



## **Social Security (Active Participation for Disability Support Pension) Determination 2014**

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I, Kevin Andrews, Minister for Social Services, make the following determination.

Dated 15 December 2014

Kevin Andrews  
Minister for Social Services

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## Part 1—Preliminary

### 1 Name

This is the *Social Security (Active Participation for Disability Support Pension) Determination 2014*.

### 2 Commencement

This instrument commences on the day after it is registered.

### 3 Authority

This instrument is made under subsections 94(3C) and (3E) of the *Social Security Act 1991*.

### 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### 5 Definitions

- (1) In this instrument:

*Act* means the *Social Security Act 1991*.

*designated provider* means any of the following:

- (a) a Job Services Australia provider;
- (b) a Disability Employment Services provider;
- (c) an Australian Disability Enterprise;
- (d) any other person who provides a program of support that is funded (wholly or partly) by the Commonwealth.

*program of support* has the meaning given by subsection 94(5) of the Act.

*relevant period* means:

- (a) in relation to a person (other than a reviewed 2008-2011 DSP starter) whose impairment is not a severe impairment—the period of 36 months ending immediately before the day on which the claim for disability support pension is made or is taken to have been made by the person; or
- (b) in relation to a person who is a reviewed 2008-2011 DSP starter and who:
  - (i) is participating in a program of support at the time the person becomes a reviewed 2008-2011 DSP starter; or
  - (ii) was participating in a program of support at any time during the period of 6 months before the person becomes a reviewed 2008-2011 DSP starter;

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the period of 36 months starting on the day the person begins the program of support; or

- (c) in relation to any other reviewed 2008-2011 DSP starter—the period of 36 months starting on the day the person is notified in writing that the person has become a reviewed 2008-2011 DSP starter.

**reviewed 2008-2011 DSP starter** has the meaning given by subsection 94(5) of the Act.

**severe impairment** has the meaning given by subsection 94(3B) of the Act.

- (2) To avoid doubt, for the purposes of paragraph (b) of the definition of **relevant period**, a person may be participating in a program of support at a time:
  - (a) whether or not the person is actively participating in the program at that time in accordance with section 7 of this instrument; and
  - (b) even if the person is not participating in the program at that time as a result of an exemption, relief or suspension from the program.

### 6 Requirements and matters to be taken into account

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

Note 1: 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).

Note 2: A person whose impairment is not a severe impairment and certain reviewed 2008-2011 DSP starters are required to have actively participated in a program of support (see paragraph 94(2)(aa) of the Act).

- (2) Part 3 sets out, for subsections 94(3D) and (3E) of the Act, matters that the Secretary must take into account in deciding whether he or she is satisfied that a person has actively participated in a program of support within the meaning of subsection 94(3C) of the Act.

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## Part 2—Requirements for active participation

### 7 Requirements for active participation

- (1) A person has actively participated in a program of support if the person satisfies the following requirements:
  - (a) the person has:
    - (i) complied with the requirements of the program of support; and
    - (ii) participated in a program of support during the relevant period;
  - (b) subsection (2), (3), (4) or (5) is satisfied in relation to the person and the program of support;
  - (c) subsection (6) is satisfied in relation to the person and the program of support.

*Requirements for period of participation in 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 during the relevant period.

Note: A period during which a person does not participate in a program of support is not to be counted (see section 8).
- (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 entire program during the relevant period.
- (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 end of the relevant period; 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 prepare for, find or maintain work 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 end of the relevant period, 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 prepare for, find or maintain work through continued participation in the program.

*Information required to be provided to the Secretary*

- (6) This subsection is satisfied in relation to a person and a program of support if the person provides the Secretary with the following information in relation to the program of support:
  - (a) the details of the designated provider of the program;

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- (b) the dates when the person started to participate in the program and, if applicable, ceased to participate in the program;
- (c) the reason for ceasing to participate in the program (if any);
- (d) any period during which the person did not participate in the program, including as a result of any exemption, relief or suspension from the program;
- (e) the reason for any period during which the person did not participate in the program;
- (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 requirements of the program 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.

### **8 Periods of non-participation not to count**

To avoid doubt, any period during which a person who has started a program of support does not participate in the program for any reason (including as a result of any exemption, relief or suspension from the program) is not to be counted in determining, for the purposes of section 7, the length of the period during which the person has participated in the program.



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## **Part 3—Matters to be taken into account in assessing active participation**

### **9 Matters to be taken into account relating to the 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 prepare for, find or maintain work (including self-employed work); 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 prepare for, find or maintain work.

### **10 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 must take into account any relevant material or document that:

- (a) relates to the person's participation in a program of support; and
- (b) relates to a program of support participated in during the relevant period.

## Part 4—Application and transitional provisions

### 11 Transitional provision

Despite the repeal of the *Social Security (Requirements and Guidelines — Active Participation for Disability Support Pension) Determination 2011* by this instrument, the definition of **designated provider** in that Determination continues, after that repeal, to apply for the purposes of this instrument in relation to a program of support that was:

- (a) not wholly or partly funded by the Commonwealth; and
- (b) started before the commencement of this Part.

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## **Schedule 1—Repeals**

### ***Social Security (Requirements and Guidelines — Active Participation for Disability Support Pension) Determination 2011***

#### **1 The whole of the Determination**

Repeal the Determination.