

UNDUE FINANCIAL HARDSHIP GUIDELINES

Department of Human Services
Disability Services Division

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Disability Services Division has developed these guidelines to support a more systematic and consistent approach by Disability Services Organisations to the consideration of undue financial hardship that may be experienced by some service recipients in the payment of fees.

It is acknowledged that organisations have fee policies for certain services. Organisations are encouraged to consider these guidelines and adapt fee policies as necessary to ensure consistency with these guidelines to make provision for the consideration of undue financial hardship.

By their nature, cases of undue financial hardship need to be considered on a case-by-case basis within an overarching and consistent, clear and known decision making framework.

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Introduction

Fees are payable for certain disability services activities, including:

- Residential care within shared supported accommodation and residential institutions
- Facility-based respite and
- Day programs

The setting of fees recognises the need for individuals to contribute to some of the cost of the activities.

Given the different activities, fee structures may vary. Fees are set cognizant of the cost of provision incurred and the target group to whom services are provided. It is acknowledged that most recipients of disability services receive a Commonwealth Disability Support Pension (DSP). The receipt of a pension does not by itself constitute the existence of financial hardship in making a case not to pay fees for disability services.

Organisations are accountable for the fees charged. Under Section 89 and section 57 of the *Disability Act 2006* services are obliged to clearly document and explain their fee policy. Organisations therefore should supply information to service recipients on the fee policy that applies to services including the amount to be charged, the scope and basis of the fee and the process for fee payment and adjustment. Policies should be available in Easy English and other formats reflecting the need to effectively communicate to the service recipient their administrator or nominated representative.

In the application of fees, circumstances may arise where the service recipient their administrator or nominated representative indicates that they are unable to pay fees or charges. Within an organisation's fee's policy, provision may be made to waive or reduce fees, including write-off of outstanding fees in certain circumstances.

Non-payment of a fee may arise for various reasons. An organisation will need to ascertain the reason and in the case of a non-financial cause, determine the appropriate action after consultation with the parties involved.

These guidelines apply to organisations that are funded for disability services to assist where financial reasons are cited for the non-payment of fees.

What is undue financial hardship?

- Where a service recipient, their administrator or nominated representative claims an inability to pay due to financial reasons, this claim should be assessed against these guidelines. Many recipients of disability services obtain the Commonwealth disability support pension, therefore it is suggested that consideration of financial hardship should be based on the term **undue financial hardship**. Receipt of a pension does not by itself constitute the determination of financial hardship for consideration in fee payment.
- A claim of undue financial hardship requires the service recipient, their administrator or nominated representative to demonstrate this. It must be clear that:
 - No further adjustments can be made to the income/expenditure of the person without unduly impacting on the health and wellbeing of the individual. This is to be measured by the ability to access the ordinary necessities of life – food, housing, clothing, and health services, and
 - the individual has no other source of income supplementation including any additional financial assistance that may be available to support the person’s level of expenditure.
- In the case of fees applying to persons under 16 years of age, family income and expenditure should be considered.
- Financial hardship may be temporary due to one-off extraordinary circumstances, for example, medical bills associated with an illness.
- Financial hardship may be longer term.
- The service recipient, their administrator or nominated representatives may wish to consult financial counselling services to assist with financial management.
- As a general rule, assessment of undue financial hardship should only be offered as an alternative after consideration has been given to other options for resolving non-payment of fees.
- Other options considered could be:
 - The appointment of an administrator to assist the service recipient in the management of their funds (for persons over the age of 18 years)
 - Development of payment plans
 - Deferral of payment until a later date where financial circumstances are temporary
 - Referral to Planning section to review the person’s support and funding plans.
- Organisations may wish however to maintain the right to consider some of these options only after assessment of undue financial hardship has been undertaken.

How is undue financial hardship to be assessed?

- The service recipient, their administrator or nominated representative must provide detailed information to support the claim. The information should be documented and authorised by them as a complete and accurate record. It is recommended that the information should identify the service recipient's annual income, or in the case of an individual under 16, the family's income, any expenditure and assets that may exist, and the reasons why payment of fees would create an undue financial hardship. Information provided is to be held in strictest confidence for the determination of undue financial hardship considerate of privacy requirements.
- The onus on demonstrating undue financial hardship rests with the service recipient, their administrator or nominated representative.
- In addition to income from Centrelink, other individuals, for example families/administrators may be contributing financially to the support of the service recipient. It is important that all sources of income and assets are known and declared to enable an assessment of an individual's circumstances and resource capacity to meet costs.
- Organisations may need to liaise with other service providers and may include the planning facilitator, for example, between accommodation services provider and day service provider, to enable a comprehensive assessment of a person's circumstances considering other fees and charges that may apply. Where more than one organisation is involved, this assessment should duly consider the views of all service providers. Release of information provided to an organisation as part of the determination of undue financial hardship to third parties cannot occur unless authorised by the service recipient or their authorised representative.
- Organisations should provide a standard format for the application of undue financial hardship including the collection of the above information.
- Given the nature of the claim, organisations must manage the claim with respect and sensitivity to the service recipient, their administrator or nominated representative. Privacy requirements need to be adhered to (see 7 below).
- Information provided to the service recipient, their administrator or nominated representative throughout the process needs to acknowledge the specific communication requirements of the individual(s).
- In considering this information, advice could be provided to the individual, their administrator or nominated representative on whether the individual is in receipt of all eligible Centrelink income/allowances. Responsibility for pursuing pension/allowance issues resides with the individual, their administrator or nominated representative.
- A detailed review of expenditure needs to occur to ascertain the extent of non-discretionary and discretionary expenditure that currently exists. Discretionary expenditure may vary with individual circumstances, however broadly it can be described as where there is some choice (that is, discretion) that can be exercised over it being incurred and the cessation of a discretionary expense item would not impact unduly on the person's access to health and wellbeing (see above). In many cases

there may be other alternatives to realising the objective of that discretionary expenditure even though that may not have been the person's preferred choice.

- Discretionary expenditure can include private health insurance, private tuition, holiday travel and reduced discretionary consumable items such as entertainment. Examples of non-discretionary expenditure are rent, food, housekeeping, basic personal care expenses, medical expenses, and prescription drugs. Exceptional cases may involve pre-existing personal debt. Note that there may be some "non-discretionary" commitments entered into by individuals that may require time to re-arrange, that is, they can become discretionary over the medium to longer term.

Who assesses it?

- Organisations should clearly identify who in the organisation will assess the consideration of undue financial hardship. This may differ across organisations but should be in line with governance accountability for key financial and operational management responsibilities in that organisation as endorsed by the organisation's Board/Chief Executive Officer (CEO).
- The staff member assessing the application should have a good knowledge of the guidelines and the circumstances of the service recipient submitting the claim. The staff member should possess the skills, experience and knowledge to support and document the decision making process.

What decision can be made?

- Where the organisation considers that undue financial hardship exists, the organisation may initiate the following actions:
 - Reduce, waive or cancel fees on a short-term basis – it is suggested that this approach be time limited with a review to see if circumstances change within regular intervals. This may be relevant where an individual's personal expenditure can be altered through different arrangements, e.g. reduced taxi fares with alternate transport arrangements implemented; or
 - long-term fee reduction or waiving of fees. This needs to be carefully considered and should be at minimum reviewed annually. As noted in this guidance, fees have been set considerate of income levels of service recipients. Refusal to pay on the basis of objection to pay fees for disability services are not grounds for exemption from payment. Organisations may consider legal avenues for the collection of outstanding debts; or
 - Endorse the decision to pay the fee.
- In recommending action a sound understanding of the individual circumstances is required. A range of options should be considered based on the individual circumstances; this may include repayment plans tailored to individual circumstances.
- The organisation needs to document the reason for the decision in writing and advise the service recipient, their administrator or nominated representative.

- Any concession in payment needs to be reviewed annually by the organisation in conjunction with the service recipient, their administrator or nominated representative

Can the decision be reviewed?

- All applicants should have a right to request a review of any decision made in relation to their application.
- Organisations should provide an avenue to the service recipient/administrator or nominated representative to seek a review of the decision.
- A senior manager of the organisation should conduct this review. Organisations may wish to involve more than one person adjudicating as a panel, with the senior manager delegated as chair.
- The service recipient, their administrator or nominated representative may choose to have an advocate representing them in the review process. Organisations should deal with reviews fairly, promptly, confidentially and without retribution.
- The process for review should be in line with the organisation's governance requirements. In most cases, organisations have established complaints/review processes; these may constitute the appropriate process for review.

Privacy and Confidentiality

- All information collected should be in accordance with the Privacy Act 2000 and the Health Records Act 2001, as well as any other laws that impose specific obligations in regard to handling information.
- The Information Privacy Act 2000 and Health Records Act 2001 require that personal information and health information be protected from misuse, loss and unauthorised access, modification and disclosure.
- Any policies and procedures developed by organisations in relation to undue financial hardship requiring the collection of information and data should stipulate Privacy and Confidentiality clauses.

Consideration of undue financial hardship – Process Flowchart



