



AAT Ruling – Demonstrating Permanency

The AAT recently reviewed a case where TMJV (the applicant) sought review the NDIA's decision to decline his request for access to the NDIS.

TMJV is aged in his late 50's, lives alone and has been unwell for many years. He had managed his condition (chronic fatigue syndrome (CFS)) at home with the assistance of his mother until she was no longer well enough herself.

In April 2018, TMJV's request to become a participant in the NDIS was declined. The NDIA was unsatisfied that TMJV met the requirements under section 24 and section 25 of the [NDIS Act \(the Act\)](#). In July 2019, TMJV applied to the Tribunal for a review, contending he met the requirements prescribed in the Act. In June 2022, the Tribunal ultimately decided in favour of the NDIA. This case provides interesting insights into how disability requirements are defined and the importance of consumers engaging in the recommended assessments for NDIS access.

You can [read the full description of the case](#) – TMVJ and National Disability Insurance Agency [2022] AATA 2053 (30 June 2022); we have provided a summary of the case below.

The Case

The issues arising in this case were whether TMVJ had satisfied the "disability requirements" under section 24 of the Act or whether he meets the "early intervention requirements" under section 25 of the Act.

Paragraph 24 of the Act requires the "impairment(s)" to be permanent and Rule 5.4 of the Access Rules state that an "impairment" will only be considered permanent if there are no known, available and appropriate evidence-based clinical, medical or other treatments that likely remedy the impairment. In other words, if treatment options are available, the applicant must attempt to undergo the medical treatment or review before a determination is made on the issue of permanency.

The Tribunal concluded that TMVJ had not met requirements under section 24 for the following reasons:

- TMVJ had not undergone assessments by a general physician, neuropsychologist or neurologist that may have led to a better understanding of his diagnosis, impairments and whether further treatment options are available, as recommended by his GP.



•TMVJ had not accessed all known, available, and appropriate evidence-based treatments that would likely to remedy. For example, a combination of cognitive behavioural therapy (CBT) and graded exercise may treat or alleviate CFS, however, these had not been attempted by the applicant. Further, the applicant had been referred to an exercise physiologist and a dietitian by his GP but did not attend these appointments.

Similarly, the Tribunal found that the Applicant had not met the requirements in paragraph 25 of the Act (“early intervention requirements”), being they were unsatisfied that his impairment(s) were permanent and that early intervention supports were likely to benefit the applicant in a functional sense by achieving the stated outcomes in the Act.

Please note, TMVJ declined to engage directly in an oral hearing, in various preliminary events and in evidence-gathering suggested by the NDIA to assist the Tribunal in reaching an informed decision in this case (e.g. engaging in an independent functional assessment by an occupational therapist and rheumatologist).

What can we learn from this case

This case had a couple of interesting features that may be useful to understand when developing an access request.

Firstly, although the AAT accepted that TMVJ suffers from CFS, the applicant could not prove that his impairments were permanent. In part, this was because the applicant refused to partake in further specialist assessment as recommended by his GP. It is possible that TMVJ’s symptoms are a product of a degenerative neurological disease which, if diagnosed, may lead to treatments not yet explored.

Secondly, the Tribunal were not positively satisfied that there were no known, available, and appropriate evidence-based clinical, medical, or other treatments that would be likely to remedy the impairments. This is because the applicant had not engaged in any treatment options available to relieve the symptoms associated with CFS (e.g. in CBT or graded exercise).

The case demonstrates that consumers need engage in all treatment options recommended by health professionals prior to accessing the NDIS. By partaking in the recommend treatment option(s), applicants may experience relief in their symptoms, or at the very least, have evidence that the treatment option in question is not appropriate for them.

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