[2013] AATA 872

|  |  |
| --- | --- |
| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number | 2013/2824 |
| Re |  |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |

# Decision

|  |  |
| --- | --- |
| Tribunal | **Senior Member Bernard J McCabe** |
| Date | **7 November 2013** |
| Date of written reasons | **6 December 2013** |
| Place | **Brisbane** |

The decision under review is affirmed.

........................................................................

**Senior Member Bernard J McCabe**

# Catchwords

SOCIAL SECURITY – Pensions, benefits and allowances – Disability support pension – Number of impairment points – Participation in a Program of Support – Decision under review affirmed

# Legislation

Social Security Act 1991 (Cth) s 94

# REASONS FOR DECISION

**Senior Member Bernard J McCabe**

**6 December 2013**

1. Mr Crawford applied for disability support pension (“DSP”) in May 2012.   
   His application was refused. I decided to affirm the decision under review after a hearing in the matter. I gave oral reasons for that decision. The written reasons which follow are distilled from the transcript for that hearing.
2. In order to be eligible for DSP Mr Crawford must satisfy a number of criteria.   
   These criteria are outlined in s 94 of the *Social Security Act 1991* (Cth) (“the Act”). Given the application was made on 10 May 2012, Mr Crawford claim must be assessed on that day and the following 13 week period to determine his eligibility (“the assessment period”).
3. The first criterion is that Mr Crawford must have an impairment. The evidence suggests Mr Crawford suffers from a number of impairments. These impairments include a lower limb condition, a spine condition, depression and anxiety, and abdominal pain.
4. The second requirement is an award of at least 20 points on the Impairment Tables.   
   This can only be done if a condition has been fully diagnosed, treated and stabilised.   
   The most serious of Mr Crawford’s conditions is the abdominal pain, which quite clearly has not been diagnosed, let alone fully treated and stabilised. In the absence of an award of points for the abdominal pain there is no evidence that any of Mr Crawford’s other conditions would attract 20 points under one Impairment Table. If I were to assume   
   Mr Crawford’s other impairments would attract 20 points under different Impairment Tables, when combined, he would still be subject to the third criterion.
5. The third criterion requires Mr Crawford to have had a continuing inability to work during the assessment period. He has been assessed to have, over a period of time and with appropriate support, an ability to work 15 to 22 hours per week. Even if it were determined Mr Crawford could not work more than 15 hours per week, there is still the requirement that he must have undertaken a Program of Support over 18 months within the three years prior to the date of his DSP claim. As Mr Crawford does not have   
   20 points under one Impairment Tables he is not exempt from this requirement.
6. Sadly it would seem Mr Crawford has only very recently become aware of the requirement to participate in a Program of Support. Therefore, he has not engaged in a Program of Support and consequently fails to satisfy the third criterion for DSP.

# Conclusion

1. Mr Crawford does not have an impairment that has been fully diagnosed, treated and stabilised, and which attracts 20 points under one Impairment Table. So, he must have a continuing inability to work, which requires the participation in a Program of Support. Mr Crawford has not participated in such a program. The decision under review is affirmed.

|  |
| --- |
| I certify that the preceding 7 (seven) paragraphs are a true copy of the reasons for the decision herein of Senior Member Bernard J McCabe |

........................................................................

Dated

|  |  |
| --- | --- |
| Date of hearing | **7 November 2013** |
| Applicant | **In person** |
| Solicitor for the Respondent | **Mr Ashley Burgess** |