



Access for co-occurring psychosocial and physical disability – lessons from AAT rulings

The Administrative Appeals Tribunal (AAT) is an independent tribunal which can [review decisions made by the NDIA](#). Cases that have gone before the AAT are [publicly available online](#) and give insight into how the NDIA makes decisions.

A recent case before the AAT addressed access for a person living with complex physical and psychosocial disabilities including borderline personality disorder (BPD).

The decision under review

MH is 47 years old and living with severe BPD and bilateral knee pain. In her personal statement, MH described difficulties with everyday tasks like driving, grocery shopping and moving around the house (as a result of her knee pain), and with socialising, maintaining relationships, going out in public and participating in work or study (as a result of her BPD). MH uses walking aids to help her to get around and manages her difficulties in social settings by trying to stay home as much as possible. She is the primary carer for her 18-year-old daughter who also has high support needs.

MH has complex medical history including diagnoses of diabetes, obesity, chronic pain, spinal stenosis, osteoarthritis, borderline personality disorder, bipolar disorder, PTSD and anxiety/depression. However, the application to access the NDIS was based only on two conditions: the bipolar disorder and the knee pain.

In the original decision the NDIA determined that MH did not meet the access criteria for either psychosocial or physical disability.

The evidence

In reviewing the decision, the AAT considered:

- MH's personal statement regarding her impairments and their impact on her life
- the evidence of three specialists and one GP regarding the physical health conditions, their impact and likely permanence
- the evidence of three psychiatrists regarding MH's mental health diagnoses, treatment and likely permanence
- a functional assessment of activities of daily living prepared by an OT
- the evidence of two mental health support workers regarding the impacts of the conditions on daily life and supports provided.



While this sounds like quite a lot of evidence, it is important to note that some of the evidence was in the form of written reports and assessments that MH had received over a number of years (e.g., a surgical report following knee surgery, a psychiatrist's diagnostic report from 2014).

Access criteria

In determining if MH could access the NDIS, the tribunal considered the evidence against each of the five disability requirements that must be met for access. For the original access decision to be overturned MH needed to meet all five criteria.

Do the conditions result in a disability?

To access the NDIS a person must demonstrate that the impairments (in this case, physical pain and anxiety in social situations) resulting from their conditions also impact their ability to perform daily tasks.

The AAT considered the knee condition and BPD separately to determine if either resulted in disability and found that both met the criterion. In the original decision the NDIA had determined that the BPD did result in disability, but that the knee condition did not.

For the knee condition, the AAT used the evidence from MH's GP and an earlier surgical report which stated that the condition results in pain that impacts her ability to move around. For the BPD, they accepted the evidence from MH's psychiatrist that BPD impacts people's abilities to form meaningful relationships and interact socially.

Are the impairments likely to be permanent?

A person is considered to meet this criterion if there are no known, available and appropriate evidence-based treatments that would remedy the impairments (section 5.4 of the legislation, NDIS ['becoming a participant'](#) rules 2016). It is important to note that the NDIA is looking for information about whether the *impairments* (e.g., pain, difficulties socialising) are likely to remain for the person's life – not whether the *conditions themselves* are permanent.

The AAT determined that *both* the pain and the impairments resulting from BPD met the criterion.

Key evidence to meet this criterion came from:

- doctor's reports that indicated that whilst weight loss would be beneficial to reduce the knee pain and mobility difficulties, there were no treatments that would remedy it completely
- the psychiatrist statement of permanency regarding the BPD, which for MH was described as 'permanent, chronic and long-standing for over three decades ...and that whilst the impairments may fluctuate in severity, they are not expected to resolve'.

Do the impairments substantially reduce the person's capacity to undertake most activities in at least one of the six domains of daily living?

Evidence from MH's personal statement as well as her GP and OT were used to determine if the impairments resulted in substantially reduced capacity in *at least one* of the six life domains.



The AAT found that MH *did not* meet this criterion for her knee pain. They agreed that whilst MH had difficulties in the domain of mobility as a result of her knees – the difficulty was not substantial and could be further reduced by weight loss and exercise.

They did, however, find that MH met this criteria for her BPD which resulted in substantially reduced functioning in the domain of social interaction. In the original decision, the NDIA stated that MH did not meet this criterion because MH had travelled with her daughter, had a Facebook page and reported interacting well with some of her support workers. Her psychiatrist disputed this evidence on the basis that the presence of a social media page and therapeutic relationships with medical professionals does not constitute a 'normal/average' social network or ability to form relationships. The AAT agreed with the psychiatrist's evidence along with evidence from both mental health support workers stating that MH requires support for most activities involving social interaction.

The impact of the BPD in the areas of self-care (sometimes needing reminders to shower) and learning (struggling to complete online study) were also considered and whilst the AAT agreed she had difficulties in these areas the impacts were not substantial. In the end, social interaction was the domain that was most impacted.

Do the impairments affect capacity for economic or social participation?

The AAT found that MH met this criterion for both conditions based on the evidence that she has been unable to work since 2009 and that despite starting a series of online study courses has not been able to complete these.

Note that in order to address this criteria MH did not need to indicate the extent to which these activities were impacted – just that they were impacted.

Is the person likely to require support under NDIS for life?

The AAT determined that MH did *not* meet this criterion for her knee condition because there are services available from the health system (e.g., support to manage weight loss) that would assist with her pain. However, based on the evidence from MH's psychiatrist and support workers, they did agree that supports to address the barriers created by her BPD (e.g., support to attend social groups, mental health programs to address social isolation) were best provided by the NDIS.

Summary

- Access was granted for the impairments resulting from BPD, specifically for their impact in the social interaction domain.
- Whilst pain and mobility impairments resulting from a knee condition met the criteria for disability they was not substantial, nor were the support needs for the condition best provided by the NDIS.
- Despite a complex medical history, the focus of the application was on two conditions that were likely to fit the disability criteria, and the impairments resulting from each condition were clearly separated.

Does this mean that everyone with BPD will be able to access the scheme?

No. The NDIS will always consider individual circumstances against the criteria. What we can learn from this case is that you need to clearly describe how a condition affects a person's life and focus on the key areas of functioning that are impacted.



How does this help me with future applications?

This ruling is a great example of how to apply to the NDIS when you have complex health and mental health conditions. MH had a complex medical history including a number of physical conditions (e.g., diabetes, obesity) that would likely overlap with her mental health difficulties. However, by clearly identifying the conditions that result in disability and focusing on the impairments separately, MH was able to gain access to the scheme.

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