV's unique circumstances that weight loss would not be an evidence-based treatment to remedy his psychosocial disability.

## The finding

From the evidence provided to the tribunal it was likely that MKYV's conditions of depression, chronic pain and obesity have become interlinked but a careful analysis of the evidence indicated that his chronic pain and depression developed independently of each other and then resulted in a *"progressive and accelerating downward spiral which has led to an end point for the Applicant from which his various symptoms are unlikely to improve"*. The tribunal found that MKYV did meet the disability criteria in sections 24 of the NDIS Act and the decision of the NDIA was set aside.



As the NDIS matures, AAT rulings can help us to understand more accurately the ways in which the NDIA makes decisions about who can access the scheme; however, each person's NDIS application reflects the unique effect of their impairments on their daily life. As always, it's important to go back to the access criteria, and build your evidence for access against these, and if you have any questions about the access process, don't hesitate to contact us at <mailto:transitionsupport@flinders.edu.au>

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