

Good news stories

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The new year is upon us so I thought I'd look for a some good news stories to kick 2005 off on a positive note!

Surprisingly I had little difficulty in finding examples of HIV-positive people who have fought a discriminatory policy or practice which worked against them because of their status—and who won out in the end.

I thought these stories might give us all hope that, if we think the system is against us (which of course, it can be), it can pay to challenge the status quo and get results.

Immigration Battle

Brent was born in Canada, trained as teacher and worked in a range of HIV education positions there until taking up a business visa to work with an HIV organisation in Sydney in 1997. He met Paul here, fell in love and in 2000 they decided to apply for permanent residency for Brent under the interdependency category. So began a four-year saga that would try the best of relationships, given the lack of certainty about what their future together might be.

Six months after they had put in their detailed application, the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) got back to them, informing them that as Brent was HIV-positive, he would need to apply for a health waiver to be able to be considered for residency. The government's position is that HIV can be an expensive illness and can incur costs to the taxpayer, but it seems that the policy is based on worst-case scenarios and fails to take account of the reduced cost of treatment these days. To get past this barrier, you need to argue that there are overwhelming compassionate reasons why you should be allowed to stay.

About a year later the couple received a second rejection letter — Brent's application for a health waiver had been denied. This seems to be standard practice for DIMIA with most positive people rejected at this stage, forcing them to take their case to the Migration Review Tribunal (MRT). An expensive legal case would be needed to prove that Brent would be an asset to our society and our economy, that he had a particular set of skills that the country needed and that either separating the couple, or forcing them to live overseas, would be unfair. Indeed the case had to cover Paul's particular skills and assets for the country as well — as he would be leaving with Brent if the case was not successful.

After a tense lead-up, the MRT hearing went well and Brent's permanent residency was granted, the Tribunal finding that their relationship was genuine and accepting their arguments that forcing them to break their ties with family, friends and community in Australia would be wrong.

The whole process cost the couple over \$20 000 in legal fees and a hell of a lot of heartache along the way, but if you are prepared to stick out this long and expensive process, it is possible to achieve a good result.

Centrelink Review

One of the nightmares for positive people living on a Disability Support Pension (DSP) is that you could be asked in for a review of your eligibility for the pension and get an unsympathetic hearing or be met by a reviewer with little understanding of the episodic nature of HIV.

This scenario happened to "Ethan" (not his real name) recently when he received a letter from Centrelink asking him to present at their offices with his bank account details for the previous six months. Ethan stewed over the reasons why he might be called in: was Centrelink concerned about the extra money he received as honorariums for committee work he did occasionally (although he had reported it) or were they worried about his trips overseas (again he had reported them as is required but they were paid for as part of his advocacy work for HIV organisations)?

He became quite distressed about the thought of being taken off the pension as he knew he was not ready to go

back into the workforce, given his health and his energy levels. He asked a good friend with advocacy experience to come with him to his interview for support.

He needn't have worried as it turned out. The panel at Centrelink was not concerned about those things as he had already reported them to his local Disability Officer who had approved them — it may have been a different story if he hadn't done this, he was told. They accepted that Ethan should continue on the DSP and in fact told him that he should be getting extra money in rent assistance. The reason that he had been called in for a review was that his credit union where his pension was paid into had recently been merged with another organisation and it was unclear to them if something unusual had happened to his funds.

Linda Forbes from Welfare Rights in Sydney told Positive Living that people on a DSP can be called in for a review at any time (for no particular reason) but triggers for attention can include an overpayment of the pension (where people haven't declared their earnings and this was found out through their taxation records), when a medical review by Health Services Australia doctors or other assessors might have suggested a return to work within a certain period or when people go overseas and don't report it. Centrelink does do data matches with immigration authorities and the taxation department and it is essential to report overseas travel and extra earnings as required.

Linda agreed that it was a stressful experience for people to have to go through a review – and welfare rights and HIV organisations can help people to prepare their case. Reviews are not going to go away anytime soon, however, with the prospect that the government may change the eligibility for DSP from an inability to work 30 hours a week to 15 hours a week. It is unclear at this stage if this would affect current people on a DSP or only those who are placed on it in the future.

Superannuation Victory

Robert has been working for a government organisation in a highly qualified position for the past six years. In 1998 their superannuation board assessed him as being only eligible for limited service benefits to the exclusion of disability cover. This was solely because of his HIV status, as he was otherwise a healthy 38 year-old with no other medical conditions.

His exclusion from full superannuation rights was to be for a period of at least three years from commencement of employment. A year later he decided to challenge this assessment and appeal to their review committee.

His health had not deteriorated at all for over 15 years and he had not needed to take HIV antiretrovirals at any stage. He referred the superannuation review committee to his medical specialist who verified his overall good health and that his HIV status would not prevent him from doing his job, including field work, in any way. The specialist further mentioned that the advent of [HAART](#) [1] Highly Active AntiRetroviral Therapy ??? aggressive treatment of HIV infection using several different drugs together. had meant that, even if he was to required to take the medications in the future, he could remain in the workforce.

Following his appeal and the response of his specialist, full superannuation rights were accorded to Robert by the superannuation board in late 1999 and he has now also been accepted as a permanent member of his organisation. Insurance HIV Cover

The last 'good news story' happened to me. When I was planning a trip to Malaysia in July this year, I noticed that the travel agency (Harvey World Travel) was offering an insurance cover that did not have an exclusion clause for people with HIV. I was surprised by this as I was used to having to accept that insurers would not cover you for anything related to HIV. I spoke to their Medical Claims section by phone and was told that if I submitted a statement from my doctor about my most recent CD4 cell count and [viral load](#) [2] A measurement of the quantity of HIV RNA in the blood. Viral load blood test results are expressed as the number of copies (of HIV) per milliliter of blood plasma. and if I hadn't been hospitalized for an AIDS-related illness recently, that I would be considered for total health cover whilst travelling. The only hitch was I would have to pay an increased premium – an extra \$63 for ten days' cover.

I submitted the doctor's report, paid the premium and was granted the cover a week later.

Several months later I needed to travel again and was using a different travel agency — who offered me a Covermore Insurance cover but this time with an HIV exclusion clause. I noticed the same insurance underwriter —

Vero Insurances – was also mentioned in the fine print of this policy so I wondered if they would consider offering me HIV cover anyway. Without any hesitation I got the same reply from the Medical Claims section: if my T-cells, viral load and hospitalisation records were fine, I would be granted cover subject to a \$63 extra premium.

Kate Richards from Covermore Travel Insurance said that her company began doing travel insurance assessments for people with HIV since the early nineties – and had consulted the AIDS Councils of NSW and South Australia, government publications and general statistics on HIV/AIDS, taking into account advances in treatments and the effects on improved health for HIV-positive people. Kate also said that screening for the policy would be different for a 12-month stay away compared with say, 10 days.

Routine treatments, including prescription renewals and planned blood tests are not covered – but in most circumstances, it does cover the cost of HIV-related medical treatment outside Australia by or on the advice of a qualified medical practitioner. I think this change of policy by some travel insurers (at least) will be heartening for those people with HIV who have been hesitant to travel overseas in case something goes wrong with their health and they can't cover the cost.

I know that in the real world life doesn't always produce such rosy outcomes – just as, I'm told, there isn't really a Santa Claus (although personally, I do believe in elves and fairies!) – but I hope people do take heart from the good news stories that we hear from time to time when a good piece of advocacy, persistent lobbying or trying all avenues of appeal actually works for people affected by discrimination or unfairness.

As someone who has been an HIV activist for many years, and vice-president of NAPWA for a number of them, I would not have stayed involved for that time if I didn't think we can succeed against injustice and make a difference. In this current climate of government cutbacks and welfare reform, we all need to believe that!

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Links:

[1] <http://www.napwa.org.au/glossary/term/96>

[2] <http://www.napwa.org.au/glossary/term/416>