



Administrative Appeals Tribunal

PRESIDENT'S CHAMBERS
The Hon Justice Garry Downes AM

6 March 2008

Senator the Hon Joe Ludwig
Minister for Human Services
Parliament House
CANBERRA ACT 2600

I refer to your letter dated 12 February 2008. The Tribunal appreciates this opportunity to provide comments on the Job Capacity Assessment program. The comments expressed in this letter reflect views that have been expressed by a number of members and staff across the Tribunal.

As you will be aware, the Tribunal's interaction with the Job Capacity Assessment program arises in the context of reviewing decisions concerning entitlement to disability support pension under the *Social Security Act 1991*. Assessments and evidence given by assessors form part of the material that is before the Tribunal in applications for review of these decisions.

Given its role, the Tribunal's comments are necessarily focussed on the way in which Job Capacity Assessments impact on decision-making in relation to disability support pensions where applications have been refused by Centrelink.

Determining the level of a person's impairment

Schedule 1B to the *Social Security Act 1991* (Cth) sets out the tables that are to be used in determining the level of a person's work-related impairment. Prior to 1 January 2008, the introduction to the tables indicated that an assessment and the assignment of impairment ratings would be undertaken by a 'medical officer' rather than an 'assessor'. Notwithstanding this legislative instruction, non-medically-trained Job Capacity Assessors have been applying the tables to determine the level of impairment. The Tribunal has a number of observations to make in relation to the way in which this task has been undertaken in assessments that have come before the Tribunal.

By way of background to its comments, the Tribunal notes that a treating doctor's report is generally obtained when a person applies for disability support pension or the person is subject to a review. This is forwarded to the assessor together with any other relevant material such as additional medical reports. In relation to the process of assigning impairment ratings, paragraph 4 of the introduction to the impairment tables provides:

A rating is only to be assigned after a comprehensive history and examination. For a rating to be assigned the condition must be a fully documented, diagnosed condition which has been investigated, treated and stabilised. The first step is thus to establish a working diagnosis based on the best available evidence. Arrangements should be made for investigation of poorly defined conditions before considering assigning an impairment rating.

Tribunal members and staff have noted that difficulties appear to arise with the quality of some assessments where there is a lack of appropriate clinical material upon which the assessor can formulate an opinion as to the level of impairment. The absence of relevant clinical detail sometimes leads assessors to make assumptions or clinical judgments about a person's condition where they do not appear to have the professional expertise to do so. More generally, medical evidence does not appear to be interpreted correctly in some cases.

A further area of concern that members and staff have reported is that some assessors appear to disregard medical reports that have been provided or reach views that are inconsistent with those reports without explaining the basis for their opinion, particularly in circumstances where the condition appears to lie outside their area of professional expertise. This appears to be a particular issue in relation to determining whether conditions are permanent and whether further treatment is accessible or likely to be effective.

Members and Conference Registrars have also advised that some assessments do not deal with all of a person's conditions or appear to contain factual errors. In others, factual information or relevant clinical data which supports the impairment rating given is not recorded.

The Tribunal's experiences in relation to this aspect of the Job Capacity Assessment process suggest that it may be appropriate to consider the following matters.

- The quality of medical information provided to assessors

While recognising that the quality of a treating doctor's report depends in large part on the person completing the report, there may be value in reviewing the information requested in the report to ensure the doctor is providing as much relevant information as possible that would assist the assessor when considering the level of impairment. There may also be value in reviewing the advice that is provided to those attending assessments about what information they should provide to Centrelink or bring with them to an assessment.

- The process of considering the level of a person's impairment

It may be appropriate to review the qualifications, experience and training that assessors ought to have when determining the level of a person's impairment. In particular, it may be appropriate to consider what can reasonably be expected of non-medically-trained assessors in different assessment situations and how an absence of relevant clinical information may be addressed as part of the assessment.

Considering a person's ability to work

In relation to the assessment of work capacity, the Tribunal recognises that Job Capacity Assessors are generally well-placed to consider issues relating to barriers to work, possible interventions and capacity to work. However, Tribunal members and staff have identified a number of matters in relation to this aspect of some assessments. Some of the issues overlap with those referred to above.

Members and Conference Registrars have reported that recommended interventions in some cases appear to be unrealistic or made without appropriate investigation as to their feasibility. The concern has been expressed that suggested support requirements can tend to be the same regardless of the nature or severity of a disability. It has also been observed that some assessments do not appear to adequately consider the impact of the interaction of different conditions and the effect of medications. These matters necessarily impact on the assessment of a person's capacity to work.

In relation to the information recorded in assessments, it has been noted that assessors may make claims in relation to a person's capacity to work or potential interventions that will improve capacity to work without referring to the basis for their view.

More generally, the Tribunal notes that assessments of a person's ability to work are necessarily problematic where they proceed on the basis of an incorrect conclusion as to the level of the person's impairment.

General issues in relation to assessments

In many cases, applicants for disability support pension or those undergoing a review are not assessed by a person who has expertise in relation to their condition. For example, a psychologist may assess a person in relation to a skeletal condition while a physiotherapist may assess a person with a psychiatric condition. It may be appropriate to consider whether people should generally be matched with assessors who have professional backgrounds that are more closely related to the relevant condition. Assessors are likely to have a better understanding of the condition and there may be a greater level of acceptance of the process on the part of those being assessed.

The Tribunal sees a number of assessments that have been undertaken without a face-to-face interview. The Tribunal does not have information in relation to the extent to which these are first or subsequent assessments. It has been observed that file assessments tend to be less useful than those involving a face-to-face interview.

Some of the issues identified above regarding assessments relate to the quality of the information recorded in the assessments. For the purposes of the decision-making process, it is important that assessments record relevant factual information and explain why particular views have been reached on the matters that must be considered in relation to determining eligibility for disability support pension. In the absence of this material, it is difficult for decision-makers to make an informed decision about entitlement. It is also important that those being assessed are able to understand why a particular view has been reached in order to identify what further material they may need to provide on review to support their claim.

In relation to the format of assessments, it has been observed that the routine use of underlining makes assessments difficult to read.

Issues arising in the review process

When reviewing a decision relating to a claim for disability support pension, the Tribunal is required to consider whether the person was entitled to the pension as at the date of the claim or within the period of 13 weeks after the claim was made. If disability support pension has been cancelled, the Tribunal must review whether the person was entitled to the pension at the time of the cancellation decision. The time for considering entitlement is usually some time in the past by the time an application is made to the Tribunal. This raises particular issues as to the evidence that will be relevant to determining the matter.

In many cases, the Job Capacity Assessment will be the only document that contains an assessment of the level of the person's impairment under the tables. If the applicant seeks to challenge this aspect of an assessment, it is generally necessary for the person to seek a further medical report on this issue. The Tribunal's experience is that reports of this kind may well lead to a concession by the Department that the person is entitled to disability support pension. It must be noted, however, that applicants vary in their ability to organise, and pay for, reports of this kind. In any event, doctors are being asked to comment on the level of impairment that existed some time in the past. In these circumstances, it may be appropriate that treating doctors give an impairment rating at the time of completing the treating doctor's report in addition to providing the range of information that underlies such an assessment.

Where additional medical evidence is provided during the course of the review process, a further Job Capacity Assessment is generally obtained. The Tribunal may also suggest that a further assessment be undertaken if there are concerns regarding the original assessment. While this issue does not relate directly to the nature of Job Capacity Assessments, the Tribunal notes that the need to obtain a further assessment can occasionally result in delays in the review process.

The Tribunal would welcome the opportunity to discuss these issues in person. If there are any queries regarding the matters raised in this letter, the contact officer is Chris Matthies, Manager, Policy and Research. He can be contacted on (02) 9391 2474 or at chris.matthies@aat.gov.au.

GARRY DOWNES