



Alliance for Children's Entitlement to Social Security

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**Comment on the proposed amendments to the
Social Assistance Act (59 of 1992)
regulations**

31 May 2001

This submission was written by the ACCESS Task Team with valuable input from ACCESS Reference Team member Assoc Professor Sandy Liebenberg from the Community Law Centre, UWC.

Contact Person:
Paula Proudlock
ACCESS Task Team
Tel: (021) 685 1583

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1. Introduction

1.1 The Alliance for Children's Entitlement to Social Security (ACCESS)

The Alliance for Children's Entitlement to Social Security (ACCESS) was established in March 2001 following a national workshop on developing a comprehensive social security system for children in South Africa. The Alliance currently has 35 signed up members¹.

The Alliance is co-ordinated by a Task Team consisting of the Child Health Policy Institute (CHPI), Soulcity, Children's Rights Centre (CRC), and the Development Resource Centre (DRC). This submission has been written and endorsed by the Task Team.

ACCESS's members all share a common vision of a society where children are able to benefit from a comprehensive social security system. The system must ensure their survival and a standard of living adequate for their development. Furthermore, it must help to create an environment that enables all children to enjoy all their constitutional rights, especially the rights to equality, dignity, health, education, participation and protection from neglect and abuse.

1.2 The current system of social security

The Social Assistance Act, which was passed pre-1994, is not in line with our new Constitution or our international legal obligations. Various amendments to the Act and the regulations have attempted to reform the system but have failed to make the desired impact on the lives of children living in South Africa:

- 60 -70% of children in South Africa live in poverty.²
- South Africa has an unacceptably high Infant Mortality Rate (IMR) of 49 per 1000 (higher than Cuba, Vietnam & Botswana),

¹ Members include Molo Songololo, Women on Farms Project, Lawyers for Human Rights, Community Law Centre (UWC), Childline, Nazareth House, Highway Hospice, Child Welfare Society, Gender Advocacy Programme, Wola Nani, Thandanani Association, RAPCAN, South African Catholic Bishops Conference, South African Black Social Workers Association, Aids Legal Project, Bambisanani Project, Early Learning Resource Unit, Grassroots Adult Education and Training Trust.

² Haarman. AFRcC. 1999.

- The majority of these infants die from preventable conditions such as diarrhoea, dehydration, malnutrition and respiratory infections which are caused by a lack of access to food, sanitation services, water and adequate shelter.
- 25% of the infants who do survive are stunted due to malnutrition.
- The IMR is predicted to increase to 100 per 1000 in the next ten years due to the HIV/AIDS pandemic.³

Furthermore, the current system does not take into account the needs of the growing number of children who are infected or affected by HIV/AIDS, children with chronic illnesses, children between the ages of 7 and 18 years who are living in poverty, street children, refugee children and children living in child headed households:

- Children with chronic illnesses and HIV/AIDS are generally not considered eligible for the Care Dependency Grant⁴
- Children living in child headed households cannot access any of the grants⁵
- Children between the ages of 7 and 18 years who are living in poverty are not considered eligible for the CSG. This amounts to approximately 6, 4 million poverty stricken children⁶.

Besides the problem that the system excludes large numbers of vulnerable children through the eligibility criteria, the majority of children who **do** qualify **are not receiving the grants** due to a variety of management, service delivery and administration problems. To mention a few:

- The take up rate for all the grants is unacceptably low. The national take-up rate for the CDG is 24% of the eligible population, for the CSG the take up is 13, 9% and the FCG is 18, 8%.⁷

³ SA Health Review 2000

⁴ Some provinces do award CDGs to children who have been physically disabled by HIV/AIDS. Eg blindness caused by HIV

⁵ The problem of children living without adult supervision is growing rapidly, especially with the increasing numbers of children orphaned by AIDS. There are already an estimated 250 000 children under the age of 15 years who have lost one or both parents to AIDS⁵. This figure is expected to rise to close on 1 million within the next 4 years. It is estimated that 10 000 children live or work on the streets in South Africa. There are thus increasing numbers of child-headed households, with children taking care of children.

⁶ Figure extrapolated from statistics in the Idasa 2000 Children's Budget Book: "Are Children Being Put First? Child Poverty and the Budget 2000".

- Approximately 51% of children in South Africa do not have birth certificates and as a result cannot access any of the grants⁸.
- The paperwork requirements for the application process are onerous and complex
- There are long time delays between the date of application and the date of payment

The children who do manage to access the Child Support Grant are struggling to survive and develop on the meagre amount of R100/month.

- The amount of the CSG is inadequate to provide for the basic survival needs of a child. A primary care giver cannot feed, shelter and care for a child on R3 per day.⁹
- The amount has not been increased sufficiently in order to keep pace with inflation since the grant was introduced in 1998. In fact the value of the grant has decreased by 10% over the past 4 years. When the CSG was introduced in 1998, its real value was R100. Taking into account inflation, its real value is now (June 2001) R85, 74.¹⁰ The R10 increase effective on 1 July 2001 will bring the real value up to R94, 31.

Taking into account the above information, it is generally agreed by all role-players that the current system is urgently in need of a comprehensive overhaul.

1.3 Scope of this submission

This submission provides input on the regulations that relate to the grants provided to children through the Social Assistance Act, namely, the **Child Support Grant (CSG)**, **Care Dependency Grant (CDG)**, **Foster Child Grant (FCG)** and the **Social Relief of Distress Grant**. We also make suggestions for amendments to the Social Assistance Act and we provide some ideas on mechanism to improve access and take-up rates for each of the grants.

⁷ Jahoma, Selwyn. Director Policy and Planning. Department of Social Development. Paper presented at May 2001 conference on social security for children.

⁸ Smart, R. 2000. Children living with HIV/AIDS in South Africa - A Rapid Appraisal. Prepared for the Interim National AIDS and Children Task Team.

⁹ Various poverty datum lines studies exist. Most of these studies have found the cost of the minimum food requirements for a person is approximately R300/month.

¹⁰ Figures supplied by Judith Streak from the Children's Budget Project, Idasa.

We are aware that the Department is viewing these amendments as short-term adjustments in light of the expected new policy on a comprehensive social security system for South Africa. We agree that the system needs a complete over haul and are actively engaging with the Committee of Inquiry into a Comprehensive Social Security System to provide input into designing the new system. However, given the size of the task and the time that it will take to design and put the new system in place¹¹, we are calling for some **key immediate amendments** to the Act and the regulations and some **immediate administrative improvements**.

The children have already been waiting a long time. **While they wait, they are dying, starving, getting sick and being subject to exploitation, abuse and neglect.** The children can't wait any longer. **ACCESS Now!**

2. Detailed comment on the regulations

2.1 Child Support Grant (CSG)

2.1.1 Situational analysis

Eligibility

- There are approximately 7, 5 million children under 7 years of age in South Africa (Census 96 statistics adjusted according to population growth)¹²
- Approximately 4, 8 million of all children under 7 live below the CSG means test threshold. The Department has targeted the CSG at these children. A total of approximately 1, 2 million children are currently receiving the grant¹³.

¹¹ We would estimate that it will take at least three years for the new system to filter down to the children.

¹² Personal communications with Selwyn Jahoma. Director Policy and Planning. Department of Social Development. May 2001

¹³ Personal communications with Selwyn Jahoma. Director Policy and Planning. Department of Social Development. May 2001

- Children aged 7 to 18 years old who live in poverty are not eligible for the grant, irrespective of the depth of the poverty in which they live.
- The grant is restricted to six children per primary care giver, thus not catering for children who live in larger households, which is the typical scenario in rural areas and areas hardest hit by the AIDS pandemic.

Amount

- The amount of the grant is very low (R100/month)¹⁴ and does not adequately cover the basic needs of the child.
- The amount has not been sufficiently increased over the past four years since its introduction to ensure that it keeps pace with inflation. In fact the value of the CSG has declined by 10% over the past 4 years since its introduction. According to an analysis by the Children's Budget Project at Idasa:
 - In June 1998, the grant was worth **R100**
 - In June 1999, it was worth **R96, 30**
 - In June 2000, it was worth **R90, 54**
 - And in June 2001 it will be worth **R85, 74**
 - If the R10 increase comes into effect in July 2001, then the grant will be worth **R94, 31**

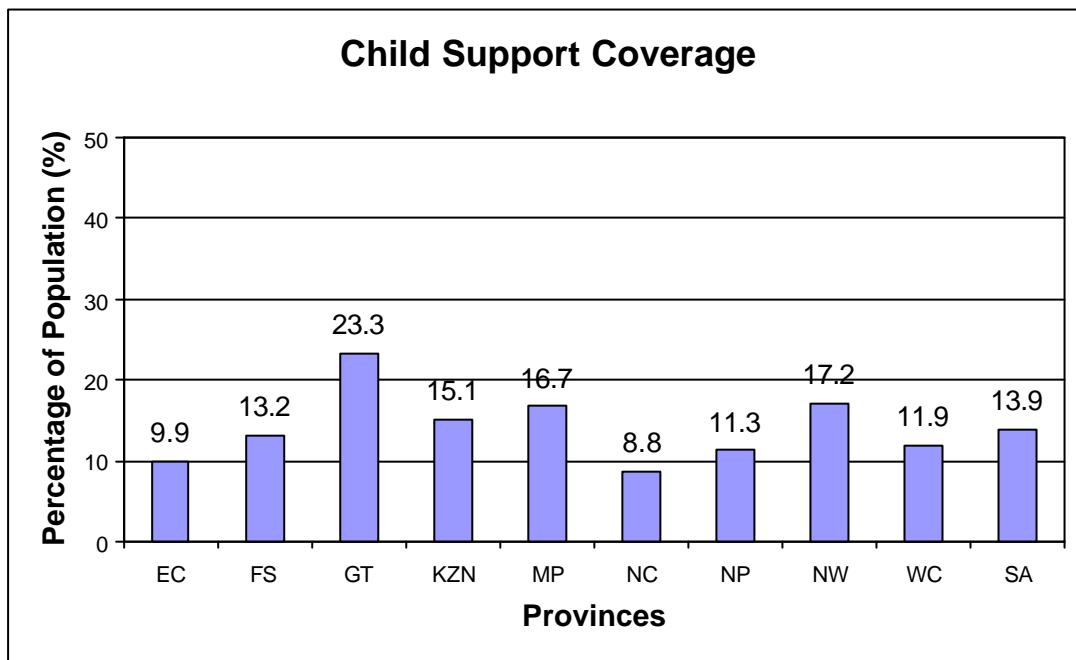
Access and administration issues

- The regulations require the primary care giver to produce the child's birth certificate before the application will be considered. 51% of children in South Africa do not have birth certificates¹⁵.
- Many primary care givers are still unaware of the availability of the grant, especially those living in informal settlements and rural areas.
- Children living in child headed households cannot access the grant.
- The budgetary allocation to the provinces is not ring-fenced. This means that provinces can under allocate budgets to the CSG line item. This results in delays as applications are not approved if the budget has run out.

¹⁴ The amount will increase to R110 in July 2001

¹⁵ Smart, R. Children living with HIV/AIDS in South Africa: A Rapid Appraisal. NACTT.

The graph below represents the percentage of children receiving the CSG compared to the percentage of children eligible in each province¹⁶. The "eligible population" in the graph refers to children living in households below the means test threshold. The data in the graphs is based on the 96 census plus estimates of population growth. Please note that there is a lot of discrepancy between the various studies on the number of children receiving the grant versus the eligible population. The figures on take-up referred to in this submission are Department of Social Development figures for February 2001.



The above information shows that there is an urgent need to address the problems with the CSG. The amendments to the regulations present us with an opportunity to begin to address these problems.

2.1.2 Comments on the proposed amendments

Regulation 3 (1) - persons eligible for child support grants

Proposed amendment

¹⁶ Graphs supplied by Selwyn Jehoma. .Director Social Security Policy and Planning National Department of Social Development. March 2001.

The present regulations allow a primary care giver who is the **biological** parent of the children concerned, to qualify for as many child support grants as she needs. Whereas primary care givers who are **not biological** parents are restricted to a maximum of 6 children.

The amendment proposes to restrict all primary care givers to a maximum of 6 grants, irrespective of whether the children are biological or not or whether the child is otherwise eligible.

Comment

Every eligible child should be able to access the child support child irrespective of whether they are living in a large or small household. In fact, children living in large households are in more need of extra financial support. Large families are typical in informal settlements and rural areas where elderly primary care givers find themselves caring for large numbers of children. Furthermore, the HIV/AIDS pandemic is increasing the numbers of children being cared for by extended family members and non-relatives.

At the time of writing this submission, we were unable to ascertain the Department's motivation for restricting the primary care giver to 6 CSG's. It may be to prevent "child farming" and to in the alternative, encourage informal care givers to register as formal care givers in terms of the Child Care Act. Registration requires them to comply with certain standards and processes. Besides lack of awareness of this option, the onerous registration requirements do not encourage primary care givers to take this route.

For both humanitarian and cost effective arguments, primary care givers need to be supported and encouraged to care for children in need, especially children infected or affected by HIV/AIDS and not discouraged through provisions such as regulation 3. If the state does not support these care givers, the children will end up in state institutions at a cost of at least R1000 per month per child or on the street or in hospital at a real cost to the state of R30 000 per month¹⁷.

¹⁷ Natrass, Professor Nicoli. Department of Economics. Inaugural Lecture on "Ethics, Economics and AIDS Policy in South Africa. 30 May 2001.

Recommendation

ACCESS therefore recommends that the limitation of 6 CSG's per primary care giver be removed.

Re-draft of proposed amendment:

Reg. 3(1) A person shall be eligible for a child support grant in respect of **all the children for which he or she is the primary caregiver**~~in respect of a maximum of six children.~~

Regulation 9(6) and (7) - accompanying documentation

Proposed amendment

The Department has proposed an amendment to regulation 9 (6) to clarify that alternative proof of Identity Documents or Birth Certificates cannot automatically be accepted. Alternative proof for these documents will require special permission from the Director General. The amendment merely brings 9(6) into line with 9(7) and in effect does not introduce anything new other than making it expressly clear that alternative proof of Identity Documents and Birth Certificates **will not be easily accepted**.

In terms of regulation 9(7), alternative proof of Identity Documents and Birth Certificates will not be accepted *"unless the Director-General directs otherwise"*.

Comment

At least 51% of children do not have birth certificates¹⁸. Children in rural areas and informal settlements make up the majority of this 51%. These are the children most in need of the CSG. The lack of birth certificates and identity documents in rural areas is due primarily to the lack of home affairs offices in these areas. Mothers with no money to spare for the transport costs have to travel long distances to home affairs offices in the towns or cities. Applications for birth certificates and identity documents can take a long time due to the time delays in the home affairs processes.

¹⁸ Smart, R

Recommendation

ACCESS recommends that alternative proof for children's birth certificates and identity documents should be allowed to be accepted as **interim proof** of the child's identity. In other words, when the primary care giver hands in her application form and accompanying documentation, if she hands in alternative proof of the child's identity, the lack of a birth certificate should not hold back the application process. However, she will be required to hand in the formal documents within 6 months of her date of application. If she fails to do so, the grant will be suspended. However, she may not be penalized for delays caused by the Home Affairs Department and therefore should be allowed to request an extension beyond the 6 months cut off date.

We suggest that **road to health clinic cards, maternity clinic birth records, affidavits** from marriage officers, traditional birth attendants, social workers or child welfare offices (NGO), and **proof of application for the child's identity document** should be accepted as interim proof.

This recommendation does not necessarily require an amendment to the regulations. The DG could simply exercise her power in terms of regulation 9(7) and issue a **general directive** that alternative proof of birth certificates and children's identity documents may be accepted for applications for the Child Support Grant.

We also recommend that the directive cover **care dependency grants**.

This directive could be withdrawn at a later stage once the Home Affairs Department has initiated a national child registration plan. Such a plan must include mobile offices being sent to rural areas.

Regulations 10 and 11 - date of application and date of accrual

Comment

We support the amendments to regulation 10 and 11. The amendment to regulation 10, together with the amendment to regulation 11 that shifts the date of accrual to the date upon which the application is made and lifts the restriction on backpay, this amendment will hopefully improve the problem of long time delays between the day when the applicant hands in her forms and the date when payment of the grant begins. It will also ensure that the primary care giver receives full back-pay. However, it must be clear that if

the applicant hands in alternative proof of the child's identity in terms of regulation 9(7) and the DG's general directive, the date of application in terms of regulation 10(1) should not be delayed.

2.1.3 Recommendations for further amendments

Regulation 1 - definition of "personal income"

Regulation 9(3) - reference to "personal income"

Regulation 15 - permissible deductions

Regulation 16(2) - means test threshold

Comment

A primary care giver has to pass the means test in order to qualify for a CSG. Her **personal income** must not be more than R800 or R1300 per month¹⁹ depending on whether she lives in a urban or rural/ or formal or informal dwelling. **'Personal income'** is defined to include both her and her spouse's income²⁰.

We would like to take this opportunity to comment on the means test that is applied to the CSG - in particular the definition of personal income and the fact that the number of children for which the primary care giver is caring for is not taken into account.

- The means test requires the primary care giver to show that her income plus her spouses income is less than R9600/ year. This amounts to a combined income of less than R800/month. If her spouse receives a pension from an employer, this amount will also be considered. The amount of R800/month is usually spent on providing shelter, food, clothing, water and schooling for a family of at least four or five people.
- The threshold amount has not been adjusted to keep pace with inflation since 1998.

¹⁹ R9600 or R13 200/year

²⁰ The draft proposes to amend the definition of **'personal income'** to make it clear that both the primary care giver and his or her spouse's income must be taken into account in the means test. This does not in effect bring about a change as currently this is happening in practice.

- A study on old age pensions found that in households where the pension went to the woman, the children were better nourished, indicating that women receiving grants are more likely to spend it on food for the children²¹.
- The means test does not take into account the number of children being supported on the primary care givers personal income.
- The use of a means test does not make economic or administrative sense given the fact that the majority of children live in poverty. The amount of money and time spent on trying to target the grant is not worth the effort. That same money and time could rather be used to provide grants to the rest of the children living in poverty.
- The means test is administratively complex and acts as a barrier to implementation. This is contrary to the principle laid down by the Constitutional Court in the Grootboom case that there must be reasonable implementation of state programmes.

Recommendation

- (1) Remove the means test and introduce universal provisioning
or in the alternative
- (2) Adjust the means test as follows:
 - ✓ Only the primary care givers income should be considered in the means test.
 - ✓ The means test formulae must take into account the number of children being supported by the primary care giver by allowing deductions for each child in their care.
 - ✓ The threshold amount must be increased to keep pace with inflation. (It has not been adjusted since 1998)

²¹ Case, A. "The Impact of the State Old Age Pension on Poverty and Household Well-being in South Africa." Paper prepared for a World Bank Course. June 2000.

Re-draft for suggestion 1:

(Remove all references in the regulations to a means test for the primary care giver applying for a child support grant.)

Re-draft for suggestion 2:

Regulation 1 - definition of "personal income": "Personal income" means the income of the primary care giver ~~and his or her spouse~~, as referred to in regulation 14(1), after all the permissible deductions referred to in regulation 15 have been made."

Regulation 9(3): An application for a child support grant shall, in addition to the documents required in terms of subsection (1), be accompanied by the following documents:

(a) proof of personal income of the applicant ~~and when applicable, his or her spouse.~~

Regulation 15: The Director General shall, on submission of acceptable documentary proof when determining the income of an applicant and a spouse in the case of a social grant, the income of the family in the case of a care dependency grant and the personal income of the primary care giver ~~and his or her spouse~~ in the case of a child support grant, allow the following deductions or contributions:

Insert new sub-regulation (5) **The number of children being supported by an applicant for a child support grant. The amount of deduction per child shall be the amount of a child support grant.**

Regulation 16(2): A primary care giver shall qualify for the amount referred to in sub - regulation (1) if his or her personal income is below -

- (i) ~~R9600~~ **(replace with an amount adjusted to keep pace with inflation and increased cost of living)**per annum; or
- (ii) ~~R13200~~ **(replace with an amount adjusted to keep pace with inflation and increased cost of living)** per annum and the child concerned and his or her primary care giver either -
 - (aa) live in a rural area; or
 - (bb) live in an informal dwelling.

Regulation 3(2) (e) - CSG or CDG?

Comment

This regulation specifies that a primary care giver cannot access a child support grant if she is already in receipt of a grant in respect of the child concerned. Therefore a parent of a child with a disability has to choose between a child support grant or a care dependency grant.

The child support grant and care dependency grant serve different purposes. While the CSG is for the basic needs of the child (survival needs such as food, clothes and shelter), the CDG is for the extra needs of a child due to his or her disability (medical costs, transport, home based care, special diet, assistive devices).

A foster child grant and a child support grant serve a similar purpose and therefore there is no need to provide a foster parent with both the CSG and the FCG.

For this reason, receipt of a CSG should not disqualify a parent from being eligible for a CDG and visa versa.

Recommendation

We therefore recommend that regulation 3(2) (e) should be amended to read that the primary care giver is only disqualified if she is already in receipt of a foster care grant in respect of the child.

Re-draft: 3(2) (e) he or she is no already in receipt of a ~~grant~~ **foster child grant** in respect of the child concerned.

Regulation 3(2) (i) - age of eligibility

Comment

This regulation specifies the age of eligibility. It states in sub-regulation (aa) that the child must be under the age of 7 years to qualify for the CSG. Sub-section (bb) specifies that the Minister may increase the age of eligibility by notice in the government gazette.

The UN Convention on the Rights of the Child and the South African Constitution define a child as a person under the age of 18 years. When the Convention and the Constitution refer to the child's right to social security, nutrition, shelter and to be protected from abuse, neglect and exploitation both documents are referring to all children under 18 years of age.

If challenged in court on the issue of excluding children aged 7 to 18 from being eligible for the child support grant, the government will need to show that its CSG programme is reasonable. To do this, it will have to show that the programme does not exclude the most vulnerable. The exclusion of children aged 7 to 18 years purely on the determinant of age, irrespective of the depth of poverty that they live in will in all likelihood not pass the test of reasonableness. The inadequacy of the various support programmes provided to school going children (eg the Primary School Nutrition Programme) provide further argument for the government's social security programme to be considered unreasonable.

Furthermore, the state is under a direct obligation to protect all children from abuse, neglect and exploitation. This is an immediate obligation that is not subject to "progressive realisation" defence. Poverty is a major determinant of child abuse, neglect and exploitation. A legal argument can therefore be made that the state is violating children's rights to be protected due to an inadequate response to dealing with the levels of poverty in South Africa. The lack of social security for children aged 7 to 18 years can therefore also be challenged in a court of law on these grounds.

The Lund Commission and the subsequent amendments to the Social Assistance Act and its regulations indicated an intention to initially set the age of eligibility at 7 years and to increase it incrementally as time goes by. It has been nearly four years since the CSG was introduced and the age of eligibility has remained static, while the value of the grant has in effect been decreased. Although substantial progress has been made over the past year in increasing the take-up rate and reaching the targeted population, the take-up is still inadequate. There have thus been no substantial progressive since 1998.

When South Africa presented its first country report on the implementation of the UN Convention on the Rights of the Child, the Committee on the Rights of the Child interpreted SA's obligations in terms of the Convention and recommended that South Africa expand the Child Support Grant

programme or develop alternative programmes to include support to children up to the age of 18 years. The Committee will expect an improvement in this regard when South Africa reports again in 2002.

Recommendation

We therefore recommend that regulation 3(2) (i) (aa) be amended to increase the age of eligibility to 18 years

or

that the Minister use his powers in terms of regulation 3(2) (i) (bb) to increase the age of eligibility incrementally through notice in the Government Gazette.

Regulation 16 (1) - value of the grant

Comment

The amount of the grant is very low (R100/month)²² and does not adequately cover the basic needs of the child.

The amount has not been sufficiently increased over the past four years since its introduction to ensure that it keeps pace with inflation. In fact the value of the CSG has declined by 10% over the past 4 years since its introduction. According to an analysis by the Children's Budget Project at Idasa:

- In June 1998, the grant was worth **R100**
- In June 1999, it was worth **R96, 30**
- In June 2000, it was worth **R90, 54**
- And in June 2001 it will be worth **R85, 74**
- If the R10 increase comes into effect in July 2001, then the grant will be worth **R94, 31**

When the CSG was introduced in 1998 at the value of R100, there was a commitment by the Department to increase the amount by linking it to an objective measure of need (the realistic costs of providing adequately for child). This commitment has not be followed through.

²² The amount will increase to R110 in July 2001

The decrease in the real value of the grant amounts to a retrogressive step that will require justification before the UN Committee on the Rights of the Child and the Constitutional Court.

Recommendation

ACCESS calls for the amount to be increased taking into account objective poverty datum , inflation and the increased cost of living.

2.2 Care Dependency Grant (CDG)

2.2.1 Situational analysis

Eligibility

A care dependent child is defined in the Act as a child:

- between the ages of one and 18 years
- who requires and receives **permanent home care**
- due to his or her **severe** mental or physical **disability**

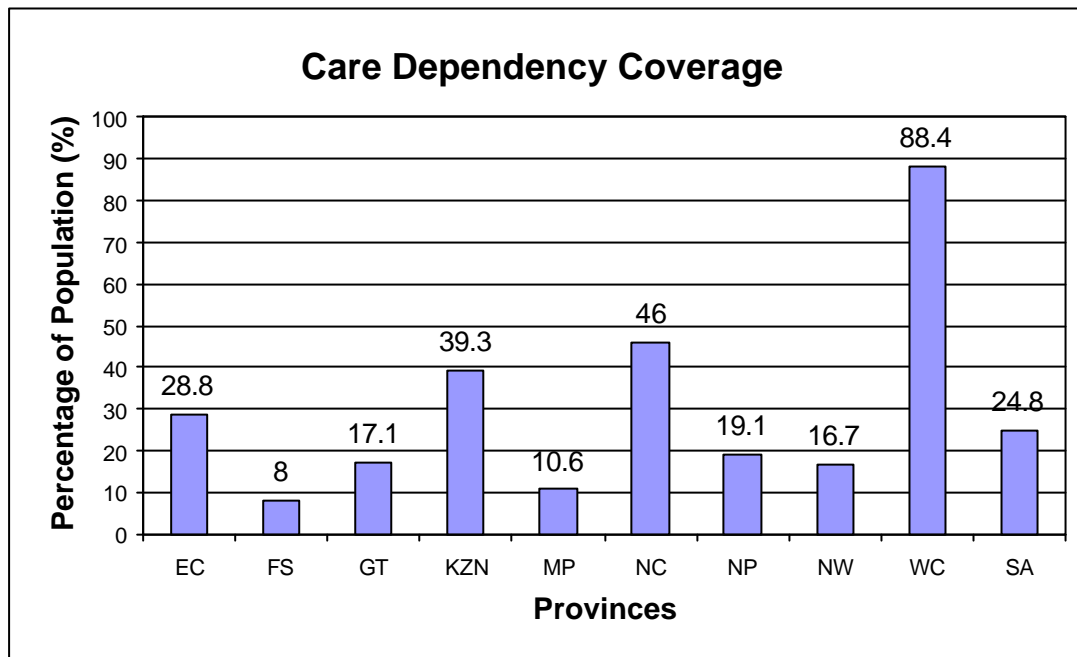
The CDG has problems due to lack of clear definitions of “disability” and “permanent home care”, which leads to subjective interpretation by assessing officers. A lack of clarity exists regarding chronic illnesses that cause disability, as well as the eligibility of children who attend Schools for Learners with Special Educational Needs.

The narrow eligibility criteria restricts a large number of children from accessing this grant, as children with special needs who require care but are not “severely disabled” do not qualify. There is also lack of clarity regarding the eligibility of children with HIV/AIDS. Legislation should not exclude children with moderate disability, children affected and infected with HIV/AIDS and children with chronic illnesses from receiving the Care Dependency Grant.

Poverty, malnutrition, lack of access to assistive devices and quality health care all contribute to the cycle of disability and suffering of the children.

Access and administration issues

The low take-up rate of this grant suggests that administrative problems are impeding the distribution of the grant. The graph below represents the percentage of children receiving this grant out of the amount of children eligible in each province.



These problems can be solved partly by amending the Act and the regulations. A new medical assessment form and application form will also have to be drafted. This will need to be followed up by the distribution of guidelines on how to interpret the new definitions and forms to all medical officers and pension officers in the provinces. Training of the medical officers and provincial officials would also be necessary.

2.2.2 Comments on proposed amendments

Regulation 1 and Regulation 5 - Assessment Panels

Proposed amendment

The amendments propose the insertion of a definition of "assessment panel" :

"Assessment panel" means a group consisting of individuals appointed by the Director-General who have the relevant experience and expertise to assess disability for the purposes of awarding social grants.

Regulation 5 is also being amended to specify that the function performed by the **medical pensions officer** be replaced by the assessment panel.

Comment

Currently, a child with a disability is assessed by a medical practitioner and then the application form and medical report is scrutinized by a medical pensions officer who then sends it on to the DG for final approval. **The amendments in essence seem to propose to replace the medical pensions officer with the assessment panels.** If our interpretation is correct, the parent will take the child to a medical practitioner to get a medical report and then submit the application form, report and accompanying documentation to the offices of the Department of Social Development. The paper work will then be sent on to the assessment panel for a decision on whether or not the application should be granted.

The concept of assessment panels is supported by ACESS as we believe that it is important for the assessment to be made by a multi-disciplinary group of people instead of one official. The decision whether or not to grant an application should not depend on a purely medical assessment or the opinion of one medical pensions officer who does not even physically see the child concerned. However, we are concerned by the lack of clarity with regards to the assessment panel's composition, functions, hours of work, remuneration, and availability.

We strongly recommend that this detail needs to be clarified now and specified in the regulations. We cannot support the proposed amendments without clarity of how and if the assessment panels will improve access. At this point we would like to provide the following principles that the assessment panel process should adhere to:

- 1) The new system must increase accessibility and the speedy processing of the care dependency grants. If the assessment panels are staffed by seconded staff or inadequately compensated and unsupervised part-time volunteers, the current hold up and delays in the application process will be exacerbated. There should therefore be sufficient

numbers of assessment panels, especially in rural areas. The panel members must be full-time and appropriately compensated, resourced and supervised.

- 2) The original purpose for the introduction of the assessment panels was to ensure that decisions are not made by a single official and are not based on a purely medical assessment. To achieve this goal, the composition of the panels needs to be carefully thought through to ensure the presence of a team of people who can provide a holistic assessment of the child's health, social and financial needs.
- 3) If the existing medical report forms are not changed, the difference between the functions performed by the existing medical pensions officer versus the new assessment panels is not clear. The medical report form requires the doctor to give his or her medical opinion on the type and severity of the disability and then to state whether the child needs permanent home based care. If the new system of assessment panels is introduced, the medical officer should not be asked to state his or her opinion on whether or not the child requires permanent home care and whether the child should qualify for a grant or not. This assessment and decision must be made by the multi-disciplinary panel.
- 4) It is not clear whether the assessment panel will see the applicant and child in person or whether they will make their assessment and decision purely on the paperwork provided. If the idea is for the panel to see the applicant and child in person, the system will not work if the panels are ad hoc structures that do not sit every week-day. The large number of applications received every month demand many full-time panels.

If the idea is for the assessment panel to make their decision on the paperwork, how will they assess the child's social, health and care needs? The medical report form does not provide information on the child's personal circumstances. **The medical report form or application form will need to be simplified and to include a needs based assessment.** Medical officers, department officials and panel members will need to have the appropriate tools and to be trained to ensure that they gather the relevant personal circumstances information.

Recommendation

ACCESS recommends that the Department make known their concrete proposals with regards to the functioning of the assessment panels before the regulations are finalized. The detail should then be included in the final regulations.

2.1.3 Recommendations for further amendments

Social Assistance Act section 2(g) and regulation 5(1) - insertion of primary care giver

Comment

Section 2 (g) of the Act stipulates that the Minister of Welfare shall make "a care-dependency grant to a **parent** or **foster parent** in respect of a care-dependent child."

Regulation 5(1) states that a **parent** or **foster parent** shall be eligible for a CDG in respect of a care dependent child.

As the Act and regulations currently stand, only the legal parent or foster parent is eligible to apply for the CDG. Extended family members or unrelated primary care givers caring for children with disabilities and chronic illnesses are not considered eligible for the CDG.

Recommendation

We therefore recommend that the Act and/or Regulations should be appropriately amended to ensure that the CDG is available to the ***primary care giver*** of the child as is the case with the Child Support Grant.

We would also like to recommend that foster parents should be able to access **both** the foster grant (for the daily needs of the child) and the care dependency grant (for the additional needs of the child due to his or her disability).

We will have to be careful of simply replacing the words "*parent or foster parent*" with "*primary care giver*" as the definition of "*primary care giver*" in the Act could be interpreted to exclude foster parents.

Therefore the care dependency grant enabling clause, section 2(g) of the Act and regulation 5(1), should be amended to mention both the *primary care-giver* and the *foster parent*.

Re-draft:

" Section 2. - Payment of grants

The Minister shall,, make -

(g) a care-dependency grant to a ~~parent~~ **primary care-giver** or foster parent in respect of a care-dependent child."

Regulation 5(1) - Persons eligible for care-dependency grants

A ~~parent or parents~~ **primary care giver** or a foster parent or foster parents shall be eligible for a care-dependency grant in respect of a care dependent child...."

Social Assistance Act Section 1 and Regulation 5

Comment

The definitions section of the Social Assistance Act specifies that a:

"**care-dependent child**" means a child:

- between the ages of one and 18 years
- who requires and receives permanent home care
- due to his or her severe mental or physical disability

The Act and regulations do not define what is "permanent home care" or "severe disability", and the terms have therefore been interpreted differently by the various officials and doctors administering the grants.

The phrase "*permanent home care*" has resulted in a lot of confusion among the doctors and medical officers who are required to assess a child for eligibility for the CDG and has been interpreted differently by various departmental officials and documents, the provinces, medical pensions officers and medical officers.

Some officials require the mother to stay at home and will not award a grant if she is employed albeit for a small amount of money that does not exclude her from the means test. Others will not award the grant if the child attends a special care day centre for half the day and comes home in the afternoon to be cared for by the granny allowing the mother to be employed. There is further confusion as to whether a child attending a special school during the day and returning at night is eligible for the grant. There is also confusion as to whether children with chronic illnesses including HIV/AIDS qualify for the CDG if they are cared for at home.

The phrase "*severe disability*" is also not defined in the Act or regulations and is again interpreted differently by the various officials in the application process. The doctors tend to make a purely medical assessment depending on the type and extent of the disability instead of looking at the social and economic consequences of the disability.

Recommendation

1) We therefore recommend the insertion of a new definition of a "*care dependent child*" which removes the words "*severe disability*" and "*permanent home care*".

Among other things, the new definition should take into account the following:

- children with moderate disabilities must be able to access the grant or a portion of the grant if the condition requires additional resources for the family.
- children with chronic illnesses, including HIV must be able to access the grant
- the purpose of the grant must not be purely for poverty alleviation but must be aimed firstly at meeting the additional needs of the child incurred due to his or her illness or disability and secondly at promoting development and participation.
- The grant must be **needs based** and must not focus on the type and extent of disability that the child suffers from.

The new definition must be broad enough to accommodate all the categories of children in need yet crisp enough to be clear in its meaning.

The drafting of a new definition needs further time and consultation. The expansion of the definition at this stage to include the broadest category of children may not be viable and we may need to come up with a compromise definition as a short-term remedy.

A number of suggestions were made at the national workshop on children and social security for disability and chronic illnesses in May 2000. The following draft represents an amalgamation of some of the definitions:

"A child (0-18years) qualifies for a care dependency grant if he or she requires additional care, support and resources due to his/her disability or chronic health condition, in order -

(a) to ensure the child's survival and a standard of living adequate for the child's development

(a) to cater for the additional costs incurred due to the disability or chronic illness ; and/or

(c) to ensure a good health and nutritional status; and/or

(d) to participate fully in life; and/or

(e) to develop his/her potential; and/or

(f) to ensure a dignified, quality life; and/or

(g) to maximise his or her educational potential.

2) Another suggestion would be a simple addition to the definition in the Act - simply specify that children with HIV and chronic illnesses are also care dependent children

3) In the alternative, we recommend that the Department draft and distribute a Departmental Directive specifying that children with HIV/AIDS or chronic illnesses must be considered to qualify for the CDG **as an interim emergency measure**. Regulation 5 could also be amended by the addition of a sub-regulation to the effect that the Minister/DG may declare further categories of children to be eligible for the CDG through a notice in the Government Gazette. We recommend that children become eligible for the CDG upon diagnosis of their positive status.

4) With regards to children with HIV/AIDS:

At the moment, some officials grant CDG's if the child has full blown AIDs. However, in most HIV positive children under 12 years of age the disease progresses rapidly. Therefore if you wait for them to receive the grant when

they have full blown AIDS, they will probably be dead by the time the grant reaches them. **The purpose of the grant should be "preventative" ie to ensure they receive the necessary food and care to keep them in good health.** If these children are not kept in good health, they end up in hospital where they need extensive and costly treatment. It has been estimated that it costs the state R30 000 pr month to keep a child in hospital.

Thus besides humanitarian grounds for keeping the child in good health, providing the CDG is a cost effective way for the State to save on hospitalisation costs.²³

5)With regards to children with chronic illnesses:

If our suggestion is implemented, the Department will have to compile a list of chronic illnesses and social consequences that make a child eligible for the CDG. The Department of Health is currently undertaking a policy development process for the management of chronic illnesses in children. The process also involves listing and categorizing the various chronic illnesses suffered by children and the needs of children with these conditions. This information could be made accessible to the Department of Social Development.

Regulation 5(1) - means test threshold

Comment

The means test threshold of R48 000 has not been adjusted since the 1998 regulations.

Recommendation

ACCESS recommends that the threshold amount be appropriately adjusted to keep pace with inflation and increased cost of living.

²³ 80% of the beds in Red Cross Children's Hospital are occupied by children with HIV.

Regulation 9 - Documents required to accompany applications

Comment

An **application form and medical assessment form** have been prescribed by the Minister²⁴. The application form is a general form for all people applying for a variety of social assistance grants. The medical assessment form is specific to the care dependency grant and must be filled in by a medical officer.

In the medical form, the medical officer is asked to state his or her opinion as to whether the child is severely, mildly or not at all disabled. He or she is also asked to state his or her opinion as to whether the child requires permanent home care due to his or her severe disability. Finally, the medical officer is asked to give a recommendation as to whether the child needs full-time care, part-time care or is able to care for him or herself.

Medical officers have asked for the form to be re-drafted as it is too simplistic and does not allow for social factors and the needs of the child to be taken into account. It provides for a purely medical assessment and concentrates on the type and extent of the disability that the child has.

Recommendation

ACCESS recommends that the form be re-drafted to make it a needs based assessment form that includes a personal circumstances assessment. The development of a needs based assessment tool will require short-term research and the subsequent development of the form²⁵.

2.3 Foster Child Grant (FCG)

2.3.1 Situational Analysis

The FCG is not being accessed by carers of the child who are not the child's legal foster parents yet are fulfilling the role of a foster parent. (eg. the

²⁵ Access is in a position to do the research and develop the form for the Department if compensated for costs

members of the extended family who are caring for children orphaned by AIDS).

A child must be removed from its parent and declared a child in need of care by the court before they will be considered eligible for a foster child grant. Many children simply end up with extended family members when their parents die or abandon them without any formal court procedures being followed. Although effectively fulfilling the function of a legal foster parent, these extended family members are not accessing the benefits of the foster child grant. This is particularly true of Black child carers versus White, Coloured and Indian child carers, and carers living in rural versus urban areas.

Children who are most vulnerable, ie those living in rural areas with care givers who live in utmost poverty, are therefore being excluded from the system. In terms of the Grootboom judgement, a state programme will not be considered to be reasonable by the Court if it does not provide for those members of society who are most vulnerable. The foster child grant system could be the subject of a constitutional challenge on this basis.

The fact that children who are most vulnerable are not accessing the grant is partly due to the following reasons:

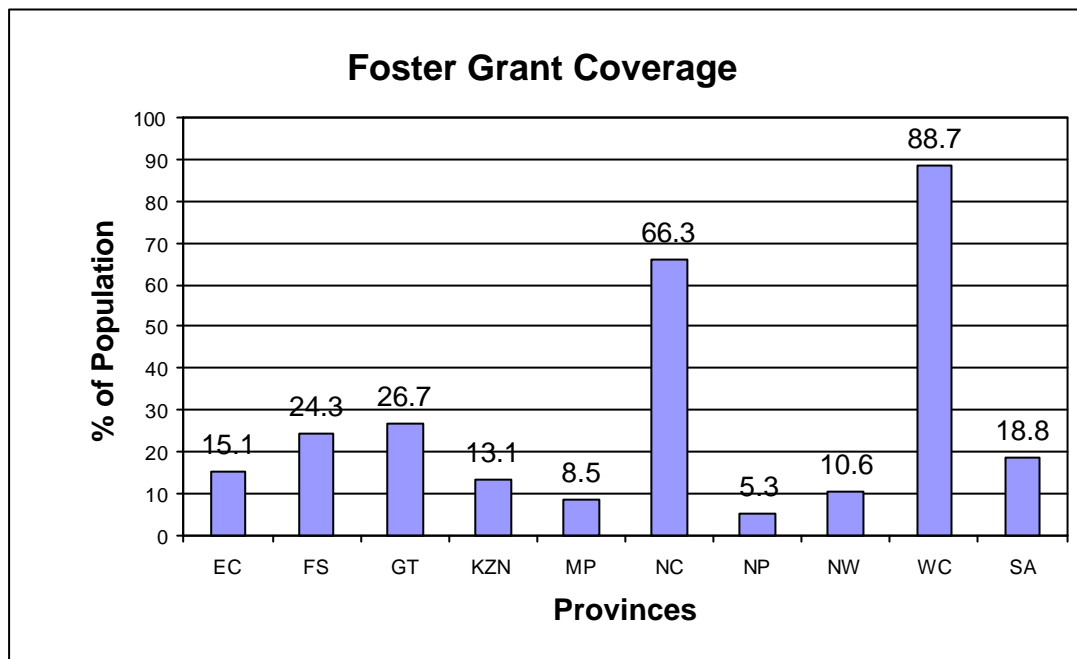
- Many people in rural areas are not aware of the existence of the foster child grant. This is because most rural areas do not have welfare offices and the Department of Social Development is not conducting awareness raising campaigns around the FCG in rural areas.
- If a care giver in a rural area become aware of the possibility of applying for the grant, the process is difficult if impossible to access. Very few rural areas have welfare offices or courts and the process is very lengthy and cumbersome requiring access to telephones, transport, postal services, and home affairs offices.

Access and administration issues

The legal process is cumbersome and lengthy. Application processes are also complicated, preventing more children from accessing this grant. As a result, there is a low uptake of this grant. As adoptions are unsubsidized many

parents do not adopt but rather have repeat foster placements in order to benefit from the Foster Child Grant. This creates insecurity for the child and parents.

The graph below represents the percentage of children receiving this grant out of the amount of children eligible in each province.



The SA Law Commission's Project Committee on the Child Care Act are discussing this problem and will be recommending an alternative system which will ensure that extended family members can access the system more easily and that will provide for subsidized adoptions.

However, the HIV/AIDS pandemic presents us with an emergency situation which requires urgent interim interventions. Introducing a system of grants for informal foster parents as an interim measure is one way of providing for children affected and infected with HIV. At a recent briefing of the Portfolio Committee of Social Development by the Departments of Health and Social Development on models of home based care for people affected and infected with HIV, it became apparent that the Departments have not yet put a programme in place to support people infected and affected with HIV. While this lacuna exists, the social assistance system can help provide for people infected and affected with HIV/AIDs to ensure their survival and care.

Again, we would like to point out the judgement of the Constitutional Court in the Grootboom case that a state programme will not survive the constitutional test if it does not provide for the most vulnerable and marginalized people. People affected and infected with HIV/AIDS live under a heavy burden of illness and poverty. If the system of social assistance does not provide for children affected and infected with HIV, it is definitely open to a constitutional challenge.

Besides humanitarian and legal motivation for such a system, the state will in the long term save the costs of having to provide for these children in state institutions.

2.3.2 Comments on the proposed amendments

Regulation 4 - persons eligible for foster child grants

Proposed amendment

The draft regulations propose to insert the requirement that the child must be a South African citizen to qualify for a foster child grant.

Comment

We do not support this amendment as it will constitute a breach of our legal obligations in terms of the Constitution and the UN Convention on the Rights of the Child.

Non-citizens, temporary residents and refugee children must be able to access the FCG. The Constitution does not have any limitations on the rights of children based on their nationality. The UN Convention on the Rights of the Child stipulates that State Parties must respect and ensure the rights set forth in the Convention to each child within their jurisdiction **without discrimination of any kind**, irrespective of the child's or his/her parents legal guardians' race, , **national**, ethnic or social origin, , birth or other status. (Article 2).

Furthermore, there are very few children in South Africa who are non-citizens and who are applying for FCGs. Removing this proposed amendment would therefore have little if any adverse impact on the budget.

Recommendation

ACCESS therefore recommends the deletion of the proposed amendment to Regulation 4(1).

Regulation 10 - date of application

Proposed amendment

The "date of application" of the grant is important because this is considered the date from which payment of the grant should begin. However, in practice, the applicant will only start receiving payment once the application has been approved by the DG (to regulation 25). This process can take anything from one to 6 months or more in some instances. The applicant may not be penalized by the Department's time delays and therefore should receive backpay for the time in-between the date of application and the date when the DG approves the grant and payment begins.

The present regulations stipulate that the date of application is the date when the application for the grant is signed by the applicant and certified by the attesting officer and a second attesting officer. Sub-regulation (2) provides that the foster parent may put in a request for the court date to be considered as the date of application.

The amendment proposes that the date of application for all grants should be the date when the application is signed by the applicant and verified by the attesting officer. The proposed amendment does away with the requirement that it must also be signed by a second attesting officer.

With regards to foster child grants, the date of application shall now automatically be deemed to be the date of the court order.

Comment

We support this amendment. Together with the amendment to regulation 11 that shifts the date of accrual to the date upon which the application is made and lifts the restriction on backpay, this amendment will hopefully improve the problem of long time delays between the date of the court order and the date when payment of the grant begins and ensure that the foster parent

receives full compensation from the date upon which they become legally responsible for the child.

Amendment of regulation 11 - date of accrual of grants

Proposed amendment

The present regulations stipulate that grants accrue from the date upon which the DG approves the grant in terms of regulation 25. However, should the time lapse between the date that the DG approves and the date that payment begins be longer than three months, the applicant is restricted to three months back pay.

Sub-regulation (2) provides that a foster parent may request that the date of accrual be deemed to be earlier. Either the date upon which the application was made or the earlier date of the court order.

The draft amendments propose to shift the date of accrual back to the date upon which the application is made.

Comment

There seems to be an error in the proposed amendment to regulation 11. The amendment stipulates that "the date of accrual of a grant shall be the date on which the application is deemed to have been made in terms of regulation 10(1)" . The amendment does not propose to delete 11(2) or to refer to 10(2) as well as 10(1) in Regulation 11(1). The consequence of this error is that foster child grants can only accrue from the date of application and not the date of the court order unless the applicant puts in a special request. This will in effect negate the positive consequences of the amendment to regulation 10.

Re-draft:

11(1):

The date of accrual of a grant shall be the date on which the application is deemed to have been made in terms of regulation 10(1) **or (2)**"

Delete subregulation (2):

~~Notwithstanding the provisions of sub-regulation (1) the Director General may approve that a foster child grant shall, subject to the provisions of the Act, accrue from the date on which the application for the grant was made or is deemed to have been made in terms of regulation 10.~~

2.3.3 Recommendations for further amendments

Regulation 4 - Persons eligible for foster child grants

Comment

The regulations currently provide that a care giver can only access a foster child grant if she follows the lengthy court procedure and obtains an order of court in terms of the Child Care Act. In line with our comments above that children living in rural areas are being disadvantaged by lack of access to the benefits of the foster child grant and that children orphaned by AIDS have very little support structures, we strongly motivate for the introduction of an informal foster child grant system.

Recommendation

ACCESS recommends that regulation 4 be amended by the insertion of a sub-regulation (3) specifying that primary care givers supporting children who have been orphaned by HIV/AIDS are able to apply for the foster child grant. This can be introduced as an **interim measure** until the Committee of Enquiry and the SALC's recommendations with regards to social assistance for children affected by HIV/AIDS have been finalized and implemented (a time period of at least three years).

Re-draft: "4(3) Notwithstanding sub-regulation (1), a primary care giver shall be eligible for a foster child grant if a social worker verifies that the primary care giver is caring for a child who has been orphaned/affected by HIV/AIDS."

The Department will have to stipulate in the regulations or in departmental directives, the necessary proof and documents required for such applications. The proof required should not be onerous taking into account that this is an interim, emergency intervention. A simple affidavit by the applicant and a social workers confirming that the

child is orphaned by HIV/AIDS and is being cared for by the applicant should suffice, along with some form of proof verifying the child's identity.

2.4 Social Relief of Distress Grant

2.4.1 Comments on the proposed amendments

Regulation 26 (1)

Proposed amendment

The Department has proposed to delete regulation 26(1)(f). Sub-regulation 1(f) provides that a person may apply for a social relief of distress grant if they have been affected by a disaster, although the area or community in which he or she lives has not yet been declared a disaster situation. A person who has been affected by "any other emergency situation" may also apply in terms of sub-regulation 1(f).

Comment

We do not support the deletion of this sub-regulation as it provides a necessary safety net for families living in crisis due to a natural disaster or other emergency situation. If natural disasters affect a large number of people, eg a hurricane destroys an entire street of an informal settlement, the local authorities will normally declare the area a disaster area which enables the affected people to claim disaster relief from the disaster relief fund. However, natural disasters and other emergencies affecting smaller groups of people do not qualify the person to receive disaster relief from the disaster relief fund.

Examples:

A river floods and washes a families shelter away

A paraffin fire burns the families house down

Recommendation

We therefore recommend that sub-regulation 26(1) (f) not be deleted but be included in the list of qualifying conditions in Regulation 26.

Regulation 29 (2)

Proposed amendment

The current regulation 29(2) specifies that a person can receive a social relief of distress grant for a maximum period of three months. The proposed amendment increases this period to four months.

Comment

Applications for the CSG, CDG and FCG on average take more than 4 months to be approved. If the applicants social relief of distress grant expires after four months, the applicant will be without a safety net for the period in between the expiry of the social relief of distress grant and the approval of the relevant permanent grant. This period of time could be lengthy.

Recommendation

ACCESS recommends that Regulation 29 (2) should be amended to provide that a person awaiting final approval of his or her application for a grant is entitled to the social relief of distress grant up until the date that the permanent grant becomes available. Besides ensuring that the applicant is fully provided for while waiting for his or her grant, such a system will provide an incentive to the Department to process applications speedily to avoid having to pay social relief of distress grants to unsuccessful applicants for long period of time.

Re-draft: 29 (2)

(a) Social relief of distress shall be issued monthly by the Director-General or a person assigned by him or her for a maximum period of 4 consecutive months.

(b) Notwithstanding sub-regulation (a), social relief of distress shall be issued monthly to a person awaiting approval of his or her grant until the last day of the month in which the Director General informs the applicant of the approval or refusal of his or her application in terms of regulation 25.

2.4.2 Recommendations for further amendments

Regulation 26

Comment

1) Regulation 26(1) gives a wide discretion to the attesting officers to refuse an application for a social relief of distress grant. The use of the word "may" instead of "shall" in effect allows the attesting officer to refuse the grant even though the applicant complies with the prescribed conditions. This is an unreasonable discretion which results in unfair discrimination. None of the other enabling sections, for example the FCG or CSG or CDG, use the word "may" instead of shall".

2) Many grant applicants are not aware that they may apply for a social relief of distress grant while awaiting the processing of their application for the CSG, CDG or FCG. This lack of awareness is partly due to the relevant welfare official not informing the applicant of this possibility.

Recommendation

1) The word "may" in Regulation 26(1) must be deleted and replaced with "shall".

Re-draft: "26(1) subject to the provisions of this Act, a person in need of temporary material assistance ~~may~~ **shall** qualify for social relief of distress if he or she complies with one or more of the following conditions: "

2) A sub-regulation be inserted in Regulation 26 specifying that the welfare official must be obliged to inform the applicant that they can apply for a social relief of distress grant while they are waiting for their CSG, FCG or CDG grant to be processed.

Re-draft: Insert 26 (4). " When an applicant applies for a social grant, child support grant, care dependency grant or foster child grant, the attesting officer (officer to whom the applicant hands the application) shall inform the applicant that he or she may apply for a social relief of distress grant while awaiting approval of their application."

3. Recommendations for mechanisms to improve management, service delivery and administration of the children's grants

Many of the problems in the current system are due to management, administrative and service delivery problems. The Department of Social Development has various positive initiatives under way to improve these problems. However, these initiatives are not generally known or well reported on. ACCESS would like to recommend that the Department regularly brief the Portfolio Committee on Social Development on its plan to improve the problems and the initiatives under way. Such briefings will serve two purposes:

- 1) It will ensure that the Department's plans and initiatives are made public and reported on in the popular media.
- 2) It will provide civil society and parliament with the opportunity to make constructive suggestions for further initiatives to address the problems.

A similar process could be followed by the Department of Home Affairs with regards to the plan and initiatives to address the problem of birth certificates and identity documents.

4. Conclusion

ACCESS would like to thank the Department for the opportunity to comment on the regulations and we wish you well in your task of incorporating the concerns of the South African public into the final draft of the amendments. Please do not hesitate to contact us for further information.

Contact person:

Paula Proudlock
Legal Advisor
On behalf of the ACCESS task team.
Tel: 021 - 685 1583 / 083 709 6421

Or

Assoc. Professor Sandy Liebenberg
Acting Director, Community Law Centre, UWC
And ACCESS Reference Team member
Tel: 021 - 959 2950