

RECENT FOS DECISIONS

FOS finds PEC exclusion reasonable and not in breach of *Disability Discrimination Act* (Cth)

[Link to determination](#)**Facts**

The Applicant held a loan protection insurance policy with the financial services provider (FSP). The Applicant lodged a claim for total disability from work due to a neurological condition.

The medical evidence demonstrated that the Applicant had been diagnosed with the neurological condition of dystonia and psychological condition of conversion disorder. Significantly, she received treatment for dystonia in the 6 months prior to policy inception.

The FSP denied the claim relying on an exclusion which provided that the FSP would not pay claims which are directly or indirectly caused by any injury or illness for which advice or treatment has been received from a registered medical practitioner or health professional within the 6 months prior to commencement of the period of insurance (PEC exclusion).

The Applicant disputed the decision on the basis that she was fully fit and well at the time she took out the policy of insurance and that the PEC exclusion was unlawful discrimination under the *Disability Discrimination Act 1992* (the DD Act).

Held

The FOS found that the FSP had established the Applicant received treatment for dystonia in the 6 months prior to policy inception and that dystonia was therefore excluded by the PEC exclusion. FOS considered that even if the relevant illness was identified in the alternative as

conversion disorder, then the evidence still reasonably supports the conclusion that the condition was present within the relevant 6 months. The FOS explained this against the background of prior diagnosis of that condition and that the symptoms of both conditions are essentially the same.

The FOS also determined that whilst the PEC exclusion did discriminate against those people with pre-existing illnesses, this was reasonable having regard to section 46(2) of the DD Act. In reaching this conclusion, the FOS considered that the PEC exclusion was a commercial and underwriting decision for the FSP; the Applicant would likely have found, had she been so inclined to investigate other insurance options, corresponding exclusions in other policies; and the Applicant should reasonably have been aware of the exclusion in the policy at policy inception.