

AAT rulings – Demonstrating permanency for NDIS access

To access the NDIS, individuals must demonstrate eligibility by meeting the age, residency, and disability requirements outlined in section 24 of the NDIS Act. A recent case – [CBFP and National Disability Insurance Agency](#) – before the Administrative Appeals Tribunal (AAT) helps us to understand the factors the NDIS considers when determining the permanency of a disability and its associated impairments.

The case

CBFP, a 20-year-old, applied for access to the NDIS based on psychosocial disability arising from a diagnosis of Post Traumatic Stress Disorder (PTSD) and personality disorder. The NDIA determined that she did not meet the access criteria in relation to the permanency requirements of 24(1)(b).

The evidence

Following a request from the applicant, the AAT considered the application in accordance with the written materials provided. The applicant expressed concern that participating in the AAT process would cause her additional anxiety and stress, emphasising that sufficient evidence had already been provided in written form. Evidence provided to the AAT by the applicant included letters from her treating GP, a statement of her lived experience, a report from her counsellor, an email from her support coordinator, a report from a psychologist and information from her two consultations with psychiatrists.

In response to the applicant's application for AAT's external review of the NDIA's decision, the NDIA paid for an independent assessment (conducted via telehealth) by a consultant psychiatrist. Regarding the independent assessment, the applicant expressed concern that relying on evidence from a single telehealth assessment conducted by someone who did not know her would not provide an accurate assessment of her current situation. However, the AAT dismissed the concerns raised as evidence provided by the applicant from similarly qualified experts were also based on one-off assessments conducted via telehealth.

There was also discussion regarding the comparative weighting of evidence, with a request to prioritise the input of individuals who had extensive contact with the applicant over brief consultations with psychiatrists.

The ruling

The decision of the NDIA to not grant access to the NDIS was upheld by the Tribunal who found that the evidence provided by the applicant did not meet the threshold for establishing that the impairments arising from her psychosocial disability were likely to be permanent. The following key points were highlighted in coming to this decision:

- The applicant, being only 20 years old, had not reached full maturity in terms of personality development, meaning that there was still potential for her to develop better control of her symptoms and to access further treatment options in the future. Further, it was highlighted that interventions in PTSD and personality disorder require medium to long-term approaches. At her current stage in the disease trajectory, the applicant should be undergoing treatment and rehabilitation within the mental health sector.
- The NDIS provides funding to address the impairments associated with disability and is not designed to support someone who has acute mental health treatment needs. These treatment needs on their own do not establish that the person meets the access criteria for the NDIS. Rather, a person will meet the access criteria for permanency if there are no other treatment options available to relieve or treat their impairment.



- If a person is unable to access a treatment due to financial or travel constraints, they must provide additional information to show that they have explored all options for bulk-billed or telehealth treatments, along with a statement of their financial circumstances.

What can we learn from this case?

When applying to the NDIS for psychosocial disability, it is important to demonstrate that all treatments likely to remedy the impairment and establish its permanency have been tried. Younger adults and people who are still actively exploring treatment options are unlikely to be found eligible and are more appropriately treated by mental health services. In addition, if there are circumstances preventing a person from accessing appropriate evidence-based clinical, medical or other treatments likely to remedy their impairments, evidence must be provided to substantiate those circumstances.

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