



S44(5) Management of Funding Rule

Plain English Summary

DSS November 2024



S44(5) Management of Funding Rule – Summary

The *National Disability Insurance Scheme Act 2013* (NDIS Act) is the law that sets out how the NDIS works.

Section 46 states NDIS funds must be spent on NDIS supports and in line with a participant's plan.

The NDIA must make a decision under section 44 about whether there is a risk that section 46 would be met.

A new rule made under subsection 44(5) will assist the National Disability Insurance Agency (NDIA) in understanding risks, putting safeguards in place to support participants, and making more consistent decisions about whether spending would be in line with section 46.

This is based on current policy and practice which includes consultation with self-managers about the current [Self-management policy](#). It will help ensure fairness in decision making across plan management types including nominees, registered plan management providers, child representatives and participants.

When plan funding is not spent in line with a participant's plan, risks are created for participants, including funding for essential supports being spent early, or used on supports that do not assist them to work towards their goals.

This is an important safeguard for participants to ensure they have access to the supports they need to live the life they choose. The NDIA will continue to carefully consider each participant's individual circumstances and provide support for participants to spend in line with their plan and build their ability to self-manage if they wish to do so.

In making a plan management decision, the NDIA will only review appropriate information available to them at the time of the decision.

Engagement

The NDIA has been speaking with participants, people with disability and disability sector representatives since July 2024 about the Management of Funding Rule. Key feedback recommended a participant-led, supportive capacity building approach be included, aligned to the level of risk, and any removal of self-management should be a last resort.

Things the NDIA must take into account

When the NDIA is considering whether a person is likely to spend NDIS funds on NDIS supports and in line with a participant's plan, they must review:

- a) a person's history of managing the funding of a plan, including whether they have spent NDIS funds on things they shouldn't have

For example, if a participant spent most of their previous plan on supports that are not NDIS supports, this may mean a participant is unlikely to spend their funding in line with section 46 if they were to self-manage supports in their current plan. On the other hand, if a participant has made one

or two accidental purchases of supports that are not NDIS supports in a previous plan, or has never purchased a support that is not an NDIS support, this may mean they are very likely to spend their funding in line with section 46 by self-managing their current plan.

- b) a person's history of providing requested information or documents to the NDIA, including if they didn't provide information, did they attempt to provide the information, or give a reason for not providing the information

For example, if the NDIA send a written request to a participant or nominee asking them to provide information to explain why certain supports were purchased from a previous plan, and the NDIA knew the participant or nominee had the information but they did provide them to the NDIA without a reason, this may mean it is unlikely section 46 would be met with if the participant or nominee were to manage supports in their current plan.

- c) whether the person has been involved in fraud, or used funds or assets inappropriately

For example, the NDIA might consider whether:

- the person has been found guilty of breaking a Commonwealth, a State or a Territory law involving fraud or misuse of funds or assets.
- the person has been ordered to pay a fine for breaking a Commonwealth, a State or a Territory law involving fraud or misuse of funds or assets.
- the person has had a negative finding against them, or action was taken following an investigation under a Commonwealth, a State or a Territory law on a matter involving fraud or the misuse of funds or assets.

- d) whether the person has experienced exploitation or significant pressure when managing legal or financial affairs

If a participant is pressured or threatened to spend NDIS funding in a certain way, this may lead to section 46 not being met. This could have negative impact on a participant, for example a debt or their funding for supports being spent too quickly (leaving them without enough funding for supports for the rest of their plan).

Working with a participant, the NDIA will think about if additional safeguards have been or can be put in place. This will enable participants to be clear about what may need to put in place to be able to request a different type of plan management in the future.

- e) whether the person has the ability or capacity to make decisions to manage their funding well, taking into account any support or assistance the person is likely to have to do so.

The NDIA will look at information available about a person's ability or capacity to make decisions or manage their finances. As part of this decision, the NDIA will think about any supported decision making supports available or that can be put in place, in line with the [Supported decision making policy](#).

- f) any other information raised by the person that the NDIA considers relevant – to ensure a participant or person has the opportunity to provide information not listed above

To ensure that a participant or person has the chance to provide information not included above. This might include goals to manage money more independently and have supports in place to do so. The participant or person may raise these or any other relevant matters at any point during the planning process.

- g) any other information or circumstances the NDIA considers relevant – to ensure all relevant information about a participant’s unique circumstances can be taken into account.

The NDIA may consider other things in addition to those raised by the participant or other person. For example, the NDIA may consider the participant’s goals as set out in their plan and whether these identify a plan to manage funding and finances more effectively.

Things the NDIA must NOT take into account

When the NDIA is deciding whether a person is likely to spend NDIS funds in line with a participant’s plan, they must NOT take into account:

- h) the nature of a participant’s impairments.

For example, a participant with an intellectual disability may still be able to manage their funding and spend in line with their plan. Many participants with intellectual disability do so. However, a participant may have an intellectual disability that impacts their ability to understand how to spend in line with their plan or their ability to make good financial decisions. If they do not have access to supports to help with decision-making, this may impact on their ability to spend NDIS funds appropriately and would be relevant to for the NDIA to consider when making a plan management decision.

When the NDIA is deciding if a person is likely to spend NDIS funds in line with a participant’s plan, they must also NOT take into account:

- i) the total funding amount or a funding component amount in the plan
- j) if a participant doesn’t use all the funding available in their plan, or in a funding period

This ensures that a participant will not be thought of as unlikely to spend in line with a plan based on the amount of funding in their plan.

- k) if a person has declared bankruptcy but has been discharged (their bankruptcy has ended).

This means participants and nominees who have been bankrupt before but are not anymore will not be treated unfairly.

Is this a reviewable decision?

Participants will have the same review rights for plan management decisions as they do now. Plan management type is part of the NDIA’s decision to approve the statement of participant supports which is a reviewable decision.