



What constitutes a ‘substantial’ reduction in functional capacity - lessons from the AAT

When applying to the NDIS, a person must demonstrate that they meet all of the access criteria, which are set out in [subsection 21\(1\)](#) of the NDIS Act.

One of the criteria is that the applicant has a disability with permanent impairments that result in substantially reduced functional capacity to undertake activities in one or more of six specified domains.

A recent case before the Administrative Appeals Tribunal (AAT) gives us clarification on what constitutes a ‘substantial’ reduction in functional capacity.

You can [read the full description of the case](#); we have provided a summary below.

The case

GXYZ lives alone with his companion dog. He has a 13-year-old son who moved interstate recently, and has been in a relationship with Ms B since 2011. He receives the disability support pension, works for up to 15 hours a week (spread over two to four days), undertakes 1–2 hours of voluntary administrative work for his church each week, and attends a wellness centre for exercise.

He completed a university degree from 2011-2014, withdrew from an honours program at university in 2015 due to ill health, and subsequently completed a certificate in business administration in 2017.

A number of medical professionals provided evidence, including GXYZ’s GP, his diabetes and general physician, his nephrologist, his consultant psychologist, his clinical psychologist, and two occupational therapists.

The AAT heard that GXYZ has end-stage kidney failure requiring dialysis three afternoons a week, and he is on the list for a kidney transplant. He also has type 2 diabetes, which requires careful diet and insulin treatment. Finally, he has a 25-year history of treatment-resistant major depression and generalised anxiety disorder (although he has never been hospitalised for his mental health).

GXYZ argued that his functional capacity was reduced in four of the six domains:

- Social interaction
He prefers to stay at home as he is anxious in new situations and large crowds, and Ms B helps motivate him to participate in social activities so that he does not shut off from people.



- Learning
He withdrew from an honours program at university in 2015 due to ill health.
- Self-management
He sometimes forgets his medications and relies on technology to manage his appointments and pay bills.
- Self-care
He struggles to cook for himself after his dialysis sessions due to fatigue (and some of his meals are provided by members of his church). He cannot clean his home thoroughly.

GXYZ wants NDIS support to help build his capacity for work and to live independently, one-on-one care to help him engage in social activities, support to build his capacity to undertake education, and assistance from a psychologist to look at 'historical issues'.

The NDIS did not admit GXYZ to the scheme, and so (after an internal NDIS review), he applied to the AAT to re-assess the decision.

The finding

The AAT found that GXYZ met most NDIS access requirements, based on evidence provided by GXYZ and the professionals listed above. In particular, the AAT accepted that both his kidney failure and mental health conditions constituted disabilities, with impairments that were likely to be permanent. It also accepted that GXYZ's health situation is complex, and that his various medical conditions interact.

However, it found that these impairments did *not* result in substantially reduced functional capacity to undertake social interaction, learning, self-care or self-management.

His nephrologist stated that under his current treatment regime, GXYZ should be able to 'function normally' in terms of activities including personal hygiene and getting from one place to another, and an OT stated that while GXYZ is genuinely impacted by fatigue, he has the ability to participate in all light to moderate tasks.

The AAT noted that GXYZ's own evidence regarding his capacity to undertake various activities was inconsistent. In particular, he showed he could manage in the various domains as follows:

- Social interaction
He regularly attends a wellness centre, has maintained a relationship with Ms B for nearly a decade, regularly attends church activities, occasionally has social engagements, has four long-term friends, and engages with social media.
- Learning
GXYZ was able to complete a degree in humanities at 75% of full load, and undertake a TAFE course.
- Self-management
He is able to participate in part-time employment and undertake volunteer work in roles which require consideration of administrative details, financial management and computer literacy.
- Self-care
GXYZ explained that while he struggles to do everything, he manages by prioritising. For example, he cooks butter chicken or spaghetti bolognese when his son visits, and completes some cleaning as required such as doing the dishes and cleaning the toilet.



The AAT stated that these 'inconsistencies appear to reflect a significant disconnect between the applicant's perception of his functional capacity, and an objective assessment of whether his impairments result in substantially reduced functional capacity'.

The AAT accepted that GXYZ's complex health situation affects his ability to live a 'normal' and fulfilling life, that he experiences significant fatigue and periods of unwellness, and that he often needs to pace and prioritise his needs.

However, the AAT was not satisfied that the applicant's impairments result in substantially reduced functional capacity to undertake any activities, and therefore he is not eligible for NDIS support.

What can we learn from this case?

In order to be accepted into the NDIS, an applicant must meet all of the NDIS access criteria, including demonstrating that their disability results in *substantially* reduced functional capacity to undertake activities in *at least one* of the six domains.

While GXYZ was able to demonstrate *some* reduced functional capacity in a number of the six domains, his capacity in any one area was not *substantially* reduced.

GXYZ and the NDIA clearly shows that limited functional capacity across the six domains isn't cumulative – an applicant needs to show *significant* difficulty in (at least) one domain, rather than *some* difficulty across multiple domains.

This case also shows the importance of providing consistent evidence. While GXYZ gave some evidence of limited functional capacity, he also gave conflicting evidence demonstrating his ability to function quite well. It's important to, as far as possible, paint a clear and unambiguous picture when giving evidence against the NDIS access criteria.

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