



Obesity and access to the NDIS – lessons from AAT rulings

We are often asked if obesity is considered a disability in the NDIS and if it 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. Here, we consider obesity against the access criteria using some evidence from recent [AAT rulings](#).

Is obesity a disability as defined by the NDIA?

Earlier AAT rulings have determined that obesity alone is not a disability because it does not 'entail a loss of, or damage to, a physical, sensory or mental function' (see [Schwass and the NDIA](#)). However, conditions that arise from obesity may still be viewed as a disabilities according to the criteria. In these instances, a person would need to focus on the resulting conditions and how they impact their life, rather than on the causes of the conditions. In a [recent example](#) the AAT determined that significant swelling and skin breakdown of lower limbs as a consequence of obesity was a disability because it resulted in a reduced capacity to manage physical activities.

Are obesity, or obesity-related conditions, likely to be permanent?

Again, for obesity alone the short answer is no – the NDIA does not consider obesity to be a permanent impairment. Whilst acknowledging the significant challenges associated with weight loss, AAT rulings frequently emphasise that treatment options (including bariatric surgery where applicable and other less invasive options) will remedy the impairment and should be tried before applying for access.

Whilst conditions resulting from obesity may fit the criteria for disability (as described above), in order to meet the requirement of likely permanence, the NDIA will need to see evidence that those impairments would remain even if the person lost weight. This is challenging and will vary on an individual basis. In the example above relating to limb impairments, GP evidence that 'weight loss would stop the condition progressing, but would not remedy completely' the lower limb neuropathy did satisfy the AAT that the condition was likely to be permanent. However, in this same example, a number of other resulting conditions (e.g., lymphedema) were not considered to be permanent because medical evidence indicated that weight loss would remedy these impairments.

Does obesity fit the criteria for substantial functional impairment in one of the six domains?

For an impairment to substantially impact daily life a person needs to have difficulties doing most things within a domain. Obesity and related conditions are most likely to impact the domains of mobility and self-care and may also impact other social and wellbeing activities. In [recent examples](#), AAT rulings have acknowledged



the difficulties (e.g., pain, exhaustion) associated with obesity and related conditions; however, they have not been found to be substantial – particularly where weight loss regimes would be beneficial.

Obesity and related conditions and the responsibility of mainstream services

For a person to be granted access to the NDIS it is important that they have a disability that would benefit from NDIS supports – that is, supports that focus on improved daily function once a condition has stabilised. Obesity and related conditions often don't pass the likely permanence criterion – and following on from this it should be no surprise that they therefore often don't meet the criteria for supports under the NDIS. Whilst there are a number of ways that the NDIS can help people with their health and wellbeing, the often clinically-focused supports required for management of weight-related conditions (e.g., diabetes management, bariatric surgery, some allied health, chronic disease management plans) are the responsibility of mainstream health services.

Obesity and psychosocial disability

Most of the examples focused on here discuss obesity and related physical conditions. But what about when mental health conditions result in challenges with weight and management of health conditions or vice versa?

As with all co-occurring physical and mental health conditions, it is really important to try to separate the psychosocial from the physical impairments. As we have seen, the NDIA generally finds that conditions do not meet the access criteria when weight loss would significantly reduce or remedy the impairments.

For people who struggle with their weight as a result of a mental health condition, the focus should be on providing evidence to support the mental health condition as the primary disability. This is not to say that challenges with managing health and wellbeing as a consequence of psychosocial disability shouldn't be discussed; however, they shouldn't be the focus. A good example of this is provided in [our summary](#) of a recent AAT case where access was granted for impairments resulting from borderline personality which co-occurred with a number of physical impairments.

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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