Centrelink entitlements for people with or who are caring for people with cancer

Centrelink basics and stages of review
1. Carers
2. Sickness Allowance
3. Disability support pension (DSP), including manifest grants
4. Bereavement Allowance
5. Newstart Allowance (NSA)
6. Debts
7. Compensation preclusion periods and special circumstances
8. Special benefit
What we do:
• Legal advice on most Centrelink problems
  • 1800 094 164 or 9481 0355 advice clinic Mon – Fri am.
• Case work and representation - Merits review, i.e. appealing Centrelink decisions on the facts
• Law reform
• Legal education

What we don’t do:
• Centrelink conduct, see the Cth Ombudsman
• We generally do not do Judicial Review, this is the jurisdiction of the Federal Court, though we have assisted the Court on request.
Centrelink stages of review

Most Centrelink decisions are reviewable:

- Internal review by the Original Decision Maker (ODM)
- Review by an Authorised Review Officer (ARO) usually a senior Centrelink officer acting as a delegate of the Secretary.
- Independent Review by the Social Services and Child Support Division of the Administrative Appeals Tribunal, one or two members, confidential (Independent first tier of review)
- Independent second tier review by the Administrative Appeals Tribunal
  a. Initial compulsory case conference run as a form of mediation – telephone or in person - confidential
  b. Follow-up telephone mention and directions
  c. Hearing, published
- Federal Court on questions of law
To be eligible for a Centrelink benefit:

- Be an Australian Resident
- Migrants need to serve a 104 week waiting period
- There are limited exceptions to both the above
- Income test
- Assets test
- Note that these tests vary per pension or allowance and whether or not the payment is at the single or couple rate
Carers’ payment (CP) and carers allowance
- CP is similar payment to the Aged Pension ($782 for single rate and $589 at the couple rate per f/n)
- Key requirement is ‘constant care’
- May need to fill out ‘Adult Disability Assessment Tool or Disability Care Load Assessment (Child) Determination

Carers allowance ($121.70 per f/n)
- Child disability annual payment of $1000.00
- No income or assets test
- Daily care
Sickness Allowance

- Aged 22 and over, but under aged pension age
- Temporary incapacity
- Must have a job or full time study to return to
- A medical certificate must be supplied
- Basic rate is as for Newstart Allowance ($519.20 at the single rate, Partnered $468 each)
The disability support pension (DSP)
Three limbs:
1. An impairment or impairments
2. An inability to work
3. It’s permanent, ie treated and stabilised at the date of application

And now we also have a Program of Support (POS)
• An 18 month training program that needs to be completed within the last three years prior to application for the DSP
DSP and manifest conditions

DSP may only be granted without the need for further assessment in the following LIMITED CIRCUMSTANCES. Manifest grants may only be made where a person has:

- a terminal illness (life expectancy of less than 2 years with significantly reduced work capacity during this period),
- permanent blindness (meets the test for permanent blindness for social security purposes),
- an intellectual disability where medical evidence clearly indicates an IQ of less than 70,
- an assessment indicating that they require nursing home level care (see note below),
- category 4 HIV/AIDS, or
- is in receipt of a DVA disability pension at special rate (totally and permanently incapacitated (TPI)).

At the time of application, the level of impairment is assessed with reference to the impairment tables:

- Must have 20 points for a single condition
- Add up to 20 points for multiple conditions + POS
At the date of application, unable to work: (Centrelink calls this a continuing inability to work) (CITW)

- No more than 15 hours per fortnight
- Used to be 30 hours per fortnight
- If a client is doing 15 hours every week, Centrelink is likely to knock them back, given if they can do 15 regularly, why not 16 or 20? (Note that this includes things like voluntary work and study)
• GP and subsequent specialist reports need to state:
  • Permanent
  • At least two years
  • May get worse
  • ‘treated and stabilised’
  • Change of treatment will often be interpreted as not stable and not permanent,
  • It’s important for practitioners to get the language right in relation to the impairment tables
Program of Support (POS)

- Generally a Commonwealth supported training program designed to assist people re engage with employment, e.g., Job Services Australia
- For 18 months within the last 3 year period prior to application for the DSP
- There seems to be some discretion with dates
- Clients are often too sick to attend any training activity
- Clients often do not benefit from any training activity, however it is very hard for a client to be exited from a POS
- Appears to be a ‘hurdle’ requirement – no need for the training to be ‘any use’
Bereavement allowance

• If you are eligible for a Centrelink benefit, the BA is similar to the aged pension which at the time of writing is a maximum of $782.20 per fortnight.
• The BA is payable for up to 14 weeks after the death of a partner, and or a carer.
• Alternately, if the applicant is pregnant when the partner dies, the BA is payable for the duration of the pregnancy.
Debts

- Often arise when someone has been overpaid or for whatever reason the recipient has not advised Centrelink of a change of circumstances, this is also known as ‘misreporting’,
- Centrelink treat debts as fraud and may prosecute if the debt is over $10,000 or when there has been a ‘knowing false statement’.
- Centrelink collect debts from social security recipients by garnishing some of their pension. The amount taken can be challenged and reduced.
- Debts can sometimes be reduced or waived where there are ‘special circumstances’.
- Special circumstances …
Special Circumstances waiver:
1. Debts under section 1237AAD
2. Preclusion periods
   a. Compensation
   b. Income maintenance (not income management)
Debt waiver continued

• Sole administrative error is problematic to prove, however occasionally we have success

Whenever a client presents with a Centrelink debt, we often advise:
1. Internal review with the ODM
2. Review by an ARO, reasons published
3. At the next stage of review, the Social Services and Child Support Division of the AAT ask Centrelink for copies of documents, and these are the equivalent of FOI documents.
4. Where there is financial hardship (often) this process fast tracks the review.
For special circumstances there needs to be:

1. Financial hardship
   a. A report from a financial counsellor is often taken as independent expert evidence, e.g. credit card debts, mortgage and so on…

2. Unforeseen and multiple life issues:
   a. Medical problems – self, partner, kids
   b. Addictions: drugs, gambling …
   c. Centrelink administrative error (ie provable bad advice),
   d. Bad legal advice: - e.g.. no advice of a preclusion period following a compensation payout.
   e. Other issues, i.e. homelessness, long term rental history
   f. Other life dysfunction that makes the application ‘special’

3. Comes down to the merits of each application and often who hears the matter
Compensation preclusion periods

- Special Circumstances waiver under section 1184K
- For special circumstances to exist:
  - Severe financial hardship
  - One or more unforseen life events, including medical conditions or addictions
  - Administrative error on C/L’s part
Income maintenance periods

• Carers Payment is exempt
• Often a client is retrenched and funds are used up to pay existing debts
• People in this situation need to go to Centrelink as soon as they receive their payout and Centrelink will calculate the length of the income maintenance period.
• Equivalent to period it would have normally ‘paid’ for, for employee
• Example: Courtney loses her job @ the handbag shop. Used to earn $1000 per fortnight. Receives 3 weeks holidays + $2,000 = $3,500. IMP = 7 weeks (+ usual 1 week waiting period)
Special Benefit

- Arising from events beyond their control
- Not able to get any other income support payment
- Usually for short term payments
- In the longer term, recipient must have no more than $5,000 in available funds.