



## Centrelink and the Administrative Appeals Tribunal (AAT)

*This is to offer you some brief information about the Administrative Appeals Tribunal (AAT) process and how a disability advocate can assist you in this process*

To be eligible to make an appeal to the AAT for a decision made by Centrelink you must have previously asked for an internal appeal of any decisions Centrelink have made. *This must occur prior to making an application to the AAT.*

Disability advocacy agencies specifically deal with decisions relating to the Disability Support Pension (DSP) and Carer payments First Review by the AAT (known as a tier 1 appeal)

If you have a decision made with respect to any other Centrelink payment that you wish to take to the AAT, your advocate can support you to be referred to a legal service better suited to support your case.

If you are making a Second Appeal (known as a *tier 2 appeal*) to the AAT *for any Centrelink payment* you will need to be referred to a community legal service or a lawyer of your choice. The Legal Services Commission or a community legal service may be able to represent you at no cost, but it is more likely that you will need to pay for a lawyer to represent you. Disability Rights Advocacy Service cannot help you with a tier 2 appeal.

All applications for First Review by the AAT (known as a tier 1 appeal) need to be made within thirteen (13) weeks after the decision date of the internal Centrelink review. If you are outside of this time, the AAT may grant your application but you may only be back paid from the date of your AAT application. If you make an application well outside the 13 weeks it would probably be better to make a completely new application to Centrelink.

If the decision you want the AAT to review is about rejection of the disability support pension:

- because Centrelink deemed that you don't have a 20 point impairment rating, or
- you don't have a continuing inability to work,

you need to go through the *T-documents* (all documents related to your DSP application) as soon as possible. This is to see if there is a report from every doctor who treated you, and/or every hospital which treated you, for the conditions you named on your claim form.

If the decision you want to review is about cancellation of disability support pension because:

- Centrelink deemed that you don't have a 20 point impairment rating, or
- you don't have a continuing inability to work,

you should go through the T-documents as soon as you get them to see if there is a report from every doctor who treated you, and/or every hospital which treated you, since you were granted disability support pension.

While your advocate is helping you with your DSP appeal, you, as the client, need to understand the following:

If we can't find anything about your treatment by a particular doctor or a hospital, your advocate will tell the AAT as soon as possible so that they can check with Centrelink in case it has more documents that the AAT need for the review. If the Centrelink does not have a document from the particular doctor or hospital, the AAT will give you sufficient time before the hearing to ask the doctor or hospital for records of your treatment. In a special case, the AAT might ask Centrelink to get documents for them from the doctor or hospital.

## The hearing

### What the AAT will do

- Usually one member of the AAT will hear the review, but sometimes it may be two or three. They will hold the hearing of the first review in private. Apart from the member(s) and any of their staff who are assisting with the hearing, the AAT won't allow anybody else to be present without their permission.
- The AAT hearing will be fairly informal. As your advocate is supporting you with the hearing, it could be conducted at a site you choose via a phone hook-up.
- The AAT will ask you to take an oath or affirmation that what you tell them is true. They will ask you to tell them why you think the Centrelink decision is wrong, and they will ask you questions about anything which will help them to make their decision on your application for review.
- If there is another party/person involved, the member/s will also ask him or her to take an oath or affirmation. He or she will also have the opportunity to tell the member/s why the Centrelink decision is right or wrong, and to answer their questions.
- If a witness is going to give evidence on your behalf, they will need to take an oath or affirmation too. Usually, a witness can only be in the hearing room when giving his or her evidence.
- The AAT is not required to apply the *rules of evidence* like a court and, as long as it is relevant, they will usually let you or a witness to tell us about something you or they have heard from someone else. The AAT will decide how much weight to give to this type of evidence when they make their decision.
- Most hearings take about an hour. Some cases take longer because there is more than one party, an interpreter, one or more witnesses, or the relevant issues and events span a long period of time.
- The AAT will record the hearing. *The AAT will not allow you to record the hearing.*
- If you fail to appear at the hearing of your application for review, the AAT may dismiss your application or make the decision based on the T-documents and any documents which you have given them.

## What the AAT will not do

- Will *not* pay for, or make any order for the payment of, the costs of legal representation if you get a lawyer to represent you.
- Will *not* pay for, or make any order for payment of, the costs of any person who gives evidence on your behalf (such as an accountant).
- Will *not* give you a copy of the recording of the hearing. If you want a transcript of what was said in the hearing because you want to apply for second review or go to court about the decision, the AAT will prepare a transcript - but you will have to pay for it.

## What you must do

- You must be ready to proceed on the day of the hearing. The AAT will not adjourn the hearing if you turn up and you don't have everything ready to go. The AAT will only grant an adjournment if it would be unjust not to do so (for example, you are unable to appear for reasons beyond your control). See section below about asking for an adjournment.
- You need to have your copy of the T- documents, and of any other documents which you gave to the AAT or they gave to you for the review, with you in the hearing. It makes the hearing easier if the member/s can refer to a document by its page number.
- If there is any other relevant document which you did not give us before the hearing, you must bring it to the hearing. If you are appearing at the hearing by telephone or videoconference, you must ask for permission to send it to the AAT at the conclusion of the hearing. You must not send documents after the hearing without the permission of the AAT

## What Centrelink must do

If the AAT orders Centrelink to obtain information or documents, or to make written and/or oral submissions, they must do so by the specified date. Centrelink must also provide the AAT with any new documents it receives that are relevant to your appeal up until the AAT make their decision.

## The decision

### What the AAT will do

If the AAT decide that they agree with Centrelink's decision, they will affirm the decision. If they make that decision at the end of the hearing, the AAT may tell you their decision and reasons for that decision then. If you want their reasons for that decision in writing, you must ask for it within fourteen (14) days.

Otherwise, within 14 days of making a decision, the AAT will give you and every other party (including Centrelink) a written notice which states their decision and reasons for the decision. The AAT will also tell you about your right to apply for a second review (tier 2).

## **What you must do**

If you think that there is an obvious mistake in the text of the AAT decision or in their reasons for decision (for example, they have made a mistake in typing an amount of money or a date), you can ask the AAT to correct it.

The AAT can't change their decision just because you think it is wrong. You have to apply in writing for a second review (tier 2). You should consider either seeking legal advice prior to making your tier 2 appeal application or making a fresh DSP application with revised evidence if this is what you want.

## **Other matters**

- **Adjournments**

The AAT will only grant an adjournment of a hearing if there are very good reasons to do so.

You and/or your advocate should make any request for an adjournment in writing explaining why you can't appear at the hearing. You must give a copy of any document which shows why you are unable to attend the hearing (such as a doctor's certificate) to the AAT. You should not assume that the AAT will agree to an adjournment just because you ask for it.

A medical certificate must be detailed and specific and include the date of the hearing. It is unlikely that the AAT will accept a medical certificate which simply states that a person is suffering from an unspecified medical condition and is unfit for work as sufficient evidence that you are unable to appear at the hearing even by telephone.

- **Interpreters**

You cannot ask a relative or friend to interpret at a hearing.

If you need an interpreter at the hearing, you need to tell your advocate and the AAT when you make your application. You will need to tell them what language and dialect (including Auslan sign language). The AAT will organise for a professional interpreter and they will pay the cost.

- **Alteration of the decision under review**

## **What the AAT will do**

If a decision is changed ('varied') or substituted by Centrelink after you applied for the first review of the decision, the AAT will review this new varied or substituted decision.

## **What you can do**

If you do not want the AAT to review the decision, you can tell the AAT that you are withdrawing or discontinuing your application for review.

- Withdrawal or discontinuance of an application

There is no cost to withdraw or discontinue your application and you can do so at any time.

If you decide to withdraw or discontinue your application for first review, you must inform the AAT in writing or by phone. Once you do so, your application for review is automatically dismissed.

- Dismissal of your application

If all of the parties agree, the AAT can dismiss your application for first review before they start the review, or without completing the review.

If you don't turn up to the hearing, the AAT may dismiss your application.

The AAT can also dismiss your application if:

- the AAT doesn't have the power to review the decision which you asked the AAT to review;
- you fail to proceed with the application;
- you fail to comply with a direction made by the AAT or member/s;
- your application is frivolous, vexatious, misconceived or lacking in substance;
- your application has no reasonable prospect of success; and/or
- your application is an abuse of the AAT appeals process.

If the AAT dismisses your application for review, they will give you their reasons for doing so.

You cannot ask the AAT for a second review of their decision to dismiss your application.

- Reinstatement of your application

If your application is dismissed because you failed to appear at the hearing, you can ask the AAT to reinstate your application.

However, you have to ask the AAT within twenty-eight (28) days from the day on which they told you that your application for review was dismissed. The AAT can only extend this time if there are special circumstances.

If you think that the AAT made a mistake in dismissing your application for review, you can also ask them to reinstate your application.

### **What you must do if the AAT dismisses your case**

If the AAT dismissed your application for review because you failed to appear at the hearing, you must contact the AAT in writing and tell them why you did not appear at the hearing. You must do this with twenty-eight (28) days.

If you think your application for review was dismissed because of a mistake by the AAT or someone else, you must tell the AAT what mistake was made.

If you ask the AAT to reinstate your application, you should also give the AAT a copy of any document that supports what you tell them. In other words, you must give them proof of why they were wrong to dismiss your application.

If you ask the AAT to reinstate your application more than 28 days after the AAT told you that your application for review was dismissed, you must ask them for an extension of time.

You must tell the AAT why you think your circumstances are special so that you should be given extra time.

You must take care to do *everything* that the AAT have told you about asking them to reinstate your application for review, because generally the AAT will not speak to you before deciding whether to reinstate your application for review.

### **What the AAT will do about reinstatement**

The AAT will make a decision on your request for reinstatement of your application for review as soon as possible.

If the AAT decide not to reinstate your application, they will tell you why in writing. You cannot ask us for a second review of this decision to refuse reinstatement.

If the AAT decide to reinstate your application, they will tell you in writing what happens next.

### **What your advocate can do / don't do**

What our advocates do Section

Your advocate can explain processes, decisions and documents to you so that you understand the process better.

Your advocate will help you make all applications for the tier 1 review, book the venue for the meeting and have all phone technology in place.

It is recommended the client be available for a review of the T-documents as soon as possible after they are told about any decision and your advocate has reviewed it.

Our advocate will review the outcomes of the hearing not more than 28 days after the result has been made by the AAT.

### **Useful Links:**

Documentation:

<http://guides.dss.gov.au/guide-social-security-law/3/6/2/10>

*Disclaimer – the information given here is of a general nature only and you should seek clarification of any statements made in this leaflet (last updated 24/9/2019)*