

Access to the NDIS - Early intervention requirements

9. Early intervention requirements

Early intervention support is available to both children and adults who meet the early intervention requirements. The intention of early intervention is to alleviate the impact of a person's impairment upon their functional capacity by providing support at the earliest possible stage. Early intervention support is also intended to benefit a person by reducing their future needs for supports.

A prospective participant will meet the early intervention requirements if they meet each of the following requirements:

- the person:
 - i. has one or more identified intellectual, cognitive, neurological, sensory or physical impairments that are, or are likely to be, permanent (section 25(1)(a)(i)); or
 - ii. has one or more identified impairments that are attributable to a psychiatric condition that are, or are likely to be, permanent (section 25(1)(a)(ii)); or
 - iii. is a child who has developmental delay (section 25(1)(a)(iii)); and
 - the NDIA is satisfied that provision of early intervention supports is likely to benefit the person by reducing their future needs for disability related supports (section 25(1)(b)); and
 - the NDIA is satisfied that provision of early intervention supports is likely to benefit the person by:
 - i. mitigating or alleviating the impact of the person's impairment upon their functional capacity to undertake communication, social interaction, learning, mobility, self-care or self-management (section 25(1)(c)(i)); or
 - ii. preventing the deterioration of such functional capacity (section 25(1)(c)(ii)); or
 - iii. improving such functional capacity (section 25(1)(c)(iii)); or
 - iv. strengthening the sustainability of informal supports available to the person, including through building the capacity of the person's carer (section 25(1)(c)(iv)); and
 - the NDIA is satisfied early intervention support for the person is most appropriately funded or provided through the NDIS (section 25(3)).

Note, in certain circumstances, a person with a degenerative condition could meet the early intervention requirements and become a participant in the NDIS.

For all children under 7 years of age (except children diagnosed with a condition on List A of this Operational Guideline) the NDIA will first consider whether the child meets the early intervention requirements before considering the disability requirements.

9.1 When is an impairment permanent or likely to be permanent for the early intervention requirements?

The NDIA *must* be satisfied a prospective participant has one or more identified impairments that are, or are likely to be permanent (i.e. lifelong or likely to be lifelong) (section 25(1)(a)(i) and (ii)).

The following principles provide guidance:

- an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence based treatments that would be likely to remedy (i.e. cure or substantially relieve) the impairment (rule 6.4 of the Becoming a Participant Rules);
- an impairment may be permanent notwithstanding that the severity of its impact on the functional impact of the person may fluctuate or potentially improve (rule 6.5 of the Becoming a Participant Rules);
- an impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its likely permanency to be demonstrated (rule 6.6 of the Becoming a Participant Rules). In this context, an impairment may be permanent notwithstanding that it may continue to be treated and reviewed after its permanency, or likely permanency, has been medically demonstrated; and
- if an impairment is of a degenerative nature, the impairment is, or is likely to be permanent if medical or other treatment would not, or would be unlikely to improve the condition (rule 6.7 of the Becoming a Participant Rules). Accordingly, in certain circumstances, a person with a degenerative condition could meet the early intervention requirements and therefore become a participant in the NDIS.

If a prospective participant has multiple impairments, the NDIA will consider each impairment separately and determine whether each impairment is, or is likely to be permanent. However, the NDIA only needs to be satisfied that at least one of a prospective participant's impairments are, or are likely to be permanent.

Where there is a possibility of medical treatment (such as surgery) to treat the prospective participant's condition, and the treatment has some prospect of success, the NDIA should not conclude that the impairment is permanent but should wait until the outcome of the treatment is known ([Mulligan and NDIA \[2015\] AATA 974 at \[71\]](#)).

9.2 Developmental delay (early intervention in early childhood)

9.2.1 Requirements for children with developmental delay

Access to the NDIS under the early intervention requirements is also open to children **under 6 years of age** with a developmental delay (section 25(1)(a)(iii)).

Generally, developmental delay is a term used when a child is slower to reach, or has not reached age-appropriate developmental milestones.

For the purposes of the NDIS Act, developmental delay means a delay in the development of a *child under six years of age* that meets all of the following criteria:

- is attributable to a mental or physical impairment or a combination of mental and physical impairments; and
- results in substantial reduction in functional capacity in one or more of the following areas of major life activity:

i. self care;

ii. receptive and expressive language;

iii. cognitive development;

iv. motor development; and

- results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated (section 9).

Note, 'receptive and expressive language' is considered to be a singular area of major life activity. Therefore, a prospective participant will *not* need to specifically demonstrate a substantial reduction in functional capacity for *both* receptive and expressive language. A substantial reduction in functional capacity for either receptive or expressive language will suffice.

'Expressive language' is taken to include articulation and speech pronunciation.

9.2.2 Determining whether a child has a developmental delay

Access to the NDIS for a child with a developmental delay must be demonstrated by reference to evidence of a substantial reduction in functional capacity relating to the child's daily routines and daily activities in one or more of the relevant areas of major life activity (i.e. self-care, receptive and expressive language, cognitive development or motor development).

In addition, the NDIA must be satisfied that any impairment which results in a substantial reduction in functional capacity in one or more area of life activity also results in the 'need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated' (section 9).

Current best practice in early childhood intervention has moved towards functional based assessments using developmental screening tools to evidence the degree of delay in a child's development. Developmental screening identifies areas in which a child's development differs from same age norms and identifies children presenting with developmental delay. For example, the Pediatric Evaluation of Disability Inventory Computer Adaptive Test (PEDI-CAT) is one of the functional assessment tools used for children in this context.

The NDIA may specify, in operational guidelines, assessment tools that may be used for the purposes of deciding whether a person meets the early intervention requirements (rule 7.2 of the Becoming a Participant Rules).

Without limitation, the NDIA may specify:

- different tools to be used for adults and children; and
- tools that are specifically tailored to particular impairments (rule 7.4 of the Becoming a Participant Rules).

A tool must be designed to ensure the fair and transparent assessment of whether a person meets the early intervention requirements and have reference to areas of activity and social and economic participation identified in the World Health Organisation International Classification of Functions, Disability and Health as in force from time to time (rule 7.5 of the Becoming a Participant Rules).

Generally, the NDIA will use a validated and reliable functional assessment tool which indicates a child is statistically below a normal range (i.e. that their needs are substantially different to the norm) to determine access to the NDIS under the developmental delay criteria for children aged under 6 years.

Qualitative information provided by parents to the NDIA regarding developmental skills and milestones may also assist in understanding the level of functional impact for a child. Where possible, the NDIA will assist parents to provide appropriate evidence of substantially reduced functional capacity relating to developmental milestones.

The NDIA will also consider the when determining whether a child's impairment results in a substantial reduction in functional capacity in one or more of the areas of major life activity.

In some circumstances, the NDIA may request further information or request that a prospective participant undergo an assessment or examination (see requesting further information or reports to inform the access decision).

In summary, having regard to results from a validated and reliable functional assessment tool and any other relevant information, a child under the age of 6 who has a developmental delay as a result of an impairment that results in substantial functional limitations requiring a coordinated, long term, multidisciplinary service response will meet the early intervention requirements under the NDIS Act, provided the early intervention support is most appropriately funded or provided through the NDIS.

It should be noted that many children who meet the developmental delay access criteria will receive early intervention supports and then exit the NDIS. Therefore, meeting the early intervention criteria does not mean a child meets the disability requirements in the NDIS Act.

Children who do not meet the early intervention access criteria may be supported in the early childhood early intervention gateway. In these situations, the NDIA should refer children to other community/mainstream supports via the early childhood early intervention gateway (see early childhood early intervention (ECEI) approach)

9.2.3 Streamlined process for determining the early intervention requirements for children with a developmental delay

The NDIA will be satisfied the provision of early intervention supports for a child with developmental delay will be likely to benefit the child as required by the early intervention requirements without further assessment (rule 6.8 of the Becoming a Participant Rules).

Therefore, children with a developmental delay will be able to access the NDIS under the early intervention requirements provided the early intervention support is most appropriately funded or provided through the NDIS (section 25(3)).

9.3 Determining whether early intervention supports are likely to benefit the person

The NDIA *must* be satisfied that the provision of early intervention supports (except for children with developmental delay) is *likely* to benefit the prospective participant by:

- reducing the person's future needs for supports in relation to disability (section 25(1)(b)); and
- achieving one or more of the following four outcomes:
 - i. mitigating or alleviating the impact of the person's impairment upon the functional capacity of the person to undertake one or more activities (section 25(1)(c)(i)); or
 - ii. preventing the deterioration of such functional capacity (section 25(1)(c)(ii));
 - iii. improving such functional capacity (section 25(1)(c)(iii)); or
 - iv. strengthening the sustainability of informal supports available to the person, including through building the capacity of the person's carer (section 25(1)(c)(iv)).

When considering whether the provision of early intervention supports is likely to benefit the person, the NDIA should consider:

- the likely trajectory and impact of the person's impairment over time (rule 6.9(a) of the Becoming a Participant Rules); and
- the potential benefits of early intervention on the impact of the impairment on the person's functional capacity and in reducing their future needs for supports (rule 6.9(b) of the Becoming a Participant Rules); and
- evidence from a range of sources, such as information provided by the prospective participant or their family members or carers. The NDIA may also in some cases seek expert opinion (rule 6.9(c) of the Becoming a Participant Rules).

When considering if a person is likely to benefit from early intervention supports, the NDIA may consider factors such as the time elapsed since the onset or diagnosis of the disability and whether there has been a recent, or impending, significant change in the person's impairment or disability.

9.4 Is the support most appropriately funded or provided through the NDIS?

The NDIA *must* be satisfied that early intervention support is most appropriately funded or provided through the NDIS (section 25(3)).

Therefore, the NDIA will consider whether a prospective participant's overall, or likely, need for early intervention support is most appropriately funded or provided through the NDIS.

A prospective participant does *not* meet the early intervention requirements if the NDIA is satisfied that early intervention support for the person is *not* most appropriately funded or provided through the NDIS, and is more appropriately funded or provided through other general systems of service delivery or support services offered by a person, agency or body, or through systems of service delivery or support services offered:

- as part of a universal service obligation; or

- in accordance with reasonable adjustments required under a law dealing with discrimination on the basis of disability (section 25(3)).

When deciding if early intervention supports are most appropriately funded or provided through the NDIS, the NDIA must have regard to the considerations outlined in [Schedule 1 of the National Disability Insurance Scheme \(Supports for Participants\) Rules 2013](#) (see is the support most appropriately funded or provided through the NDIS?).

9.5 Streamlined process for determining the early intervention requirement for children under 7 years of age

In some circumstances the NDIA will be satisfied that a prospective participant meets the early intervention requirements by reference to List D appended to this Operational Guideline.

List D has been developed to streamline the access process for children under 7 years of age who have been diagnosed with a condition/s included on the list.

9.5.1 'List D' conditions

Where a child under the age of 7 has been diagnosed with a condition/s on List D the NDIA will be satisfied that the child meets the early intervention requirements without further assessment.

A child does not need to have a condition on List D to become a participant in the NDIS.

9.5.2 Early intervention for hearing impairment for people aged 0-25

The NDIA will be satisfied that a person meets the [early intervention requirements](#) without further assessment when the person:

- is aged between birth and 25 years of age; and
- has confirmed results from a specialist audiological assessment (including electrophysiological testing when required) consistent with auditory neuropathy or hearing loss \geq 25 decibels in either ear at 2 or more adjacent frequencies, which is likely to be permanent or long term; and
- the hearing loss of the person necessitates the use of personal amplification.

This streamlined access approach for early intervention acknowledges a rich body of evidence that recognises that early intervention support up to and including the age of 25 is critical for people with hearing impairment as the developing brain requires consistent and quality sound input and other support over that period to develop normally and ameliorate the risk of lifelong disability.

This same body of evidence suggests that brain development and language capability have been achieved by the age of 26. Therefore, adults aged 26 years and over are not immediately accepted to be likely to benefit from the same early intervention approach because there is no requirement to support the development of the auditory pathways. Adults aged 26 years and over with hearing impairment will therefore be assessed normally, on a case by case basis, having regard to the availability of all relevant evidence.

9.6 Reassessment of early intervention supports

Where a person has become a NDIS participant under the early intervention requirements, the NDIA will reassess their circumstances when reviewing their plan. The purpose of the reassessment is to ensure that early intervention supports continue to provide a benefit to the person, as required by the early intervention requirements.

If a participant no longer meets the early intervention requirements, the NDIA will consider whether the person can continue to access the NDIS under the disability requirements.

In some circumstances, a person's access to the NDIS may be revoked if they do not meet either the disability or early intervention requirements.

Where the participant is a child with developmental delay, there is no requirement to reassess access to the NDIS on the child's sixth birthday, particularly where the child may have only recently gained access to the NDIS. In general, a plan of usual length for others with similar circumstances should be developed for these children (up to 12 months). The child's status may then be reassessed when reviewing their plan.

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