

Disability Insurance May Be a Saviour

By Geoffrey Hallmann

Never Assume!

In the early 1990s the surge in superannuation entitlements under the Superannuation Guarantee legislation also brought with it an increase in employees who had access to Superannuation Disability Insurance. The problem is, people forget that it exists, or believe that it does not apply to them.

You may well be very wrong. Do not assume that you are not entitled.

What Insurances Are There?

If you have ever had superannuation (or indeed a job that resulted in you earning more than \$450/month), you should have had superannuation and more than likely an automatic disability insurance. You may know this as 'Total and Permanent Disability' Insurance. Others may have taken out their own insurances. Some of these insurances may include:

- Income Protection (also known as Sickness and Accident) provides a weekly wage;
- 2 year Total but Temporary Disability (i.e. it pays you a weekly wage);
- Total and Permanent Disability (where you cannot work your occupation - it may be your own occupation or possibly other occupations that you were eligible for by virtue of education, experience and training);
- Permanent Impairment where your disability impairs you permanently;
- Trauma insurance where issues such as cancer, heart attack, stroke, etc are covered.

Do Some Research

During my time across a career as a researcher, a solicitor, an insurance/financial advisor and person with ME/CFS, I have directed numerous people to make inquiries of their superannuation and personal insurers to see if there was coverage.

Surprise, surprise, quite often there was.

On other occasions people have lost their super or not actually been paid it even when entitled. They didn't know where to look.

Insurance You Know About

In the former case the situation is much easier. Simply ring the insurer and ask them to send you out a claim form ... even if you have taken the super out in the past. If you stopped work when you got sick, or because you got sick, you are most likely entitled to be paid out if the condition is regarded as permanent. In most cases you have to be off work at least 6 months to be entitled for TPD claims, but in the case of income replacement, it may be weeks up to 3 months.

Illustration 1 – Jim had a variety of jobs over the 1990s before going off work in 1996 with ME/CFS. He had three insurances, one being his ex-employer (it was still active at the time), one his current insurer and one a personal income protection policy. He claimed on the Income Protection and received payment. He took out all of his super balance out of the old policies.

He did not claim on either of the TPDs. Both were an "any occupation" definition. One had a claim for lost wages – but he didn't claim.

He tried to return to work in 2003, but could not do the work that he used to do. In his new job he had super that had TPD and permanent impairment and he took on a new job that had TPD.

When he sees his solicitor after the insurer inappropriately stopped payment on the Income Protection, the Barrister is briefed and notices the circumstances. He asks if there are any TPD insurances and points out that since Jim could not do what he did then, and because he works a completely different job, he may well be entitled to claim for both the old TPD policies valued at \$ 300,000.00 as well as \$ 100,000.00 for the new policy that has permanent impairment.

Insurance You Cannot Find

There are policies out there that you may have that require you to do some research. First, you can use a tool such as <http://www.findmysuper.com.au/> or <https://superseeker.super.ato.gov.au/individuals/default.aspx?pid=0>.

If your employer should have paid you super, but didn't, you will need to talk to the ATO about the matter. Visit the ATO website at <http://www.ato.gov.au/individuals/content.asp?doc=/content/86136.htm> to find out what to do.

Once you find it, you may be able to track down the insurance that was attached or should have been attached and make a claim. On the latter, the situation is not as clear. If you lose an opportunity to get insurance because an employer is negligent in paying super, it is a matter for a solicitor.

Illustration 2 – Jim had been working in the 1990s before he fell ill with ME/CFS. Like most people, he claimed his super under hardship. He didn't think anything more about the policy.

In 2009 he was prompted to consider a claim. He was now 60 and never likely to return to work. He went searching for his super, sought out a solicitor and was advised that he may well have had a claim.

Workers Compensation

On a rare occasion you may well have a Workers Compensation claim. Some Workers Compensation schemes have two options to initiate a claim.

The first requires you to demonstrate that your condition was caused by your employer. Case law exists to show that there have been successful claims on this count. Q-Fever caught in a butchery that caused ME/CFS has been allowed within the NSW Workers Compensation Commission. On that occasion the claimant was awarded permanent impairment and was entitled to weekly benefits and expenses such as medical.

Claims for Hepatitis B injections have failed, although a needle stick injury to a police officer which led to a viral infection then ME/CFS, did succeed.

The second requires you to demonstrate that whilst the CFS was not work related, the work your employment led to an exacerbation of the symptoms. Again there is case law to suggest that this has been successfully argued.

Ignore the Insurers

When speaking to the insurers, they may well tell you that you do not have a claim.

A simple rule applies here. Ignore them because often they have absolutely no idea what the law is or what you are entitled to. Insist on getting the forms. If they won't send them, get the solicitor to do it.

Contact a Solicitor

One thing I would advise everybody to do in the above situations is to speak to a solicitor before lodging a claim. Most solicitors operate on a no win, no pay basis and this means that they will assist you to put a claim together without requiring payment for their services. They may, however, need money for expenses. It will depend on your solicitor.

In the case of Workers Compensation, the system, in most cases, covers the cost of the solicitor at the end of the claim. Medical reports might be covered by the solicitor up front, but you may have to pay for them.

In all claims a well constructed report from a specialist is the ideal and often most persuasive evidence that there is. Make sure it comes from someone who knows what they are talking about. A person who doesn't know ME/CFS can be more damaging than helpful.

The solicitor can speed the process up and remove undue distress from your life. As a person with ME/CFS, you do not need anything else making life difficult.

Plaintiff law firms are at <http://www.lawyersalliance.com.au/memberfirms.php>. This is a good start.

Conclusion

Hopefully this short guide will help people to take steps to find money that can assist them in their situation. People with ME/CFS are often the poorest in our society. Taking steps such as those above may offer some relief from financial distress or even pave the way for people to obtain medical assistance that helps in the management of the condition.

Take a chance. Never assume. Ask for help.

About the Author

Geoffrey Hallmann is a researcher with ME/CFS who is currently undertaking a PhD into the condition with the Southern Cross University in Lismore, NSW. He has worked within the insurance industry and as a solicitor who has successfully litigated a number of ME/CFS claims. To participate in his research you can contact him via mobile on 0414 014 365 or via Email at geoffhallmann@yahoo.com.