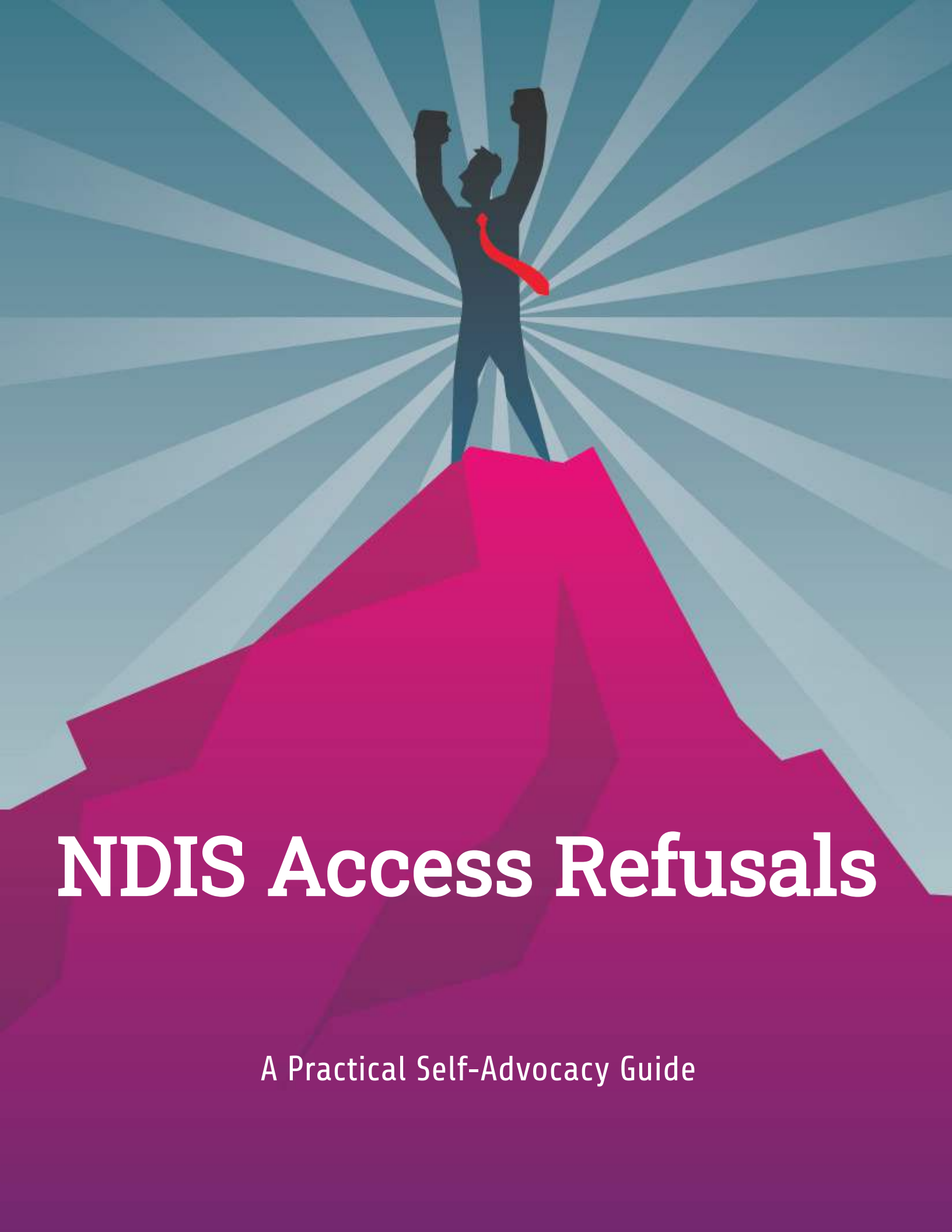

NDIS Access Refusals

A Practical Self-Advocacy Guide

NDIS Access Refusals Based on "Not Permanent": A Practical Self-Advocacy Guide

How to challenge vague "treatments remain" reasoning and what your reports should say

Disclaimer: This document is general information to help people understand common NDIA reasoning and how to respond. It is not legal advice. If your matter is urgent or complex, consider speaking with an advocate or lawyer.

Contents

1. The common issue: NDIA says your condition is not permanent

A very common reason the NDIA refuses NDIS access (or says you do not meet access) is: "Your impairment is not, or is not likely to be, permanent because there are remaining treatment options."

Often this appears as a short statement like “the evidence does not show that all available and appropriate treatments have been explored.” The problem is that this can be vague, and it may not properly explain what treatments NDIA believes are still available, or why those treatments would likely fix (remedy) the impairment.

2. What the law requires NDIA to do (reasons + proper test)

NDIA must give written notice and reasons for reviewable decisions.

For access decisions, the NDIA must apply the legal test in section 24 of the NDIS Act (disability requirements), including permanence.

Important: an impairment can still be considered permanent even if it is episodic or fluctuates in intensity.

3. Key precedent: NDIA v Davis (Federal Court)

The Federal Court decision NDIA v Davis is frequently relied on when NDIA argues “treatment options remain”. In practical terms, it supports these points:

- NDIA should identify the specific treatments it says are still “known, available and appropriate”.
- “Available” is not just theoretical; it can include real-world access issues (for example: affordability, location, waiting lists, suitability).
- The idea of treatments being likely to “remedy” an impairment is closer to cure/removal, not merely symptom improvement or partial benefit.

4. What to challenge in the refusal letter

When a refusal is based on “not permanent”, focus your challenge on the gaps in NDIA’s reasoning and the evidence.

Key points to challenge:

- Vagueness: NDIA says “treatments remain” but does not name them.
- No explanation of why those treatments are “known, available and appropriate” for you personally (in your real circumstances).
- No explanation of why those treatments are likely to “remedy” (remove) the impairment rather than just manage symptoms.
- Failure to engage with clinician evidence about the long history/course of the impairment, treatment attempts, and outcomes.
- If NDIA suggests “fluctuating” means “not permanent”, point to the law that fluctuating/episodic impairments can still be permanent.

5. What to ask for: clearer reasons and particulars

If the refusal reasons are unclear, you can ask NDIA to provide clearer reasons and “particulars”. This means asking them to spell out the exact factual basis for the decision.

Request that NDIA identify, in writing:

- The specific treatments NDIA says are still available and appropriate (name them).
- Why NDIA says each treatment is available to you in practice (cost, location, waiting lists, suitability).
- Why NDIA says each treatment is likely to remedy the impairment (not just help symptoms).
- What evidence NDIA relied on to reach those conclusions.

You can do this as part of an internal review request, and you can also request a formal statement of reasons under the Administrative Review Tribunal Act 2024.

6. Evidence checklist: what your clinicians should include

NDIA decisions often turn on how clearly your medical evidence addresses permanence and functional impact. Do not assume NDIA will infer permanence from diagnosis alone. Ask clinicians to state it explicitly.

What the report should cover

Notes / examples to include

Permanence (explicit statement)

Use the words: “permanent” or “likely to be permanent”. Explain why (course, duration, history, prognosis).

Treatments tried (detail)

List medications, therapies, admissions, frequency/duration, response, side effects, engagement barriers.

Why further treatment won’t remedy

State that further treatment may help manage symptoms but is unlikely to remove the impairment (no cure).

Known/available/appropriate in real life

If NDIA might say “try X”, address whether X is actually accessible (cost, waitlists, location, suitability).

Functional impact (real-world examples)

Describe substantial reductions in daily functioning: self-management, social interaction, learning/decision-making, communication, mobility (if relevant).

Fluctuation/episodic course

If symptoms fluctuate, note that this does not mean the impairment is not permanent; describe baseline functioning and episodic deterioration.

Likely need for ongoing supports

A sentence like: “likely to require ongoing supports long-term / for life, even if symptoms vary.”

7. Ready-to-use wording (templates)

A) Suggested clinician wording (edit to fit the person):

- "In my opinion, [Name] has impairments that are permanent, or likely to be permanent, within the meaning of the NDIS Act."
- "[Name] has engaged in evidence-based treatment over an extended period, including: [list]. Despite this, the impairments persist and are expected to continue."
- "There are no further known, available and appropriate treatments that are likely to remedy (remove) the impairments. Future treatment is aimed at symptom management and risk reduction rather than cure."

B) Suggested wording for your review request (edit to fit):

- "The refusal reasons are vague. Please identify the specific treatments you say remain 'known, available and appropriate', and explain why each is available to me in practice (cost, access, waiting lists, suitability)."
- "Please explain why you say each treatment is likely to remedy (remove) the impairment rather than merely manage symptoms."
- "Please identify the evidence you relied on for those conclusions, and address my clinician evidence about prognosis and treatment history."

8. Practical tips: records, timelines, and next steps

- Keep a single timeline of treatment: dates, providers, therapies, medications, hospitalisations, outcomes.
- Keep copies of all reports and NDIA letters. Save emails and write down phone calls (date, person, summary).
- In new reports, ask clinicians to include both permanence and functional impacts with real examples.
- If you request an internal review, submit the strongest updated evidence early and clearly link it to the legal test (permanence + functional impact).
- If internal review is unsuccessful, consider external review at the Administrative Review Tribunal (ART).

9. Useful links (legislation and cases)

Legislation:

- **NDIS Act s 24 (disability requirements):** https://www5.austlii.edu.au/au/legis/cth/consol_act/ndisa2013341/s24.html
- **NDIS Act s 100 (reasons for reviewable decisions):** https://classic.austlii.edu.au/au/legis/cth/consol_act/ndisa2013341/s100.html
- **Administrative Review Tribunal Act 2024 s 268 (request a statement of reasons):** https://www5.austlii.edu.au/au/legis/cth/consol_act/arta2024336/s268.html

Cases:

- **NDIA v Davis [2022] FCA 1002:** https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2022/1002.html
- **Mulligan v NDIA [2015] FCA 544:** https://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2015/544.html

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"NDIS_Permanence_Refusal_Self_Advocacy_Guide" empowers individuals facing NDIS access refusals by demystifying the vague reasoning often employed by the NDIA regarding the permanence of their impairments. This practical guide provides essential strategies for challenging refusals, detailed checklists for required evidence, and templates for effective communication with the NDIA. Equip yourself with the knowledge to advocate for your rights and secure the support you need.