

BUDGET 2017 – DISABILITY SUPPORT PENSION

In the 2017 Budget the Government announced a measure affecting eligibility for the disability support pension (DSP):

- the removal of impairment table 6 from 1 July 2017 and
- introduction of a requirement that new DSP claimants have treatment for substance abuse before any associated functional impairments can be considered fully diagnosed, treated and stabilised for the purpose of assessment under the impairment tables.

The Government estimates savings from the measure of \$21.7 million over five years to 2021.

Background – disability support pension medical eligibility

The DSP provides financial support to people with a permanent physical, intellectual or psychiatric condition which prevents them working.

To be eligible for the DSP, claimants must meet a number of requirements such as residency and means tests. They must also meet the medical eligibility requirements.

A small proportion of claimants qualify without further assessment on the basis that the nature of their medical condition means they are “manifestly” eligible for the DSP. Most claimants, however, must have their medical conditions assessed against the legislative criteria for the DSP. The Department of Human Services administers the assessment process.

The main medical eligibility requirements are that the person’s disability or medical conditions are:

- fully diagnosed, treated and stabilised and
- their impact on the person’s ability to function day to day has an impairment rating of 20 points or more under the impairment tables.

These two criteria are related, as unless a condition is fully diagnosed, treated and stabilised it cannot be rated under the impairment tables. In practice, these criteria determine the outcome of the majority of DSP claims.

A person must also demonstrate a continuing inability to work.

Fully diagnosed, treated and stabilised

The requirement that a disability or medical condition be fully diagnosed, treated and stabilised is complex. Although there are three elements to this criterion, in practice they overlap, especially whether a condition is treated and stabilised.

Broadly, a condition is:

- fully diagnosed if it has been assessed by a qualified medical practitioner and there is evidence to support its existence and
- fully treated and stabilised if:
 - reasonable treatment or rehabilitation has been undertaken
 - treatment or rehabilitation is continuing or planned but will not help the person work 15 hours or more per week in the next 2 years or

-there are medical or other reasons why treatment cannot be undertaken.

Impairment rating

The impairment tables are contained in a legislative instrument ([here](#)). They were revised with effect from 1 January 2012 and apply to new DSP claimants and existing recipients undergoing a medical review. This followed a review by an Advisory Committee, which reported in 2011 ([here](#)).

There are 15 impairment tables which are used to assess how a person's disability or impairment affects their ability to function day to day. Generally, the tables are divided up by function, eg table 2 assesses impact on upper limb function, table 5 mental health function and so forth.

The Budget measure

The Government has announced that it will remove impairment table 6 from the impairment tables from 1 July 2017. This requires amendment of the legislative instrument which contains the impairment tables. The measure will affect new claimants who lodge their claim on or after 1 July 2017 and existing recipients who are medically reviewed.

Impairment table 6 is used to assess the functional impact of excessive use of alcohol, illegal and prescription drugs or other harmful substances such as petrol. Its removal is intended to prevent people qualifying for the DSP on the basis of substance abuse alone. The Government estimates it will affect 450 claimants out of about 109,000 claimants per year, who will no longer qualify for the DSP. Most will instead qualify for newstart allowance or youth allowance (other).

New DSP claimants will also have to undergo treatment for substance abuse before any associated functional impairments are considered fully diagnosed, treated and stabilised and assessed under the impairment tables.

The purpose of the measure is to ensure that people qualify for the DSP only on the basis of functional impairment.

Analysis

Removal of impairment table 6

In his Budget speech, the Treasurer described this measure as "denying welfare for a disability caused solely by their own substance abuse". Unfortunately some media and commentators picked up this description, as it is inaccurate.

The removal of impairment table 6 does not prevent a person with functional impairments caused by past or current substance abuse from qualifying from the DSP. Those impairments may still be assessed under one of the other tables. For example, someone with a permanent neurological impairment caused by substance abuse may still be assessed under table 7 (brain function). Similarly there is a strong association between psychiatric disorders and substance abuse, although it may difficult to ascertain whether the psychiatric disorder prompted the substance abuse or whether the substance abuse created (or triggered) the psychiatric disorder. In this circumstance, the removal of impairment table 6 does not of itself prevent the person's psychiatric disorder being assessed under table 5 (mental health function).

The reality that past or current substance abuse is associated with a range of other impairments explains why the Government estimates that a relatively small number of claimants will be affected each year by the removal of impairment table 6.

Impairment table 6 may be seen as an anomaly. As noted above, generally the impairment tables are organised by functional area (upper limb, lower limb, brain functioning, stamina and so forth), irrespective of the underlying causal condition. Table 6 considers functional impairment due to a particular underlying cause, substance abuse. For this reason, its removal is arguably consistent with a recommendation of the Advisory Committee which reviewed the impairment tables in 2011 that there be a further revision of the impairment tables to ensure they are all functionally based.

However, the risk of a piecemeal approach to review of the impairment tables is that some claimants are unable to have their functional impairment properly assessed. This would be contrary to the underlying intent of the measure which is that qualification occur on the basis of functional impairment.

The risk of this occurring from the removal of impairment table 6 is difficult to assess and needs careful consideration. For example, impairment table 6 currently extends to prescription drug addiction and can capture the impact this has on memory and concentration (as it rates the impact on ability to complete daily tasks or reliably attend work or appointments). If removed, this may shift the assessment of some people in this group to table 1, such as people with chronic pain and reliance on pain medication. As currently drafted, table 1 does not well capture the effect of pain medication despite that being one of the common impacts of chronic pain.

The adequacy of the likely alternative impairment tables like table 1 to which people with substance abuse problems may flow with the removal of table 6 should be carefully considered before implementation of this measure, including through consultation with medical experts and other stakeholders.

Requirement that associated substance abuse be fully diagnosed, treated and stabilised

As noted above, the impact of the removal of impairment table 6 is lessened by the fact that many people with substance abuse problems have associated impairments such as psychiatric or neurological impairments.

It is precisely this group of claimants with impairments associated with substance abuse at which the second element of this measure is aimed. It requires DSP claimants to undergo treatment for substance abuse before associated impairments may be regarded as fully diagnosed, treated and stabilised. The concern appears to be that DSP claimants are having their primary condition assessed as fully diagnosed, treated and stabilised, even when associated substance abuse has not been fully diagnosed, treated and stabilised.

The potential impact of this measure is complex to assess, but could well be far more significant than the removal of impairment table 6 because of the much more commonplace circumstance where substance abuse is associated with other impairments.

Much depends on the drafting of the new measure and its practical administration by DHS.

It would have the greatest potential impact if drafted to require treatment of substance abuse in any case where it is associated with a primary condition, such as a psychiatric condition. However, this may distort the proper assessment of the person's functional impairment if the psychiatric condition is independent of, rather than caused by, the substance abuse. If the primary psychiatric condition is independent, the issue should be whether the psychiatric condition has been fully diagnosed, treated and stabilised and, if so, an impairment rating should be assignable irrespective of whether there has been treatment of the substance abuse.

Alternatively, the measure could be drafted to distinguish between functional impairments where the associated substance abuse has a causal relationship with the impairment and those where it exists independently of the substance abuse.

A rule like this would be very difficult to administer consistently and fairly. One reason is the factual and evidentiary difficulty of reasonably establishing whether there is such a causal relationship in a particular case. For example, as noted above, there is a strong association between psychiatric conditions and substance abuse, but it can be difficult, if not impossible, to ascertain whether the psychiatric condition resulted in the substance abuse or whether the substance abuse triggered (or created) the psychiatric condition. There are further difficulties, once the psychiatric condition is in existence, in determining the causal impact of treating ongoing substance abuse.

The end result could be a situation where, in practice, a DSP claimant who has not had substance abuse treatment has to satisfy a decision-maker that their psychiatric condition is independent of the substance abuse. For the reasons outlined above, this could be a very difficult task. It may lead to arbitrary decision-making and increase the level of DSP appeals.

If a high bar is set for claimants in practice, this requirement could well operate to exclude people with disability who also have substance abuse problems from access to the DSP. It could also fall especially hard on more vulnerable groups with less access to specialist psychiatric or other assessment and treatment, or integrated treatment for mental health and substance abuse.

Again, this proposal needs careful consideration, testing and consultation with stakeholders to ensure that it does not impact on people with severe and long term impairments independent of substance abuse.