



Anxiety and access – Lessons from the AAT

The threshold of functional impairment required to be reached to gain access to the NDIS is high, and unfortunately, many people who have genuine struggles in life as a result of a permanent disability, do not meet the criteria for NDIS support.

A recent case before the AAT – HPSC and the NDIS – shows the importance of consistent evidence, and of demonstrating *significant* functional impairment in at least one of the six domains.

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

The case

HPSC is a 28-year-old Brisbane woman, living with anxiety since 2015. She also has carnitine palmitoyltransferase deficiency type II and cyclic vomiting syndrome, which require her to eat regularly and sometimes result in hospitalization. She has sought access to the NDIS and been found access-not-met twice. She maintains she has substantially reduced functional capacity in all six domains.

Her conditions create significant challenges – she is often weak and lethargic, and struggles with confidence issues and depression. Her mother lives with her most of the time, and provides significant support.

She works one day a week in a costume shop, and has completed some of a Bachelor of Arts and Communications Degree on campus. She volunteered in a call centre for the 2018 Commonwealth Games and goes to cosplay conventions. She has a number of friends who she sees a few times a month, sometimes goes camping with them or rock climbing, and goes to events such as weddings and parties. She had a romantic relationship that lasted some months, during which time she was exercising daily.

The Tribunal heard evidence from HPSC, her mother, and considered written evidence from her GP, a consultant psychiatrist, a registered psychologist, and an endocrinologist. The Tribunal approached this evidence with caution due to inconsistencies, noting that ‘doctors sometimes slip into the role of advocates for their patients’ and that where this may be possible, they should be available during the case for cross examination.

The Tribunal focused on the need to demonstrate substantially reduced functional capacity in at least one domain (communication, social interaction, learning, mobility, self-care or self-management). It also underlined that with a fluctuating condition, the focus is on the person’s ability to function *between* acute episodes.

It noted that ‘a condition which affects a person only intermittently cannot be said to substantially reduce their capacity...overall’ and that therefore it is important to determine whether a person’s episodes of incapacity are typical or exceptional.



In determining this case, the Tribunal noted that the evidence was inconsistent, with the tribunal member stating 'I accept that much is what [HPSC] is able to achieve is a *struggle*...but it does seem that she is able to do a substantial number of the things which a person of her age would typically do....I focus on her ability function between acute episodes, and the result is that it is appropriate to find that she is able to achieve, typically, a relatively high degree of functionality.'

In relation to the six domains, it found the following:

Communication - she does not usually require assistance to communicate; she worked at a call centre during the Commonwealth games, and freely understood and responded to questions during the hearing; the evidence tabled refers to her *confidence* communicating, not her *capacity* to communicate.

Social interaction – while she struggles with feelings of inadequacy and anticipated rejection, she sees friends regularly, attends social events such as weddings and birthdays, and maintained a romantic relationship in 2018 and 2019; she has a general capacity to maintain friends and interact with the community.

Mobility – while she sometimes become bedridden and experiences frequent lethargy, she's had two overseas trips since 2015, goes out with friends once or twice a month, has engaged in rock climbing, walks to and from work, and has a driver's license.

Self-care - the Tribunal noted that her mother's evidence about helping with daily tasks was lacking in detail, was unspecific, and suggested exaggeration. For example, she has to be reminded to eat and drink, and yet when she went camping for days at a time, she was able to manage independently. The tribunal noted that 'shortcomings...do not, of themselves, demonstrate that she is substantially unable to care for herself overall'.

Self-management – volunteering, studying, working, and having relationships are all significant life decisions that she has made for herself. She is capable of completing daily tasks, making decisions, and problem solving. Except when she is acutely affected by one of her medical conditions, she is a relatively high functioning person.

Overall, the tribunal found that HPSC exhibits a relatively high degree of functionality, and that most of the time, she's able to hold down employment, study at university, engage in social activities, move about in the community, take overseas holidays and engage in outdoor activities.

The AAT noted in closing that 'It could be noted that she is less able to do those things than a person who is not afflicted with her quite severe medical conditions, but it would also appear to be true that she is much more capable than a typical participant in the NDIS is.

The AAT affirmed the NDIA's access-not-met decision.

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