[2015] AATA 193

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| Division | **GENERAL ADMINISTRATIVE DIVISION** |
| File Number(s) | 2014/5017 |
| Re |  |
|  | APPLICANT |
| And |  |
|  | RESPONDENT |

# Decision

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| Tribunal | **Senior Member J F Toohey** |
| Date | **31 March 2015**  |
| Place | **Sydney** |

The Tribunal affirms the decision under review.

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**Senior Member J F Toohey**

***CATCHWORDS*** *– social security – disability support pension – diabetes – inguinal hernia – right lower limb – back pain – nasal condition – left hand – depression and anxiety – anal bleeding – whether conditions fully diagnosed treated and stabilised during claim period – decision under review affirmed*

**Legislation**

Social Security Act 1991 s 94

Social Security Administration Act 1999 s 42 and Sch 2

Criminal Code Act 1995 (Cth) s 145.1(1)

**Cases**

Hasan and Secretary, Department of Social Services [2015] AATA 31

**Secondary Materials**

Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011

# REASONS FOR DECISION

**Senior Member J F Toohey**

**Background**

1. On 21 June 2012, Mr Mohammad Hasan applied for disability support pension (DSP). Centrelink decided he did not qualify for the payment. On 17 September 2014, the Social Security Appeals Tribunal (SSAT) affirmed that decision. Mr Hasan seeks review of the SSAT’s decision.

**The legislation**

1. The legislation concerning DSP is in the *Social Security Act* 1991 (the Act). Section 94 provides that, to qualify for DSP, a person must have:
	* 1. a physical, intellectual or psychiatric impairment, or impairments, which are rated 20 or more points according to the Impairment Tables in the Act; and
		2. a *continuing inability to work* as defined by the Act.
2. Mr Hasan had to satisfy these criteria on 21 June 2012 when he applied for DSP, or within the following 13 weeks, that is by 20 September 2012: s 42 and Sch 2 of the *Social Security Administration Act* 1999. I will call this *the claim period*.

**The Impairment Tables**

1. The Impairment Tables are found in the *Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2011.* They comprise 15 Tables by which the functional impact of impairment is rated as nil, mild, moderate, severe or extreme, corresponding to zero, five, ten, twenty and thirty points. Ratings are assigned according to descriptors in each Table.
2. A rating can only be given to an impairment if the condition causing it is permanent: cl 6(3)(a). *Permanent* means that a condition is *fully diagnosed* by an appropriately qualified medical practitioner, and has been *fully treated* and *fully stabilised*, and it is more likely than not to persist for more than two years: cl 6(4).
3. When deciding whether a condition has been *fully diagnosed and fully treated*, the following must be considered: whether there is corroborating evidence of the condition; what treatment or rehabilitation the person has had for the condition; and whether treatment is continuing or is planned in the next two years: cl 6(5).
4. *Fully stabilised* means either:
	1. the person has undertaken reasonable treatment for the condition and any further reasonable treatment is unlikely to result in significant functional improvement to a level enabling the person to undertake work in the next two years; or
	2. the person has not undertaken reasonable treatment for the condition and:

(i) significant functional improvement to a level enabling the person to undertake work in the next two years is not expected to result, even if the person undertakes reasonable treatment; or

(ii) there is a medical or other compelling reason for the person not to undertake reasonable treatment.

**Documents submitted by Mr Hasan in support of his claim**

1. In his claim for DSP, Mr Hasan described his disabilities, illnesses or injuries as:

 *Right leg injuried heavily can not walk, give weight, sit*

1. In support of his claim, Mr Hasan submitted two medical reports purporting to be from Dr Ahmed Elarif, of Holden Street Medical Centre, Lakemba, dated 14 June 2012. The first described Mr Hasan’s conditions as:

 *Loss memory, can not bear weight, crazy often*

1. The first report described Mr Hasan’s inability to bear weight as “due to diabetes” and the treatment for his condition as “diaben”, and for his “loss memory crazy” as “counselling”.
2. The second report described Mr Hasan’s conditions as:

*knee x-ray, ultrasound, right knee [indecipherable] pain due to diabetes*

1. Dr Elarif has provided a written statement dated 24 May 2013 in which he states that Mr Hasan was his patient between 19 July 2012 and 31 July 2012 during which time he saw him “on a number of occasions” and treated him for “gastro-oesophageal reflux, gastroenteritis, allergies, dermatitis, skin tags, acne and musculoskeletal issues”.
2. Dr Elarif states he did not complete either of the reports dated 14 June 2012 submitted by Mr Hasan. He says he can state “categorically” that neither signature was completed by his hand and the stamp on each document that purports to be of his practice does not resemble a stamp that he uses as part of his duties and nor does it resemble the stamp used by reception staff.
3. Dr Elarif was not called to affirm his statement. However, at a hearing on 14 January 2015 concerning Mr Hasan’s claim for carer payment and carer allowance for his son, Dr Elarif provided a statement in similar terms in respect of documents submitted by Mr Hasan in that matter. Dr Elarif gave oral evidence affirming the contents of his written statement (see *Hasan and Secretary, Department of Social Services* [2015] AATA 31 at [25]).
4. It was put to Mr Hasan at the hearing that Dr Elarif’s reports were not genuine. He stated he would not rely on them and declined to say anything further about them.
5. I am satisfied on the basis of Dr Elarif’s written statement that its contents are true and that neither document submitted by Mr Hasan is genuine. I find that both have been fabricated.
6. Mr Hasan also submitted the following documents in support of his claim for DSP:

(i) a report dated 21 October 2013 from Medical Imaging Bankstown of x-rays and ultrasound investigations of his left hip and left foot;

(ii) a report dated 23 October 2013 from Medical Imaging Bankstown of a CT scan of his left hip;

* + 1. a referral dated 5 November 2013 from Dr Hosni Ayyas, general practitioner, to Dr George Kourtesis, seeking his opinion on his “left indirect inguinal hernia”;
		2. a certificate dated 18 November 2013 from Dr Ayyas certifying him unfit for work or study from 18 November 2013 to 3 January 2014 by reason of “left inguinal hernia” and “left knee ligament tear”;
		3. a certificate dated 29 December 2013 from Dr Elsadig Mohammed certifying him unfit for work or study from 29 December 2013 to 10 January 2014 by reason of “inguinal hernia” and “diabetes”;
		4. a certificate dated 3 January 2104 from Dr Ayyas certifying him unfit for work or study from 3 January 2014 to 3 March 2014 by reason of “left inguinal hernia” and “left knee ligament tear”;
		5. a certificate dated 18 February 2014 from Dr Naim Islam certifying him unfit for work or study from 18 February 2014 to 19 May 2014 by reason of “left sided inguinal hernia”, “nasal polyp” and “back pain with radiation to leg”;
		6. a certificate dated 5 April 2014 from Dr Ayyas certifying him unfit for work or study from 5 April 2014 to 5 July 2014 by reason of “left inguinal hernia” and “left ligament tear”;
		7. a report dated 21 May 2014 from Medical Imaging Bankstown of x-rays, ultrasound investigations and CT scans of his left hand, left knee, lumbosacral spine and left ring finger;
		8. a certificate dated 12 June 2014 from Dr Mohammed certifying him unfit for work or study from 12 June 2014 to 12 September 2014 by reason of “left sided inguinal hernia” and “nasal polyp” and “chronic back pain”;
		9. a report dated 4 June 2014 on a Centrelink form from Dr Ayyas which describes his conditions as “Low back disc disease causing severe back pain and limited mobility”;
		10. a report dated 20 June 2014 from Medical Imaging Bankstown of a right groin ultrasound;
		11. a report dated 21 June 2014 from Medical Imaging Bankstown of an x-ray and an ultrasound of his right hip;
		12. a report dated 27 June 2014 from Christine Gilto, registered psychologist, stating she had been counselling Mr Hasan for depression and anxiety “for the past several months”;
		13. a report dated 29 September 2014 from Ms Gilto stating Mr Hasan’s symptoms were consistent with Major Depressive Disorder and Generalised Anxiety Disorder;
		14. a prescription by Dr Mohammed on 23 October 2014 for Lantus Solostar pen and a report certifying a diagnosis of type 1 diabetes.

**Were Mr Hasan’s conditions fully diagnosed treated and stabilised during the claim period?**

1. Mr Hasan gave oral evidence before the Tribunal. As the decision in his earlier matter (*Hasan and Secretary, Department of Social Services* [2015] AATA 31) shows at [30]-[31], he was convicted in the Downing Centre Local Court on 4 November 2014 of six counts of using a forged document with the intention that it be accepted as genuine by a Commonwealth official, contrary to s 145.1(1) of the *Criminal Code* *Act* 1995 (Cth). Mr Hasan pleaded guilty to all charges and was fined and placed on good behaviour bonds. He conceded at the earlier hearing that four of the charges concerned reports from doctors, including Dr Elarif, which he submitted in connection with his claim for carer payment and carer allowance for his son.
2. Mr Hasan was formally cautioned that investigations were continuing into matters concerning his claims for social security payment and that evidence given before the Tribunal might be used in connection with those investigations. Mr Hasan declined to answer a number of questions about documents submitted in support of his claim for DSP. Several times he declined to answer questions until evidence of the “mental stability” of counsel for the respondent was produced to him. His request was refused.
3. Asked what medical conditions he suffers from, Mr Hasan said he has diabetes, he cannot use his left hand at all, he has heavy pain in his back, his nose becomes blocked, and he has “bleeding from the stool area”. I will deal with these in turn and with the other conditions mentioned in the various reports.

***Diabetes***

1. Mr Hasan claims he was diagnosed with type I diabetes in 2006. I accept that is true. I accept he relies on self-administered insulin injections.
2. The only documents which indicate any impairment as a result of Mr Hasan’s diabetes are those purporting to be from Dr Elarif which state he has right knee pain and cannot bear weight on that knee due to diabetes. For the reasons set out above, I do not accept those documents are genuine.
3. Mr Hasan has not suggested he suffers any other impairment on account of his diabetes. Assuming this condition is fully diagnosed treated and stabilised, there is no evidence to support a finding that it impairs his functioning in any way. It follows that it would attract a rating of nil.

***Left hand***

1. Mr Hasan gave evidence that he cannot use his left hand at all. He then said he can only use it with a “light grip”. He said the problems started when he lifted a heavy pot while working as a kitchen hand. He is normally left-handed and tries to use his right hand for activities such as writing and feeding the children.
2. The x-ray of Mr Hasan’s left hand on 21 May 2014 showed “no significant abnormality”.
3. Even if I accept Mr Hasan’s claim that he is restricted in the use of his left hand, there is no evidence to support a finding that it was fully diagnosed, treated and stabilised during the claim period. It follows that it cannot be given an impairment rating.

***Back pain***

1. Mr Hasan gave evidence that he has suffered from “heavy pain” in his lower back for three to four years since lifting heavy pots while working as a kitchen hand from 2000 to 2004.
2. Dr Islam’s certificate of 18 February 2014 refers to Mr Hasan having “back pain with radiation to leg”. He describes Mr Hasan’s symptoms as “severe back pain with pain in lower legs. Can’t sit for ling (sic) and unable to bend forward from back pain”. He describes the prognosis as “uncertain”.
3. The x-ray of Mr Hasan’s lumbosacral spine (and other parts) on 21 May 2014 found “no significant abnormality”.
4. Dr Mohammed’s certificate of 12 June 2014 refers to “chronic back pain” and the prognosis as “uncertain”. According to Dr Ayyas’ report of 4 June 2014, Mr Hasan’s low back disc disease had its onset on 2 January 2013 and was diagnosed on 10 February 2013. Dr Ayyas records that it is due to a fall in childhood and osteoarthritis, current and proposed treatment is Panadol Osteo, Mobic and physiotherapy, and the condition affects Mr Hasan’s ability to “sit/stand/move” and his communication.
5. There appeared to be inconsistencies in the reports as to the cause of Mr Hasan’s back pain. It is clear from these reports, however, that its earliest date of diagnosis was 10 February 2013 and that it was still being investigated on 21 May 2014. I find this condition was not fully diagnosed, treated and stabilised during the claim period. It follows that it cannot be given an impairment rating.

***Nose condition***

1. Dr Islam’s certificate of 18 February 2014 states that Mr Hasan was to undergo an operation for a nasal polyp on 18 March 2014. Dr Mohammed’s certificate of 12 June 2014 also refers to him having a nasal polyp. Dr Mohammed states the condition is temporary and “likely to show considerable improvement within two years”
2. Mr Hasan gave evidence that he underwent plastic surgery for a blocked nose on 5 January 2015. He said it has “almost fixed the problem”.
3. I find this condition was not fully diagnosed, and treated during the claim period. It follows that it cannot be given an impairment rating.

***Anal bleeding***

1. Mr Hasan gave evidence that he has had “bleeding from the stool area” since he was a student. He controls it with “a powerful medicine” that he gets from Bangladesh.
2. It is not clear that this condition was fully diagnosed during the claim period but, even allowing that it was, and even allowing that it was also fully treated and stabilised, Mr Hasan’s evidence is that it is controlled with medication. He does not suggest that it affects his ability to function in any way. In those circumstances, it cannot attract more than a rating of nil.

***Inguinal hernia***

1. I accept that Mr Hasan suffers from a left inguinal hernia. However, the information before me does not support a finding that it was fully diagnosed, treated and stabilised during the claim period.
2. Dr Ayyas referred Mr Hasan to Dr Kourtesis on 5 November 2013, well after the claim period, “for opinion and management”. Mr Hasan gave evidence, which I accept, that he is waiting for surgery for his hernia. He said he was due to undergo surgery at the end of March 2015 but it has been rescheduled, probably for April 2015.
3. I find this condition was not fully diagnosed, treated and stabilised during the claim period. It follows that it cannot be given an impairment rating.

***Major Depression and Generalised Anxiety Disorder***

1. Dr Ayyas’ report of 4 June 2014 refers to Mr Hasan having anxiety and severe depression “caused by difficult life situation”. Dr Ayyas states the condition had its onset on 1 February 2013 and was diagnosed on 2 March 2013. He describes treatment as psychotherapy and Cipramil 20 mg.
2. Mr Hasan gave evidence before the Tribunal that he first saw Ms Gilto in early 2014. She was the first person he saw in connection with his depression and anxiety.
3. The introduction to Table 5 (Mental Health Function) in the Impairment Tables states that, in order for a mental health condition to be considered fully diagnosed:

*the diagnosis of the condition must be made by an appropriately qualified medical practitioner (this includes a psychiatrist) with evidence from a clinical psychologist (if the diagnosis has not been made by a psychiatrist).*

1. Ms Gilto’s letterhead shows she is a registered psychologist. Even if she were a psychiatrist or clinical psychologist, her diagnosis was not made, and Mr Hasan did not commence treatment for this condition, until early 2014, well after the claim period.
2. It follows that this condition was not fully diagnosed, treated and stabilised during the claim period and cannot be given an impairment rating.

***Left knee***

1. Dr Ayyas’ certificate dated 18 November 2013 refers to Mr Hasan having “left knee ligament tear” and symptoms of “left knee pain, limited mobility”. Dr Ayyas described the condition as “temporal” by which it appears he means temporary. He stated that Mr Hasan had been referred to a general surgeon and was awaiting surgery; his prognosis was “uncertain”.
2. It is not clear when this condition was diagnosed but, even allowing that it was fully diagnosed during the claim period, it was not fully treated and stabilised. It follows that it cannot be given an impairment rating.

***Left hip and foot***

1. It is not clear from the report dated 21 October 2013 why Dr Ayyas referred Mr Hasan for x-ray and ultrasound of his left hip and left foot. Nor is it clear why a CT scan of his left hip was performed on 23 October 2013. However, neither report appears to show any significant abnormality. Even if it did, the investigations were undertaken well after the claim period.
2. I am not satisfied this condition was fully diagnosed, treated and stabilised during the claim period. It follows that it cannot be given an impairment rating.

***Right hip, leg and knee***

1. The reports purporting to be from Dr Elarif refer to right knee pain due to diabetes. I have dealt with those reports already. The only other document referring to a problem with Mr Hasan’s right knee or leg is his claim form in which he states that his right leg is injured “heavily” and he cannot walk, sit, or put any weight on his right leg.
2. Nothing in Mr Hasan’s appearance on the three days when he attended the Tribunal for hearings suggested he was having any difficulty walking. There is no independent medical evidence to support a finding that he has any impairment of his right leg or knee.
3. Dr Ayyas’ report of 14 June 2014 refers to Mr Hasan having “bilateral inguinal hernia.” It appears that Dr Ayyas sought further investigation. Mr Hasan had a CT scan of his right groin on 20 June 2014. The report of that investigation shows:

*[N]o evidence of an inguinal or femoral hernia. No inguinal lymphadenopathy. No evidence of a hip joint effusion. No other finding of note.*

1. The report of an x-ray of Mr Hasan’s right hip on 21 June 2014 commented:

*Greater trochanteric bursitis. The patient may benefit from a CT guided steroid injection.*

1. I accept that, in June 2014, there was evidence of bursitis in Mr Hasan’s right hip. However, I am not satisfied it was fully diagnosed, treated and stabilised during the claim period. I am not satisfied that any other condition that Mr Hasan suffers in his right leg or knee was fully diagnosed, treated and stabilised during the claim period. It follows that any condition affecting his right hip, leg or knee cannot be given an impairment rating.

**Conclusion**

1. I am not satisfied that Mr Hasan had an impairment, or impairments, rating 20 points or more on the Impairment Tables during the claim period. It follows that his claim cannot succeed. In these circumstances, it is not necessary to consider whether he also had a continuing inability to work.
2. I affirm the decision under review.

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| 1. I certify that the preceding 55 (fifty-five) paragraphs are a true copy of the reasons for the decision herein of Senior Member J F Toohey.
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Associate

Dated 31 March 2015

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| Date(s) of hearing | **17 March 2015** |
| Representatives for the Applicant | **Self-represented** |
| Representatives for the Respondent | **Dr Stephen Thompson, Solicitor** |