

family

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Abstract

This is an information paper on the Disability Support Pension which in 1991 replaced the Invalid Pension, Sheltered Employment Allowance, Rehabilitation Allowance and Incentive Allowance. **Keyword: Government**

NEW DISABILITY PAYMENTS

Disability Support Pension

From 12 November 1991, the Disability Support Pension (DSP) replaced the following disability payments: Invalid Pension, Sheltered Employment Allowance, Rehabilitation Allowance and Incentive Allowance. The largest group of people affected by the changes will be those receiving or claiming Invalid Pension. Those who were receiving Invalid Pension on 12 November were automatically transferred to DSP. Any of these people can be reviewed at any time and if this happens their eligibility will be assessed under the new rules (which are described below).

Sheltered Employment Allowance recipients were also transferred to DSP and Incentive Allowance will continue to be paid to existing recipients while they remain on DSP and in a sheltered workshop. Those who were receiving Rehabilitation Allowance will continue to get the payment (as DSP) for as long as they continue in their rehabilitation programs.

New eligibility rules

The law about qualification for DSP is substantially different from the old requirements for Invalid Pension. In order to qualify for DSP a person must satisfy two tests.

1. He or she must have a physical, intellectual or psychiatric impairment of 20% or more. The impairment will be measured by the Commonwealth Medical Officer (CMO) by using Impairment Tables which are part of the legislation.

If a person is assessed by the CMO as having an impairment of between 10% and 20%, they are entitled to ask for a re-examination by a more senior CMO.

2. If the person satisfies the first condition, they must also have a "continuing inability to work".

The law defines this term as meaning that the person cannot perform work at award wage level

for at least 30 hours a week for the next two years. The decision about this element of the DSP will be made by a Disability Support Officer (DSO), a new position created within the DSS.

In determining whether a person has a "continuing inability to work", the DSO cannot take into account non-medical factors such as the person's qualifications, education, language skills or the locally accessible labour market. The person's impairment must of itself be sufficient to stop a person doing work. The only exception is that for applicants who are over 55 years of age, the local labour market can be taken into account in determining whether the person has a "continuing inability to work".

Programs and assistance

For those who are clearly too severely impaired to work again, DSP will be granted without further assessment. The law defines a "severely disabled" as a person who has a total inability to work for at least 2 years, which is due wholly to their physical, intellectual or psychiatric condition.

Those who do not fall into this category will be assessed by a Disability Panel, which will have officers from the DSS, Commonwealth Employment Service (CES) and Commonwealth Rehabilitation Service (CRS). Pensioners in this "active" category will have access to rehabilitation, vocational and training programs. The role of the Panel will be to discuss the needs of the pensioner and help design a package which will meet those needs and assist the person re-enter the paid workforce. There are no penalties for clients who do not want to take up re-training or rehabilitation programs offered, or if they withdraw at a later stage. A friend or advocate can accompany the pensioner to the panel discussions, and interpreters are available on request.

Getting back to work

There are now a number of incentives to encourage people on DSP to get back into the paid workforce.

- If a pensioner takes up work, their DSP will be suspended for a period of 2 years, not cancelled. If the job does not work out, it is much easier for the person to simply return to DSP.
- A person who was on DSP can keep their Pensioner Health Benefits Card for 12 months after entering the workforce.
- A \$200 employment entry payment will be paid to help meet costs associated with returning to work.
- A person on DSP will be able to earn up to \$250 a week before a review of their entitlement is triggered. The existing income tests however still apply to the pensioner who is earning money from employment.
- The Mobility Allowance has been increased to \$40 a fortnight, for those who cannot use public transport and are engaged in vocational training or employment for at least 8 hours a week.

Young people paid less

People under 21 who qualify for DSP after 12 November 1991 will receive a reduced rate of pay. It will be equivalent to the rates paid to young unemployed people, although a Youth Disability Supplement of \$30 a week will be paid (\$32 from January 1992).

In addition, young people who are single and **under 18** will not qualify for Rent Assistance unless they have dependent children or live in supported accommodation. Couples without dependent children will have an 18 week wait for Rent Assistance.

For **18 - 20 year olds**, Rent Assistance will not be paid if they live in their parents' home. Otherwise, they will have an 18 week wait, unless they have a child or live in supported accommodation.

Young people who were already on Invalid Pension before 12 November 1991 will continue to receive the higher maximum rate of pension which applied before 12 November, not the reduced youth rates introduced by these changes.

Payment of DSP overseas

If a person applies for, and is granted DSP, after 12 November 1991, and then goes overseas, the DSP will only be paid for a maximum of **12 months**. There are only two exceptions to this:

- (i) a person who is considered "**severely disabled**" (see definition above) will not have this time restriction on payment. The person must, however, have been severely disabled prior to leaving Australia in order to be exempt.
- (ii) if the pensioner moves to a country with which Australia has a social security agreement and the agreement allows payment of DSP for longer than 12 months.

Pensioners who were or who become qualified for payment of Invalid Pension prior to 12 November 1991 and who wish to take their DSP overseas will be treated under the old rules. Their pensions will be fully portable, subject to their being medically eligible at the time they leave. ■

Sickness Allowance

Sickness Benefit no longer exists. On 12 November 1991, it was replaced by Sickness Allowance - a new payment with new rules and conditions.

Many of the old rules that applied to Sickness Benefit are the same for Sickness Allowance. These include the various waiting and deferment periods, the effect of worker's compensation payment, the need to establish a loss of income before establishing eligibility, the rates of payment, and the income and assets tests.

But there are also many changes. The main ones occur in the eligibility conditions and the associated timing issues. These are described in detail below. All people receiving Sickness Benefit on 11 November 1991 were automatically transferred to Sickness Benefit Allowance on that day, and their payments will be continued under the new rules.

Eligibility conditions

A person may be eligible for Sickness Benefit Allowance if they are temporarily incapacitated for 'work' because of an illness or injury. 'Work' means

- 1) in the case of who a person still has an employment contract, that they are unable to return to that employment due to their illness or injury;
- 2) in the case of a person has not had or no longer has an employment contract, employment that the person can be reasonably expected to do for at least 8 hours per week at award wages.

It would seem that the Department will scrutinise new claims for Sickness Allowance more thoroughly than it did with Sickness Benefit. The more thorough scrutiny will involve making decisions as to (i) whether there is a more appropriate payment (Job Search Allowance or Disability Support Pension) or (ii) the disability has already existed for long enough not to be considered temporary.

Period of payment

If a person is eligible for Sickness Benefit then the length of payment of that claim is restricted by two things. The first of these is called the "Maximum Allowance Period" which defines the maximum time payments can be made after the lodgement of each medical certificate. The second of these is that the law prevents payments of Sickness Benefit, for most people, going for more than 12 months.

Maximum Allowance Period

When a person lodges a medical certificate they can only be paid for a maximum period of 13 weeks or for the period specified in the medical certificate, whichever is the shorter. At the end of this period a further medical certificate must be lodged. If a person fails to lodge a further medical certificate before the previous certificate runs out, their claim may be cancelled. A new claim would have to be lodged. The DSS will advise a person in writing 28 days before the end to their "maximum allowance period". This will be the only notification provided by the Department, before a letter advising that the claim has been cancelled.

In certain circumstances the DSS can extend the "maximum allowance period" up to 4 weeks if circumstances make it unreasonable to obtain a certificate before the end of the "maximum allowance period". DSS guidelines say that this extension will only be given if the DSS have not given enough notice of the end of the previous "Maximum allowance period". This may occur

due to processing delays or because the person initially had a medical certificate for a very short period. The length of any extension will be based on how long it should reasonably take to get a further medical certificate. The Welfare Rights Centre believes that other circumstances which are not covered in departmental guidelines would also count for an extension. Most importantly it should be extended when the late lodgement of a medical certificate was caused wholly or substantially by the medical condition itself.

When a claim is cancelled, a new claim has to be lodged to get further payments. This can be done in one of two ways. Either a new claim can be lodged or a new medical certificate can be supplied. When a new medical certificate is supplied, that will be accepted as the date of lodgement of the new claim as long as a new claim form is also lodged within the next 14 days.

Complex procedure for new claims

The DSS guidelines state that different procedures will apply depending on how long it is between the date of the last payment and the date of lodgement of the new claim. Where this is less than 4 weeks, a shorter new claim form only needs to be completed. Where this period is over 4 weeks a whole new claim process is required and new waiting periods apply which, for most people, means another week's waiting period. (It should be remembered that Special Benefit should be applied for if the person is in hardship.)

It is possible to have the date of the new claim backdated by up to 4 weeks if it can be shown that the reason for late lodgement of the claim was caused wholly or substantially by the medical condition itself.

Where the period is under 6 weeks then the date of the original claim will still be taken to be the commencement date even though the person ceased to receive payments for a period of time. This period of non payment still counts towards the 12 months period after which it is not possible, in most cases, to get any more Sickness Allowance payments.

Payments past 12 months

In most cases, a person will not be able to get Sickness Allowance for more than 12 months. Payments will only be extended past 12 months:

- if DSS thinks the incapacity will end during the next 52 weeks;

- if the medical condition that currently incapacitates the person is different from or significantly more serious than the previous medical condition;
- if the person's incapacity is caused by a chronically relapsing medical condition;
- if the person is undertaking an approved program of counselling treatment or therapy for drug or alcohol abuse in which the person is not likely to participate for more than 78 weeks;
- if the person is undertaking a rehabilitation program with the Commonwealth Rehabilitation Services.

To receive payment after 12 months, a person must lodge a new claim for Sickness Allowance. The new claim should be lodged before the end of the first 12 month period to avoid any loss of payment. The DSS will normally review everyone after 40 weeks of Sickness Allowance payments and should make a decision about whether or not payments will be extended before the 12 months is up.

Only in two situations can payments be extended past 52 weeks without the DSS making a formal decision that one of the above conditions is satisfied. These are:

- the Disability Support Officer has not made a decision at week 50 of the original claim about whether payments will be extended and the person has lodged a new claim seeking extension.
- the person has lodged a claim for Disability Support Pension before the expiry of 52 weeks and that claim is still being processed. In the former situation, payments can be extended by up to 4 weeks; in the latter, until the claim for Disability Support Pension is determined. If payments are extended beyond 52 weeks, then the "maximum allowance period" cannot be extended under the rules explained earlier. This means that failure to lodge a further certificate prior to the expiration of the previous certificate will result in the cancellation of the previous claim and payment can only be made following lodgement of a further claim.

No further claim within 2 years

If a person has received Sickness Allowance for a period of 12 months and is not eligible to receive continuing payments, or has already received payments for 2 years, then the person is not eligible for Sickness Allowance for the next 2 years unless one of the following applies:

- the new incapacity is caused by a medical condition that is different, or significantly more serious than the previous incapacity;
- the person's medical condition is a chronically relapsing condition and the incapacity for work is caused by a relapse of that condition;
- the person is undergoing an approved program of counselling, treatment or therapy for drug or alcohol abuse in which the person is not likely to participate beyond 78 weeks;
- the person continues to participate in or commences a Commonwealth Rehabilitation program.