



Social Security (Requirements and Guidelines – Active Participation for Disability Support Pension) Determination 2011

Social Security Act 1991

I, JENNY MACKLIN, Minister for Families, Housing, Community Services and Indigenous Affairs, make this Determination under subsections 94(3C) and 94(3E) of the *Social Security Act 1991*.

Dated 23rd August 2011

J Macklin

Jenny Macklin

Minister for Families, Housing, Community Services and Indigenous Affairs

Part 1 Preliminary

1. Name of Determination

This Determination is the *Social Security (Requirements and Guidelines – Active Participation for Disability Support Pension) Determination 2011*.

2. Commencement

This Determination commences immediately after the commencement of Schedule 3 to the *Family Assistance and Other Legislation Amendment Act 2011*.

3. Interpretation

In this Determination:

Act means the *Social Security Act 1991*.

designated provider means any of the following:

- (a) a Job Services Australia provider;
- (b) a Disability Employment Service;
- (c) an Australian Disability Enterprise;
- (d) a provider authorised by a State or Territory government to conduct a transition to work program;
- (e) a provider authorised by the relevant workers' compensation authority of the Commonwealth, or of a State or Territory, as a result of a claim made under the relevant legislation of the Commonwealth, State or Territory;
- (f) a provider authorised by an insurer as a result of a claim under a contract of insurance for an accident (including a motor vehicle accident), sickness or other trauma;
- (g) a provider that provides a program that satisfies paragraph (a) and subparagraph (b)(ii) of the definition of *program of support* in subsection 94(5) of the Act.

relevant date of claim, in relation to a person and his or her claim for disability support pension, means the date on which the claim is made or is taken to have been made by the person.

4. Requirements and guidelines

- (1) Part 2 specifies requirements for the purposes of subsection 94(3C) of the Act.

Note: Subsection 94(3C) of the Act provides that a person has actively participated in a program of support if the person has satisfied the requirements specified in a legislative instrument made by the Minister for the purposes of subsection 94(3C).

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- (2) Part 3 sets out guidelines that the Secretary must comply with in deciding whether he or she is satisfied that, in a case where a person's impairment is not a severe impairment, the person has actively participated in a program of support within the meaning of subsection 94(3C) of the Act.

Part 2

Requirements for active participation

5. Requirements for active participation

- (1) A person has actively participated in a program of support if:
 - (a) the person has:
 - (i) complied with the requirements of the program of support; and
 - (ii) participated in a program of support during the 36 months ending immediately before the relevant date of claim; and
 - (b) subsection (2), (3), (4) or (5) is satisfied in relation to the person and the program of support; and
 - (c) subsection (6) is satisfied in relation to the person and the program of support.
- (2) This subsection is satisfied in relation to a person and a program of support if the person participated in the program of support for at least 18 months.
- (3) This subsection is satisfied in relation to a person and a program of support if:
 - (a) the duration of the program of support was less than 18 months; and
 - (b) the person completed the program.
- (4) This subsection is satisfied in relation to a person and a program of support if:
 - (a) the program of support was terminated before the relevant date of claim; and
 - (b) the program of support was terminated because the person was unable, solely because of his or her impairment, to improve his or her capacity to find, gain or remain in employment through continued participation in the program.
- (5) This subsection is satisfied in relation to a person and a program of support if:
 - (a) at the relevant date of claim, the person is participating in the program of support; and
 - (b) the person is prevented, solely because of his or her impairment, from improving his or her capacity to find, gain or remain in employment through continued participation in the program.
- (6) This subsection is satisfied in relation to a person and a program of support if the person provides the Secretary with the following in relation to the program of support:
 - (a) the details of the designated provider of the program;
 - (b) the dates when the person began the program and, if applicable, ceased the program;
 - (c) the reason for ceasing the program (if any);
 - (d) any period of non-participation in the program including exemptions, reliefs, or suspensions from the program;
 - (e) the reason for any period of non-participation in the program;

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- (f) the terms of the program that were specifically tailored to address the person's level of impairment, individual needs, barriers to employment and capacity to work;
 - (g) the terms with which the person had to comply in order to satisfy the program requirements and the level of compliance with those terms;
 - (h) the vocational, rehabilitation or employment activities the person participated in as a part of the program;
 - (i) the frequency of contact that the person had with the designated provider of the program.

Part 3 Guidelines

6. Program of support

In deciding whether the Secretary is satisfied that a person has actively participated in a program of support for the purposes of paragraph 94(2)(aa) of the Act, the Secretary must consider whether the program of support:

- (a) was provided by a designated provider; and
- (b) was specifically tailored to address the person's level of impairment, individual needs and barriers to employment; and
- (c) provided vocational, rehabilitation or employment services with a particular focus on developing skills the person requires to improve the person's capacity to find, gain or remain in employment (including self-employment); and
- (d) includes at least *one* of the following activities;
 - (i) job search;
 - (ii) job preparation;
 - (iii) education and training;
 - (iv) work experience;
 - (v) employment;
 - (vi) return to work;
 - (vii) vocational or occupational rehabilitation;
 - (viii) injury management;
 - (ix) an activity designed to assist the person to return to, maintain or obtain employment.

7. Material to be taken into account

In deciding whether the Secretary is satisfied that a person has actively participated in a program of support for the purposes of paragraph 94(2)(aa) of the Act, the Secretary may take into account any material or document that:

- (a) relates to the person's participation in a program of support; and
- (b) relates to a program of support undertaken in the 36 months prior to the relevant date of claim.