Can I make a total permanent disability (TPD) claim for chronic fatigue syndrome (CFS)?

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Chronic fatigue syndrome (CFS), often accompanied by conditions like fibromyalgia, myalgic encephalomyelitis (ME) and other chronic pain syndromes, can significantly impact a person's ability to work and live a normal life. If you're struggling with one of these debilitating illnesses and considering a Total Permanent Disability (TPD) claim, understanding your rights and the complexities of the claims process is crucial.

What is a total permanent disability (TPD) claim?

TPD benefits are available to people who are unable to work due to injury or illness. Each potential benefit is different and is based on the individual policy or trust deed you entered into when taking out the insurance, as well as your age and the date of your injury. It does not matter what your injury or illness is. You simply have to be unable to return to work either doing your own job or a job you are trained for, experienced in or educated for.

Learn more about TPD claims in our earlier blog, "TPD claims – your complete guide".

To be able to make a TPD claim, you need to have held TPD insurance at the time the injury occurred (as opposed to the time you lodge your claim). This type of insurance is often included in superannuation policies or can be taken out as a standalone policy. If the insurer denies your TPD claim because you do not currently have TPD insurance but you did have insurance at the time of your injury or illness, you should seek legal advice.

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What do I need to make a claim for TPD?

To be eligible for a TPD claim, you generally need to meet the following criteria.

Medical evidence

You must provide medical evidence that you are suffering from a total and permanent disability. This typically includes reports from your treating doctors and specialists. You will need to have doctors complete Medical Attendant Statements (MAS) provided by your superannuation or insurance provider.

The definition of “total and permanent disability” can differ between policies. If you’re unsure if you meet the definition for your specific policy, we can help you with that.

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Inability to work

You must demonstrate that you are unable to work in your usual occupation or any other occupation for which you are reasonably suited by education, training, or experience.

Waiting period

Some disability insurance policies require a waiting period during which you must be continuously disabled before you can make a claim.

TPD claims for chronic fatigue syndrome and similar illnesses

Chronic fatigue syndrome (CFS) and similar illnesses, such as fibromyalgia, can be challenging when it comes to TPD claims. This is due to their often-subjective nature and the difficulty in providing objective medical evidence.

Unlike physical injuries with visible symptoms, CFS and other similar illnesses manifest in a variety of symptoms, including fatigue, pain, cognitive difficulties and sleep disturbances, making it difficult to quantify the extent of disability.

However, successful claims can be made with the right approach.

Tips for making a TPD claim for chronic fatigue syndrome and similar illnesses

Gather medical evidence

Obtain comprehensive medical reports from your treating doctors and specialists.

Detailed reports from your treating doctors and specialists confirming the diagnosis of CFS or other related injuries should be obtained. These reports should include the criteria used for diagnosis. Reports from your rheumatologist, neurologist and/or immunologist will be especially helpful in a TPD claim for CFS and related illnesses.

Medical evidence should also include documentation of the onset, duration, and severity of the symptoms you have suffered. This should include fatigue, cognitive difficulties, sleep disturbances and any other relevant symptoms. Records of all treatments attempted, including medications, therapies and lifestyle changes, along with their outcomes is also helpful to support your TPD claim.

Symptomatology and treatment details can usually be obtained by requesting the clinical notes of your GP or specialist.

If there are associated psychiatric conditions such as depression or anxiety that have stemmed from the injuries, reports from mental health professionals such as psychologists or psychiatrists can be crucial.

At Guardian Injury Law, we can assist you with obtaining the relevant medical evidence to maximise the success of your TPD claim.

Undergo relevant assessments

In addition to obtaining reports from your specialists, certain assessments of your ability can help to support your TPD claim.

Functional capacity assessment

Consider undergoing a functional capacity assessment (FCA) by an occupational therapist. These assessments can objectively evaluate your physical limitations and how they impact your ability to perform daily activities and work-related tasks.

An assessment of activities of daily living (ADL) can also be undertaken to measure your ability to perform basic self-care tasks, which can support your claim based on the severity of your symptoms.

Cognitive testing

Neuropsychological tests that assess cognitive function, including memory, attention, and executive function can provide objective evidence of cognitive impairment and your ability to process information and act on it.

Exercise testing

Cardiopulmonary exercise testing (CPET) can objectively measure exercise capacity and post-exertional issues, a hallmark of CFS.

Consult an experienced TPD lawyer

Given the complexities involved in TPD claims for CFS and similar illnesses, it is recommended that you speak to an experienced TPD lawyer as soon as possible.

At Guardian Injury Law, we are experts in advocating for client's with CFS and pursing TPD claims on their behalf. We will assist you navigating the claims process, investigating your claim and preparing submissions to your super fund or TPD insurance provider, supporting your claim for TPD.

Challenges of TPD claims for CFS

CFS and similar illnesses are often characterised by subjective symptoms, which can make it difficult to provide objective evidence. It has been noted that CFS is often an exclusionary diagnosis when there is no other possible cause for the symptoms. As such, it is crucial to have detailed and consistent medical documentation.

If your claim has been denied by your super fund or TPD insurance provider, you have the right to appeal the decision. This process can be complex and time-consuming. Guardian Injury Law can provide you with free advice so you know what your options are.

Why should I engage a TPD lawyer?

While TPD claims for chronic fatigue syndrome and similar illnesses can be challenging, they are not impossible. With thorough medical evidence (which we can assist you with gathering), a clear understanding of your policy along with experienced legal advice and assistance, you can improve your chances of a successful TPD claim.

We can help you lodge a detailed and thorough TPD claim along with all the appropriate supporting evidence. If your claim is rejected, we will be able to review your policy and medical history and guide you through your appeal options and any further obligations.

Call us today for a free appointment to find out where you stand.

Contacting Guardian Injury Law

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