

# **SUBMISSION TO THE REVIEW OF THE ADULT DISABILITY ASSESSMENT TOOL**

## **National Welfare Rights Network**

### **Is the ADAT consistently identifying persons with similar care requirements, even where the type of disability varies?**

1. We understand that the Adult Disability Assessment Tool (ADAT) was introduced in July 1999 as the Government was concerned that assessment of eligibility for Carer Payment was subjective, and that decision-making was inconsistent. The Government was also concerned that without an assessment tool, the extension of Carer Payment and Allowance to carers of children as well as adults, and the introduction of Carer Allowance, would exacerbate these perceived problems of subjective and inconsistent decision-making.
2. The introduction of “tools” to assess information provided by the carer and the “Treating Health Professional” (THP), was intended to make decision-making rigorous and thereby fair, in that subjective opinions and value-judgements of delegates would have no influence.
3. Clients whose Carer Allowance and/or Carer Payment claims are refused or cancelled despite their provision of a high level of care, generally feel frustrated that although Centrelink officers may agree that they really *should* be eligible for payment, legislative anomalies and issues regarding the administration of the ADAT create unintended barriers to eligibility. Often carers are forced to claim activity-tested Newstart Allowance, only to be fearful that they will be offered work that will mean they can no longer provide the care on which another person depends.
4. We have not scrutinised statistics regarding appeal rates for decisions to cancel or refuse Carer Allowance and Carer Payment, but in our experience carers whose ADAT scores are inadequate to attract payment do not appeal – convinced (sometimes with the assistance of Centrelink officers), that it would be useless to question a score arrived at by a computer on the basis of special tables. People with care responsibilities often face many hurdles negotiating the bureaucratic maze of disability and carer services and entitlements provided by local, State and Commonwealth-funded bodies. Fulfilling complex claim and appeal requirements in order to secure Social Security assistance targeted to carers, can be a further hurdle that impacts on a carer’s emotional capacity to deal with the many personal issues relating to providing personal care.
5. We understand that when a claim for Carer Allowance or Carer Payment is lodged, the claimant is issued with a THP report for completion by the caree’s

treating doctor. Upon lodgement of the THP report, the ADAT score is then calculated, and the functional assessment questionnaire is only sent to the carer if the THP report scores on the ADAT.

6. We appreciate that the policy of only having a functional assessment questionnaire completed by the applicant if there is a possibility of Carer Payment/Carer Allowance being granted is well-intentioned, in that it is designed to prevent carers going through the arduous and intrusive task of completing the claimant questionnaire to no avail. However, this practice effectively means that it is hard to identify whether persons with similar requirements in terms of level of care requirements are being rated similarly under the CDAT.
7. We also find that carers can face difficulties having the THP complete the report. We advise our clients that it is important to go through the questionnaire with the doctor if they can, but this is often not possible in practice. Many doctors generally take the form for completion later, and the carer may have no opportunity to point out, for example, that the doctor's responses to two questions are contradictory. Further, many of our clients feel daunted by the prospect of asking for medical reports and bearing the brunt of the doctor's complaints regarding Centrelink's paper-work requirements. It is understandable that many people cannot effectively point out mistakes or carelessness to a doctor in the completion of a THP report they have only completed under sufferance. This can create significant problems under the legislation as it stands (see case studies, below).
8. With regard to the claimant questionnaire itself, we have had the benefit of reading the submission of the Carers Association to the review, and endorse their comments.
9. It is our experience also that the ADAT as it stands can produce scores that inadequately reflect the care needs of people with a psychiatric disability, an intellectual disability, a personality disorder, or an acquired brain injury. ADAT scores fail to reflect the diverse care needs of people with, for example, schizophrenia, where the care extends from intensive monitoring during psychotic episodes to prevent harm, to enhancing the person's involvement in home and community life.
10. The role of carers of people with these types of disability can be complex and extremely demanding. In terms of the Claimant Questionnaire, a carer of a person with schizophrenia whose behaviour requires constant supervision, can score poorly in Division C of the Tool, if the quality of the care provided and the fact that it is provided by a particular person, is effective in managing the caree's behaviour. For example, the caree may never wander or physically harm other people because the home is set up so they cannot wander and their behaviour is monitored to the extent that risk of harm is minimised.
11. *This effect for behavioural disorders is a "catch-22". The ADAT needs to be revised such that carers of people with psychiatric, intellectual and cognitive disabilities and people with acquired brain injuries, more readily attract a score which reflects the extent of necessary care provided.*

12. A primary issue with regard to the Professional Questionnaire is the lack of transparency of the scoring. Again this issue is the most significant in respect of assessments of people with disabilities which require the carer to manage behaviour as well as meet physical needs. While the doctor may have no doubts that the caree would be in institutional care if not for the care provided by the carer, and may be convinced that the carer could not sustain an adequate level of care if working, they may have no idea on completion of the form that their answers will mean the carer will not qualify for payment. This can be due to inadequacies of the questions posed, or because the doctor is totally unaware of aspects of the care provided (for example that the caree provides help combing hair and maintaining good personal presentation, or supervises bathing because of hot water risks), so ticks the response that will produce a nil or low score.
13. Similarly, in our experience doctors may leave a question blank if none of the responses seems appropriate. While Centrelink at times contacts doctors as to why a question has been left blank, this is not always so. This is unfortunate when it may be the one missed answer that tipped the score to below the required rating, particularly given that the result will be technical hitches with back-dating (see case studies, below).
- 14. We propose that this lack of transparency merely creates unnecessary hurdles for carers who are either inappropriately refused payment because the caree's doctor has been careless, or has found the questions inappropriate to the needs imposed by the disability.*

### **Is there a need to develop new test components to cover particular types of disability?**

- 15. As proposed by the Carers Association, the ADAT should also be revised so as to better assess the needs of people with psychiatric disability, acquired brain injury, cognitive impairment or behavioural disorders.*
16. We also share the Carers Association's concerns regarding carers of people with renal failure. We have recently been contacted by several clients who provide care for people with renal failure who are undergoing haemo dialysis and peritoneal dialysis, whose carer payment has been cancelled. We understand that haemo dialysis involves three periods of dialysis a week, with the duration of each at least 5 hours per day; while peritoneal dialysis requires treatment 4 or 5 times daily.
17. In both types of treatment the carer has other care responsibilities further to supervising and assisting with the dialysis itself. It is accepted that if the carers did not provide this assistance, the patients would need hospital care.
- 18. It is apparent that the ADAT is failing to accurately assess the care needs of people on dialysis who must be assisted with the procedure, and who also have other high level care needs. It would seem that this is not the result of an intentional policy, and we propose that the Department conduct a review of*

*Carer Allowance and Carer Payment cancellations and refusal decisions so as to amend that ADAT to better reflect functional disability and care needs.*

19. Further to revising the Tables so as to better reflect the care needs of people with the conditions and disabilities discussed above, ***we propose that there is a need to provide for a discretion to grant Carer Allowance and Carer Payment where the ADAT score is inadequate (or zero).*** As the situation now stands, even if Centrelink and DFACS policy experts are convinced that a person's ADAT score is only inadequate due to a flaw in the Tables or due to the failure of the questionnaires to identify care needs and functional impairment associated with a particular condition, the decision to reject the claim for Carer Payment or Carer Allowance must stand. This can mean that the only income support option for a carer is activity tested Newstart Allowance.

**What changes, including changes to the forms and questionnaires, might improve the efficiency of the tool?**

20. ***We endorse the Carers Association's comments and recommendations, and also recommend that consideration be given to amending the legislation such that a person in receipt of Carer Payment automatically attracts Carer Allowance.***
21. ***Further, it is essential that issues which have come to light in appeals against Carer Allowance and Carer Payment refusals, of which DFACS is aware, are resolved as a matter of priority.*** These issues are highlighted in the following case studies – most of which have involved appeals to the AAT. It is important to note that pursuing such appeals can require a great deal of persistence on the part of these carers, as they are generally simultaneously attempting to negotiate the maze of Commonwealth and State-funded services available for carers, including respite. The clients for whom we have successfully advocated at the Social Security Appeals Tribunal, are dismayed by DFACS appeals on the grounds of a legal technicality regrading jurisdictional issues when there is clearly a general consensus that the person should attract the payment.

**Case study 1 – Anna**

22. Anna applied for Carer Allowance in respect of her husband, John. Anna's treating doctor, Dr Michael completed a the professional questionnaire, which produced an ADAT score of 11. The claimant questionnaire produced a rating of 18.5, giving a total rating of 29.5. The claim was therefore rejected.
23. Anna reapplied for Carer Allowance a few months later and payment was granted, on the basis of a 2<sup>nd</sup> professional questionnaire completed by Dr Michael.
24. During the period between the two claims, John's condition had in no way deteriorated; his care needs had not increased; and the care provided by Anna had not changed. Anna therefore sought arrears of Carer Allowance back to the date the first Carer Allowance claim was lodged. Arrears were refused by the original

decision-maker and the ARO, who determined that the ADAT could not be applied on the second professional questionnaire in respect of the first claim.

25. The Social Security Appeals Tribunal noted clear errors in the first form completed by Dr Michael, and sought his clarification. On the basis of evidence from Dr Michael, the Social Security Appeals Tribunal determined that the Health Professional Assessment Rating should have been 12, and allowed the appeal.
26. DFACS appealed to the AAT, arguing that 2.2(3) of the ADAT provides that if the Secretary is not satisfied that a professional questionnaire is an accurate reflection of the person's disability, etc, the secretary must ask for a *replacement* questionnaire to be completed by *another* health professional.

*Issues:*

- This interpretation prevents a doctor from correcting errors in the completion of a questionnaire. Although John had been treated by a number of doctors, only Dr Michael had an overall knowledge of John's functional impairment as a result of his disability.
- This matter was eventually resolved by sending John to an HSA doctor who completed a new professional questionnaire, which produced an ADAT qualifying Anna for Carer Allowance. Whilst we accept that this was a practical resolution in terms of enabling payment to be made in respect of the first claim, and it is clear from the ADAT Determination instrument that the professional questionnaire can be completed by any doctor, not just the person's *treating* doctor, this avenue for resolving a case is not open to most claimants whose initial claims have been refused on the basis of a professional questionnaire that is inaccurate in some way. This is inequitable, especially for people who accept the refusal of a first claim and neither appeal nor re-lodge, and is cumbersome administratively.
- The completion of the professional questionnaire by the HSA doctor is also problematic in that Carer Payment and Carer Allowance applicants are informed by on the Centrelink forms (quite reasonably) that the THP report must be completed by the *treating* doctor of the person they care for. Although the solution of bringing in a HSA doctor is a reasonable resolution of Anna's case, it is not a solution which makes policy sense in terms of basing decisions on the evidence of the doctor who has treated the person and is best placed to understand the limitations imposed by their disability or condition.

**Case study 2 – Bob**

27. Bob is an elderly Age Pensioner who lives with and cares for an elderly friend, Eunice, who would be confined to a nursing home if not for his care. Bob was refused Carer Allowance because he did not score sufficiently when the ADAT was applied. Both Bob and Eunice are of limited means.
28. Bob appealed to the Social Security Appeals Tribunal which scrutinised the Treating Health Professional's questionnaire completed by Eunice's treating doctor. The Tribunal found that the Doctor had made errors in completing the form, and that some of his answers contradicted each other. The Tribunal, of

which one member was a doctor, Dr Max, closely examined all the evidence, interviewed Bob, and arrived at a new ADAT score which qualified Bob for Carer Allowance.

29. In the meantime, Bob also lodged a further Carer Allowance claim, with a new report from the same Dr which had been more carefully completed. Carer allowance was granted on that claim.
30. The Department appealed against the Social Security Appeals Tribunal's decision arguing that the Social Security Appeals Tribunal does not have jurisdiction to alter an ADAT score.
31. We proposed that as Dr Max is a qualified medical practitioner, he can thereby make an assessment in terms of the professional questionnaire. Centrelink disputed this on the grounds that when Dr Max is on the Tribunal, he stands together with the other members in the shoes of the Secretary. To act simultaneously as the Secretary and the treating health professional would be a conflict of interest; the Social Security Appeals Tribunal's decision was thereby *ultra vires*.
32. Whether or not the the Social Security Appeals Tribunal's decision was *ultra vires*, we believe that in view of the recent decision that the Bob qualified for Carer Allowance in respect of the a second claim and the second report by the same doctor, the refusal decision should now be reviewed again – by simply reapplying the ADAT in respect of the second questionnaire completed by Eunice's treating doctor. We consider that there is no bar to the Secretary now applying the ADAT for Bob's first Carer Allowance claim in respect of the second report provided by Eunice's doctor. Had Eunice's doctor contacted Centrelink before the application of the ADAT to advise that he had made a mistake and wanted to redo the questionnaire, his request would certainly have been agreed to. Reapplying the ADAT for the first claim in respect of the preferable report would have represented a reasonable resolution of this matter that would in no way contravene the purpose of the Act.
33. Part 2.2(3) of the Secretary's Determination states that if the Secretary is not satisfied that the professional questionnaire is an accurate reflection of the person's disability and care needs, the Secretary must ask for a replacement professional questionnaire to be completed by *another* treating health professional
34. Centrelink then suggested that Bob take Eunice to another doctor for another professional questionnaire on which the first Carer Allowance claim could be reviewed. He took Eunice to the doctor, but the doctor refused to complete it, noting that he does not normally treat Eunice and the form itself states that it must be completed by the person's "treating" doctor.
35. The issue of backpay to the date of the first claim is still under appeal.

*Issues:*

- Bob is an elderly man caring for an elderly friend in order that she is not forced to enter nursing home care. He feels that he is being forced to jump hoops and is

puzzled by our attempts to explain to him the technical obstacles to backpaying his Carer Allowance, when the level of care he provides is the same now as when he lodged the first claim.

- Like case study 1, there is no dispute that the first professional questionnaire provided by Bob failed to accurately reflect Eunice’s disability and her care needs.
- It would seem that 2.2(3) of the Secretary’s Instrument was intended to address situations where the professional questionnaire appears to *over*-state the impact of disability or *over*-state a person’s care needs, by providing for a second opinion to be obtained. ***We propose that there is an urgent need for the Secretary make a further Determination which would better address situations like Anna’s and Bob’s, where these factors appear to have been under-stated.***

### **Case study 3 – Stefan**

36. Stefan has received Carer Payment/Pension for five years, in respect of his wife Gabriela who has schizophrenia. Gabriela’ condition is severe and she requires Stefan’s constant care and monitoring of her behaviour, without which she would require permanent institutional care.
37. Centrelink at no time disputed Stefan’s eligibility for Carer Pension/Payment for five years. Despite this Stefan was not advised of the existence of Carer Allowance (or DCNB) and he therefore did not apply for payment or make inquiries about it.
38. Stefan was finally advised of the existence of Carer Allowance by the Carers Association. He was advised to claim and to seek backpay.
39. Stefan was granted Carer Allowance but he was denied backpayment, on the grounds that 26 weeks arrears could only be paid if he were caring for someone whose disability had an “acute onset”.
40. Stefan is now appealing the decision to refuse arrears.

#### *Issues:*

- The rationale for this arrears limitation is difficult to understand, particularly when arrears policies in place for CDA made no such distinction between disabilities arising from an “acute onset” and those arising from a chronic condition. CDA arrears policy quite appropriately recognised that people caring for a child with a chronic condition are often not in a position to seek advice as to allowances payable by the Commonwealth.
- The Carer Allowance arrears policy discriminates, for no apparent reason, against carers of people with conditions that do not have an acute onset. Carers of people with a psychiatric disability or an acquired brain injury are unfairly disadvantaged. Issues faced by carers, families and friends of people with schizophrenia are complex – particularly given the distressing behavioural symptoms and its episodic nature, and that the condition may either not be diagnosed for some time. Many families fail to seek help when faced with bizarre behaviour of a person

with undiagnosed schizophrenia. Our experience is that even if inquiries are made of Centrelink specifically regarding Carer Allowance, many front-line staff do not appreciate that Carer Allowance can be payable in respect of people with psychiatric conditions whose care needs relate to behavioural issues.

- *We propose that the Act be amended such that all recipients of Carer Payment who are granted Carer Allowance, have arrears paid to the date of grant of Carer Payment.* This would not only allow for the payment of arrears to people who failed to claim earlier due to ignorance or incorrect advice, but would also resolve technical problems associated with the need for a different doctor to provide a report for a review of a decision based on an inadequate ADAT score for the professional questionnaire.
- *For the same reasons we propose that arrears of up to twelve months be available to people granted Carer Allowance who are not entitled to carer Payment, on the basis of evidence that Carer Allowance would have been payable at an earlier date had a claim been lodged.*

## **General suggestions for improvement**

We endorse the Carers Association's recommendations.

Further, for the reasons outlined above, we recommend that:

- claimants for Carer Payment and Carer Allowance be offered the option of completing the carer questionnaire at claim rather than awaiting the outcome of the THP report scoring;
- the legislation be amended so as to introduce a discretion to determine that a person with an inadequate or zero ADAT score qualifies for Carer Payment and/or Carer Allowance;
- the legislation be amended so as to introduce a discretion to pay arrears of Carer Allowance of up to twelve months;
- the ADAT be revised such that carers of people with psychiatric, intellectual and cognitive disabilities and people with acquired brain injuries, more readily attract a score which reflects the extent of necessary care provided;
- the score ratings of answers on the professional questionnaire be made transparent so that the treating health professional's responses more meaningfully reflect the caree's disability and the extent of their care needs; and
- that the legislation be amended such that a person in receipt of Carer Payment automatically attracts Carer Allowance.

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**National Welfare Rights Network**

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