



# Depression and back pain - lessons from the AAT

We frequently hear about applicants to the NDIS who have received an access not met decision – in some cases, a re-worked access request can result in the applicant being accepted into the scheme.

A recent case before the AAT – [Joufian and the NDIA](#) – underscores the importance of separating out multiple conditions, and providing clear and current evidence.

## The case

JJ applied to the NDIS and received an access not met decision.

JJ has a number of back conditions as a result of a 2009 motor vehicle accident, and depression as a result of his back pain.

There was limited current evidence provided, so the AAT relied on old evidence (from around the time of the motor vehicle accident), and JJ's own spoken evidence.

Limited evidence provided by JJ's GP and physiotherapist indicates that JJ does not require assistance with communication, social interaction, learning, self-care or self-management.

He has some mobility issues, but according to JJ's own evidence, he can stand up from the floor, and dress and shower without assistance. He can lift up to 3 kg, drive a car for 10 minutes, and he walks 700m every day, although he sometimes needs to rest.

The AAT concluded therefore, that although JJ is impacted by his conditions, his functional capacity is not substantially reduced.

In addition, a number of the older pieces of evidence suggested that his conditions may be able to be remedied.

Evidence from a surgeon suggested that lumbar surgery may help his back condition if more conservative rehabilitation was ineffective. JJ was concerned about the risks of surgery and had not spoken to a surgeon since 2010.

With regards to his depression, JJ continues to take anti-depressants, but has not received counselling for several years despite this being recommended by a hospital pain clinic.

Although JJ meets some of the disability requirements, the AAT concluded that his impairments may not be permanent.

Therefore, JJ does not meet all of the criteria for entry to the NDIS as set out in section 24 of the NDIS Act. The AAT upheld the NDIS's access not met decision.



## What can we learn from this case?

When making an NDIS access request, it is important to provide good quality, current and consistent evidence, showing that:

- a person's disability substantially affects their ability to undertake tasks in at least one of the six domains of functioning. Providing examples of what the person cannot do because without supports as a direct result of their disability is a good way to show the challenges the person faces are much more than a person without that disability
- that their disability is likely to be permanent and all recommended treatments have been explored.

A current summary statement from the person's GP or other appropriate clinician is likely to be helpful in this respect.

While it may be tempting to include lots of evidence in an access request, evidence from a variety of medical professionals offering conflicting information or treatment recommendations (especially if this is historical), is likely to muddy the waters of the access request.

This case also illustrates why it is good practice to address each disability separately. JJ's depression is described as stemming from his back pain – therefore if his back pain could be remedied, his depression may also be alleviated.

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