

SOCIAL ASSISTANCE:

A REFERENCE GUIDE FOR PARALEGALS

B L A C K S A S H
MAKING HUMAN RIGHTS REAL

Acknowledgements

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FOREWORD

This guide points to a remarkable achievement in democratic South Africa. It highlights how far South Africans have come in expanding social rights for the poorest even though much more needs to be done and can be done. It is also an invaluable contribution in ensuring that people are able to claim their social and economic rights. South Africa's social security system is important for the social development of the country and is especially important for people who live in conditions of terrible poverty. Social assistance in the form of cash grants and other benefits such as treatment for HIV/AIDS and feeding schemes provided by the South African government are recognised as among the most effective poverty reducing strategies.

The post-1994 democratically elected government undertook significant policy and administrative reforms to redress the terrible impacts of race-based apartheid exclusions. Such reforms reflect the imperatives to fulfil the Constitutional mandate for the provision of social security, the moral need to redress race-based inequities and the social and economic imperatives to reduce poverty, unemployment and lack of access to social and economic opportunities for the majority of people. Importantly, the progressive realisation of the right to access social assistance is a real, a concrete indication that political freedom and social and economic justice for the poorest people must work together to achieve human well being.

Country-wide civil society activism and social mobilisation to address poverty, inequality and income insecurity also prompted policy reforms on social grants. The ongoing struggles led by civil society organisations (including Black Sash, COSATU, civic movements, pensioners, women, disabled people's organisations, youth organisations, worker-based organisations, homeless people, people living in rural areas and many other organisations) ensures that the needs of those who are most deprived are not forgotten. It is through the collective struggles of those who live in destitution and those who believe in social justice and freedom that real change in the lives of people is slowly taking place in South Africa. Access to social grants, to primary health care and basic education is undoubted slowly making an impact on the lives of many.

Social grants in South Africa are an outcome of shifts in thinking about how to enable people to overcome poverty and destitution. Major shifts have taken place in how we understand social security and how we understand its role in reducing poverty and promoting inclusive economic development. South Africa adopted a broader more developmental approach to social security when, at a policy level, comprehensive social protection became the framework within which decisions on social assistance and social services are made. This shift reflects a major turning point and came out of a recommendation of the Report of the Committee of Inquiry into Comprehensive Social Security (2002).

In placing social grants as a key pillar of a broader social protection strategy South Africa is moving away from a piece-meal residual and reactive approach to poverty to an approach that is socially and economically empowering. A comprehensive approach has protective, developmental, redistributive and transformative functions that together are giving people the building blocks for survival with dignity. The Committee of Inquiry into Comprehensive Social Security also made significant recommendations on a range of income support measures in the form of cash grants to poor households.

Assessments of the impacts of social grants undertaken in South Africa tell us that even the most minimal income support from government enables people in destitution to lift themselves out of the vicious cycle of poverty. Today social assistance in the form of cash grants is a lifeline for millions of poor households.

The Black Sash, and in particular the team that produced this guide, are to be commended. This guide is important because it is the first comprehensive guide to South Africa's social grant system. It translates policy and legislative requirements for accessing social grants into clear and simple steps that can be understood by those who work in communities. The role of paralegals and of those involved in ensuring that access to social grants will be made much more effective. Starting from chapter one the guide outlines what the right to social assistance means for all those who live in South Africa. It provides information on the different types of social grants available to people, the criteria according to which individuals qualify for these grants, and the process through which applications can be made.

In the context of one of the most severe global economic recessions, increasing unemployment and retrenchments, as well as lack of decent paid work opportunities for those denied employment, the importance of social assistance and social protection measures is once again coming to the fore. There is increasing policy consensus, in Africa and globally, on the need to put into place social assistance measures to help people cope with the impacts of the financial and economic crisis as well as with chronic poverty. South Africa's social assistance system can become an example of how to help people overcome chronic poverty and manage risks when times are especially tough.

Despite the hard won achievements of South Africans in gaining access to social grants, we need to ensure that the needs of those who are without paid work, without food, without access to health care and education are also met. In laying out who can receive grants, this guide also highlights who does not qualify for grants. South Africa is not a poor country and the level of wealth accumulation of a few is obscene when there are so many who have nothing. The key question that we need to address in South Africa is how to ensure the equitable distribution and redistribution of the benefits of democratic development to the poorest. Critical engagement with the state and advocacy on behalf of the most socially and economically excluded and deprived is part of the ongoing struggle for freedom. This guide is an excellent tool in enabling people to access social grants. It must also spur us towards greater efforts to ensure that the benefits of political freedom translate into fair economic and social opportunities for all.

Prof. Vivienne Taylor

Chair: Committee of Inquiry into a
Comprehensive System of Social Security
December 2009

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ABOUT THIS GUIDE

How you can use this guide

This reference guide is part of a series of Black Sash guides for paralegals and other people and organisations who provide advice regarding people's socio-economic rights. It draws on the Black Sash's extensive experience of assisting people with difficulties in accessing social assistance – with a view to enriching your understanding of this area of law, the kinds of challenges that can be faced and what can be done about them.

The guide has been designed to help you find answers to some of the questions you may have, by dedicating a separate chapter to each social grant or award. It also has an index which will help you find what you are looking for.

Social assistance laws continue to change, following the government's commitments and advocacy from the public. To this end we include comment on issues and policies which we believe still need to be improved for us to be able to say that people in South Africa have access to integrated and comprehensive social assistance.

We hope to have captured in one publication as much up-to-date information as possible to help people in advice offices advise their clients – towards promoting efficient access to social assistance.

What this guide offers

This guide will assist you to

- assess which grant someone may be eligible for
- give people detailed information about each grant
- advise someone about how to apply for each grant
- foresee some of the problems that may arise in the application process and try to avoid and solve these
- understand more about the way grants lapse, are suspended or cancelled
- know more about the appeals and reconsideration processes
- know when you can help and when you cannot.

It includes

- information on how to apply for a grant, including comprehensive lists of the documents needed
- the rules that govern each grant
- the amounts of each grant as well as how the means test works and what the threshold is for each grant
- an information sheet on each grant
- a focus on foreign nationals, identifying what they are entitled to
- case studies
- lists and summaries of the laws that are central to the social assistance system
- contact details of the offices who are involved in the system.

Case studies are used in a number of places in this guide to illustrate what kinds of issues may arise and how they could be handled. While they draw on the Black Sash's experience in the advice offices, none of the case studies refers to real people.

Advocacy issues

In many chapters, the gaps in the social assistance system or in the provision of a particular grant are identified as needing advocacy work. Together with other civil society organisations, the Black Sash advocates around some of these issues, as noted in each instance in the text. Some issues have received less attention than others, however, and certainly the Black Sash is not involved in them all. We include current debates on all the gaps that we are aware of so that you can be involved in advocacy work on whichever issue your organisation is interested in, if you are not already doing so.

In addition, case work provides both crucial evidence for advocacy work as well as opportunities for precedent-setting cases. Where your organisation is not primarily involved in advocacy work, please send examples of cases which you believe may help in closing the gaps in the system to the nearest Black Sash office listed in the back of this guide.

Becoming out-of-date

As we know that the monetary amounts of each grant and the thresholds are likely to date, we have left space in the relevant lists and fact sheets for you to add new amounts as they are published each year. But other aspects may also change – so we invite you to use this as a workbook and make notes in available spaces, until we publish an updated edition.

Material consulted in compiling this guide

The legislation used in writing this guide is listed in each chapter to which it applies. We have also drawn on a variety of official documents from the South African Social Security Agency (SASSA) and the Department of Social Development which we have acknowledged wherever used – as we have any research reports and presentations which we have cited.

There are various guides on social assistance – especially those compiled by the Department of Social Development and SASSA. Their contact details are given in Appendices E and F.

ACRONYMS

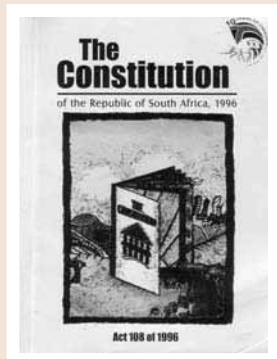
ACCESS	Alliance for Children’s Entitlement to Social Security
ANC	African National Congress
APLA	Azanian People’s Liberation Army
BIG	Basic Income Grant
COIDF	Compensation for Occupational Injuries and Diseases Fund
COSATU	Congress of South African Trade Unions
DSD	Department of Social Development
GDP	Gross Domestic Product
HAT	Harmonised Assessment Tool (for assessing disability)
HIV/AIDS	Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome
ICESCR	United Nations’ International Covenant on Economic, Social and Cultural Rights
ID	Identity document
ITSAA	Independent Tribunal for Social Assistance Appeals
MK	Umkhonto we Sizwe
MTBPS	Mid-Term Budget Policy Statements
NIA	National Intelligence Agency
NPA	National Prosecuting Authority
PAC	Pan African Congress
PAJA	Promotion of Administrative Justice Act (Act No. 3 of 2000)
PAIA	Promotion of Access to Information Act (Act No. 2 of 2000)
RAF	Road Accident Fund
SACC	South African Council of Churches
SANGOCO	South African Non-Governmental Organisations Coalition
SAPS	South African Police Services
SASSA	South African Social Security Agency
SARS	South African Revenue Service
SRD	Social Relief of Distress
UIF	Unemployment Insurance Fund
VAT	Value Added Tax



Chapter 1

THE RIGHT TO SOCIAL ASSISTANCE

A **social grant** is an amount of money given by the government to a person who is in financial need. It is given monthly for either a fixed or extended period of time.



THE RIGHT TO SOCIAL ASSISTANCE

Social assistance

Social assistance is provided by governments to people when they are not able to look after themselves and their families. It forms part of the broader social security provision which has been accepted by many governments across the world as an important intervention against poverty. As such, it contributes to a basic minimum standard of living, and also assists with bringing about better income distribution in unequal societies such as our own. Social assistance is often given in the form of regular income transfers or **social grants** or can be given as short term relief.

Despite wide recognition of its importance, however, social assistance is not established as a right in all countries and is given in different amounts to different categories of people. There are debates across the world about who should be prioritized for social assistance when financial resources are constrained, and even about who deserves that assistance. Policy makers argue about the impact of social assistance on the economy, on development, on social cohesion and on individual recipients' motivation and life chances.

In this chapter, we will briefly examine how 'the right to social assistance' has been enshrined in our Constitution, and how it has been interpreted in our laws and regulations. We will also look at arguments which are made to restrict or expand and extend the social assistance net.

From apartheid to the Constitution and the Bill of Rights

The South African Bill of Rights in the Constitution (Act No.108 of 1996) established the fundamental principles of equity and need that should govern social assistance in South Africa.

'... everyone has the right to have access to social security, including if they are unable to support themselves and their dependants, appropriate social assistance.' Section 27(1)(c) of the Bill of Rights.

The new government was responsible for interpreting the commitments made in our Constitution and in international agreements, by formulating new laws and regulations.

Government also had to decide which of the previous forms of social assistance it would preserve and which it would change. Successive apartheid governments had made social assistance available only to categories of people who were seen to be most vulnerable – such as children, disabled people and the elderly and had done so unequally to people classified 'Coloured', 'Indian', 'Black' and 'White' – with 'White' people receiving a substantially larger proportion of assistance.

Many of the new members of government had had personal experience of poverty and hardship and were committed to changing discriminatory and unequal laws and policies of the past. However, given the large number of laws and policies to be changed, limited resources and the extensive needs of the people of the country, government was faced with many difficult choices and only some issues were dealt with comprehensively.

Legislation

A number of the principles outlined in the Bill of Rights have begun to be realised through a range of laws. In this section we set out the primary and secondary legislation (and associated regulations) relating to social assistance in South Africa today.

Primary legislation

The Social Assistance Act of 2004 (Act No. 13 of 2004) and its Amendment (Act No. 6 of 2008) are the primary laws relating to the provision of social assistance. In addition, regulations are published periodically to provide details of how the Act should be implemented. The most recent at the time of writing this publication are the 'Regulations relating to the application for, and payment of, social assistance and the requirements or conditions in respect of eligibility for social assistance, August 2008'.

Copies of these Acts and the regulations can be obtained from the website of the Department of Social Development (www.socdev.gov.za) or from the Government Printers. A related manual – on the Social Relief of Distress – is available at your local **SASSA** office.

Secondary legislation

The agency that administers social assistance – the South African Social Security Agency or **SASSA** – was established in 2004 by an Act of the same name (Act No. 9 of 2004).

The remaining secondary legislation falls into three categories:

- legislation that applies to a particular group of people – like refugees, children or older persons;
- legislation that applies to particular situations – like being a single parent or being in a natural disaster;
- legislation that promotes access to information or administrative justice.

People

The Refugees Act of 1998 (Act No. 130 of 1998) provides a definition of a refugee. This is important as refugees are **eligible** for certain social assistance grants.

Grants for children must take account of two foundational laws – namely the Child Care Act of 1983 (Act No. 74 of 1983) and, although not completely in force by 2009, the Children's Amendment Act of 2007 (Act No. 41 of 2007).

The law relating to older people is the Older Persons Act, of 2006 (Act No. 13 of 2006) which repealed the Older Persons Act, of 1998 (Act No. 100 of 1998 and Act 81 of 1967).

Situations

Laws which relate to particular situations in which people find themselves:

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Disaster Management Act, 2002 (Act No. 57 of 2002)

Accessing information and administrative justice

South Africa has two laws which help citizens access just and fair service from public bodies, as well as from other organisations and people. These are the Promotion of Administrative Justice Act of 2000 (Act No. 3 of 2000)

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are sick or disabled etc.

– commonly known as PAJA – and the Promotion of Access to Information Act of 2000 (Act No. 2 of 2000) – known as PAIA. They are summarised in Appendices H and I.

International conventions

South Africa is a signatory to a number of international conventions that have a bearing on social security rights in the country. One of the conventions that is central to social security is the United Nations' International Covenant on Economic, Social and Cultural Rights (ICESCR). This says that one of the core obligations of the state is to provide all individuals and families with access to social security. To achieve this goal, the covenant requires that the state adopts an accountable and transparent strategy and plan of action to achieve this. While the South African government has signed this covenant (indicating its intention to ratify it), it had not yet ratified it at the time of writing this guide.



The right to social assistance in South Africa

The shape and size of social assistance has changed significantly since 1994. In the worst days of apartheid, as with all support and services, there were huge differences in the extent to which people from different 'race' groups could access various grants, as well as in the amounts they would receive. While the value of the old age and disability grants were equalised across 'race' in the last years of apartheid, in 1994 Black people still faced much bigger challenges in accessing grants than White people with similar socio-economic circumstances.

Hard decisions had to be made in the new democracy. For example, when government realised how much it would cost to extend what was then called 'child maintenance' to those who had been classified 'Black' (to make their access the same as for others), they abolished the grant completely because it seemed unaffordable. Fortunately the Lund Committee was established to advise how the available money could be used to reach poor children. The result was a small Child Support Grant, initially available only for very young children – but subsequently extended to many more children, in response to concerted advocacy by civil society organisations.

Since 1994, the number of people receiving grants has been dramatically expanded. In his State of the Nation Address in June 2009, President Zuma reported that more than 13 million people were receiving social grants.

'While creating an environment for jobs and business opportunities, government recognises that some citizens will continue to require state social assistance. Social grants remain the most effective form of poverty alleviation. As of 31 March 2009, more than 13 million people received social grants, more than 8 million of whom are children.' – President JG Zuma *State of the Nation Address of the Republic of South Africa, Joint Sitting of Parliament, Cape Town, (3 June 2009).*

At the time of writing, the Child Support Grant reaches more than 8 million children and the Foster Care Grant is given for nearly 500 000 children. The other grants for which numbers have increased rapidly are the Care Dependency Grant (more than 100 000 children) and the Disability Grant for adults (more than 1.4 million beneficiaries).

There have been other changes besides the numbers of people accessing grants, however. For example, following sustained advocacy action by civil society, the age of older men eligible for the Older Person's Grant was dropped to 60 (to equalise them with women); children eligible for the Child Support Grant has risen from 7 years old, to 15 and – at the time of publication – to 18; permanent residents are now entitled to grants and refugees also have access to some; and applicants who do not have identity documents can now use alternative documents to apply for social assistance. These and other changes have increased the number of people who can access grants.

These are remarkable achievements, and are recognised as such across the world.

However, as before 1994, the focus of social assistance remains on certain categories of children, elderly people and people with disabilities. This excludes many people who are 'unable to support themselves and their dependants' and therefore whose right to social assistance, as guaranteed in the Constitution, is not yet realised.

All adults between the ages of 18 and 60 who are able-bodied are excluded from social assistance. These include those who

- cannot find work;
- are suffering from a chronic illness (like HIV/AIDS) but are not regarded as disabled;
- are unable to generate income as they look after children in need of permanent care or support services at home.

Foreign nationals have very limited access to current social assistance provisions.

- Only permanent residents and in some cases refugees, may access and receive a grant to take care of a child. Other foreign nationals in need and who care for children may not access this social assistance.
- Refugees and asylum seekers who are in need and over 60 years old, may not apply for the Older Person's Grant. (Disabled refugees may do so, however.)

Advocating for the right to social assistance for all in need

Since the end of apartheid in 1994, the Black Sash has focused on the promotion and protection of our hard-won freedoms, particularly in the areas of social and economic rights. We are committed to working against poverty and for dignity and human rights; to create a society that has effective laws and delivery systems, including comprehensive social protection for the most vulnerable.

We note that South Africa continues to be a deeply unequal society, characterised by very high unemployment levels. The economic crisis of 2008 and 2009 has had a devastating effect on our economy and many families have lost what income they had. A further factor that needs to be considered is HIV/AIDS. South Africa has now reached a stage where the number of new infections each year is thought to have reached its peak. But the number of new orphans and the number of people who are AIDS-sick will continue to increase for the foreseeable future as infected people become ill and die. This will increase the need for social assistance, whether in the form of more Disability, Care Dependency and Foster Care Grants, or in the form of a new Chronic Illness Grant.



We are deeply concerned that so many people in our society continue to live in poverty, and with illness, without any access to social assistance.

We believe there are two main reasons for the continued exclusion of people from income support.

Affordability and the national budget

The most common reason that the government gives for not introducing new policy is that there is not, or will not be enough money in future national budgets to afford the proposed changes.

Section 27 of the Constitution allows the government to realise the right to social assistance progressively – i.e. to phase in social assistance over time, rather than deliver it all to everyone immediately. But the term progressively also means that government may not move backwards and withdraw any of the rights it has given.

The Constitution says that government can provide grants 'within available resources'. This means that the government only has to deliver what they believe they can afford. However, the term 'within available resources' is a very difficult concept to define. For example, if the government chooses a minimal or conservative tax policy and collects little revenue, following high tax cuts and benefits to the wealthy, it could argue that there are not enough available resources. On the other hand, an aggressive tax regime, where very high revenue is collected, might provide sufficient resources. But it may be viewed as unfair by taxpayers, and could lead to a decline in, or non-compliance with or disinvestment in the economy, with devastating long-term results.

While we all must accept that there are financial restrictions on what we can achieve as a society, we can also ask careful questions about how money is collected, and what is prioritised within the national budget.

The new government in 1994 inherited a relatively large debt alongside huge needs in the population. It made the choice of a 'fiscally prudent' macro-economic strategy that, amongst other things,

- implemented a low tax: GDP ratio (for years this fell below 25% of GDP);
- partly privatised some state assets, such as South African Airways;
- liberalised exchange controls enabling unrestricted flows of money outside South Africa.

This strategy was strongly opposed by the labour movement and civil society organisations who were concerned that this policy regime would not be able to adequately address the huge poverty and inequality challenges left by the apartheid government. The People's Budget Campaign (representing COSATU (Congress of South African Trade Unions), the SACC (South African Council of Churches) and SANGOCO (South African Non-Governmental Organisation Coalition)) argued that government should raise additional resources for social spending. They called for higher tax:GDP and deficit:GDP ratios to raise funding for development.

Despite this opposition, government worked to reduce the **budget deficit**. As a result it steadily declined over a few years, even to the extent that there was sometimes a **budget surplus**. Many criticised this surplus, when the need to spend on social problems was so great in the country. After all, they argued, government is not a private company whose aim is to make profits; it is meant to spend the money it collects to improve people's lives.



GDP – or gross domestic product – is the total spent on goods and services produced within the country within a year.

A **budget deficit** occurs when more money is spent than is taken in by government. The opposite of a budget deficit is a **budget surplus**.

The impact of the global financial crisis of 2008 and 2009 has meant that we are no longer in surplus. In fact, the reduction in revenue (income collected through taxes) due to a slowing in the economy, has resulted in the erosion of our accumulated surplus to a significant (but manageable) deficit in just one financial year.

Nonetheless, we believe that the country must continue to allocate funds to social needs, such as grants – and government has decided to do so. There are two reasons for this. Firstly, the financial crisis has meant that the need for increased social assistance is even more urgent than before, given the huge losses of jobs in the economy and the negative impact on poor households. If we go back on the commitments made on social assistance, we will eventually lose the many gains made over the past 16 years. Secondly, our deficit is expected to be far smaller than that of many other countries. In fact, developed countries have planned for big deficits precisely to try and overcome some of the bad effects of the financial crisis on people's quality of life.

Perceptions and beliefs

It may not only be the cost factor that has held back the rollout of social assistance to all who need it. There are many influential people in South Africa who still seem to believe that some people are more 'deserving' of assistance than others. For example, they might argue that children, old people and people with disabilities are more deserving of assistance than unemployed people; and South Africans more deserving than refugees. There are also those who believe social assistance has a negative effect on society. They say that people abuse grants and become dependent on them, losing their will to work.

While there is no doubt that there are some people who do abuse the system, many of the arguments that are used against the grant system are based on inaccurate assumptions, prejudice, anecdotal stories or information that has been disproved. They are also generally based on a few exceptional cases rather than the behaviour of the majority of grant recipients. In addition, these allegations seldom mention the many households where receiving grants can move a family from extreme vulnerability into a slightly more viable financial position. And finally, it is worth noting that when systems used by the middle classes are abused by a few, there are seldom calls that these systems should be closed down, as is the case with the grant system which benefits the poor.

We are concerned that these beliefs are often based on personal prejudice and individual stories of abuse, rather than on careful research as to the impact of social assistance. They also often ignore the reality of our society, where high levels of unemployment limit genuine opportunities for people to independently earn a living. We are concerned that many unsubstantiated beliefs influence policy and budget choices and stand as an obstacle to our government extending social assistance to many who are unable to support themselves and their families.

People arguing against income support say they want people in this age group to work to support themselves (despite very high levels of unemployment, and research that shows that grants enable people to look for work). Alternatively, they argue that people can take up opportunities in the Extended Public Works Programme (despite these being very short term), or draw benefits from the Unemployment Insurance Fund (despite this only lasting six months and only being available to those who have had formal employment).

Advocacy strategies and achievements

In the Black Sash we engage in advocacy work which is focused on improving policies, laws and practices so that they reflect the principles in the Bill of Rights. We use a range of approaches to achieve our goals – including promoting ideas through the print and broadcast media; convening public and special interest meetings; making submissions to Parliament; working with government officials and parliamentarians so they understand why policies must be changed; holding marches and pickets to raise the issue in public; educating community members about their rights and supporting those affected to speak for themselves.

CAPE TIMES
Monday, 28 April 2008, p. 5

Black Sash calls for basic income grant

EXPRESSING concerns about food insecurity amid rising interest rates, inflation and food and fuel prices, the Black Sash has called on the government to implement social and economic policies that would throw a lifeline to the poor.



The Campaign for a Basic Income Grant

In 2001, a coalition of civil society organisations (including the Black Sash), faith-based organisations and trade unions was formed to advocate for a Basic Income Grant (BIG) for South Africa.

In 2002, the Committee of Inquiry into a Comprehensive System of Social Security (referred to as the 'Taylor Committee' after its chair, Professor Vivienne Taylor), recommended a comprehensive system of social security to be adopted and implemented in terms of the Constitution. This included a universal cash transfer to be given to everyone who lived in South Africa. Those who were not in financial need would pay back the amount they had received through the tax system.

There was some support for this in government, particularly from former Minister of Social Development, Zola Skweyiya, who publically supported the implementation of a BIG. However, it has been deemed to be unaffordable and not been implemented.

The Black Sash, together with other civil society organisations and alliances, continues to believe our society should provide income support to those in need between the ages of 18 and 59 years and we monitor ongoing international research into the benefits of a Basic Income Grant.

Improving the Social Assistance System

Together with other members of civil society, we have also used the Constitution to advocate for the improvement of the social assistance system. In several cases this has included taking the government to court when continued advocacy brought no results or when organisations such as the Black Sash saw that applicants were being treated in unconstitutional ways.

Court cases and orders of the court have resulted in, among other things,

- getting access to some grants for refugees;
- making documents other than the 13-digit identity book acceptable when applying for a grant;
- insisting that government continues the temporary disability grants, when they withdrew them for a short period;
- substantially improving the means test for the Child Support Grant, making it accessible to more people in need; and
- grants being paid out from the date of application, with the necessary back pay.

In addition, two major advocacy victories were won while litigation was in process. Although no decision was made by a court of law, the act of litigation had an impact on the policy process, along with wide-scale campaigning. In both these cases, the resulting policy changes widened the social security net considerably through

- lowering the qualifying age for men for the Older Person's Grant to 60;
- increasing the age of the Child Support Grant to age 18.

Constitutional Court challenges are not, however, an easy and quick fix. Firstly, they cost money; and secondly, they often drag on for a long time. But thirdly, there are now signs that government is becoming reluctant to introduce some positive laws out of fear that they will be tackled in court if they are not being properly implemented. Wherever possible, we believe it is important to rely on the strength of civil society organisations to put pressure on the government to relieve the often desperate circumstances of many citizens, using the law only when really necessary.

Units within government has started to seriously consider a chronic illness grant for people with illnesses such as HIV/AIDS, as a result of lobbying from civil society. It is proposed that this grant would cover extra costs associated with illness, such as transport to the clinic to get medicine and special food. We are excited that the grant is being considered and believe this is because we have made clear and strong arguments for its need and worked together with a range of stakeholders to make our case.

At the time of writing this manual, we are preparing celebration meetings to welcome the Cabinet's decision to extend the Child Support Grant to all children up to the age of 18. This follows extensive and multi-layered advocacy by a large number of people and organisations and represents a major victory for social assistance activists inside and outside of government.

Evidence

One factor that can help with policy change is having good evidence. One of the reasons that government can give for not changing policy is that they do not recognise the extent of the problem, or they blame the problems on the victims. An example of this is where those who oppose extension of grants say that 'young women are getting pregnant to get the Child Support Grant, so the Child Support Grant is affecting the morals of the society'. The Department of Social Development has been diligent in commissioning research to investigate these kinds of claims. One study found that Child Support Grants were more likely to be paid to women over 35 and that fewer than 3% of the beneficiaries of this grant were teenagers. This is a **rebuttal** to the argument – that is, it is a response that shows that the claim of a grant being a **perverse incentive** is flawed or wrong.

Other research agencies have also undertaken investigations to identify difficulties in getting grants as well as what grant money is spent on. This research can influence decision makers. For example, in his 2009 budget speech, former Finance Minister Trevor Manuel admitted that there was proof that the Child Support Grant helped with poverty reduction – something he had never openly admitted before.



A **rebuttal** is usually information that shows that an argument made by someone else is not correct.

A **perverse incentive** in the context of social assistance is where a grant is thought to encourage people to do something that undermines society, as well as the grant system itself.

The role of paralegals in advocacy work

Paralegals can play a vital role in advocacy around the issue of social assistance in at least three ways.

Firstly, paralegals and those giving advice can make people aware of their own rights, as well as of those who are excluded from the social assistance system, so that they can add their voices to calls for a comprehensive social security system. They can support and resource people to effectively engage the different departments and spheres of government, and to hold public representatives accountable for transparent and effective delivery.

Secondly, case work can provide examples that highlight inequities, unhelpful policies and poor service delivery. These cases can be used as evidence to strengthen the existing advocacy work of the Black Sash and other civil society organisations and might also be useful for setting legal precedents that could improve legislation and practice.

Thirdly, it is important to discuss perverse incentives and rebuttals within the social assistance context, as these kinds of allegations have influence. They affect public perceptions as well as the political will to realise the constitutional right to social security for everyone. In each chapter addressing specific grants, we will describe possible perverse incentives and rebuttals, where these exist.



Chapter 2

OVERVIEW OF SOCIAL ASSISTANCE

A **social grant** is an amount of money given by the government to a person who is in financial need. It is given regularly (monthly) for extended periods of time in response to relatively unchanging sets of circumstances. Examples are the Child Support Grant and the Disability Grant.



OVERVIEW OF SOCIAL ASSISTANCE

In Chapter One, we explored debates around the 'right to social assistance'. We saw that in South Africa the right to social assistance is enshrined in our Constitution and has been implemented through a large **social grants** programme together with social relief which is given in the form of cash 'awards', food vouchers or parcels. Although since 1994, the government has given social assistance to increasing numbers of people, it has not yet ensured that all who need it have access to this assistance. In this chapter, we will look at the forms of assistance available to those who are currently eligible.

When this guide was published at the end of 2009, the grant system was in the process of equalising the age at which men and women could access particular grants. From April 2010 both men and women may access the Disability Grant from 18 years until their 60th birthday, after which they may access the Older Person's Grant.

Historically men were only able to access the Older Person's Grant from 65, and they therefore received the Disability Grant until 65. In contrast, women accessed the Older Person's Grant from 60, and so were only able to receive the Disability Grant to 60.

How social assistance fits into social security arrangements

Social security systems are often made up of 'contributory' and 'non-contributory' components. Together they should provide income protection at different times of people's lives. Examples include where people are unable to support themselves or their dependants; where people require access to health services following an accident; where people are unemployed; or where people are old or die.

The 'non-contributory' component is where people who are in need can benefit even though they have not 'contributed' specifically for this purpose. In this case the funding is taken from income from taxes (both VAT and income tax). In contrast, those who benefit from a 'contributory' fund are largely those people who contributed directly to the fund, which often also benefits their dependants. Social assistance – the system of grants and relief – is part of the non-contributory component of social security.

Contributory social security arrangements

Contributory funds are established to help people when something specific happens to them – that is, to address the consequences of a particular risk. Examples are becoming unemployed or retired; the death of a family member; becoming disabled following a motor vehicle accident or an accident at work.

These funds consist largely of the contributions made by people who participate in particular activities – for examples as consumers, employees, and/or employers. Contributions are generally deducted at work or when purchasing goods or services (like vehicle licences or petrol). Some funds are also supplemented by the government.

Those who benefit from a 'contributory' fund are largely those people who contributed directly to the fund, which often also benefits their dependants. Sometimes others affected by the same circumstance (e.g. a car accident)

may also be able to claim. Examples of funds are the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF) and the Compensation for Occupational Injuries and Diseases Fund (COIDF – previously the Workers' Compensation Fund).

Although contributory arrangements do not focus on the most vulnerable groups in society, they provide important support for those receiving this benefit in times of need.

Although it offers only temporary assistance, the UIF is significant when it comes to poverty intervention, and since 1994, has improved its reach. For example, domestic workers and seasonal agricultural workers are now covered by the Fund. This is especially important for women in these groups, as UIF provides some maternity as well as unemployment benefits. Another important change is that those who are paid lower wages get a larger percentage of their wages from the UIF than those who are better paid.

Non-contributory social security arrangements

The most significant form of non-contributory social security in South Africa is provided through the social grant system which supports people who are in need of financial assistance – following the Social Assistance Act of 2004 (Act No. 13 of 2004). It is typically funded from general taxes – from income tax paid by a small proportion of the population and from the VAT paid by most people when they buy goods and services.

Non-contributory social security arrangements are 'redistributive'. This means they are a way of re-distributing – or sharing – money collected (largely from wealthier sectors of society) to those which are in need of financial support. Although it is important in all countries where there are people in need, redistribution can make a particularly significant difference in countries where there are high levels of inequality and where many people are unable to engage in economic activity that sustains them and their households.

As we saw in Chapter One, a government's ability to provide social assistance depends on the money it collects and the decisions it makes about what to prioritise in its spending.

In South Africa the amount allocated to the social assistance system – and therefore to each individual grant – is made public through the annual budget which is announced in February each year. In 2010/2011, R94.9 billion was allocated to social assistance – about 3.5% of that year's GDP. This allocation to social assistance forms a large part of the Department of Social Development's budget.

Types of social assistance

A social grant is given regularly to the same person for extended periods of time in response to relatively unchanging sets of circumstances. To date, there are seven different social grants offered by the South African government to people who qualify for them. Three of these are intended to assist those who care for children and four are for adults. In addition there is a short-term award for those who are in social distress, which provides immediate, short-term assistance to adults who are in financial distress and cannot look after themselves and their dependants. For more information about the Social Relief of Distress award, see Chapter 16.

GDP – or Gross Domestic Product – is the total spent on goods and services produced within the country within a year.

Children are defined as people who are younger than 18 years old – according to the country's Constitution, the Social Assistance Act of 2004 and the Children's Act of 2005.

Mutual exclusivity is when two things are not allowed to happen at once. So if someone has A, they cannot have B. Grants are mutually exclusive where you are not allowed to get one grant if you are already receiving another.

Grants for the care of children

The grants that are available to those who care for **children** are as follows:

- The Child Support Grant is intended to support the basic needs of a child until they turn 18 years. It is provided to a parent or primary caregiver who is in need. The extension of the CSG to children up to the age of 18 will be rolled out over three years. As we go to press, the Minister of Social Development has published regulations which say that parents and caregivers of children born on or after the 31 December 1993 may apply for the Child Support Grant if they are eligible in terms of the means test. (Chapter 8).
- The Foster Child Grant is provided to a foster parent who is legally appointed by a court to care for a child under 18 years old, be they orphaned, abandoned, at risk, abused and/or neglected (Chapter 9).
- The Care Dependency Grant is intended to assist a parent, primary caregiver or foster parent, who is in need, to provide support for a child under 18 years old, who has severe disabilities and who requires permanent care or support services (Chapter 10).

Grants for adults

The four social grants for adults (people over 18) are as follows:

- The Disability Grant is intended for adults who are in financial need and who are disabled, which leaves them unfit to support themselves. It is provided until their 60th birthday, at which point they may become eligible for an Older Person's Grant (Chapter 12).
- The Older Person's Grant – also known as the 'State Old Age Pension' – is intended for older people who are in financial need. From April 2010, both men and women may access the grant from their 60th birthday. (Chapter 13).
- The War Veterans' Grant is provided to adults 60 years and older who are in need and who served in one or both of the World Wars or the Korean War. There is also provision made for veterans of the anti-apartheid struggle – but as these 'special pensions' are part of a different aspect of the social security arrangements, they are only briefly discussed (Chapter 14).
- The Grant-in-Aid is intended for adults who are in need of regular assistance from another person due to their disability. They may only receive this grant if they are already receiving one of the other three grants for adults, however (Chapter 15).

Social Relief of Distress

The Social Relief of Distress (SRD) award is given for a short period to help people in need of immediate temporary assistance and who do not have sufficient means to provide for themselves and/or their dependants. While this award is for adults and people who care for children, it may also be accessed on behalf of children.

There is a range of circumstances in which people may apply for SRD – like the loss of their possessions due to a disaster or when someone is waiting to receive an approved grant. It is also given to those who will undergo 'undue hardship' if they are not given this relief. This award is addressed in Chapter 16.

Mutual exclusivity of grants

Most grants are not allowed to be given to someone if they are already receiving another grant. This is called **mutual exclusivity**. So, for instance, if

a person is receiving an Older Person's Grant (pension), they are not allowed to also receive a Disability Grant.

The one exception is where a beneficiary is in need of ongoing regular care. In this case they may receive a Grant-in-Aid in addition to any of the other three grants for adults.

Amount of each grant

The amount of each grant is specific – as shown in Appendix C. As this amount may change every year – when the country's annual budget changes – there is space in the appendix for you to write in these new amounts. The amount of SRD is related to the grant amounts and may vary, depending on individual circumstances and the resources available. The total budget allocated to SRD is limited, and so provincial Departments may run out of funding before the end of the financial year and therefore be unable to provide further assistance to those in need.

Governance of social assistance

While Parliament makes laws about social assistance, the Minister of Social Development is ultimately responsible for ensuring that social assistance is delivered to the people who are eligible for it. This includes exclusive responsibility for ensuring that regulations are developed to guide the implementation of the Social Assistance Act of 2004 – as per Section 29 of that Act.

The Minister must also ensure that social assistance is delivered through the following bodies which govern and administer the grant system broadly. They are

- The Department of Social Development (DSD) – which is responsible for ensuring that people access social assistance according to the laws. This entails developing policies, guidelines and standards and overseeing actual delivery.
- The **South African Social Security Agency (SASSA)** – a Schedule 3A entity which has been contracted by the Department of Social Development to process and deliver social assistance grants and awards to beneficiaries.
- The Independent Tribunal for Social Assistance Appeals (ITSAA) – a separate body, which is not yet fully established, hears appeals made to the Minister of Social Development by **applicants** and beneficiaries who think that decisions were not made fairly. (See Chapters 3 and 5.)
- The Social Assistance Inspectorate – intended to be a watchdog of the social assistance system and of SASSA itself. This has not been established (see below).

Department of Social Development (DSD)

Prior to SASSA's being established, the administration of social grants had been undertaken by the provincial offices of the Department of Social Development. With the establishment of SASSA, the administration of social grants moved to this entity, changing the Department's role to one of oversight of SASSA as well as of the 'Appeals Tribunal' (ITSAA). During this shift from the Department to SASSA, some grant recipients experienced difficulties with accessing the services they needed. At the time of writing this guide, this seems much improved and there is official commitment for continued improvement.



The South African Social Security Agency Act of 2004 (Act No. 9 of 2004) provides for the establishment of **SASSA** as a Schedule 3A public entity in terms of the Public Finance Management Act of 1999 (Act No. 1 of 1999).

An **applicant** is the person applying for a grant or award.

In addition to social assistance, however, the Department of Social Development has various other important functions – like the National Food Relief Programme; foster care placement; care and services to older persons including admissions to homes for older persons; services to people with disabilities; services to children including providing funding to early childhood development centres, etc. It also takes other initiatives. For example in 2009, it offered social work bursaries at higher education institutions. The Department recognises the integral role social workers play in the system and that a shortage of this skill was affecting, amongst other things, the delivery of social assistance to beneficiaries.



South African Social Security Agency (SASSA)

SASSA is a Schedule 3A entity whose primary purpose is the administration, management and payment of social assistance.

The Agency is responsible for 'paying the right social grant to the right person at the right time' – through

- providing information about grants to beneficiaries and potential beneficiaries;
- providing assistance to applicants to understand and exercise their rights to social security;
- handling all queries relating to grants;
- reconsidering their decisions on the formal request of applicants and beneficiaries; and
- ensuring that grants are paid timeously and in the way chosen by each beneficiary from the options available.

SASSA must also investigate any irregularities relating to grants. This can include identifying possible cases of fraud by beneficiaries, including cases in which a SASSA employee was involved. (See also the role of the Inspectorate below.)

SASSA cannot develop policy, which remains the responsibility of the Department in line with the Social Assistance Act of 2004. So where civil society wants to challenge existing policy – for example to ask for the extension of the Older Person's Grant to refugees – this must be directed to the Minister of Social Development.

While SASSA has an autonomous management structure, it reports to the Minister of Social Development. (See Appendix E for contact details of SASSA offices.)

The Independent Tribunal for Social Assistance Appeals (ITSAA)

Applicants can appeal against decisions made by SASSA about their grants where they do not think the decision was fair, or where a request for reconsideration has been unsuccessful. The appeal should be addressed to the Minister of Social Development and will be considered by **ITSAA** or 'the Appeals Tribunal'.

As there are not many ITSAA offices at this stage, the best way for an applicant to submit an appeal is to send the letter of appeal to their local SASSA office. SASSA will forward it to the Department of Social Development in which the Appeals Tribunal is housed.

The Tribunal was only set up in 2008 and is still not functioning optimally, given insufficient capacity, poor systems and an inadequate budget allocated within the Department. As a result, there is an extensive backlog of cases.



Report fraud and corruption relating to social grants by phoning the SASSA Hotline at 0800 601 011

While the Social Assistance Act (13 of 2004) states that appeals should be directed to the Minister of Social Development, **ITSAA**, the Independent Tribunal for Social Assistance Appeals is appointed by the Minister to do this work.

At the time of writing, this amounted to about 60 000 outstanding appeals. In addition, no regulations have been published to provide the necessary guidelines for what the Tribunal must do and how it must do it, resulting in its operating as best it can without any formal guidelines.

This backlog and lack of an effective appeals process is a significant obstacle to people's access to administrative justice and their right to social assistance. The lack of will to prioritise a solution to this effectively denies thousands of people their right to social assistance, and is a point of advocacy for the Black Sash. (See Chapter 6.)

Social Assistance Inspectorate

The Social Assistance Act of 2004 also established the Social Assistance Inspectorate which reports to the Minister of Social Development. Its functions as prescribed by the Act are:

- to conduct investigations to ensure the integrity of the social assistance frameworks and systems;
- to execute internal financial audits and audits of whether SASSA is sticking to laws and policies;
- to investigate fraud, corruption and mismanagement within SASSA;
- to establish a complaints mechanism; and
- to combat the abuse of social assistance.

The Inspectorate has not yet been established however, and there is currently no known plan to do so. Where SASSA's internal monitoring systems fail, the National Prosecuting Authority (NPA) can undertake this function. It can be summonsed to investigate irregularities by a 'whistleblower' within SASSA who knows of, or has been informed of, irregularities. Alternatively members of civil society may go straight to the NPA where they suspect the Agency of covering up irregularities themselves.

A 'whistleblower' is an informant who exposes wrongdoing within an organisation in the hope of stopping it. Whistleblowers should be protected from being victimised by the Protected Disclosures Act of 2000 (Act No. 26 of 2000).



Chapter 3

APPLYING FOR SOCIAL ASSISTANCE

APPLYING FOR SOCIAL ASSISTANCE

The grants and awards currently available in South Africa are described in the previous chapter. This chapter outlines who can apply to the South African Social Security Agency (SASSA) for a grant and how they make their application and get their grant.

Appendix A provides an easy-reference summary of the details given in this chapter. A checklist of things to consider when helping a client assess if they may be eligible for a grant is given on page 25 below.

Who can apply for a Grant?

The nationality of the applicant

All children are eligible for social assistance according to the Constitution and international instruments related to children's rights, no matter what their national status is. However, their ability to access a grant, according to South African law, depends on the national status of their parent, foster parent or **primary caregiver** who cares for them and applies for the grant.

All social grants are accessible to **applicants** who are South African citizens or are permanent residents as long as they meet the specific **criteria** for that grant. The nationality of any children in their care is not relevant to the application.

Adults with formal refugee status and who are in need, may apply for the Disability Grant, the Grant-in-Aid and the Foster Child Grant. Only refugees who are disabled adults or foster parents may access Social Relief of Distress Award (SRD). Refugees are not eligible to apply for any other assistance for themselves, or for the children in their care. Adult foreign nationals with any other status – like asylum seekers, migrant workers or those who are 'undocumented' – are not eligible for any social grants or SRD, either for themselves or for children in their care.

A comprehensive summary of the social assistance that is available to foreign nationals is given in Appendix B.

The means of the applicant

As the government has limited funds for social assistance, it wants to provide support to the people who are most in need. They have therefore decided on the amount a person may earn and, sometimes, the value of what they may own, in order to qualify for social assistance.

Only people whose financial situation puts them below a certain level will qualify to receive a grant. The assessment of an applicant's financial situation is called a **means test**. (This term is based on the word 'means' which is another term for money or resources.) The maximum amount they may earn or own is called the threshold.

Each chapter in this guide lists the means threshold for each grant at the time this guide was published – and a summary of these is given in Appendix D. Space has been left for you to write in the new thresholds each time they change.

In terms of the Social Assistance Act of 2004, a **primary caregiver** is 'a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily needs of that child'. A primary caregiver is not a biological or foster parent but, like anyone caring for a child, they must ensure that the child is fed, clothed, immunised and provided with access to health care.

An **applicant** is the person applying for a grant or award.

To be eligible to receive a grant, a person must meet the **criteria** given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are sick or disabled etc.

A **means test** is an assessment of how much money is earned (income) by a grant applicant and their spouse and dependent children – and sometimes also of the value of their possessions (assets), in order to see if they are eligible for a grant.

Up-to-date **thresholds** used in the means tests can always be found in the Government Gazette, on the website of the Department of Social Development, or can be obtained from the administrator at a local SASSA office.

Income and assets

There are two parts to deciding about the applicant's means – namely the total value of the things they own (**assets**) and the amount they earn (**income**).

- Only the income (of the applicant – the parent or primary caregiver) is assessed for child grants.
- Both income and assets are included in the means test for adult grants.

The Foster Child Grant has no means test at all, as the grant is simply made available to anyone who fosters a child through the courts.

The income of an applicant is the total amount that she/he earns in a year before tax, medical aid, pension etc. is deducted. Income could come from any of the following sources:

- salaries or wages – that is, money they are paid for work they do
- maintenance paid to them in respect of a child or an ex-spouse
- compensation from the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries & Diseases Fund (COIDF)
- income from rent, private pension or annuity
- interest and dividends earned on investments
- profits from a business (or a farm)
- financial support from an organisation – e.g. the Red Cross
- income from trusts or inheritances (especially of dependent children)
- any ex-gratia amounts received – e.g. a bonus payment
- income generated from assets – e.g. using one's car as a taxi.

Income from grants shall not be taken into account when calculating whether or not someone is eligible for social assistance. So, for example, if someone receives Child Support Grants for her two children, this will not be included in the means test when she applies for a Disability Grant for herself. In this way a poor household may receive a number of grants.

Social insurance payments, however, are included as income in the means test. This could include, for example, monies obtained from the Unemployment Insurance Fund, the Road Accident Fund, Compensation for Occupational Injuries and Diseases Fund as well as pensions and provident funds.

You may need to weigh up what will legitimately suit your client's circumstances best – and over time. For instance should a grant application be done after your client has received a dependent benefit following the death of their breadwinner? As this benefit is mostly paid out in the form of a lump sum, you would need to assess if it pushed their income above the threshold for a grant, thus making them unable to get a grant. If it does this, it may be better to wait until enough money has been spent so that their income and/or assets meet the requirements of the means test.

In calculating the income, some amounts may be deducted. These are:

- obligatory contributions to a pension, retirement annuity or provident fund or voluntary contributions to a pension, retirement annuity or provident fund – but this to be no more than 22% of the net income of the applicant;

The **threshold** is the maximum income and assets an applicant may have in order to be eligible for a grant. If they have less than the threshold they will be eligible. But if they earn or own more, they are not eligible.

Assets are the things that a person – or a married couple – owns. They can be actual things (like a house) or they can be investments – like cash in the bank, money invested in a pension fund etc.

Income is the money earned by the beneficiary – and their spouse and dependent children, where applicable.



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An **affidavit** is a document in which a person makes statements and promises that they are true. By signing the statement in front of a Commissioner of Oaths they make it a legal document.

- tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them;
- membership fees which they pay to an approved medical scheme; and
- the amount they pay to the unemployment insurance fund.

If an applicant gives up their income or makes a donation before they apply for the grant it will affect the means test. Income earned or donated will be taken into account for a period of five years, and assets donated will be taken into account forever.

A list of the income and assets that will be considered in a means test – and the documents needed – is given in the chapters dedicated to each grant. Wherever possible, applicants will need documents as proof of each form of income – although they can sign an **affidavit** to say that they have certain income or assets for which they have no documents. It is fraudulent not to declare all income or assets. (In the case of deductions, original documentation is required as alternative documentation may not be used, nor will the SASSA affidavit be accepted.)

Being married or single

Where the applicant is married, the means of both partners are assessed, whether they are married in or out of community of property. Where a dependent child has income, this is included too.

In the context of social assistance, 'being married' can take various forms. These include people who are married through the standard civil marriage (as defined in the Marriage Act of 1961 (Act No. 25 of 1961)) as well as couples married through customary law or Muslim Rites, following the Recognition of Customary Marriages Act of 1998 (Act No. 120 of 1998). In addition, however, the Social Assistance Regulations of August 2008 considers couples to be married if they were married under the 'tenets of any Asiatic religions where "spousal relationship" has a similar meaning'.

Everyone else is considered to be single for the purpose of the means test – which means that their partner or ex-partner's means are not included in the assessment. These include:

- people who co-habit (live together) but are not formally married in any of the ways described above;
- people who are divorced (but they must declare any income they receive from their ex-spouse);
- people who are still formally married but whose spouse has deserted them for more than three months; and
- people whose spouse has died (but again they must declare any income they receive from their spouse's pension or estate).

Who can apply on behalf of a beneficiary?

Adults who are unable to act for themselves can be represented by another person in terms of their grant. This person is called a procurator and can be chosen by the beneficiary themselves or by SASSA. To play this role, they must be over 18 years old and reside in South Africa permanently (with a fixed address). They need not be a South African citizen or a permanent resident. A beneficiary's spouse, or a family member or a friend may be the procurator. They must obviously be seen as trustworthy. Procurators are only allowed to collect grants for a maximum of five beneficiaries.

Procurators nominated by the beneficiary

A procurator nominated by a grant applicant must sign the grant application form and/or provide their thumbprints. This is to promise that they 'are not an unrehabilitated insolvent' and 'are not owed any money by the applicant' and that they will abide by the conditions of being a procurator, among which are that they agree to 'hand over the social assistance to the applicant' and 'inform SASSA of any changes in the applicant's circumstances' including if they leave the country.

This serves as a **power of attorney** which enables SASSA to give the beneficiary's grant to this person in good faith. Procurators are listed on SASSA's system and need to produce their own identity document to collect the grant. Procurators may use the identity documents of any country, or a passport, or a driver's licence when they collect the grant money.

Where the applicant is mentally able but is physically unable to act for themselves – e.g. they are bedridden or frail – they are encouraged to apply for the grant and manage its use themselves. SASSA officials do house visits to assist people to submit their applications. In this case, a procurator need only collect their grant for them.

Where a person who is otherwise able to act for themselves is temporarily unable to – e.g. they have been hospitalised – they may appoint a temporary procurator for up to three months. As this application is made after the original application for the grant (where a procurator would be named) a separate form must be completed at a SASSA office.

Procurators nominated by SASSA

There are two conditions under which SASSA will appoint a procurator to act on the beneficiary's behalf.

- Where the beneficiary is not mentally fit to access social assistance without help, SASSA will appoint a person to apply, collect and manage the grant on their behalf.
- If SASSA finds out that a beneficiary or a procurator misuses the grant money (i.e. it is not used in the best interests of the beneficiary or their child) SASSA will appoint someone to collect and manage the grant.

SASSA may decide to appoint a registered welfare organisation which has suitable administrative capacity and a bank account and which they believe will manage the funds in the best interest of the beneficiary. The welfare organisation does not need to have existing relations with the beneficiary but might simply agree to provide a reliable channel for their funds.

Changing procurators

Where a beneficiary wants to nominate a different procurator – for instance if they realise that the procurator is using their grant for their own benefit – they can request SASSA to change the procurator. They do this by submitting a completed form to SASSA – after which it may take a month before the new procurator is appointed and may act on behalf of the beneficiary.

When a procurator dies, another person (procurator) will be appointed either by SASSA or by the beneficiary concerned.

A **power of attorney** is a document signed by someone which says that they give another person, named in the document, the legal right to act on their behalf.

The procurator's availability

Grants will lapse if the money is not claimed for three consecutive months.

If the procurator intends being out of the country for more than three months, they should inform SASSA and the grant will be suspended until the person appears in person at SASSA. No grant can be paid to anyone if they are out of the country.

If the procurator fails to inform SASSA of their being away, they will be considered unfit for this role. If they were attending to an emergency, however, the beneficiary can write to SASSA to request them not to stop payment of the grant – and can, among other things, name a contact person within South Africa who can act as a procurator in their absence.

How do people get their grants?

There are three stages in the process of getting a grant.

1. Application: This mostly entails filling in the application forms in the presence of SASSA officers who guide the applicant in providing all the information and documents necessary. It does not cost anything to apply for a social grant. Application is free of charge.
2. Notification: This is when the applicant is told whether or not their application has been approved. They may be told on the same day as they apply but, failing this, a letter will be posted to them. In practice, this usually arrives between three weeks and three months after application.
3. Payment: If their application was approved, they will be eligible to receive their first payment. While there is nothing in the regulations or policies which says how long a beneficiary might have to wait for this, in practice people do not wait longer than one month after notification of approval.

Assisting your client to apply for social assistance

The following steps will help you find out which grants your client may be eligible for – and whether or not it is worth their going to SASSA to apply for a grant. By going through this checklist you can ensure that they take as many of the documents and information as are required with them. You can also get a sense if their income and assets are under the threshold.

	√
1. Find out if your client or a member of their household is currently receiving a grant of any kind. If yes, work out if there are other grants which may apply to other members (e.g. an Older Person's Grant does not exclude you from thinking about Child Support Grants for children in the household).	
2. Find out if their means might allow them to access a grant. Ask them generally about their income and assets (including that of their spouse, if they have one, and their dependent children). Remember to ask them about other forms of financial assistance they may be getting – especially maintenance for a child.	
3. Note the ages and wellbeing of each member of the household. (If their means makes them only eligible for some grants and not others, you may choose to assess only the adults/children who have a chance of being eligible for a grant.)	
4. Using Appendix D in this guide on 'Grant thresholds' assess which grants they may be eligible for and ask them if they are interested in applying for these. (The value of each grant is given in Appendix C.) If necessary, use the specific chapter in this guide to give them more information about the grant they are interested in, either to tell them about the grant or to answer any questions you or they may have.	
5. Using the list in each chapter, identify the documents they will need for each grant. Remember: if they do not have all the documents, they are able to apply for a grant using alternative identification and may make affidavits where other documents are not available (see Chapter 4).	
6. As they need to complete the application forms with a SASSA official present, you cannot provide them with help in this regard. They must go to the nearest SASSA office and complete the form there. (A list of regional offices is given in Appendix E. They should have contact details for local offices.)	
7. Decide in what order they need to do things once they have left your office – e.g. apply for identification documents or get supporting documents from various authorities like a school or clinic – before going to SASSA. If it seems helpful, write this down, to avoid their wasting a lot of time (and money) going to the wrong place or taking insufficient documentation!	

If you have any queries about social grants, please contact the
Black Sash Help Line on 072 663 3739 for FREE paralegal advice and support.



Stage 1: Application

A person can apply for a grant at their nearest SASSA service point. To find your nearest SASSA service point, contact the nearest Regional Office. A list of Regional Offices is given in Appendix E.

Where an applicant cannot get to the SASSA offices for medical reasons, a friend or family member can give SASSA a letter from the applicant which includes a doctor's note explaining why they cannot visit the office themselves. SASSA may then arrange to visit the applicant at home to do the necessary paperwork.

The applicant must complete the application form in the presence of a SASSA officer. This will be followed by an interview, during which the means test will be done – i.e. the financial situation of the applicant (and their spouse and dependent children, where applicable) will be assessed on the basis of the information provided.

Finally, the applicant's fingerprints will be taken. (A full set of fingerprints is no longer required for applicants who have a 13-digit bar-coded identity document, but where they do not have this, a full set of fingerprints is taken.)

This should take about 45 minutes (according to SASSA's national norms and standards policy) but can (and often does) take longer, depending on the facilities and staff at each office and the applicant's particular situation.

All information collected by SASSA for a grant application is confidential and can only be shared when the applicant gives permission to do so or when ordered to do so by a court of law.

Documents

Four grants require that the applicant must get documents before they apply.

- In the case of the Foster Child Grant, they must have a court order granting foster status.
- For the Care Dependency Grant, Disability Grant and Grant-in-Aid, they must have a medical referral letter from their own doctor (which is followed by a formal medical assessment with a state doctor required during the application process).

For all the other grants, an applicant must have as many of the required documents as possible with them when they apply so these can be attached to the application. (As SASSA will make copies, it is not necessary to make extra copies before going to their offices.) Where a document is not available, an applicant can submit either alternative forms of documentation or an affidavit with the missing information. (See Chapter 4 for details on documentation needed.)

If a procurator is being nominated, some form of identification for them must be presented and recorded – which can be a South African 13-digit bar-coded identity document, a passport, a driver's licence, an identity document from the country of origin etc. The proposed procurator must also either sign the form or give copies of their thumbprint confirming their commitment to undertaking the tasks of a procurator.

Method of payment

During the application process, the applicant should say how they would like the money to be paid. The grant can either be

- collected in cash on specific days at a pay point, or
- paid electronically into a banking or post office account.

While having the grant paid electronically into an account is safer and possibly a more convenient option for some, this does mean that bank charges are likely to be deducted from the grant amount received. A person can decide to change the payment method at any time by filling in a form at a SASSA office, but the change will only be implemented a month later.

Proof of application

When the application process has been completed, the applicant will be given a receipt. This receipt has information about the application including the identification of the applicant, date of application, type of grant, status of application, and name of the SASSA official who processed the application. It should also have a reference number which the applicant must use when enquiring about the progress of the grant application.

Stage 2: Notification

It is critical that an applicant provides a postal address at which he/she will receive mail. This is the address which SASSA will use to send all notifications and official correspondence – and it is the applicant’s responsibility to collect the mail and respond to the correspondence. If they do not do so, there may be negative consequences for them – which could include, for instance, the grant being suspended.

In some cases, applicants will be told whether or not their application is approved, on the same day that they apply. At some SASSA offices, staff may not be able to make a decision on the same day as the application. In this case it could take between three weeks and three months to decide and to notify the applicant of the decision.

Applicants should receive a letter, written in the language the applicant prefers, saying whether they will get the grant (that is, it has been approved) or not (that is, their application has been refused).

If the grant has been approved, the letter of award should include the conditions relating to the grant, such as how it will be paid and when it might lapse. If the application is rejected, the letter must explain why it has been refused and must advise the applicant of their right to reconsideration and appeal and what process they should follow. See Chapter 6 for details on appeals.

The applicant can find out what has happened to their application by phoning SASSA’s toll-free helpline on 0800 601 011 and quoting their reference number. It is essential that paralegals enquiring on their client’s behalf obtain permission from the applicant to do so before phoning SASSA.

Where the application for a grant has been approved, SASSA will send the beneficiary a note saying where and when the first payment will be made, which is usually no longer than one month after notification of approval.

Stage 3: Payment

A full list of the amount of each grant is given in Appendix C. Grants for children are fixed amounts while those for adults depend on their means – that is, the more people earn and own, the less they receive in the form of a grant.

Arrears payments

If an application for a grant is approved, the applicant is entitled to receive the grant from the date they applied, not the date it is approved. The applicant is therefore entitled to an arrears payment – or back-pay – from the date of the application.

Where the person may suffer financial difficulty while waiting to receive an approved grant, they could apply for a Social Relief of Distress (SRD) award (see Chapter 16). If they do receive monies from SRD, they will be required to pay this back from the arrears amounts they eventually receive.

Identification for collecting a grant

An identity document and a grant card issued by SASSA are necessary when a grant is collected in cash. Grant cards – which have the person's information stored on a micro-chip – are used both to identify people and to enable them to access money at a specific pay point.

Where a beneficiary applied for the grant using alternative identification documents, they only need a grant card and their letter of award.

Should a grant recipient lose his/her identity document they must obtain a temporary document from the Department of Home Affairs. Similarly if a grant recipient loses their grant card, they must inform SASSA immediately and have a new one issued before they can receive the grant. SASSA is able to liaise with the cash payment contractor to replace the card within days, if not immediately.

How long are grants paid for?

Each grant has conditions attached to it. For example some grants lapse after a certain time, particularly to do with age of the beneficiary. In other cases, grants can be suspended or cancelled where some obligation has not been met or there is abuse of the system. See Chapter 5 for details of this.

Case study: Complications at pay points

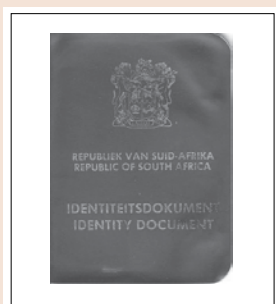
Ms Nje opted to receive her monthly payments at the pay point – but she subsequently experienced several problems with this arrangement. On some occasions, she was informed that there was no money left at the pay point to pay all the beneficiaries and that she had to go to the post office. On other occasions she was told to come back on another day as the queues were very long. This was very frustrating, but Ms Nje did what was necessary to get this money.

What the Black Sash did

The Black Sash advised Ms Nje to open a bank account and to give the details of this account to SASSA so that the grant would be paid into her account.

Outcome

When Ms Nje went to the bank, the clerk advised her that she could open a special account which had lower bank charges, given that it was largely to receive her grant payment. To do this she would need to go back to SASSA to get a form confirming she was a grant recipient after which she could open the bank account. Ms Nje did this and now receives regular payments directly into her account, where she also banks any other money she receives.



Can anyone claim part of a beneficiary's grant monies?

Grants are meant to benefit the person who is vulnerable, not their family or friends. While grants are often used to support others where households are very poor, this should not be at the expense of the child, disabled person or older person for whose care the grant is intended.

When people are applying to borrow money, they are not allowed to include their grants as income when they show how much they earn. Grants may also not be used as security for credit or given to money lenders or 'loan sharks' to pay back debts. Money lenders and creditors (people who are owed money) are not allowed to enter the premises where grants are being paid, or even be within 100 metres of them. This is to try to stop people using their grants to pay off debts.

The only deduction from a grant which is permitted is a premium for a funeral policy which is registered with the Financial Services Board. The deduction cannot exceed 10% of the grant's value, however.

When a beneficiary is cared for by an institution they may not get their full grant. When they are cared for by an institution which is

- wholly funded by the state, for more than six months on a 24-hour basis, they will not receive any of their grant. These institutions include old age homes, psychiatric hospitals, prisons and treatment centres (as defined in Section 1 of the Prevention and Treatment of Drug Dependency Act, 1992).
- contracted by the state, they may be given 25% of the full value of their grant. Examples of these are Lifecare and Smithfield Institutions.
- subsidised by the state – such as old age homes run by NGOs – they would qualify for their Older Person's Grant, but not the Grant-in-Aid.
- a state hospital (such as Baragwanath), they do not lose their grant as state hospitals are not considered state-funded institutions for the purpose of social assistance.

Using the access laws – a tool for paralegals

The Promotion of Access to Information Act of 2000 (Act No. 2 of 2000) and the Promotion of Administrative Justice Act of 2000 (Act No. 3 of 2000) – referred to as PAIA and PAJA – can be used in the context of applications. Both laws can be used to ensure that your client has recourse when they do not feel that their case has been dealt with fairly.

PAIA (summarised in Appendix H) can be used to request relevant information about their case such as why an application was refused or a decision is taking too long. You can insist that the information is provided within 30 days.

If you believe that the way in which their case was handled was the source of the unfairness, PAJA could be used (summarised in Appendix I). This can include asking for written reasons about the basis on which a decision was made or how a process was handled. You must request this information within 90 days of your client's having received the service from which the query arises, and insist that it is provided to you within a further 90 days.



Advocacy

Achievement: Back pay

A precedent known as the Back Pay Case, established that arrears payments must be made to beneficiaries who had waited to receive the social assistance they had been granted. *Mahambehlala v MEC for Welfare, Eastern Cape*, and another 2002(1) SA 342(SE) was undertaken by the Legal Resources Centre on behalf of Mr Mahambehlala, and supported by the Grahamstown Black Sash office (who presented the context as a Friend of the Court (*amicus curae*)).

Issue: Means testing

During 2009, the government raised the issue of removing means testing in relation to the Older Person's Grant (as part of the retirement reform process). This has served to highlight again the whole question of the role of the means test in relation to all grants.

'The rationale for means testing is primarily to save money. The evidence ... highlights the many costs of targeting, particularly through a verified means test. These include not only the financial costs of the required administrative capacity but also political costs, social costs, economic distortions and the direct cost to the beneficiary. In addition, means testing can lead to the exclusion of the poorest – the people that the social protection policy aims to reach. While international experience offers evidence about many alternatives to means testing, including proxy means testing, geographical targeting, community-based targeting, and others, these generally cannot be implemented within a rights-based approach. Reforms to the means testing process are most likely to be feasible, cost-effective and rights-based if they move in a more universal direction.' – Michael Sampson *'The Social and Economic Impact of Benefits to Children and Older People in Southern Africa'*, Economic Policy Research Institute (February 2007).

Consistent with the findings of this research, the Black Sash advocates for the complete removal of any means test for grants, relying instead on the South African Revenue Services (SARS) to retrieve amounts from people who are not 'in need'. We do this for three reasons.

Firstly, the current cumbersome system of means testing often unintentionally or incorrectly excludes people from getting a grant. While some of these people are really poor, their incomes are just above the cut-off amounts of the means test. Secondly, the current system can lead to fraudulent or nontransparent behaviour by applicants who are intent on accessing a grant. For instance they may not disclose all their income or possessions. Thirdly, the means test does not encourage people to supplement their grant income through some kind of work as they are anxious that the grant may be taken away from them.



Chapter 4

DOCUMENTS NEEDED

An **applicant** is the person applying for a grant or award.

A **beneficiary** is a person who receives social assistance.

An **affidavit** is a document in which a person makes statements and promises that they are true. By signing the statement in front of a commissioner of oaths they make it a legal document.

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are sick or disabled etc.

A **procurator** is a person who acts on behalf of an adult beneficiary or caregiver of a child beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

DOCUMENTS NEEDED

The main purpose of SASSA – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development. Various documents are needed when applying for grants, as without these SASSA cannot process the application.

Generally the documents required are identity documents, evidence of marital status and documents relating to the financial situation of the **applicant** and their spouse. Applicants may also need proof of someone's status, whether this is their own status as a primary caregiver or as a foster parent, or the medical condition of a potential **beneficiary**.

If people do not have all the documents needed, they are often allowed to provide the missing details themselves, signing a form in front of a commissioner of oaths to promise that the information they have given is true. This is a binding document called an **affidavit**.

Various officials at SASSA are authorised to be commissioners of oaths. It is therefore not necessary for a grant applicant to find a commissioner of oaths to verify their statements or documents before they go to SASSA to apply for the grant.

Grant beneficiaries might be asked from time to time to verify their details with SASSA. This is to ensure that they are still **eligible** for the grants they are getting. When this happens, they will again be required to supply documentary evidence of their situation. If they are not able to do so at all, this may lead to the suspension of the grant.

Each chapter which addresses a particular grant includes a list of the documents needed for that grant.

Identity documents and birth certificates

As a general rule, everyone over 16 years old must be in possession of either an identity document or birth certificate when applying for social assistance. All children under 16 need a birth certificate.

Adults

Every adult should have an appropriate identity document:

- As a South African citizen or permanent resident, they should have a South African 13-digit bar-coded identity document.
- As a refugee they should have a refugee identity document OR a refugee status permit together with proof of having applied for an identity document from the Department of Home Affairs.
- As an asylum seeker, they should have a Section 22 asylum seeker permit. (However note this category of person is not eligible for grants or SRD.)

Where adults act on behalf of others in applying for or receiving a grant (i.e. are '**procurators**') they need identity documents of any country, or a passport, or a driver's licence.

Children

Every child – defined as a person under 18 years old – has the right to be documented and to have appropriate identity documents:

- As a South African citizen, they should have a birth certificate with a 13-digit identity number which was issued free of charge immediately after the registration of their birth at any Home Affairs service point. (This can be an 'abridged' or 'unabridged' birth certificate. The 'abridged' birth certificate is shortened, while the 'unabridged' version includes the details of the biological parents.)
- As a South African citizen over 16 years old, they should have a South African 13-digit bar-coded identity document.
- As a permanent resident, they should have a birth certificate OR a South African 13-digit bar-coded identity document if they are over 16.
- As a 'documented' or 'undocumented' foreign national child, they should have a birth certificate, identity document or passport from their country of origin. Where they do not have these, their biological or foster parent or primary caregiver should make an affidavit and apply for a birth certificate at the Department of Home Affairs (obtaining a receipt of the application when they do so).

Challenges in accessing a birth certificate

The documenting of births in South Africa is governed by the Births and Deaths Registration Act of 1992, which requires that the birth of a child must be registered within 30 days. Once this has been done at the Department of Home Affairs, a birth certificate is issued to serve as a legal record of birth and of the person's identification.

Birth registration is an essential means of protecting children and serves to acknowledge their existence and entitlement. Despite it being a child's fundamental human right to be registered at birth by the government, people experience a range of challenges in having this done and as a result, many South Africans do not have a birth certificate.

Proof of the mother's identity

Proof of the mother's identity is one of the requirements to register the birth of a child. This can present significant challenges

- to young mothers who are under the age of 16 and therefore are not eligible for an ID document, or to those mothers (over 16) who have not yet applied for an ID document. Where this is the case, Home Affairs officials must accept the mother's own birth certificate as proof of her identity.
- where biological mothers are absent or deceased. For instance women could die in childbirth – or they may abandon their children without ever having registered their birth.

Late birth registration

It is possible for Home Affairs to register a birth at any stage of someone's life. There are three categories of late registrations.

Notices after 30 days, but before one year

Notice of birth must be given on a Home Affairs form (BI-24) accompanied by written reasons why the birth was not notified as required within the prescribed 30 days.

Notices after one year, but before 15 years

Notice must be given on a Home Affairs form (BI-24/1), accompanied by

- an application for identity document (BI-9 form); and



A **documented foreign national** is someone who is living in South Africa and has documents recognised by the Department of Home Affairs allowing them to be in the country.

An **undocumented foreign national** might have documents (e.g. their own passport), but none that is recognised by the South African Department of Home Affairs as giving them permission to be here.



Report fraud and corruption relating to social grants by phoning the SASSA Hotline at **0800 601 011**

- supporting documentation as specified in regard to applicants for identity documents whose births have not been registered yet.

This must be supported by

- written reasons why the birth was not registered;
- documentation that may assist in proving the child's identity and status (e.g. hospital certificate or school report or register); and
- an affidavit by the parents or, where they are not available, by a close relative at least 10 years older than the child and who is familiar with the child's birth details.

Notices after 15 years

Notice of birth must be given on a Home Affairs form (BI-24/15), accompanied by

- an application for an identity document (BI-9 form); and
- supporting documentation as specified in regard to applicants for identity documents whose births have not been registered yet; as well as
- written reasons why the birth was not registered as required.

Alternative identification documents

Some South Africans and foreign nationals have experienced problems in getting their identity documents following the inability of the Department of Home Affairs to do this quickly and accurately. As this remains a challenge, the use of alternative identity documents to apply for and receive social assistance has been a vital advocacy issue for a number of years.

In 2005, the Alliance for Children's Entitlement to Social Security (ACCESS) – in which the Black Sash participates along with other civil society organisations – took the Minister of Social Development to court. The purpose was to insist that the government implements the 2005 Regulations which allowed children to use alternative identification where they did not have any, particularly where the Department of Home Affairs had not yet issued their documents.

This became known as the 'Paper Chase Case'. ACCESS won the case, but the government appealed. Finally in March 2008, the court instructed the government to allow alternative identification to be used by adults and children. Five months later, in August 2008, new Regulations were published which included the option of using alternative identification documentation.

Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says that SASSA may accept alternative proof of identification where the person currently has no valid proof (an identity document or a birth certificate). These would typically include

- a sworn statement (an affidavit) on a form provided by SASSA; and, where available,
- proof of having applied for formal identity documentation from Home Affairs.

These could also be supported by

- a sworn statement by a reputable person (like a councillor, traditional leader, social worker, priest, school principal) who verifies that they know the person; and/or
- other documents like baptismal certificates, school reports, clinic cards etc.



Ideally alternative identification should only be used as a temporary measure. While it has not been regulated, SASSA requires that grant beneficiaries apply to the Department of Home Affairs within three months for their proper documents. Once the person provides proof of having applied for their documents, the grant will continue to be paid until the beneficiary receives their identity documents and returns to the SASSA office to update their records.

However, if they do not apply for these documents and do not return to SASSA to confirm that this has been done within the three-month period, payment of their grant may be suspended.

Lost or destroyed documents

People applying for the Social Relief of Distress (SRD) award after their documents have been lost or destroyed – for example in a fire or flood – may use alternative proof of any identification documents. (This is outlined in Regulation 15(2) of the Regulations of the Social Assistance Act of 2008.)

Where they can reasonably be expected to get documentation, they are required to produce these before SRD will be issued for a second time. A social worker will need to see the documentation during the assessment for an extension of SRD, as well as for any subsequent applications made for SRD within a one-year period as this must also be supported by a social worker's report.

Marital status

Documents to show an applicant's marital status could include the following:

- if single, the SASSA affidavit stating this;
- if married, a marriage certificate (which includes the spouse's identity number);
- if married through customary law, an affidavit from a headman stating this or a certificate from the Register of Customary Unions;
- if married by Muslim Rites, an affidavit stating this;
- if divorced, the divorce order;
- if the spouse is deceased, the spouse's death certificate;
- if married and the spouse has deserted for more than three months, an affidavit stating this.

Where original documents are not available, they can be substituted by an affidavit at SASSA. If the identity number of the spouse is not included in the relevant document, their identity document will also be necessary.

People living together as domestic partners who are not formally married do not require any documentation relating to their relationships, as co-habitation is not considered a marriage for the purpose of social assistance. The applicant will be considered single and will need an affidavit stating this.

Primary caregivers of children

Where the adult is not a biological parent or foster parent, they will need to be officially recognised as a primary caregiver in some way in order to access the social assistance available to support the child. People do not have to be appointed by a court or assessed by a social worker to be a primary caregiver, however.



Means is a word used for how much someone owns and earns.

Assets are the things that a person (or a married couple) owns. They can be actual things (like a house) or they can be investments – like cash in the bank, money invested in a pension fund etc.

Primary caregivers can use one of the following to prove their status:

- an affidavit from the biological parent; or
- an affidavit from a member of the police (SAPS) who testifies that they know the adult to be the primary caregiver of a particular child; or
- a report from a social worker; or
- a letter from the school principal.

Medical documents

Medical assessments are required for grants relating to disability, for instance a Care Dependency Grant for a child, or a Disability Grant or a Grant-in-Aid for an adult.

A referral report from the applicant's own medical practitioner is required when the grant is first applied for. As part of the application process, SASSA will then send the applicant for an assessment by a medical officer/practitioner employed by or contracted by the state (selected from official lists). In the case of the Disability Grant, this report must be submitted within three months of the assessment.

Financial documents

An applicant for a grant will be asked to list all their **means** (assets and income) – including that of their spouse and any dependent child (if applicable) – on the SASSA application form. Wherever possible, these should be supported by any of the documents listed below. Where they do not have proof of income, however, they should still include the details on the form, as the form is also an affidavit – so by signing it, the applicant is promising the information is correct. This does not apply to deductions, however, where only original documentation is acceptable.

While the list of possible documentation given below is long and often complicated, SASSA finds that an affidavit is sufficient for the vast majority of grant applicants, given how little they own and how straightforward their finances are.

Assets

Financial documents regarding assets could include any of the following:

- recent bank statements for three recent consecutive months;
- municipal rates account of property owned but not occupied by the beneficiary or spouse;
- deeds of immovable property owned by the beneficiary or spouse, or property under leasehold;
- proof of any outstanding bond on property owned and not occupied by the beneficiary or spouse;
- deeds of any property rights held by the beneficiary or spouse;
- proof of whether a working farm which generates income is owned or being rented;
- statements of cash investments, bonds or loan receipts or any other outstanding debts in favour of applicant or their spouse;
- certificates of shares or share capital or statements of interests in assets in a company or other institutions;
- endowment policies after maturity date, and declaration of cash in hand and statements of any accounts in financial institutions; or
- documentary evidence of any lump sum invested by the beneficiary or spouse in a company or financial institution.

Income

Proof of income could include any of the following:

- if employed, their wage certificate(s)/pay slip(s);
- if unemployed and they had been formally employed, an Unemployment Insurance Fund (UIF) card or receipt; or a declaration of this on the SASSA affidavit;
- if never employed, a declaration of this on the SASSA affidavit.

Income other than from employment includes:

- evidence of profit from a business concern or a farm;
- rental agreements if rental income received;
- evidence of income from any property rights;
- proof of receiving compensation e.g. amounts from the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries and Diseases Fund (COIDF);
- evidence of receipt of ex gratia amounts (e.g. a bonus payment);
- evidence of income of financial support from an organisation – be this local or international;
- evidence of receipt of monies from a trust or inheritance (especially of dependent children);
- proof of receipt of a private pension or annuity;
- documentation showing the interest and dividends earned on any investments;
- maintenance court order stating the amount of maintenance that is being paid or documents or affidavit that show attempts to try to obtain a maintenance order or payment against an existing order;
- receipts of any maintenance received for a child; and
- receipts of any maintenance received as an ex-spouse.

Deductions

Proof of deductions from income of both parties should also be submitted, being any of the following:

- obligatory contributions to a pension, retirement annuity or provident fund or voluntary contributions to a pension, retirement annuity or provident fund – but this to be no more than 22% of the net income of the applicant;
- tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them;
- membership fees which they pay to an approved medical scheme; or
- the amount they pay to the Unemployment Insurance Fund.

In the case of deductions, original documentation is required and neither alternative documentation nor the SASSA affidavit is acceptable.

Applying for a Social Relief of Distress award

When applying for a SRD, applicants could produce any of the following:

- proof of insufficient means by declaring assets and income (following Section 15(1) of the Regulations);
- proof of having applied for a private pension (e.g. from a workplace) or compensation from the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF), or the Compensation and Occupational Injuries Disability Act (COIDA);
- proof of short-term disability – i.e. disability expected to last less than six months. (While this is usually a report from a state doctor, for a SRD assessment a report from a private doctor is acceptable.);

Income is the money earned by the applicant – and their spouse and dependent children, where applicable. Money received as a grant may not be included as income in a means test.





- proof of a spouse being admitted to a prison, a treatment centre or a hospital;
- a discharge certificate from a prison, a treatment centre or a hospital; or
- proof that the applicant is awaiting trial.

Additional documents that could be useful are

- death certificates;
- municipal bills;
- bank account details; and
- letters from organisations or public people (e.g. social worker, religious leader or medical practitioner) supporting their application.



Chapter 5

LAPSES AND REVIEWS

A **beneficiary** is a person who receives social assistance.

LAPSES AND REVIEWS

This chapter has been written in accordance with the new Social Assistance Amendment Bill which was tabled in Parliament in March 2010. The Bill is concerned largely with the definition of disability, and the mechanisms for reconsideration and appeal of SASSA decisions. We anticipate that the Bill will be passed by parliament and that regulations will follow. It will be important to refer to these regulations as soon as they are available.

Lapses

A grant is said to lapse when the SASSA system automatically stops paying it, based on the condition of the award as included in the original award letter. This can happen for any grant

- on the last day of the month in which the **beneficiary** dies (as grants cannot be inherited);
- if the beneficiary has not collected the grant for a period of three consecutive months.

Case study: Re-instating a lapsed grant

The Child Support Grants which Ms Ismail received for her four children lapsed in January 2009 because she had lost her identity book and her 'All Pay' card.

Ms Ismail normally collected the grant money every three months because of the cost of travelling to the pay point – and only realised that she had lost her identity document and card on the day she intended to go there. She reported the incident to SASSA in January 2009 and the official helped her to apply for a new All Pay card, using alternative identification. Although she received the new card the same day, the official also informed her that the grant had automatically lapsed as it had not been collected for three months.

Anxious to access her grants, Ms Ismail also applied for a new ID book at the local Department of Home Affairs – not being aware that she could have used alternative identification to access her grants. On receiving her new ID document four months later in June 2009, she therefore re-applied for the grant, receiving her first payment in July 2009. While this included back-pay from the date of application in June 2009, she felt that she was owed much more. She thought she should be paid for the three months prior to the grant lapsing (November 2008 – January 2009) as well as for the four months (February to May 2009) after the grant had lapsed.

What the Black Sash did

The paralegal agreed that Ms Ismail had good reasons for the grant having lapsed and gave her a referral letter to the local SASSA office, querying the payment of outstanding arrears during the period when the grant had lapsed. The letter said the payment should also include interest for this period. After receiving their reply saying that they would not pay these arrears, the paralegal wrote a letter of demand to the SASSA regional office demanding the payment of arrears.

Outcome

On 10 November 2009, the full amount was paid to Ms Ismail. This included the four months during which the grant had lapsed plus the three months prior to it lapsing as well as interest.

In addition, each grant will lapse under circumstances particular to each grant. (See the relevant chapters in this guide.)

A grant that has lapsed cannot be appealed, and SASSA is not required to send any written notification prior to lapsing the grant.

Reviews and suspensions

SASSA needs proof that a beneficiary is still alive! Some people continue to claim a grant for a person who has died and this is one of the forms of fraud that undermines the grant system. SASSA regularly reviews the income, health status and documentation of beneficiaries. In addition, each grant may be reviewed under particular circumstances (see the relevant Chapters in this guide).

Reviewing a grant usually entails SASSA checking that the beneficiary's circumstances still make them **eligible** for their grant(s). They could become ineligible following a change in circumstances, or where they failed to provide SASSA with the information or documents requested. Where people are found to no longer be eligible, their grant is suspended or cancelled. In addition a grant may also be suspended if it was approved and granted in error.

All beneficiaries are required to prove they are still alive and thus entitled to receive a grant. Either they must provide finger or palm prints at the grant pay point, or they must provide a life certificate once a year. If a beneficiary is asked to produce a life certificate, the grant will be suspended if they do not comply within 30 days.

Changes in income

Changes in income must be declared during the annual assessment of income – i.e. when SASSA sends the beneficiary a registered letter asking about their current financial circumstances. This is so that SASSA can be sure that the person's means are still below the **threshold** for the grant they are getting. Where someone's means have increased, they may either become completely ineligible – in which case the grant will be suspended – or it may mean they are eligible to receive a grant of a lesser amount (in the case of grants for adults). Where a grant is suspended, your client has the right to make representation to SASSA as described in the section on the review process below.

SASSA will investigate where it suspects there has been a change in the financial circumstances of the person whose means were tested.

Changes in health status

Where the health of a person receiving a permanent Disability Grant improves (due to a medical procedure, for instance) they must inform SASSA, as they may no longer be considered 'disabled' and the grant may need to be suspended. In these kinds of cases, failure to report this could be considered as fraudulent.

In addition to voluntary declarations, however, SASSA requires that beneficiaries of grants which support those who are disabled (like the Disability Grant and the Care Dependency Grant) have medical assessments from time to time. This is to confirm that their condition still meets the criteria for the grant.



Report fraud and corruption relating to social grants by phoning the SASSA Hotline at 0800 601 011

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are sick or disabled etc.

The **threshold** is the maximum value of the income a grant applicant – and their spouse and dependent child – is allowed to earn and, in the case of adult grants, also the maximum value of the goods they may own in order to be eligible for a grant. If they have less than the threshold they will be eligible. But if they earn or own more, they are not eligible.

In cases where a beneficiary's condition cannot be expected to change (for example where there is severe mental retardation), SASSA may request an administrative review to confirm that the financial circumstances are still the same, but is not likely to request a medical review.

Changes in documentation

SASSA will also review the circumstances of people whose grants were given subject to documents being valid. This applies particularly to the identity documents of refugees and foster care court orders, both of which expire after a certain time and must be renewed in order to continue to receive the grants.

This condition can also apply to beneficiaries who have received grants on the basis of alternative documentation. SASSA requires that they provide proof of having applied for formal documentation from Home Affairs within three months of receiving their first grant payment. As this is not formally in the regulations, however, SASSA uses its discretion, but this may include their suspending the grant.

Grant approved in error

If a grant was approved and granted in error, SASSA will suspend or cancel the grant – and the beneficiary who received the money in error will have to pay back any money they received. If the beneficiary can prove that they received the money without knowing that they were not entitled to the grant, however, a submission may be made to the Minister to remit the debt – that is, they would not be expected to pay back the money given in error.

The review process

Since SASSA posts all notices of review by registered mail, it is important to ensure that your client provides a current postal address at all times. Failure to do this may result in the beneficiary not receiving the notification and the grant being suspended. The responsibility to provide a postal address, and to collect mail sent to that address remains with the beneficiary.

SASSA must give a beneficiary 90 days' written notice of their intention to review their grant – which may be an assessment of income or of health, or a review of documentation. In this review notice, they must ask the beneficiary to provide the information they need in order to decide to either continue or suspend the grant. The beneficiary should provide the necessary information within the 90 days.

If the beneficiary does not submit the information asked for, or if the information provided is not acceptable to SASSA, the beneficiary will be given 90 days' notice of SASSA's intention to suspend the grant. This written notice must give the reason for the suspension and the date on which it will be suspended. It should be delivered by hand or sent by registered post.

During this 90-day period, the beneficiary has the right to make representation to SASSA and to provide reasons as to why the grant should not be suspended. If the beneficiary does not make representation, the grant will automatically be cancelled. If the beneficiary disagrees with the decision, they may ask SASSA to reconsider.

Using the access laws – a tool for paralegals

The Promotion of Access to Information Act of 2000 (Act No. 2 of 2000) and the Promotion of Administrative Justice Act of 2000 (Act No. 3 of 2000) – referred to as PAIA and PAJA – can be used in the context of suspensions. Both laws can be used to ensure that your client has recourse when they do not feel that their case has been dealt with fairly.

PAIA (summarised in Appendix H) can be used to request relevant information about their case. These could be the policies and procedures that underpinned the response received by your client which may have led to their grant being refused or suspended. You can insist that the information is provided within 30 days.

If you believe that the way in which their case was handled was the source of the unfairness, PAJA could be used (summarised in Appendix I). This can include asking for written reasons about the basis on which a decision was made or how a process was handled. You must request this information within 90 days of your client's having received the service from which the query arises, and insist that it is provided to you within a further 90 days.





Chapter 6

APPEALS

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

While the Social Assistance Act (13 of 2004) states that appeals should be directed to the Minister of Social Development, **ITSAA**, the Independent Tribunal for Social Assistance Appeals is appointed by the Minister to do this work.

APPEALS

This chapter has been written in accordance with the new Social Assistance Amendment Bill which was tabled in Parliament in March 2010. The Bill is concerned largely with the definition of disability, and the mechanisms for reconsideration and appeal of **SASSA** decisions. We anticipate that the Bill will be passed by parliament and that regulations will follow. It will be important to refer to these as soon as they are available.

Reconsiderations and appeals

If your client disagrees with the decision made by **SASSA** about their grant, they have two opportunities to have the decision overturned. In terms of the proposed amendment, they should first request that **SASSA** reconsider their decision and if this is not successful, they may appeal to the Minister of Social Development.

There may be three decisions they want reconsidered or appealed:

1. the rejection of their application;
2. the award of a grant for a temporary period;
3. or a decision to pay a reduced amount.

Request for reconsideration by **SASSA**

Your client may formally request that **SASSA** reconsider their decision by sending a letter within 90 days of having received **SASSA**'s notification. (See Appendix G for an example of such a letter.)

How to submit an appeal

Where a request for reconsideration by **SASSA** has been unsuccessful, your client may submit a formal appeal to the Minister of Social Development. The appeal will be considered by the Independent Tribunal for Social Assistance Appeals (**ITSAA** or 'the Appeals Tribunal').

As there are not many **ITSAA** offices, the best way for an applicant to submit an appeal, is to send a letter of appeal to their local **SASSA** office. This letter must be sent within 90 days of receiving notification that **SASSA** has upheld their original decision. (Again, Appendix G has an example of such a letter.) **SASSA** will forward it to the Department of Social Development in which the Appeals Tribunal is housed. The **SASSA** contact details are given in Appendix E.

Unfortunately, due to the absence of Regulations at the time of writing this guide, it is not clear how long the appeal process will take – or the basis on which the decision will be made.

The Appeals Tribunal

The role of the Appeals Tribunal – and the considerable backlog of cases – is mentioned in Chapter 2. The Appeals Tribunal has been set up to consider appeals by members of the public who are unhappy about **SASSA**'s decision in respect to a grant. **ITSAA** may either agree with **SASSA**'s decision about the grant in question, or they may disagree.

For instance, in the case of a Disability Grant, the Tribunal must consider appeals against rejections of the grant, as well as appeals against temporary awards. For example, if SASSA awarded a grant for a temporary period, the Tribunal may uphold the temporary award, or change it to a permanent award. However, if SASSA rejected an application for a grant, the Tribunal would have to decide whether the applicant should get a grant, and if so, whether it should be a permanent or temporary award.



Paralegal experience has shown that the Tribunal can recommend that applicants be given a Social Relief of Distress award while they wait for payment, where the appeal is in their favour. This is only done in exceptional circumstances, however.

At the time of writing this guide, the Appeals Tribunal had only two offices – a head office in Pretoria and a regional office in Durban. By 2010 they intend having offices in Gauteng, KwaZulu-Natal and Eastern Cape which will deal with appeals from all nine provinces. ITSAA's contact details are given in Appendix G.

The absence of regulations to govern the Tribunal

Normally a body like an Appeals Tribunal should operate under a comprehensive set of regulations which describes the extent of its powers and guides the procedures and processes to be followed. However, at the time of writing this guide, neither the previous or current Minister has made these regulations. As a result, the Tribunal continues to operate only with the support of a Standard Operating Procedure manual which, as an internal document, is not a legally binding instrument. The unfortunate result is that the public is currently not able to find out what they can expect from the appeals process, or how the Appeals Tribunal makes a decision. They cannot find out

- what the step-by-step process is;
- what the timeframe is for addressing an appeal and for informing the applicant of their decision; and
- how the Tribunal intends to uniformly apply standards of practice across the country.

Under these circumstances, it is very difficult for applicants to understand and assert their rights to a speedy and fair appeals process.

New information

If your client has any relevant new information which might help them to access the grant, then it may be better to withdraw the appeal and begin the application process again through SASSA, using all available information.

To withdraw an appeal, the applicant must write to the Appeals Tribunal simply saying that they want to withdraw their appeal. They can then start a new application process as outlined in Chapter 3.

Applicants who choose this route must understand that, if the grant is awarded on re-application, they will only be paid from the date of the application, and will therefore forfeit any possibility of receiving back-payment from the date of the previous application. It is therefore important that applicants are able to make an informed decision in these cases.



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Advocacy

The Black Sash advocates – along with other members of civil society – for policies, laws, regulations and practices that ensure that the social assistance system is accessible to all, that it functions well and that grants are awarded to the right people accessibly, timeously and with dignity.

The Appeals Tribunal

The Black Sash believes in the right to independent appeal. The Tribunal was only set up in 2008 and at the time of writing, was still not functioning optimally, given insufficient capacity, poor systems and an inadequate budget allocated within the Department. As a result, there is an extensive backlog of cases. At the time of writing, this amounted to about 60 000 outstanding appeals.

The lack of an effective appeals process and the unacceptable backlog of appeals cases is a significant obstacle to people's access to administrative justice and their right to social assistance. The lack of will to prioritise a solution to this, effectively denies thousands of people their right to social assistance, and is a point of advocacy for the Black Sash.

We advocate for a fully functioning, effective Appeals Tribunal to be established by 2010. This entails developing regulations to guide it as well as establishing the capacity to process appeals fairly, efficiently and speedily. We also propose that a budget be made available to clear the substantial and unacceptable backlog of appeals.

Using the access laws – a tool for paralegals

The Promotion of Access to Information Act of 2000 (Act No. 2 of 2000) and the Promotion of Administrative Justice Act of 2000 (Act No. 3 of 2000) – referred to as PAIA and PAJA – can be used in the context of appeals. Both laws can be used to ensure that your client has recourse when they do not feel that their case has been dealt with fairly.

PAIA (summarised in Appendix H) can be used to request relevant information about their case. These could be the policies and procedures that underpinned the response received by your client which may have led to their grant being refused or suspended. You can insist that the information is provided within 30 days.

If you believe that the way in which their case was handled was the source of the unfairness, PAJA could be used (summarised in Appendix I). This can include asking for written reasons about the basis on which a decision was made or how a process was handled. You must request this information within 90 days of your client's having received the service from which the query arises, and insist that it is provided to you within a further 90 days.



Chapter 7

CHILDREN AND SOCIAL ASSISTANCE



Means is a word used for how much someone earns and, sometimes, owns.

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are disabled etc.

A **beneficiary** is a person who receives social assistance.

CHILDREN AND SOCIAL ASSISTANCE

Children's rights to social assistance

Children are defined as people who are younger than 18 years old – according to the country's Constitution, the Social Assistance Act of 2004 and the Children's Act of 2005

'Every child has the right to basic nutrition, shelter, basic health care services and social services' according to the country's Bill of Rights (Section 28(1)(c) of the Constitution of the Republic of South Africa (Act No. 108 of 1996). The Constitution also guarantees that everyone has the right to access social security if they are unable to support themselves and their dependants, including the right to access social assistance. In addition, South Africa has ratified the United Nations' Convention on the Rights of the Child.

Despite all of these commitments, however, not all children living in South Africa who are in need of support receive the assistance that they should. Currently, a child's ability to access social assistance is limited by two factors:

- the **means** of their biological parent or primary caregiver, as the child's access to a grant depends on whether the applicant (parent or caregiver) is **eligible** in terms of SASSA's means test;
- the applicant's (biological or foster parent or caregiver) legal status to be in South Africa – as, while the child's national status does not matter, the applicant must be a South African citizen or a permanent resident and, in some cases a refugee.

The Black Sash advocates – along with other members of civil society – for policies, laws and budgets to be changed so that every child who needs it receives social assistance. Details of advocacy as they relate to each grant are given in the relevant chapters.

This chapter introduces the social assistance that is currently available to children. Details of each grant are given in the three chapters that follow.

Grants benefiting children

The current grants for children, which are discussed in detail in dedicated chapters 8, 9 and 10, are as follows:

- The **Child Support Grant** is intended to support the basic needs of a child until they turn 18 years. It is provided to a biological parent or primary caregiver who is in need (Chapter 8).
- The **Foster Child Grant** is provided to a foster parent who is legally appointed by a court to care for a child under 18 years old, be they orphaned, abandoned, at risk, abused and/or neglected (Chapter 9).
- The **Care Dependency Grant** is intended to assist a parent, primary caregiver or foster parent who is in need to provide support for a child (under 18 years old) who is disabled and who requires permanent care or support services (Chapter 10).

These grants are awarded to the **beneficiary** (biological or foster parent, or primary caregiver) who must apply for, collect and manage the grant in the child's interests. The value of each grant is listed in Appendix C.

Who is a primary caregiver?

As children cannot access grants for themselves, they need an older person who cares for them to do so. Where they are not cared for by a parent or foster parent, they may be looked after by a primary caregiver. In terms of the Social Assistance Act of 2004, a primary caregiver is 'a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily needs of that child.' A primary caregiver is not a biological or foster parent but, like anyone caring for a child, they must ensure that the child is fed, clothed, immunised and provided with access to health care.

Increasingly, in the context of the AIDS pandemic, a 'primary caregiver' can also include an older brother or sister who looks after younger children. Families/homes like these are referred to as child-headed households.

People do not have to be appointed by a court or assessed by a social worker to be recognised as a primary caregiver, but when applying for a social grant they should offer any of the following as proof that they are a primary caregiver:

- An **affidavit** from the parent or guardian saying that this person should take care of the child and be the primary caregiver. (This must include that they are not being employed to look after the child.)
- If both parents are deceased, an affidavit by the primary caregiver supported by the parents' death certificates. (Where they cannot get the death certificates, an affidavit from the church or community leader confirming the death of both parents will be accepted.)
- An affidavit from a police officer who knows the family circumstances and is willing to swear to this.
- A report from a social worker confirming the circumstances.
- A report from the school principal from the school attended by the child.

The grant application form includes an affidavit for people to swear on oath that they are the primary caregiver.

Eligibility for grants benefiting children

All children in South Africa, no matter what their nationality, are eligible for social assistance. However, their ability to access a grant, according to South African law, depends on the age of the child, the national status of their parent, foster parent or primary caregiver and the financial eligibility of the parent or caregiver.

The Summary of Grants in Appendix A gives, among other things, the criteria which make biological and foster parents and primary caregivers eligible for a grant – while Chapter 3 contains a checklist that could be used when helping a client decide if they are eligible for a grant.

Age of child

The Child Support Grant, the Foster Child Grant and the Care Dependency Grant are given until the child is 18 years old. Where a child who is fostered is still completing their secondary school or special educational training, however, the Foster Child Grant may be extended beyond 18 years to allow for this.

An **affidavit** is a document in which a person makes statements and promises that they are true. By signing the statement in front of a commissioner of oaths they make it a legal document.

A **documented foreign national** is someone who is living in South Africa and has documents recognised by the Department of Home Affairs allowing them to be in the country.

An **undocumented foreign national** might have documents (e.g. their own passport), but none that is recognised by the South African Department of Home Affairs as giving them permission to be here.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

Until January 2010 the Child Support Grant was only available to children until they turned 15. The extension of the CSG to children up to the age of 18 will be rolled out over three years. As we go to press, the Minister of Social Development has published regulations which say that parents and caregivers of children born on or after the 31 December 1993 may apply for the Child Support Grant if they are eligible in terms of the means test. This has been welcomed by civil society groups who have argued for more than ten years for this extension.

National status

The applicant (biological or foster parent or caregiver) for the Child Support Grant must be a South African citizen or a permanent resident.

The applicant for the Foster Child Grant and Care Dependency Grant must be a South African citizen, permanent resident or refugee (with Section 24 status).

Children cared for by other '**documented**' foreign nationals (like asylum seekers and migrant workers) or by foreign nationals who are '**undocumented**' cannot access any of these grants, despite the international agreements to care for children.

Financial status

Parents and caregivers who apply for the Child Support Grant and the Care Dependency Grant must be eligible in terms of SASSA's means test. Only the income (not the assets) of the applicant is assessed for child grants.

The Foster Child Grant has no means test at all, as the grant is simply made available to anyone who is awarded foster parent status by the court.

Financial eligibility and thresholds – that is, the amount of money that may be earned in order to be eligible for a child grant – are explained generally in Chapter 3, while Appendix D lists the amounts of the thresholds for each grant. This is also given in the chapter which focuses on each grant.

Documents needed

Every child has the right to be documented and to have appropriate identity documents. Caregivers should obtain children's identity documentation from the Department of Home Affairs. Children who are foreign nationals should have a birth certificate or an identification document, such as a passport, from the country of origin. The importance of birth certificates and identity documents needed for children to access grants has been outlined in Chapter 4.

Where a child has no valid proof of identity, however, Section 11(1) of the 2008 Regulations of the Social Assistance Act says that **SASSA** may accept alternative proof of identification. These would typically include

- a sworn statement (an affidavit) on a form provided by SASSA; and, where available,
- proof of having applied for formal identity documentation from Home Affairs.

These could also be supported by

- a sworn statement by a reputable person (like a councillor, traditional leader, social worker, priest, school principal) who verifies that he/she knows the person; and/or
- other documents like baptismal certificates, school reports, clinic cards etc.

Where a child entered South Africa without their parents, an affidavit could be made by a fellow adult refugee, or by an immigration official or police officer, or by a South African citizen or a permanent resident.

Ideally alternative identification should only be used as a temporary measure. While it has not been regulated, SASSA requires that grant beneficiaries apply to the Department of Home Affairs within three months for their proper documents. Once the person provides proof of having done so, the grant will continue to be paid until the beneficiary receives their identity documents. Once they have received them, they must return to the SASSA office so that their record with SASSA can be updated.

However, if they do not apply for these documents and do not return to SASSA to confirm that this has been done within the three-month period, payment of their grant may be suspended.

Maintenance

The provision of social assistance to children does not mean that biological parents no longer have to look after their children or pay for their needs – whether they live with them or not. They are still required to support and nurture them.

All children have a right to maintenance. The Maintenance Act of 1998 (Act No. 99 of 1998) says that both biological parents must pay maintenance towards the support of their children according to how much they earn. So a biological parent who is a single caregiver can claim child maintenance from the other biological parent who may not be living with them anymore. The amount of money received – or proof that they have tried to get it and failed – must be included in a grant application by a biological parent.

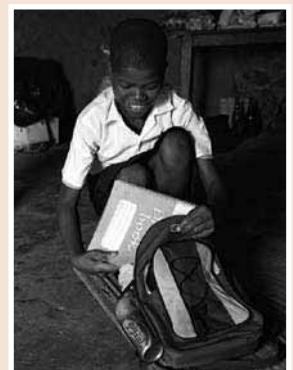
Other people who have taken on the role of caregiver (like a grandmother or an adult who is not a family member) can also claim child maintenance from biological parents – but are not obliged to try to do so. The amount received will be included in the means test.

Applying for child maintenance

Caregivers wanting to claim maintenance for children should apply for a court order at the nearest magistrate's office in their area. (A list of offices is given in the blue pages of the phone book under Regional Offices of National and Provincial Government – under 'Justice'.)

To do this they will need:

- the name and address of the person against whom the order is being made, and the details of where they work, if applicable; and
- a certified copy of their own identity document; and



- a certified copy of the child/ren's birth certificate/s; and
- a letter of attendance from the school principal for any school-going child/ren; and
- a certified copy of the divorce order (if applicable); and
- proof of the primary caregiver's income (like a salary or pension slip) and how much it costs to care for the child.

Remember that applicants do not need a lawyer and the application for maintenance (which includes their personal details) is made at the magistrate's court in a private office, not in the public court.

Whether or not the maintenance order is successful, a single biological parent or primary caregiver can still apply for a grant. The means test will be applied to the income of the caregiver at the time the application is made – which will include any maintenance obtained. If they receive maintenance payments after the application was made, they should simply declare these to SASSA, so the agency can check if they are still eligible for that grant. Failure to declare this would be fraudulent.



Child-headed households

In the context of the HIV/AIDS pandemic, children are increasingly having to play the role of primary caregivers when they are the only people left to look after younger children. While this usually means there is no adult in the house, there are also cases where an adult is still there, but is too ill to care for the children.

A child-headed household is defined as a household in which a person between the ages of 16 and 18 is the oldest competent person in the house. So to be legally recognised as a primary caregiver, a young person must be over 16 years old. As they cannot take on the full responsibilities of an adult, a mentorship programme has been established whereby a 'supervising adult' supports them in this role. This adult must ensure that the grants are used for the children's benefit and must facilitate SASSA's access to the children, as requested.

The law says that where the oldest person is *under* 16, the children are meant to be placed in the care of an adult family member and/or fostered. The reality in many places in South Africa, however, is that children under ten years old live without any adults. Where they are not cared for by an adult in any way, these children are unable to access social assistance in their own right. They are left to their own devices in their communities and are sometimes discriminated against because their parents or elders have died as a result of AIDS-related illnesses.

Adults are duty-bound to notify the appropriate local authorities of any children who live without any adults in their household. For some adults this duty is absolute – that is they are required by law or their professional ethics to notify the authorities. This means that legal practitioners and medical workers like a clinic nurse or sister are obliged to do so. A neighbour will not be held liable if they do not report a child-headed household to an authority, however, although they are encouraged to do so, so that the children can access the support they need.

Children in institutional care

Children being cared for in state-funded institutions – such as children’s homes, treatment centres, places of safety and psychiatric hospitals – are not eligible for grants. However if a care-dependent child is admitted temporarily to a psychiatric hospital, their parent or foster parent or primary caregiver may continue to receive the grant for the care of the child for up to six months.

Children admitted to state hospitals, such as Baragwanath, continue to be eligible to receive their grant as these are not considered state-funded institutions for the purpose of social assistance.



Chapter 8

CHILD SUPPORT GRANT

Grant for caring for a child

A *means test* for a grant for a child is an assessment of how much money is earned (income) by a biological parent or primary caregiver – and, where applicable, by their spouse and/or any dependent children – in order to see if they are eligible for a grant.

CHILD SUPPORT GRANT

Who is the Child Support Grant for?

The Child Support Grant is intended to provide for the basic needs of children whose parents or primary caregivers are not able to give them sufficient support due to their impoverished circumstances. Children are defined as people who are younger than 18 years old – according to the country's Constitution, the Social Assistance Act of 2004 and the Children's Act of 2005.

The amount of the Child Support Grant changes every year, but in 2010/2011 it was R250 per month per child. The grant is awarded to the parent or primary caregiver who must apply for, collect and manage the grant in the child's interests. The child's access to a grant depends on whether the applicant (parent or caregiver) is eligible in terms of SASSA's means test.

Who is eligible for the Child Support Grant?

In order to be eligible for the Child Support Grant, a biological parent or primary caregiver must

- be 'in need', as defined by SASSA's *means test*;
- care for a child, living in South Africa;
- be living in South Africa and be a South African citizen or a permanent resident.

A primary caregiver may only receive the Child Support Grant for up to six children who are not their biological children.

Legislation which applies to the Child Support Grant

Primary legislation

- South African Constitution, 1996 (Act No. 108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008

Secondary legislation

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Child Care Act, 1983 (Act No. 74 of 1983)
- Children's Act, 2005 (Act No. 38 of 2005)
- Children's Amendment Act, 2007 (Act No. 41 of 2007)
- South African Social Security Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

Where to obtain copies

As it may be useful to you as a paralegal to have these laws and regulations in your office, you can get copies from the government printers or download copies from the internet at www.legislation.gov.za or www.polity.gov.za or www.socdev.gov.za

Until January 2010 the Child Support Grant was only available to children until they turned 15. The extension of the CSG to children up to the age of 18 will be rolled out over three years. As we go to press, the Minister of Social Development has published regulations which say that parents and caregivers of children born on or after the 31 December 1993 may apply for the Child Support Grant if they are eligible in terms of the means test. This has been welcomed by civil society groups who have argued for more than ten years for this extension.

Although grants are available to all children living in South Africa, and not only to South Africans, their ability to receive a grant depends on the national status of their biological parent or primary caregiver. In the case of the Child Support Grant, their parent or primary caregiver must be a South African citizen or a permanent resident.

Who cannot get the Child Support Grant?

A biological parent or primary caregiver will not be given a Child Support Grant if

- they receive an income above the **threshold** of the means test; and/or
- someone else is getting a Child Support Grant for the child; and/or
- they receive a Foster Care Grant or a Care Dependency Grant for that child; and/or
- the child is resident in an institution funded by the state; and/or
- they are **documented foreign nationals** who are not permanent residents (they are migrant workers, refugees or asylum seekers) or they are **undocumented foreign nationals** (even if the child is a South African citizen or a permanent resident).

Children who are heading households and who are younger than 16 years old cannot access grants for any of the children in the household without the support of a supervising adult. If the oldest sibling is older than 16 years, however, they may apply for the Child Support Grant as the primary caregiver of the younger siblings.

What is the means test for the Child Support Grant?

The purpose of a 'means test' and how this works is outlined in Chapter 3. In the case of the Child Support Grant, it entails assessing the earnings (income) of the biological parent or primary caregiver and their partner or spouse (husband or wife) – as well as of any dependent child with means – to see if they can be considered to be 'in need'.

In 2010/2011 a single person with children in their care must not earn more than R30 000 a year (which averages out to R2 500 a month) while a married couple must not earn more than R60 000 a year (an average of R5 000 a month). The amounts of these 'thresholds' may change each year. The value of goods the caregiver owns, their 'assets', are not assessed in the case of grants for children.

What conditions are there relating to the Child Support Grant?

A person who receives a Child Support Grant cannot also receive a Foster Child Grant or a Care Dependency Grant for the same child.

The grant may lapse or may be suspended and cancelled in certain circumstances.

- The grant will lapse if the child dies.
- The grant will lapse when the child turns 18.

The **threshold** is the maximum income and assets an applicant may have in order to be eligible for a grant. If they have less than the threshold they will be eligible. But if they earn or own more, they are not eligible.

A **documented foreign national** is someone who is living in South Africa and has documents recognised by Department of Home Affairs allowing them to be in the country.

An **undocumented foreign national** might have documents (e.g. their own passport), but none that is recognised by the South African Department of Home Affairs as giving them permission to be here.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

A **procurator** is a person who acts on behalf of a beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

The grant may also be suspended or cancelled following an annual review of the beneficiary's circumstances to assess if they are still eligible for the grant. Suspension or cancellation could result from

- the child being admitted to a state-funded institution for more than six months; or
- the income/assets of the parent or primary caregiver (including those of their spouse and/or dependent children) increasing such that they no longer qualify for the grant in terms of the means test.

The beneficiary has several opportunities to ensure that the grant is not cancelled. See Chapter 3 and Chapter 5 for details.

A caregiver, parent or foster parent must inform **SASSA** of any changes in their or the child's circumstances which may affect their eligibility for the grant. Receiving a grant when a person is not eligible for it is fraud and a criminal offence.

How does someone apply for the Child Support Grant?

The process of applying for the Child Support Grant is the same as for all other grants (see Chapter 3) and details of SASSA offices are given in Appendix E. However, before the biological parent or primary caregiver applies for the Child Support Grant they should check that they have the documents listed on the next page.

How can a Child Support Grant be paid out?

A Child Support Grant is paid out in the same way as other grants. This is outlined in Chapter 3.

Where a caregiver is unable to collect their own grant, they may appoint a **procurator** (a person who acts for them) to do so. The role of a procurator – how they are appointed and what they must do – is also outlined in Chapter 3.

What other financial assistance could be accessed?

If the primary caregiver is a biological parent and is entitled to receive child maintenance from the other parent of the child, they must first try to get this through a maintenance order. They will be asked about this when they apply for a Child Support Grant – and must either declare what they have received or describe their efforts to access this funding, even if they have failed to do so. Any amount received will be included in their income when their eligibility for the grant is assessed.

In addition, poor people – including those receiving social assistance – are eligible for various forms of financial support, like primary healthcare and relief from school fees.

Children are automatically exempted from paying school fees if their parent or primary caregiver can show they are the beneficiary of a Child Support Grant. All the caregiver has to do is to make application for this exemption at the school. Some households might get assistance with the cost of water, electricity and property rates and taxes. In order to receive some of these benefits, these households undergo means tests by the Municipality.

Documents required to apply for the Child Support Grant

IDENTIFICATION OF CHILDREN	√
Children who are South African citizens: South African birth certificate (abridged or unabridged) with 13-digit identity number OR South African 13-digit bar-coded identity document (only available to children over 16) OR a passport	
Children who are foreign nationals (be they documented (refugees, asylum seekers or migrant workers) or undocumented): Birth certificate or identity documents from the child's country of origin e.g. a passport	
Children who are permanent residents: Any of the above – either from South Africa or from their country of origin	
IDENTIFICATION OF BENEFICIARIES (biological parents or primary caregivers)	
South African 13-digit bar-coded identity document	
AND if they are not the child/ren's biological parent, proof that they are the primary caregiver of the child. This could be - an affidavit from a police member saying that they recognise this person as the primary caregiver OR - a report from a social worker OR - an affidavit from the biological parent OR - a letter from the school principal	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
Passport OR Driver's licence OR ID document from country of origin	
AND an affidavit by the procurator (on the SASSA application form) agreeing to this responsibility	
MARITAL STATUS OF BENEFICIARIES (biological parents or primary caregivers)	
<ul style="list-style-type: none"> If single, the SASSA affidavit stating this If married, a marriage certificate (which includes spouse's identity number) If married through customary law, an affidavit from a headman or a certificate from the Register of Customary Unions If married by Muslim Rites, an affidavit stating this If divorced, their divorce order If spouse is deceased, the spouse's death certificate If married and the spouse has deserted for more than three months, an affidavit saying this (If living together as domestic partners but not formally married, no documentation needed) 	
AND, if applicable, spouse's identity document	
MEANS (of the biological parent or primary caregiver, and their spouse and/or any dependent children, where applicable)	
Income:	
Affidavit on SASSA's prescribed form listing the total income of the adult applicant and their spouse and/or any dependent children, if applicable. This to be supported by any of the documents below.	
If employed, their wage certificate(s)/pay slip(s)	
<ul style="list-style-type: none"> If unemployed and had been formally employed: an Unemployment Insurance Fund (UIF) card or receipt; or a declaration of this on the SASSA affidavit If never employed, a declaration of this on the SASSA affidavit 	
Income other than employment:	
<ul style="list-style-type: none"> Evidence of profit from a business concern or a farm Rental agreements if rental income received Evidence of income from any property rights Proof of receiving compensation e.g. from RAF, UIF, COIDF Evidence of receipt of ex gratia amounts (such as once-off or bonus payments) Evidence of income of financial support from an organisation – be this local or international Evidence of receipt of monies from a trust or inheritance (especially of dependent children) Proof of receipt of a private pension or annuity Documentation showing the interest and dividends earned on any investments Maintenance court order stating maintenance being paid; or documents affidavit showing attempts to get it Receipts of any maintenance received for a child Receipts of any maintenance received as an ex-spouse 	
<i>Where no valid proof is obtainable for a form of income, the details can be declared on the standard SASSA affidavit</i>	
Deductions – Original documentation is required. Alternative documentation not accepted	
Obligatory contributions to a pension, retirement annuity or provident fund or voluntary contributions to a pension, retirement annuity or provident fund – but this to be no more than 22% of the net income of the applicant	
Tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them	
Membership fees which they pay to an approved medical scheme – for beneficiary or spouse and/or dependent children	
Contributions to the Unemployment Insurance Fund	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the **Black Sash Help Line on 072 663 3739** for FREE paralegal advice and support.

An *incentive* is something that motivates someone to do something. It is a kind of a reward.

A *perverse incentive* in the context of social assistance is where a grant is thought to encourage people to do something that undermines society, as well as the grant system itself.

A *rebuttal* is usually information that shows that an argument made by someone else is not correct.

Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000. Commonly called PAIA and PAJA, these laws make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Perverse incentives – and rebuttals

In the context of high unemployment, poverty and the increasing HIV/AIDS pandemic in South Africa, it can be expected that the demand for social grants will continue to rise. It is in this context that the allegation has been made that young women become pregnant expressly to obtain the grant, with some saying that the Child Support Grant provides an *incentive* for teenagers to have children so that they can access this grant. This has been much debated and researched by civil society and the government.

Research by the Human Sciences Research Council on *perverse incentives* undertaken in 2007 for the Department of Social Development produced valuable findings.

As at October 2005, teenagers (younger than 20 years old) represented only 5% of all Child Support Grant recipients. In addition the percentage of teenage mothers accessing grants was very low compared to women older than 20. The study also indicated that most caregivers only applied for the Child Support Grant some time after a child was born and that the majority of caregivers only receive one Child Support Grant. This meant that the accusation that young women were ‘farming with children’ (having a lot of children for the purpose of accessing the grant) could also be ruled out. The study proved a *rebuttal* to the allegation, by showing conclusively that the Child Support Grant does not provide an incentive for teenagers to have children in order to access the grant.

There is also a belief amongst certain sectors of society that some caregivers do not spend the grant on the needs of the children but rather spend it irresponsibly, on alcohol and drugs. Although there are some people who may abuse the grants they receive, it is not the majority. Research undertaken by the Children Count Project of the Children’s Institute, shows that the Child Support Grant is used for food, school fees and transport. StatsSA confirmed in July 2009 that school attendance among those who receive a Child Support Grant is much higher than among those who do not.

The Black Sash argues that it is government’s job to act if there are any instances of abuse of the grant. These kind of negative allegations about who gets the grant or how some people spend money should not be allowed to be exaggerated into a general perception.

References

1. *Multi-year study on the impact of Child Support Grants Workshop, 2007*. Human Sciences Research Council for the Department of Social Development, 2007.
2. *Grants for children. A brief look at the eligibility and take-up of the Child Support Grant and other cash grants*. Annie Leatt, The Children's Institute, University of Cape Town, June 2006.
3. *Strategic Consideration for a Comprehensive System of Social Security*. Discussion Document, Department of Social Development, South Africa, June 2008.
4. *Review of the Child Support Grant. Uses, implementation and obstacles*. Report compiled and produced by the Community Agency for Social Enquiry (CASE) for the Department of Social Development, the South African Social Security Agency (SASSA) and the United Nations Children's Fund (UNICEF), March 2008.
5. Children Count Project. General Household Survey. In *Child Gauge 2009*. The Children's Institute, University of Cape Town, 2009.

Advocacy issues

Achievement: Increase in the thresholds in the means test

For years the threshold which determined whether or not people could access the Child Support Grant was not increased, despite the increasing inflation rate in South Africa. This meant that the number of people who could access the grant became smaller and smaller.

The threshold for the means test for the Child Support Grant was finally increased with the publication in August 2008 of the Regulation to the Social Assistance Act. This was partly as a result of intervention by civil society and of the Children's Institute's support for a case against the government undertaken by the Legal Resources Centre in Grahamstown.

The case of *Nokwayiyo Margaret Ncamile v The Minister of Social Development* was about the termination of the Child Support Grant on the grounds that Ms Ncamile no longer qualified for the grant in terms of the means test. While this case was never argued before a judge, it put pressure on the government to publish the appropriate regulations which effectively doubled the previous threshold. These regulations also ensured that it would increase automatically with inflation in the future as the threshold is now calculated following a standard formula.

Achievement: Extension of the Child Support Grant to age 18

The Black Sash has worked tirelessly with other civil society organisations and in particular with the Alliance for Children's Entitlement to Social Security (ACCESS) and the Children's Institute, to campaign for the extension of the Child Support Grant to 18.

One of the strategies was to embark on a case that would test the constitutionality of the government's right to limit access to the Child Support Grant. Together with the Legal Resources Centre we all worked with Ms Florence Mahlangu, a mother of a 14 year-old boy, in a court action to compel the government to stop denying children between the age of 14 and 18 years the Child Support Grant.

At the time of completing this guide, Cabinet has just announced the extension of the grant to age 18, with a rollout plan which was accommodated in the Medium Term Budget Policy Statement! We can assume that the pressure of



this case below, combined with consistent and strong advocacy from across many sectors of South African society, led to this important victory.

In *Florence Mahlangu v The Minister of Social Development and others*, 2005 TPD, Mrs Mahlangu argued that it is unconstitutional for the government to limit the Child Support Grant to children up to age 14 (in 2008). She based her argument on the supremacy of the Constitution and other legislation like the Social Assistance Act of 2004 and the Children's Act of 2005 which define a child as a person under the age of 18.

She argued that the government was not honouring the right to social security and this action affected the daily lives of children. She also argued that it violated the children's right to nutrition, education and health care services and that there is sufficient evidence that caregivers use the Child Support Grant to pay for food, transport to school and school fees. She argued that when children stop receiving the Child Support Grant, they leave school because they have to find employment, given the lack of financial support.

The government argued that increasing the Child Support Grant is a policy decision and not a decision that can be made by the court. They argued that they still intended to extend the grant to 18 years but needed to do further research on what the impact of the extension would be on the budget. They stated that they would explore other policy interventions for children in this age group such as job training programmes.

The case was heard in Pretoria High Court in March 2008.

Issue: Extending the grant to children in the care of refugees

The Black Sash advocates that all children living in South Africa should benefit from the social assistance system when their caregivers do not have the means to look after them. Currently, whether or not a Child Support Grant is awarded depends on the national status of the adult who cares for them. While the Regulations to the Social Assistance Act of 2004 allow refugee adults to foster children, it does not give them access to the two other grants for children, namely the Child Support Grant and the Care Dependency Grant.

The Black Sash therefore argues that the regulations are in contradiction to a number of commitments which inherently protect the rights of the child – namely the constitutional provisions for the social security of children, the country's Children's Act (38 of 2005) and the United Nations Convention on the Rights of the Child, which South Africa has ratified and to which it is a signatory. While we recognise that these are indivisible rights and that they should be unconditionally available to everyone, the Black Sash proposes that in the first instance, these grants be extended to children in the care of refugees.





Chapter 9

FOSTER CHILD GRANT

Grant for caring for a foster child

Children are defined as people who are younger than 18 years old – according to the country's Constitution, the Social Assistance Act of 2004 and the Children's Act of 2005.

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are disabled etc.

FOSTER CHILD GRANT

Who is the Foster Child Grant for?

All **children** who live in South Africa, no matter what their nationality, may be fostered if their parents are unable to care for them as they are absent, unfit or deceased. People are unfit to care for a child if they

- abandoned the child,
- failed to maintain a reasonable degree of interest and concern in the child,
- imposed extreme and repeated cruelty on them,
- failed to protect the child from his/her environment, and/or
- failed repeatedly to provide the child with adequate food and shelter despite their ability to do so.

The child's situation must be assessed by a social worker – who may recommend to the Children's court that the child be fostered if they find that the child is in need of care or is exposed to risk. Children are placed in the care of foster parents in terms of the Child Care Act of 1983.

All foster parents are **eligible** to apply for the Foster Child Grant to support them to provide for the basic needs of the child they are fostering. The foster parents must ensure that the grant is used to benefit the child and must ensure that they are fed, clothed and healthy and that they attend school. An assigned social worker must visit the child from time to time to ensure that they are being properly cared for.

Legislation which applies to the Foster Child Grant

Primary legislation

- The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008
- Refugees Act, 1998 (Act No. 130 of 1998)

Secondary legislation

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Child Care Act, 1983 (Act No. 74 of 1983)
- Children's Act, 2005 (Act No. 35 of 2005)
- Children's Amendment Act, 2007 (Act No. 41 of 2007)
- South African Social Security Agency Act, 2004 (Act No. 9 of 2004)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

Where to obtain copies

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The Foster Child Grant is available to foster children until they are 18 years old. And where a foster child is completing their secondary school or special educational training, application can be made to the provincial Department of Social Development to extend the payment of the grant to 21 years in order to enable them to do so.

The amount of the Foster Child Grant changes every year – since 1 April 2010 the grant is R710 per month per foster child. Payments are made from the date that the child was placed in foster care by the court, even if the grant was not applied for immediately.

Who can be a foster parent?

Foster parents must be adults (a person over the age of 18) living in South Africa who are assessed by a designated social worker to be 'fit and proper' people and 'willing' to undertake care of the child (according to the terms of the Child Care Act of 1983). They must provide an environment that is conducive to the child's growth and development. In order to foster a child in South Africa, however, an adult must be either

- a South African citizen; or
- a permanent resident; or
- a refugee with Section 24 permit (which allows a person to hold refugee status for two years according to the Refugees Act of 1998).

An asylum seeker, migrant worker or a foreign national who is undocumented may not foster a child.

An adult family member, including a brother or sister (over 18 years old), may foster a child as long as they are not the child's biological parent. Children between 16 and 18 years old who are heading households are not eligible to foster anyone, including their dependent younger siblings. They can receive the Foster Child Grant through an adult person designated by the Children's Court to supervise them, however (see Chapter 7). A **legal guardian** may not become a foster parent.

Process

To become a foster parent, your client must contact their local Department of Social Development or local welfare organisation like Child Welfare. (Contact details for provincial offices of the Department are given in Appendix F.) Here the intake worker – the administrator who starts the process of application – will arrange for a social worker to screen the applicant. This will entail interviews and a visit to the home of the adult wishing to foster a child. The applicant must be able to produce an unabridged birth certificate of the child – but if none exists, they can submit a passport, or an **affidavit** and proof of receipt for a birth certificate application made at the Department of Home Affairs.

Who is eligible for the Foster Child Grant?

To be eligible for a Foster Child Grant

- the foster parent must be in possession of a court order that makes their foster care status legal; and
- the foster parent and the foster child must be residing in South Africa when the application is made and when the grant is received.

A **legal guardian** is a person who has the legal authority to care for the personal and property interests of another person. These are usually the parents – but the parents can give this responsibility to another person in the event of their death.

An **affidavit** is a document in which a person makes statements and promises that they are true. By signing the statement in front of a commissioner of oaths they make it a legal document.



Here 'education or training' refers to schooling and vocational education – but not to tertiary education (Section 176 (2) of the Children's Amendment Act of 2007).

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

What conditions are there relating to this grant?

Currently the duration of the Foster Child Grant is linked to the period of appointment of the foster parent(s), in accordance with the Child Care Act of 1983. As this is usually for a period of up to two years, the grant often only lasts for that time. The social worker must visit the child at least once during the two years to evaluate the child's stability.

But following work currently being done and in terms of the Children's Act of 2005 (which will eventually replace the Child Care Act of 1983), Children's Courts can make a foster order for any period – and some courts are already making orders for longer than two years. This is particularly in the case of placements within the family, where the order may be made from the date of placement until the child's 18th birthday. This will prevent a lot of unnecessary administration.

The authority to extend a court order is currently delegated to the provincial departments of Social Development as this is an administrative action, and does not require the foster parent to go back to court. The decision will be based on the social worker's report and may result in the foster period being extended for two years in order to create stability for the child. Where a foster parent appointment is extended on time, the Foster Child Grant will be paid to the foster parents without any interruption. (See the case study at the end of this chapter for more details about late extensions.)

Foster Child Grants are usually paid until the child turns 18. The grant will lapse

- when the child turns 18, if they are no longer involved in education and training. (If, at 18, the child is still in formal education or training, the grant can be continued to enable the child to complete the training);
- on the last day of the month the foster child or both foster parents die;
- if the child is no longer in the custody of the foster parent.

What is the means test for the Foster Child Grant?

There is no means test for a Foster Child Grant. A foster parent qualifies for the grant regardless of their income. It is also irrelevant whether the foster child has an income, as this is not taken into account.

How does someone apply for the Foster Child Grant?

The process for applying for the Foster Child Grant is the same as for all other grants (see Chapter 3) and details of **SASSA** offices are given in Appendix E. However, before applying on behalf of the child, the foster parent should check that they have the documents listed in the table opposite.

How can a Foster Child Grant be paid out?

A Foster Child Grant is paid out in the same way as all other grants. The options are given in Chapter 3. Where a caregiver is unable to collect their own grant, they may appoint a procurator (a person who acts for them) to do so. The role of a procurator – how they are appointed and what they must do – is also outlined in Chapter 3.

Documents required to apply for a Foster Child Grant

IDENTIFICATION OF CHILDREN	√
Children who are South African citizens: South African birth certificate (abridged or unabridged) with 13-digit identity number	
OR South African 13-digit bar-coded identity document (only available to children over 16)	
OR a passport	
Children who are foreign nationals (<i>be they documented (refugees, asylum seekers or migrant workers) or are undocumented</i>): Birth certificate or identity documents from the child's country of origin e.g. a passport	
Children who are permanent residents: Any of the above – either from South Africa or from their country of origin	
IDENTIFICATION OF BENEFICIARIES (foster parents)	
Court order indicating foster care status AND	
South African 13-digit bar-coded identity document OR	
Refugee ID document OR	
Refugee status permit and proof of having applied for an ID from the Dept of Home Affairs	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
South African 13-digit bar-coded identity document OR	
Passport OR	
Driver's licence OR	
ID document from country of origin AND	
Affidavit by the procurator (on the SASSA application form) agreeing to this responsibility	
MARITAL STATUS OF BENEFICIARIES (foster parents)	
<ul style="list-style-type: none"> • If single, the SASSA affidavit stating this • If married, a marriage certificate (which includes spouse's identity number) • If married through customary law, an affidavit from a headman or a certificate from the Register of Customary Unions • If married by Muslim Rites, an affidavit stating this • If divorced, their divorce order • If spouse is deceased, the spouse's death certificate • If married and the spouse has deserted for more than three months, an affidavit saying this • (If living together as domestic partners but not formally married, no documentation needed.) 	
AND, if applicable, spouse's identity document	
MEANS	
<i>No documents are necessary, as the Foster Child Grant is not means tested</i>	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says that SASSA may accept alternative proof of identification where the person currently has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the
Black Sash Help Line on 072 663 3739 for FREE paralegal advice and support.

Case Study: A Foster Child Grant delayed and suspended

Ms Namhla Khumalo is a 46-year-old woman who cares for a child whose mother has died and whose father's whereabouts are unknown. After attending a foster parents' workshop organised by the Black Sash, she compiled the necessary documentation that proved that the child attended school, produced the identity documents for herself and the child, and accompanied the social worker to court to place the child in foster care with her. As part of the court order that granted Ms Khumalo foster care status for two years from 25 January 2007, the court also said that she qualified for a Foster Child Grant and that SASSA should pay her the grant from the date of the order.

Issue 1: Delay in the application process and first payment

Ms Khumalo applied for the Foster Child Grant on 1st February 2007. In spite of all the documents being handed in at the time of the application, Miss Khumalo waited five months before the grant application was approved, and she started receiving payments at the end of June 2007. No reasons were given for the delay. She was not paid the arrears owed to her from the date of the court order.

Issue 2: Termination of the Foster Child Grant

A second major difficulty arose when the Foster Child Grant was suspended at the end of January 2009, as the social worker had failed to apply to extend the foster care order at the end of the two-year period as required by the Child Care Act. She should have done a home visit in which she checked the home environment, the child's school attendance records etc. and then submitted a report.

SASSA informed Miss Khumalo that the social worker must send them a letter saying that the child was, in fact, still in her care and that a court order was being applied for, so that they could start paying her again. Realising that she might have some difficulty with the social worker – and being concerned about this loss of important income – Ms Khumalo requested that the Black Sash assist her in handling the process as fast as possible.

What the Black Sash did

Ms Khumalo came to the Black Sash offices in March 2009, having not been paid at the end of February, which alerted her to the problem of the lapsed court order resulting in her grant being suspended. As it turned out, there were three things to be done.

The most urgent was to get the grant paid again by having the social worker submit the necessary letter to SASSA. Secondly, a claim would need to be made for the months after January 2009 when the grant was not paid until the grant began to be paid again. And thirdly, a claim for arrears/back-pay would also need to be made for the initial period of five months when she did not receive the grant (between the date of the court order (25 January 2007) and June 2007 when the grant was first paid).

Finally, the paralegal urged Ms Khumalo to get a new court order formalising her fostering relationship with the child, even though this did not affect her immediate ability to have the grant paid again.

What the Black Sash then did

The Black Sash paralegal assisted Ms Khumalo by contacting the social worker concerned and requesting the letter confirming that Miss Khumalo was still fostering the child and that a court order was being applied for. Given that Ms Khumalo's difficulty had arisen partly from the social worker's negligence, the Sash followed up the social worker ten days later to check that the letter had indeed been sent to SASSA.

They helped her to apply for the arrears she lost whilst waiting to receive her initial Foster Child Grant. Recognising that Ms Khumalo might struggle financially while waiting for the grant to be paid again, the paralegal suggested that she go to SASSA and apply for a Social Relief of Distress award. They also advised her to apply for arrears for any months she was not paid, given the lapsing of the court order and grant.

This proved to be worthwhile as the grant was only paid again three months later, during which time Ms Khumalo would have battled to feed the child had she not received the award. Luckily this was given to her in form of food parcels which meant she did not have to pay them back when she eventually received the arrears for the three months in which she did not receive the grant.

Learning from this case study

- When handling foster child cases, particularly in the early stages, urge the foster parents to remind the social worker to prepare and submit the report needed to renew their status as foster parents at least six months before the court order expires. In this way they will be able to give a copy of the extension of the order to SASSA in time to avoid the grant being stopped. On the other hand, if the grant has already been suspended, you can assist the client to have the social worker submit a letter to SASSA explaining that the child is still being fostered by the same foster parents (if that is the case) and that they should continue the grant payments whilst the social worker completes his/her report for the court and has a court order made that extends the fostering relationship.
- If the complaint was about a delay in renewing the foster care status, find out where the delay actually took place. For example was it caused by the social worker, the court or SASSA? Try to assess if this may have been an exception or might be an ongoing problem which would cause other people difficulty. Once you have done this, decide on the best place to give feedback or lodge a complaint. This could be at SASSA, or at the local district office of the Department of Social Development or you could write to the South African Council for Social Service Professions. Choose which route to follow, based on the severity of the problem. In the case of the social worker, be sensitive to the fact that the client may have an ongoing relationship with them – but explain that the system will only be strengthened if people and organisations are given feedback and held to account.
- Make sure that the clients who are in desperate need apply for Social Relief of Distress (SRD) while they are waiting for their applications to be processed. However, be aware that SRD, unlike other grants, is dependent on the availability of funding. If the funds are exhausted, this award will not be given. Also be aware that any person who received SRD and a grant covering the same period, will be expected to pay back the amount they received from SRD, unless that support was given in the form of a food parcel.
- As people are entitled to payments from the date of the court order awarding them foster status, note the date of the application for the grant, as well as the date on which they first received a payment – and make sure that they access any back payments due to them.



What other financial assistance could be accessed?

Foster parents are not required to try to retrieve child maintenance from biological parents. Nonetheless the court may make a contribution order which requires biological parents to pay towards maintaining the foster child.

If the child being fostered is disabled and is in need of permanent care, the foster parent may be able to receive a Care Dependency Grant in addition to the Foster Child Grant (see Chapter 10).

A person who receives a Foster Child Grant may not also receive a Child Support Grant for the same child. (They may receive Child Support Grants for other children in their care who are not fostered, however.)

Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000. Commonly called PAIA and PAJA, these laws make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Perverse incentives and rebuttals

A report by the Department of Social Development commissioned in 2006 confirmed that 'informal fostering is a well-established practice in certain sections of the South African population'. It further suggested that foster care is a valuable form of alternative care for children whose parents have died or unable to care for them.

It is within this context that it has been alleged that people foster children

- within the biological family context in order to receive a grant amount higher than the Child Support Grant; and
- after the age of 15 years when the child was no longer eligible for the Child Support Grant.

The rebuttal for the first issue is that the state, in the form of social workers, assesses whether the child is in need of foster care and whether the potential foster parents are 'fit and proper' and willing and able to look after the child. This means that each foster case and each potential foster parent, even if he/she is a family member, is assessed on its merits.

The answer to the second issue is not a rebuttal but rather a confirmation. The majority of foster children (at the time of writing) have indeed been over

An **incentive** is something that motivates someone to do something. It is a kind of a reward.

A **perverse incentive** in the context of social assistance is where a grant is thought to encourage people to do something that undermines society, as well as the grant system itself.

A **rebuttal** is usually information that shows that an argument made by someone else is not correct.

15, being the age group where the Child Support Grant has lapsed, until the very recent decision to extend the grant to 18.

Caregivers are often discouraged from applying to be foster parents and thus to access the Foster Child Grants and to rather apply for the Child Support Grant, given the work that fostering entails for social workers.

As the amount they would receive from a Foster Child Grant would be nearly three times higher than the Child Support Grant (R710 a month rather than R250, in 2010/2011), caregivers who are suitable to foster children should be advised to start the fostering process as soon as possible. Using the Foster Care Grant in this way is not perverse but is a legitimate way in which poor caregivers might be able to provide for children in their care.

Advocacy issues

Achievement: Foster Child Grant extended to foster parents who are refugees

Until recently, only South African citizens and permanent residents were allowed to foster children. This was extended in 2007 to include refugees, following advocacy campaigns and legal cases initiated by the organised refugee community. As a result, the South African government changed the 2008 Regulations to the Social Assistance Act of 2004 to specify that refugee adults may also foster children who live in South Africa.

Currently other documented foreign nationals (like migrant workers and asylum seekers) and those who are undocumented may not foster children. This is despite the fact that all children are entitled to receive care and protection, according to the country's Constitution, to the Children's Act of 2005 and to the Social Assistance Act of 2004.

Issue: More social workers needed

There are many impediments that need to be addressed and advocacy that needs to be done to improve the foster care system to ensure that children who are orphaned, abandoned, abused, neglected or exploited can find safe environments and homes that are caring and stable. The most pressing of these are the delays and difficulties following the shortage of social workers.

A social worker's report must accompany an application for foster care. This delays applications significantly, given the huge backlog of cases and the insufficient numbers of social workers in South Africa to do this work. Some say this is to do with the poor pay they receive such that, according to a qualified social worker, they are not able to 'keep serving their communities so they move to different sectors of the economy after qualifying'.

While the Department of Social Development is making serious attempts to increase people's interests in becoming social work professionals, the Black Sash and other civil society organisations continue to advocate that the Department makes a more concerted and strategic effort to attract and retain social workers. The Black Sash also suggests that auxiliary social workers

be used more effectively in the administration of foster care. We support the provision of the Children's Act of 2005 that where the Court has confidence in the foster arrangement, longer court orders (currently the maximum is two years) may be given to reduce the administration of reassessment and renewal.

Paralegals can contribute to advocating for more social workers and for alternative administrative arrangements by sending the Black Sash stories of cases. We are interested in cases that illustrate the unreasonable time taken by some social workers to complete the first report necessary for people to become foster parents, or subsequent reports necessary for the extension of a foster care contract. Improving this aspect of fostering will ultimately assist adults who are trying to care for children by becoming foster parents, but who cannot do so because the necessary reports are not available.



Chapter 10

CARE DEPENDENCY GRANT

Grant for caring for a disabled child

CARE DEPENDENCY GRANT

This chapter has been written in accordance with the new Social Assistance Amendment Bill which was tabled in Parliament in March 2010. The Bill is concerned largely with the definition of disability, and the mechanisms for reconsideration and appeal of SASSA decisions. We anticipate that the Bill will be passed by parliament and that regulations will follow. It will be important to refer to these regulations as soon as they are available.

Who is the Care Dependency Grant for?

The Care Dependency Grant provides financial support to the biological and foster parents and to **primary caregivers** who look after children who are disabled and who require or receive permanent care or support services. While primary caregivers and biological parents are means tested, foster parents are not.

The amount of the Care Dependency Grant changes every year – but in 2010/2011 the grant was R1 080 per month for each child.

The grant is awarded to the caregiver who must apply for, collect and manage the grant in the child's interests. They must ensure the child is fed, clothed, receives care and stimulation, and also that the child has suitable access to health and support services.

In terms of the Social Assistance Act of 2004, a **primary caregiver** is 'a person older than 16 years, whether or not related to a child, who takes primary responsibility for meeting the daily needs of that child'. A primary caregiver is not a biological or foster parent but, like anyone caring for a child, they must ensure that the child is fed, clothed, immunised and provided with access to health care.

Legislation which applies to the Care Dependency Grant

Primary legislation

- The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008
- Refugees Act, 1998 (Act No. 130 of 1998)

Secondary legislation

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Child Care Act, 1983 (Act No. 74 of 1983)
- Children's Act, 2005 (Act No. 35 of 2005)
- Children's Amendment Act, 2007 (Act No. 41 of 2007)
- South African Social Security Agency Act, 2004 (Act No. 9 of 2004)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

Where to obtain copies

As it may be useful to you as a paralegal to have these laws and regulations in your office, you can get copies from the government printers or download copies from the internet at www.legislation.gov.za or www.polity.gov.za or www.socdev.gov.za

Who is eligible for the Care Dependency Grant?

In order to be **eligible** for the Care Dependency Grant, a biological parent or primary caregiver must be a South African citizen or permanent resident, while foster parents may either be South African citizens, permanent residents or refugees.

The biological or foster parent or caregiver must care for a child

- younger than 18 years old; and
- in need of permanent care or support services due to their disability.

Caregivers must have a medical assessment report confirming the child's disability.

Who cannot get a Care Dependency Grant?

If the child with a disability or condition requiring permanent care or support services is being cared for on a 24-hour basis for more than six months in an institution funded by the state (like a psychiatric hospital), a Care Dependency Grant will not be given to the primary caregiver, biological parent or foster parent of the child.

Children who are heading households and who are younger than 16 years old cannot access grants for any of the children in the household without the support of a supervising adult. If the oldest sibling is older than 16 years, however, they may apply for the Care Dependency Grant as the primary caregiver of the younger siblings.

Refugees who are not foster parents cannot get this grant – nor can other documented foreign nationals who are not permanent residents (i.e. they are migrant workers and asylum seekers) or undocumented foreign nationals, even if the child is a South African citizen or a permanent resident.

What is the means test for the Care Dependency Grant?

The purpose of a 'means test' and how this works is outlined in Chapter 3. In the case of grants for children, it entails assessing the earnings (**income**) of the biological parent or primary caregiver and their partner or spouse (husband or wife) to see if they can be considered to be 'in need'. Foster parents, however, are not means tested.

In 2010/2011

- a single person with children in their care must not earn more than R129 600 a year (which averages out to R10 800 a month),
- a married couple must not earn more than R259 200 (R21 600 a month).

The amounts of these '**thresholds**' may change each year.

The value of goods the caregiver owns – known as 'assets' – are not assessed in the case of grants for children.

What conditions relate to this grant?

The grant may lapse or may be suspended and cancelled in certain circumstances.

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are disabled etc.

Income is the money earned by the beneficiary – and their spouse and/or dependent children, where applicable.

The **threshold for a child grant** is the maximum amount of money that a caregiver – and their spouse and/or dependent children – is allowed to earn or receive in order to be eligible for a grant. If they have less than the threshold, they will be eligible. But if they earn more, they are not.

A **beneficiary** is a person who receives social assistance.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

A **procurator** is a person who acts on behalf of a beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

The grant will lapse

- when the child turns 18 (in which case she or he may become eligible for a Disability Grant) or
- if the child dies.

The grant may be suspended or cancelled following an annual review of the **beneficiary's** circumstances to assess if they are still eligible for the grant. Suspension or cancellation could result from

- their being admitted to a state-funded institution for over six months; or
- the income/assets of the biological parent or caregiver (including those of their spouse) increasing such that they no longer qualify for the grant in terms of the means test; or
- the expiry of the court order which authorised a fostering relationship – or the identity documents of any refugee who is a foster parent.

The beneficiary has several opportunities to ensure that the grant is not cancelled. See Chapter 3 and Chapter 5 for details.

A caregiver, parent or foster parent must inform **SASSA** of any changes in their or the child's circumstances which may affect their eligibility for the grant. Receiving a grant when a person is not eligible for it is fraud and a criminal offence.

If the primary caregiver, biological or foster parent dies, SASSA will appoint an interim caregiver who will continue to receive the grant for six months while a permanent alternative caregiver is found. If for some reason an interim or a new caregiver is not found, the Care Dependency Grant will be suspended until there is someone to care for the child. Once a new caregiver is in place, any amounts that were not paid since the original caregiver died must be paid to them for the child. The new caregiver will need to make a new application to receive the grant in the future, however, as the grant is means tested and depends on their income.

How does someone apply for the Care Dependency Grant?

The caregiver, parent or foster parent, must submit a referral letter from the child's doctor when first applying for the grant. SASSA then sends the child to a state doctor who produces a medical assessment of the child's condition. After this, the application process is the same as for all other grants (see Chapter 3 above) – and details of SASSA offices are given in Appendix E.

Before the primary caregiver, parent or foster parent applies for the Care Dependency Grant on behalf of the child, however, they should check that they have the documents in the table that follows.

How can a Care Dependency Grant be paid out?

A Care Dependency Grant is paid out in the same way as all other grants. The options are given in Chapter 3. Where a caregiver is unable to collect their own grant, they may appoint a **procurator** (a person who acts for them) to do so. The role of a procurator – how they are appointed and what they must do – is also outlined in Chapter 3.

Documents required to apply for Care Dependency Grant

IDENTIFICATION OF CHILDREN	√
Children who are South African citizens: South African birth certificate (abridged or unabridged) with 13-digit identity number	
OR South African 13-digit bar-coded identity document (only available to children over 16)	
OR passport	
Children who are foreign nationals (<i>be they documented (refugees, asylum seekers or migrant workers) or are undocumented</i>): Birth certificate or identity documents from the child's country of origin e.g. a passport	
Children who are permanent residents: Any of the above – either from South Africa or from their country of origin	
CHILD'S WELLBEING / HEALTH / CIRCUMSTANCES	
A referral report regarding the child from the child's own medical practitioner (SASSA will then send the child for a medical assessment by a medical officer/practitioner employed by or contracted by the state)	
IDENTIFICATION OF BENEFICIARIES (Biological or foster parents or primary caregivers)	
South African 13-digit bar-coded identity document	
AND, if they are not the child's biological parent, proof that they are the primary caregiver of the child. This could be	
- an affidavit from a police member saying that they recognise this person as the primary caregiver; or	
- a report from a social worker; or	
- an affidavit from the biological parent; or	
- a letter from the school principal.	
OR, if they are a foster parent: Refugee ID document	
OR Refugee status permit AND proof of having applied for an ID from the Dept of Home Affairs	
AND court order indicating foster care status	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
South African 13-digit bar-coded identity document	
OR Passport	
OR Driver's licence	
OR ID document from country of origin	
AND Affidavit by the procurator (on the SASSA application form) agreeing to this responsibility.	
MARITAL STATUS OF BENEFICIARIES (Biological or foster parents or primary caregivers)	
<ul style="list-style-type: none"> • If single, the SASSA affidavit stating this • If married, a marriage certificate (which includes spouse's identity number) • If married through customary law, an affidavit from a headman or a certificate from the Register of Customary Unions • If married by Muslim Rites, an affidavit stating this • If divorced, their divorce order • If spouse is deceased, the spouse's death certificate • If married and the spouse has deserted for more than three months, an affidavit saying this • (If living together as domestic partners but not formally married, no documentation needed) 	
AND, if applicable, spouse's identity document	
MEANS (of the biological parent or caregiver, their spouse)	
<i>NOTE: The means test does not apply to foster parents.</i>	
Income:	
Affidavit on SASSA's prescribed form listing the total income of the adult applicant and their spouse (if applicable). This to be supported by any of the documents below.	
<ul style="list-style-type: none"> • If employed, their wage certificate(s)/pay slip(s) • If unemployed and had been employed: an Unemployment Insurance Fund (UIF) card or receipt; or a declaration on the SASSA affidavit • If never employed, a declaration of this on the SASSA affidavit 	
Income other than employment:	
<ul style="list-style-type: none"> • Evidence of profit from a business concern or a farm • Rental agreements if rental income received • Evidence of income from any property rights • Proof of receiving compensation e.g. from RAF, UIF, COIDF • Evidence of receipt of ex gratia amounts (such as once-off or bonus payments) • Evidence of income of financial support from an organisation – be this local or international • Evidence of receipt of monies from a trust or inheritance (especially of dependent children) • Proof of receipt of a private pension or annuity • Documentation showing the interest and dividends earned on any investments • Maintenance court order stating maintenance being paid; or documents affidavit showing attempts to get it • Receipts of any maintenance received for a child • Receipts of any maintenance received as an ex-spouse 	
<i>Where no valid proof is obtainable for a form of income, the details can be declared on the standard SASSA affidavit</i>	
Deductions – Original documentation is required. Alternative documentation not accepted	
Obligatory contributions to a pension, retirement annuity or provident fund or voluntary contributions to a pension, retirement annuity or provident fund – but this to be no more than 22% of the net income of the applicant	
Tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them	
Membership fees which they pay to an approved medical scheme – for beneficiary or spouse and/or dependent children	
Contributions to the Unemployment Insurance Fund	

Note: Section 11(I) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about Social Grants, please contact the
Black Sash Help Line on 072 663 3739 for FREE paralegal advice and support.

Case Study: Applying for a Child Dependency Grant

Jabulile Mabaso, an old-age pensioner, is the primary caregiver of her three-year-old granddaughter who is physically disabled and in need of full-time and permanent home-based care. The child's biological mother passed away a year ago, leaving the child in Mrs Mabaso's care. She must now ensure the child gets nutritious food and warm and clean clothes, receives care at all times and enough stimulation through play, and that she attends regular appointments with the health services.

Mrs Mabaso came to the Black Sash offices in October 2009 and explained that she had not heard whether her application for the Care Dependency Grant which she applied for in June 2009 had been approved, despite the fact that she has been to the SASSA offices twice to find out about this.

What the Black Sash did

The Black Sash knew that it was standard practice for this particular SASSA office to make a decision about the grant application on the same day they applied for it and that they told applicants straight away. They phoned the office and were advised that SASSA still needed a discharge report from the state-funded rehabilitation institution where the child had spent almost seven months before the application for the grant was made. Mrs Mabaso had no recollection of ever having been asked for this.

The Black Sash immediately phoned the rehabilitation institution and the discharge report was faxed to their offices within an hour. Mrs Mabaso submitted this to SASSA the next day.

Three months later – in January 2010 – Mrs Mabaso visited the Sash offices again and explained that the Care Dependency Grant had been approved shortly after the discharge report had been submitted in October – but that she had waited two months before she received her first payment in December 2009.

The Black Sash explained that as Mrs Mabaso had only received one month's payment, she was entitled to another five months in the form of back-pay from the date of application in June 2009. They wrote a letter to her local SASSA office pointing this out – and phoned them the next day to check that they had received the fax and would pay Mrs Mabaso. After talking with a number of officials, a SASSA staff member agreed that this was correct and that it would be paid to her.

Learning from this case study

- Although SASSA aims to process applications as quickly as possible, the application process can take longer. It is therefore important to check to find out what may be holding it up by phoning either the office concerned or the SASSA helpline – at 0800 601 011 – which is meant to be able to track the progress of all applications on a centralised system.
- Remember that the applicant should be paid fully from the date of application and make sure that back-pay (arrears) is applied for – and received.
- If the client's needs are desperate and the grant has been approved, remember to help them to apply for a Social Relief of Distress award. Although this may be deducted from the grant they receive later, it may provide crucial relief at the time.



What other financial resources could be accessed?

A person who receives a Care Dependency Grant can also receive a Foster Child Grant for the same child – but may not also receive a Child Support Grant.

If the parent or primary caregiver is entitled to receive child maintenance from the other biological parent of the child, they must first try to get this through a maintenance order. They will be asked about this when they apply for a Care Dependency Grant. Any amount received will be included in their income when their eligibility for the grant is assessed.

When the child turns 18, the Care Dependency Grant lapses. At this age, the child becomes eligible for, and may apply for, a Disability Grant in their own right, provided they pass the means test.

Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000. Commonly called PAIA and PAJA, these pieces of legislation make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Advocacy issues

Issue: A uniform harmonised disability assessment tool

For many years, there has been no uniform way of assessing disability. This is because there was no official definition of disability and no uniform 'tool' for assessing disability consistently. This means that people who have been excluded from accessing the Care Dependency Grant often do not know why they were rejected and do not know the basis on which they were assessed.

The new Social Assistance Amendment Bill which was tabled in Parliament in March 2010 defines disability in respect of an applicant as 'a moderate to severe limitation to his/her ability to function as a result of a physical, sensory, communication, intellectual or mental disability rendering him or her unable to obtain the means needed to enable him or her to provide for his or her own maintenance OR be gainfully employed'.

The Black Sash acknowledges the introduction of the Department of Social Development's revised and more inclusive definition of disability and the introduction of their harmonised assessment tool to be used by everyone involved in assessing disability. We argue that the criteria and process should be made public so that people who apply for grants entailing disability may be satisfied that an assessment – and an application or appeal that

is rejected – was done fairly. In this respect, we are encouraged that the new Social Assistance Amendment Bill provides a standardised definition of disability, making a harmonized tool legally possible.

However, while many people who are chronically ill currently receive the Disability Grant, this will not be possible in the future as chronic illness is not defined as a disability. The Black Sash therefore argues that the new assessment tool should be introduced concurrently with a new Chronic Illness Grant. (See the proposal for a Chronic Illness Grant in Chapter 12 on the Disability Grant.)



Issue: Extending the Grant-in-Aid to beneficiaries of the Care Dependency Grant

It is common for people to look after family members who are in need of care – or to provide care for someone in their community. This is because they want the person – and perhaps particularly children – to be able to stay in their own home. Sometimes it is because there are no other options.

The Grant-in-Aid is currently intended for adults who are disabled and need regular attendance by another person. It is not however available to those who look after children.

We advocate that the Grant-in-Aid be extended to those in receipt of the Care Dependency Grant, as there is no reason why there should be a difference between the care needed for a child compared to care for an adult. The proposal is that this would work in the same way as it does for adults – namely that receiving the Grant-in-Aid would be dependent on the receipt of the Care Dependency Grant and therefore would not be means tested again.

Issue: Extending the grant to children in the care of refugees

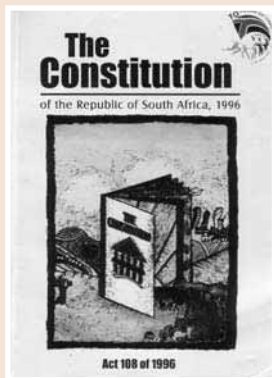
The Black Sash advocates that all children living in South Africa should benefit from the social assistance system when their caregivers are not able to look after them. Currently, whether or not a child is awarded a grant depends on the national status of the adult who cares for them. While the Regulations to the Social Assistance Act of 2004 allow refugee adults to foster children, it does not give them access to the two other grants for children.

The Black Sash therefore argues that the regulations are in contradiction to the constitutional provisions for social security of children, as well as to the country's Children's Act of 2005 and the United Nations Convention on the Rights of the Child (which South Africa has ratified and to which it is a signatory) which inherently protect the rights of the child. While we recognise that these are indivisible rights and that they should be unconditionally available to everyone, the Sash proposes that grants for children be extended to children in the care of refugees in the first instance.



Chapter 11

ADULTS AND SOCIAL ASSISTANCE



ADULTS AND SOCIAL ASSISTANCE

Rights and access to social assistance

According to the South African Bill of Rights in the Constitution (Act No. 108 of 1996), 'everyone has the right to have access to social security including, if they are unable to support themselves and their dependants, appropriate social assistance' (Section 27(1c)).

While these rights may make people in South Africa among the more fortunate in Africa, in reality these benefits are currently only available to a portion of those who need it. Assistance in the form of grants is only given in certain circumstances – it is 'categorical' (i.e. given to only certain categories or groups of people) and is means tested (i.e. grants are only given to people who do not earn or own above a certain level). This means that many poor people are excluded from the social security net and have no forms of income as they do not qualify for any support.

This applies particularly to adults between the ages of 18 and 60 who are able-bodied (i.e. are largely healthy and not defined as 'disabled') but who are unable to find employment. If there were enough jobs, these people would not need social assistance – but it is estimated that as many as 4 million people who could work are not able to find decent work. This leaves many people and families to survive through a combination of casual employment, informal work or self-employment and subsistence. As this does not provide a reliable or consistent income, additional income through social assistance becomes a significant contribution to poor households.

A study on the effect of grants on poor households – called 'Welfare and Work', undertaken in 2008 by the Human Sciences Research Council – shows that the introduction of regular cash amounts stimulates the household's ability to generate further income. That is, people in households that receive grants are more able to find work or find ways of earning money. This is in contrast to the suspicion that grants produce a **perverse incentive** not to work or to find employment. It is also a **rebuttal** to the claim that social assistance creates a sense of dependency among the majority of people who receive it.

Grants for adults

The current grants for adults, which are discussed in detail in dedicated chapters 12 to 15, are

- the Disability Grant
- the Older Person's Grant (the 'state old-age pension')
- the War Veterans' Grant
- the Grant-in-Aid

The Disability Grant

The Disability Grant is intended for adults who are in financial need and who have a disability which prevents them from being able to support themselves. It is provided until their 60th birthday, at which point they may become eligible for an Older Person's Grant. This grant is addressed in Chapter 12.

An **incentive** is something that motivates someone to do something. It is a kind of a reward.

A **perverse incentive** in the context of social assistance is where a grant is thought to encourage people to do something that undermines society, as well as the grant system itself.

A **rebuttal** is usually information that shows that an argument made by someone else is not correct.

The Older Person's Grant

The Older Person's Grant – also known as the 'state old-age pension' – is intended for men and women who are 60 years old who are in financial need. This grant is addressed in Chapter 13.

The War Veterans' Grant

The War Veterans' Grant is provided to adults 60 years and older who are in need and who served in one or both of the World Wars (1914–1918 and 1939–1945) or the Korean War (1950–1953). This grant is addressed in Chapter 14. (There is also provision made for veterans of the anti-apartheid struggle – but as these 'special pensions' are part of a different aspect of the social security arrangements, they are only briefly discussed in Chapter 14.)

The Grant-in-Aid

The Grant-in-Aid is intended for adults who are in need of regular assistance from another person due to their disability (Chapter 15). They may only receive this grant if they are already receiving one of the other three grants for adults, however.

The amount of each grant

The amount of each grant for adults changes every year. Unlike the grants for children, however, the actual amount awarded depends on the **beneficiary's** income or, where applicable, the joint income of the beneficiary, their spouse and dependent children. So after an **applicant** has passed the means test and is found eligible for the grant, the next assessment is to determine how much they will actually receive. This is calculated on a sliding scale, such that the more someone has, the less they will get from the grant. The sliding scale for 2010/2011 is given in Appendix C.

Special award – the Social Relief of Distress (SRD)

The Social Relief of Distress (SRD) award provides immediate temporary assistance for a short period. It is intended to help people in need who do not have sufficient means to provide for themselves and/or their dependants. While this award is for adults and caregivers, they may also access SRD on behalf of children.

There is a range of circumstances in which people may apply for SRD – like the loss of their possessions due to a disaster or when someone is waiting to receive an approved grant. It is also given to those who will experience 'undue hardship' if they are not given this relief. This award is addressed in Chapter 16.

Eligibility

The Summary of Grants in Appendix A lists, among other things, the criteria which make adults eligible for each of the grants listed above. These are their age, their national status, and their financial status. Chapter 3 contains a checklist that could be used when helping a client decide if they may be eligible for a grant.

A **beneficiary** is a person who receives social assistance.

An **applicant** is the person applying for a grant or award.

A **documented foreign national** is someone who is living in South Africa and has documents recognised by Department of Home Affairs allowing them to be in the country.

An **undocumented foreign national** might have documents (e.g. their own passport), but none that is recognised by the South African Department of Home Affairs as giving them permission to be here.

Income is the money earned by the applicant – and their spouse and dependent children, where applicable. Money received as a grant may not be included as income in a means test.

Assets are the things that a person – or a married couple – owns. They can be actual things (like a house or a car etc) or they can be investments – like cash in the bank, money invested in a pension fund etc..

National status

Adults must be either South African citizens or permanent residents in South Africa to be eligible for a grant intended for adults. Refugees who are disabled are entitled to access three of the four grants.

Refugees who are assessed as being disabled, may access the Disability Grant and a Grant-in Aid. Other than those refugees whose Disability Grant is automatically converted into an Older Person's Grant when they turn 60, they may not access the Older Person's Grant or the War Veterans' Grant. **Foreign nationals** who are not permanent residents – whether they are documented (migrant workers or asylum seekers) or are **undocumented** – are not eligible for grants for adults. (An overview of grants for foreign nationals is given in Appendix B.)

Financial status

All grants for adults are means tested – that is, the **income** and **assets** of the person who will benefit from the grant will be assessed. Where beneficiaries are married, the income and assets of their spouse will be included – and where there are dependent children with income, this will also be included.

The amounts they (and their spouse where applicable) may own and earn are listed in Appendix D. These are also mentioned in each chapter dedicated to a particular grant.

Documents needed for accessing grants for adults

The importance of documents needed to access grants has been outlined in Chapter 4.

However, Regulation 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says that SASSA may accept alternative proof of identification where the person currently has no valid proof (an identity document or a birth certificate). These would typically include

- a sworn statement (an affidavit) on a form provided by SASSA; and, where available,
- proof of having applied for formal identity documentation from Home Affairs.

These could also be supported by

- a sworn statement by a reputable person (like a councillor, traditional leader, social worker, priest, school principal) who verifies that he/she knows the person; and/or
- other documents like baptismal certificates, school reports, clinic cards etc.

Ideally alternative identification should only be used as a temporary measure. While it has not been regulated, SASSA requires that grant beneficiaries apply to the Department of Home Affairs within three months for their proper documents. Once the person provides proof of having applied for their documents, the grant will continue to be paid until the beneficiary receives their identity documents. Once they have received them, they must return to the SASSA office so that their record with SASSA can be updated.

However, if they do not apply for these documents and do not return to SASSA to confirm that this has been done within the three month period, payment

of their grant may be suspended.

Advocacy

As mentioned in Chapter 1, adults who do not receive social assistance at all include:

- able-bodied adults between the ages of 18 and 60 years old who are in financial need, often because they are unemployed;
- adults who are in financial need who are unable to generate income as they provide care at home for children in need of permanent care or support services;
- adults suffering from chronic illness – like HIV/AIDS – who are not regarded as disabled but are in financial need and therefore unable to maintain good health;
- adults who are refugees, who have not received a disability grant and are not permitted to apply for the Older Person's Grant when they turn 60;
- all other documented foreign nationals (like asylum seekers and migrant workers) as well as those who are undocumented.

Advocacy related to a particular grant is described in the relevant chapter, while overarching issues – like the lack of a grant for everyone in need – have been addressed in Chapter 1.



Chapter 12

DISABILITY GRANT

Grant for adults with disabilities

DISABILITY GRANT

This chapter has been written in accordance with the new Social Assistance Amendment Bill which was tabled in Parliament in March 2010. The Bill is concerned largely with the definition of disability, and the mechanisms for reconsideration and appeal of SASSA decisions. We anticipate that the Bill will be passed by parliament and that regulations will follow. It will be important to refer to these regulations as soon as they are available.

Who is the Disability Grant for?

The Disability Grant is intended for adults who are in financial need and who have a disability which prevents them from being able to earn sufficient income through work to support themselves. It is provided until their 60th birthday, at which point they become eligible for an Older Person's Grant.

What is the grant amount and how is it calculated?

The amount of the Disability Grant changes every year – but in 2010/2011 the maximum a beneficiary could receive was R1 080 per month, which is the same as the Older Person's Grant which can be received from the age of 60.

Unlike the grants for children, however, the amount received by an adult depends on the beneficiary's income and assets – and, where applicable, those of their spouse and/or dependent children. So after an applicant has passed the **means test** and is found to be eligible for the grant, the next assessment is how much they will actually receive.

Means is a word used for how much someone earns and, sometimes, owns. A **means test** is an assessment of how much money is earned (income) by a grant applicant and their spouse and/or dependent children – and sometimes also of the value of their possessions (assets), in order to see if they are eligible for a grant.

Legislation which applies to the Disability Grant

Primary

- The Constitution of the Republic of South Africa 1996 (Act No.108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008
- Refugees Act, 1998 (Act No. 130 of 1998)

Secondary

- South African Social Security Agency Act, 2004 (Act No. 9 of 2004)
- Maintenance Act, 1998 (Act No. 99 of 1998)
- Older Person's Act, 2006 (Act No. 13 of 2006)
- Older Person's Amendment Act, 1998 (Act No. 100 of 1998)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

Where to obtain copies

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This is calculated on a sliding scale, such that the more someone earns, the less they will get from the grant. (For example single beneficiaries who receive a regular monthly income of R648 or less, will receive the full grant amount of R1 080 – but if they earn R808 a month, the grant amount will be reduced to R1 000 a month. Those who earn as much as R2 608 will get the minimum amount possible – namely R100 a month.) The sliding scale for 2010/2011 is given in Appendix C.



Defining disability

The new Social Assistance Amendment Bill which was tabled in Parliament in March 2010 defines disability in respect of an applicant as ‘a moderate to severe limitation to his/her ability to function as a result of a physical, sensory, communication, intellectual or mental disability rendering him or her unable to

1. obtain the means needed to enable him or her to provide for his or her own maintenance OR
2. be gainfully employed’.

Who is eligible for the Disability Grant?

To become **eligible** for a Disability Grant, the applicant must

- have a disability in terms of the Act – according to a medical assessment which is no less than three months old at the time of application; and
- be between 18 and 59 years old; and
- be a South African citizen, a permanent resident or a refugee (with ‘Section 24 status’ per the Refugees Act (130 of 1998)); and
- be living in South Africa; and
- have assets and income that qualify them for being ‘in need’ in terms of the means test (see below).

When this guide was published at the beginning of 2010, the grant system was in the process of equalising the age at which men and women could access particular grants. From April 2010 both men and women may access the Disability Grant from 18 years until their 60th birthday, after which they may access the Older Person’s Grant.

Historically men were only able to access the Older Person’s Grant from 65, and they therefore received the Disability Grant until 65. In contrast, women accessed the Older Person’s Grant from 60, and so were only able to receive the Disability Grant to 60.

Who cannot get the Disability Grant?

An applicant will not qualify for a Disability Grant if s/he:

- is assessed not to be disabled by the medical officer; or
- refuses to undergo medical treatment; or
- refuses to do any work that they could do; or
- is living in, or is maintained or cared for by, an institution wholly funded by the state – for example old age homes, psychiatric hospitals, prisons, or a treatment centre (as defined in Section 1 of the Prevention and Treatment of Drug Dependency Act of 1992); or
- receives either the Older Person’s Grant or the War Veterans’ Grant; or
- has income and assets which exceed the means test thresholds (see overleaf).

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are sick or disabled etc.

Assets are the things that a person – or a married couple – owns. They can be actual things (like a house) or they can be investments – like cash in the bank, money invested in a pension fund etc.

Income is the money earned by the applicant – and their spouse and/or dependent children, where applicable. Money received as a grant may not be included as income in a means test.

The **threshold** is the maximum value of the income a grant applicant – and their spouse and/or dependent children – is allowed to earn and, in the case of adult grants, also the maximum value of the goods they may own in order to be eligible for a grant. If they have less than the threshold they will be eligible. But if they earn or own more, they are not eligible.

If applicants are maintained or cared for in certain institutions which are contracted by the state, such as the Lifecare or Smithfield Institutions, their grant is reduced to 25% of the maximum amount of the Disability Grant payable. People who are admitted to state hospitals, such as Baragwanath, do not lose the Disability Grant, however, as state hospitals are not considered state-funded institutions for the purpose of social assistance.

What is the means test for the Disability Grant?

The means test entails assessing the value of applicants' possessions (**assets**) and how much they earn (**income**) to see if they can be considered to be 'in need'.

In the case of the Disability Grant, the assets and income of the adult beneficiary, their spouse and/or any dependent children are assessed. Any income from claims on the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF) and the Compensation and Occupational Injuries and Diseases Fund (COIDF) must all be included as income in the means test.

In 2010 when this guide was published, the **threshold** was the same for all grants for adults.

In 2010/11, the asset threshold was

- a maximum of R518 400 for a single person; and
- a total maximum of R1 036 800 for married people.

And the income threshold was

- a maximum of R31 296 per year for a single person (which averages out at R2 608 a month); and
- a total maximum of R62 592 per year for married people (which averages out at R5 216 a month).

(Appendix D provides space for you to record the new amounts as they change each year.)

What conditions relate to this grant?

People applying for the Disability Grant will have to undergo a medical examination by a doctor authorised by the state to do so. The doctor will assess the degree of the person's disability and fill in a medical assessment form provided by SASSA – which must include an opinion regarding whether the disability is temporary or permanent.

- A permanent Disability Grant may be awarded in cases where it is believed the disability will last for more than a year. It is important to note that a permanent Disability Grant does not mean a grant for life, but only that it will last for longer than 12 months.
- A temporary Disability Grant may be awarded in cases where it is believed the disability will last for between six months and a year.
- People with conditions that are assessed as likely to last less than six months do not qualify for a Disability Grant, but may apply for a Social Relief of Distress award (see Chapter 16).



Temporary grants cannot be reviewed. Once the period of the temporary Disability Grant has expired the grant lapses. If the applicant is still disabled, they must apply again by submitting a new application with another medical examination. The grant may be awarded for another temporary period or it may be awarded permanently, based on the new medical information. It might also be rejected.

The Disability Grant will lapse if

- the beneficiary dies; or
- the beneficiary's refugee status lapses, making them no longer eligible for this grant.

The Disability Grant may also be suspended or cancelled following an annual review of the beneficiary's circumstances to assess if they are still eligible for the grant. Suspension or cancellation could result from

- their being admitted to a state-funded institution for over six months; or
- their income/assets (including those of their spouse and/or dependent children) increasing such that they no longer qualify for the grant in terms of the means test; or
- a medical assessment that found that the beneficiary was no longer 'disabled'.

The beneficiary has several opportunities to ensure that the grant is not cancelled. See Chapter 3 and Chapter 5 for details.

When the beneficiary reaches the age of 60, Disability Grants are automatically converted to Older Person's Grants by the electronic system used by SASSA. This includes refugees, but refugees over the age of 60 years old who have not been in receipt of a Disability Grant cannot apply for an Older Person's Grant.

As with all grants, the beneficiary – or their estate – must inform SASSA of any changes in their circumstances which may affect their eligibility for the grant. Receiving a grant when a person is not eligible for it is fraud and a criminal offence.

How does someone apply for the Disability Grant?

The applicant must submit a referral letter from their own doctor to SASSA when first applying for the Disability Grant. SASSA will then send them to a state doctor who produces a medical assessment of their condition. After this, the application process for the Disability Grant is the same as for all other grants (see Chapter 3).

Before applying, however, an applicant should check that they have the documents listed on the next page.

How can a Disability Grant be paid out?

Disability Grants are paid in the same way as for all grants, as outlined in Chapter 3. Where a beneficiary is unable to collect their own grant due to their disability, they may appoint a procurator (a person who acts for them) to do so. The role of a **procurator** – how they are appointed and what they must do – is also outlined in Chapter 3.

A **procurator** is a person who acts on behalf of a beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

IDENTIFICATION OF BENEFICIARIES	√
South African 13-digit bar-coded identity document	
OR Refugee ID document	
OR Refugee status permit AND proof of having applied for an ID from the Dept of Home Affairs	
MARITAL STATUS OF BENEFICIARIES	
<ul style="list-style-type: none"> If single, the SASSA affidavit stating this If married, a marriage certificate (which includes spouse's identity number) If married through customary law, an affidavit from a headman or a certificate from the Register of Customary Unions If married by Muslim Rites, an affidavit stating this If divorced, their divorce order If spouse is deceased, the spouse's death certificate If married and the spouse has deserted for more than three months, an affidavit stating this (If living together as domestic partners but not formally married, no documentation needed.) 	
AND, if applicable, spouse/partner's identity document	
BENEFICIARIES' WELLBEING / HEALTH / CIRCUMSTANCES	
A referral report from the applicant's own medical practitioner <i>(SASSA will then send the applicant for an assessment by a medical officer/practitioner employed by or contracted by the state)</i>	
MEANS – of beneficiary and their spouse and/or dependent children, where applicable	
Assets:	
Municipal rates account of property owned but not occupied by the beneficiary or spouse	
Deeds of immovable property owned by the beneficiary or spouse, or property under leasehold	
Proof of any outstanding bond on property owned and not occupied by the beneficiary or spouse	
Deeds of any property rights held by the beneficiary or spouse	
Proof of whether a working farm which generates income is owned or being rented	
Statements of cash investments, bonds or loan receipts or any other outstanding debts in favour of applicant or their spouse	
Certificates of shares or share capital or statements of interests in assets in a company or other institutions	
Endowment policies after maturity date, and declaration of cash in hand and statements of any accounts in financial institutions	
Recent bank statements for three recent consecutive months	
Documentary evidence of any lump sum invested by the beneficiary or spouse in a company or financial institution	
Income:	
Affidavit on SASSA's prescribed form listing the total income of the adult applicant and their spouse and/or dependent children (if applicable). This to be supported by any of the documents below.	
<ul style="list-style-type: none"> If employed, their wage certificate(s)/pay slip(s) If unemployed and had been formally employed, an Unemployment Insurance Fund (UIF) card or receipt; or a declaration of this on the SASSA affidavit If never employed, a declaration of this on the SASSA affidavit 	
Income other than employment	
<ul style="list-style-type: none"> Evidence of profit from a business concern or a farm Rental agreements if rental income received Evidence of income from any property rights Proof of receiving compensation e.g. from RAF, UIF, COIDF Evidence of receipt of ex gratia amounts e.g. (such as once-off or bonus payments) Evidence of income of financial support from an organisation – be this local or international Evidence of receipt of monies from a trust or inheritance, particularly of dependent children Proof of receipt of a private pension or annuity Documentation showing the interest and dividends earned on any investments Maintenance court order stating maintenance being paid; or documents showing attempts to get it Receipts of any maintenance received for a child Receipts of any maintenance received as an ex-spouse 	
<i>Where no valid proof is obtainable for a form of income, the details can be declared on the standard SASSA affidavit</i>	
Deductions – Original documentation is required. Alternative documentation not accepted	
Obligatory contributions to a pension, retirement annuity or provident fund or voluntary contributions to a pension, retirement annuity or provident fund – but this to be no more than 22% of the net income of the applicant	
Tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them	
Membership fees which they pay to an approved medical scheme – for beneficiary or spouse and/or dependent children	
Contributions to the Unemployment Insurance Fund	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
South African 13-digit bar-coded identity document	
OR Passport	
OR Driver's licence	
OR ID document from country of origin	
AND Affidavit by the procurator (on the SASSA application form) agreeing to this responsibility	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the **Black Sash Help Line on 072 663 3739** for FREE paralegal advice and support.

What other financial resources could be accessed?

People receiving a Disability Grant may also receive the Grant-in-Aid if the applicant cannot look after themselves and needs regular care by another person at home (see Chapter 15). They may not also receive an Older Person's Grant or a War Veterans' Grant, however.



Depending on how the person became disabled, they could also receive benefits from the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF) or Compensation for Occupational Injuries and Diseases Fund (COIDF).

- The object of the Road Accident Fund is to pay compensation for loss or damage caused by a motor vehicle accident.
- The Unemployment Insurance Fund could pay an adult in the short-term if they are disabled in the course of employment.
- The Compensation for Occupational Injuries and Diseases Fund may also pay an adult if they were injured in an accident at work – either temporarily or permanently.

Income from these funds is included in the means test for the Disability Grant, however.

Among other benefits, beneficiaries may also access a special housing subsidy for people who are disabled, through the Department of Human Settlements.

Case study: Accessing information to secure a Disability Grant

Mr Phosa came to the offices of the Black Sash on 19 April 2009 to get help with his application for a Disability Grant. Almost three years before, he had fallen off scaffolding while working casually on a building site and severely hurt his back, so was no longer able to work. He had applied for the Disability Grant at his local SASSA office two years earlier on the 23 February 2007 but, despite making numerous enquiries to that office, he had not received a helpful response to his application.

What the Black Sash did

We asked Mr Phosa to return to his local SASSA office to obtain a proof of enquiry – which he did and returned with it on 7 June 2009. The Black Sash paralegal then submitted a formal letter of complaint to SASSA, asking for an explanation of this two-year delay and for a report on the status of Mr Phosa's application. She included the necessary supporting documents, namely a copy of the client's ID book, proof of application and proof of his enquiry.

Outcome

A fortnight later the paralegal received a letter from SASSA, requesting that Mr Phosa visit the pre-litigation unit on the 16 August 2009. Again Mr Phosa did as he was asked – and a month later, on the 16 September 2009, the Black Sash received a letter from SASSA advising that his application had been approved and he would be given back-pay to the date of his initial application in February 2007.

Mr Phosa received the money in October 2009 and continues to receive a Disability Grant every month.

An **incentive** is something that motivates someone to do something. It is a kind of a reward.

A **perverse incentive** in the context of social assistance is where a grant is thought to encourage people to do something that undermines society, as well as the grant system itself.

A **rebuttal** is usually information that shows that an argument made by someone else is not correct.

Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000. Commonly called PAIA and PAJA, these pieces of legislation make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Perverse incentives and rebuttals

It has been alleged that in order to stay on the Disability Grant, people do not try to improve their health by, for example, complying with their medication regimen or eating prescribed nutritious food. The extent to which this is the case cannot be known – but the fact that some people may pay this price (of their wellbeing, and, ultimately, their life) simply to ensure that income continues to be received in the household, requires serious attention.

The Black Sash and others in civil society are proposing that a Chronic Illness Grant, which does not depend on the state of a person's health once it has been awarded, will encourage people to take medication and to keep well, and will not offer them the invidious choice of undertaking what are short-term financial survival strategies to improve the lives of others in the household, while endangering their own lives.

Advocacy issues

Issue: The yo-yo effect

To be able to maintain one's health is particularly important in the context of the HIV/AIDS pandemic. Currently, once a person's condition deteriorates, they may be considered to be too ill to work and they may therefore become eligible for a Temporary Disability Grant. Once on antiretroviral therapy (ART) and with the support of the grant, the health of many people improves.

When the temporary Disability Grant period of six months expires, they must either apply for another temporary grant or for a permanent grant. Either way they are required to have another medical examination. But if the ART has improved their CD4 count as it is intended to do, the beneficiary may not be eligible for a grant. When they stop receiving this income support, they are less able to care for themselves (as they are unlikely to find work given unemployment levels), resulting in a decline in their health and, possibly, their CD4 count.

The prospect of losing this sometimes crucial income to poor households can lead to some people not taking their medication, in order that their condition does not improve and the grant will continue. Ultimately people become 'disabled' again – particularly those who are malnourished and/or living in conditions where they cannot protect themselves from infections in their environment, and are unable to access any support. Commonly referred to

as the yo-yo effect, this is a serious unintended consequence of the current structure and implementation of the Disability Grant.

A permanent Disability Grant cannot be given twice, and a temporary grant only lasts between six and 12 months (the same as the projected duration of the disability). The structure of these grants therefore does not support people who are chronically ill, including those who are HIV positive or have AIDS.

Issue: A uniform harmonised disability assessment tool

For many years, there has been no uniform way of assessing disability. This is because there was no official definition of disability and no uniform 'tool' for assessing disability consistently. This means that people who have been excluded from accessing the Disability Grant often do not know why they were rejected and do not know the basis on which they were assessed. As a result, the majority of appeals by social grant beneficiaries are from those who have been refused a Disability Grant. The absence of standard procedure has bred a lack of confidence in this grant, and it is a matter of urgency that this issue be resolved.

The Black Sash acknowledges the introduction of the Department of Social Development's revised and more inclusive definition of disability and the introduction of their harmonised assessment tool (HAT) to be used by everyone involved in assessing disability. We argue that the criteria and process should be made public so that people who apply for grants entailing disability may be satisfied that an assessment – and an application or appeal that is rejected – was done fairly. In this respect, we are encouraged that the new Social Assistance Amendment Bill provides a standardised definition of disability, making a harmonised tool legally possible.

At the time of writing, the HAT has not yet been implemented and as an interim measure, **SASSA** has introduced new assessment forms, which provide much more detail regarding the applicant's condition. Medical officers contracted to undertake the medical assessments for disability grants have to undergo training, to ensure that they all apply these criteria uniformly.

Issue: Chronic illness

Many people who are chronically ill currently receive the Disability Grant but this will not be possible in the future, as chronic illness is not defined as a disability. The Black Sash therefore argues that the new assessment tool should be introduced concurrently with a new Chronic Illness Grant (for both adults and children), in order to look after the tens of thousands of people who are chronically ill and who would be excluded from the new definition of disability.

A Chronic Illness Grant would allow those who are chronically ill (rather than disabled) and in financial need to be able to maintain their health status. It would ensure that people with a chronic illness (like HIV/AIDS or TB, diabetes or hypertension) are able to look after themselves sufficiently well to manage their condition, instead of becoming functionally disabled or terminally ill. The income support would continue even in periods of improved health and wellbeing – and even if they are able to work. Only when the beneficiary no longer passes the means test, would this grant be withdrawn. It may be applied for again when and if their financial condition deteriorates.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

Both the state and civil society have considered a Chronic Illness Grant. The South African National AIDS Council (SANAC) has adopted a resolution calling for a Chronic Illness Grant to be implemented alongside the harmonised assessment tool for disability. The Department of Social Development proposed the grant in their June 2008 discussion document *'Strategic considerations for a Comprehensive System of Social Security'*. However, other government departments (like the departments of Finance and Health) need to support its establishment before it can become a reality.



Chapter 13

OLDER PERSON'S GRANT

Grant to support older men and women
(The 'state old age pension')

A **beneficiary** is a person who receives social assistance.

OLDER PERSON'S GRANT

Who is the Older Person's Grant for?

The Older Person's Grant – also known as the 'state old-age pension' – is intended for citizens or permanent residents of South Africa who are in financial need and are 60 years old and older.

When this guide was published at the beginning of 2010, the grant system was in the process of equalising the age at which men and women could access particular grants. Historically men were only able to access the Older Person's Grant from 65, whereas women accessed the Older Person's Grant from 60. As of 1 April 2010, both women and men are eligible for the Grant from their 60th birthdays.

Even though this change in the law affects a small percentage of South Africans, it is important that the elderly in society who do not have a private retirement income should be provided with a way of ensuring a life of dignity and value – and we welcome the fact that it will be given equitably to men and women.

What is the grant amount and how is it calculated?

The amount of the Older Person's Grant changes every year – but in 2010/2011 the maximum a **beneficiary** could receive was R1 080 per month – which is the same as the Disability Grant which can be received until the age of 60.

Legislation which applies to the Older Person's Grant

Primary legislation

- South African Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Amendment Act, 2008 (Act No. 6 of 2008)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008

Secondary legislation

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Older Person's Act, 2006 (Act No. 13 of 2006)
- Older Person's Amendment Act, 1998 (Act No. 100 of 1998)
- South African Social Security Act, 2000 (Act No. 2 of 2000)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

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Unlike the grants for children, however, the amount received by an adult depends on the beneficiary's income – and, where applicable, of their spouse and/or dependent children. So after an **applicant** has passed the **means test** and is found to be **eligible** for the grant, the next assessment is how much they will actually receive. This is calculated on a sliding scale, such that the more someone earns, the less they will get from the grant.

For example single beneficiaries who receive a regular monthly income of R648 or less, will receive the full grant amount of R1 080 – but if they earn R808 a month, the grant amount will be reduced to R1 000 a month. Those who earn as much as R2 608 will get the minimum amount possible – namely R100 a month. The sliding scale for 2010/2011 is given in Appendix C.

Who is eligible for the Older Person's Grant?

To be eligible for an Older Person's Grant, a person must

- be 60 years old or older; and
- be a South African citizen or permanent resident; and
- be living in South Africa; and
- have assets and income that meet the means test for being 'in need' (see below).

Who cannot get the Older Person's Grant?

A person is not eligible for the Older Person's Grant if they are living in, or are maintained or cared for by, an institution wholly funded by the state, for example a home for older persons, a psychiatric hospital or prison, a treatment centre (as defined in Section 1 of the Prevention and Treatment of Drug Dependency Act of 1992).

If they are maintained or cared for in certain institutions which are contracted by the state, such as the Lifecare or Smithfield Institutions, they may receive a grant, but it is reduced to 25% of the maximum amount payable. In the experience of Black Sash paralegals, it seems that some old-age homes make it a pre-requisite that the person who wants to live there is receiving an Older Person's Grant. Not only is it illegal for a person to be living in a state-funded institution at the same time as receiving the full grant amount, but it is also illegal for them to hand their grant to the institution in payment for their upkeep.

People who are admitted to state hospitals, such as Baragwanath, do not lose the Older Person's Grant, however, as state hospitals are not considered state-funded institutions for the purpose of social assistance.

The Older Person's Grant is not available to foreign nationals other than permanent residents, even if they have refugee status. However, Disability Grants paid to disabled refugees will be automatically converted to an Older Person's Grant when they reach the prescribed age, as all Disability Grants are automatically converted to the Older Person's Grant by SASSA's electronic system.

An **applicant** is the person applying for a grant or award.

Means is a word used for how much someone earns and, sometimes, owns.

A **means test** is an assessment of how much money is earned (income) by a grant applicant and their spouse and/or dependent children – and sometimes also of the value of their possessions (assets), in order to see if they are eligible for a grant.

Assets are the things that a person – or a married couple – owns. They can be actual things (like a house) or they can be investments – like cash in the bank, money invested in a pension fund etc.

Income is the money earned by the applicant – and their spouse and/or dependent children, where applicable. Money received as a grant may not be included as income in a means test.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

What is the means test for the Older Person's Grant?

The means test entails assessing how much money someone has in terms of their possessions (**assets**) and how much they earn (**income**) to see if they can be considered to be 'in need'.

In the case of the Older Person's Grant, the assets and income of the beneficiary, their spouse and dependent children are assessed. In 2010 when this guide was published, the threshold – that is, the maximum value of their assets and income they are allowed to have and still qualify to get the grant – was the same for all grants for adults.

In 2010/2011, the asset threshold was

- a maximum of R518 400 for a single person; and
- a total maximum of R1 036 800 for married people.

And the income threshold was

- a maximum of R31 296 per year for a single person (which averages out at R2 608 a month); and
- a total maximum of R62 592 per year for married people (which averages out at R5 216 a month).

Appendix D provides space for you to record the new amounts as they change each year.

What conditions relate to this grant?

If the person is receiving a Disability Grant, it will automatically be converted to an Older Person's Grant (given that the means tests are the same) when the beneficiary turns 60.

The Older Person's Grant lapses when the beneficiary dies. No-one can inherit someone else's Older Person's Grant. As all grant beneficiaries are entitled to the grant until the last day of the month in which he or she dies, however, there may be benefits still to be claimed after they have died. These can be claimed either by the estate of the late beneficiary or by the person liable for the funeral expenses.

The grant may be suspended or cancelled following an annual review of the beneficiary's circumstances to assess if they are still eligible for the grant. Suspension or cancellation could result from

- their being admitted to a state-funded institution for over six months; or
- their income/assets (including those of their spouse and/or dependent children) increasing such that they no longer qualify for the grant in terms of the means test.

The beneficiary has several opportunities to ensure that the grant is not cancelled. See Chapter 3 and Chapter 5 for details.

The beneficiary – or their estate – must inform **SASSA** of any changes in their circumstances which may affect their eligibility for the grant. Receiving a grant when a person is not eligible for it is fraud and a criminal offence.

Documents required to apply for the Older Person's Grant

IDENTIFICATION OF BENEFICIARIES	√
South African 13-digit bar-coded identity document	
MARITAL STATUS OF BENEFICIARIES	
<ul style="list-style-type: none"> • If single, the SASSA affidavit stating this • If married, a marriage certificate (which includes spouse's identity number) • If married through customary law, an affidavit from a headman or a certificate from the Register of Customary Unions • If married by Muslim Rites, an affidavit stating this • If divorced, their divorce order • If spouse is deceased, the spouse's death certificate • If married and the spouse has deserted for more than three months, an affidavit saying this • (If living together as domestic partners but not formally married, no documentation needed) 	
AND, if applicable, spouse/partner's identity document	
MEANS – of beneficiary and their spouse and/or dependent children, where applicable	
Assets:	
Municipal rates account of property owned but not occupied by the beneficiary or spouse	
Deeds of immovable property owned by the beneficiary or spouse, or property under leasehold	
Proof of any outstanding bond on property owned and not occupied by the beneficiary or spouse	
Deeds of any property rights held by the beneficiary or spouse	
Proof of whether a working farm which generates income is owned or being rented	
Statements of cash investments, bonds or loan receipts or any other outstanding debts in favour of applicant or their spouse	
Certificates of shares or share capital or statements of interests in assets in a company or other institutions	
Endowment policies after maturity date, and declaration of cash in hand and statements of any accounts in financial institutions	
Recent bank statements for three recent consecutive months	
Documentary evidence of any lump sum invested by the beneficiary or spouse in a company or financial institution	
Income:	
Affidavit on SASSA's prescribed form listing the total income of the adult applicant and his/her spouse and/or dependent children (if applicable). This to be supported by any of the documents below.	
<ul style="list-style-type: none"> • If employed, their wage certificate(s)/pay slip(s) • If unemployed and had been formally employed: an Unemployment Insurance Fund (UIF) card or receipt; or a declaration of this on the SASSA affidavit • If never employed, a declaration of this on the SASSA affidavit 	
Income other than employment:	
<ul style="list-style-type: none"> • Evidence of profit from a business concern or a farm • Rental agreements if rental income received • Evidence of income from any property rights • Proof of receiving compensation e.g. from RAF, UIF, COIDF • Evidence of receipt of ex gratia amounts (such as once-off or bonus payments) • Evidence of income of financial support from an organisation – be this local or international • Evidence of receipt of monies from a trust or inheritance, particularly of dependent children • Proof of receipt of a private pension or annuity • Documentation showing the interest and dividends earned on any investments • Maintenance court order stating maintenance being paid; or documents affidavit showing attempts to get it • Receipts of any maintenance received for a child • Receipts of any maintenance received as an ex-spouse 	
<i>Where no valid proof is obtainable for a form of income, the details can be declared on the standard SASSA affidavit.</i>	
Deductions – Original documentation is required. Alternative documentation not accepted	
Voluntary contributions made to a provident or retirement fund where no obligatory deductions are being made to a pension, retirement annuity or provident fund (but the deduction can be no more than 22% of the net income of the applicant)	
Tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them	
Membership fees which they pay to an approved medical scheme – for beneficiary or spouse and/or dependent children	
Contributions to the Unemployment Insurance Fund	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
South African 13-digit bar-coded identity document	
OR Passport	
OR Driver's licence	
OR ID document from country of origin	
AND Affidavit by the procurator (on the SASSA application form) agreeing to this responsibility	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the
Black Sash Help Line on 072 663 3739 for FREE paralegal advice and support.



A **procurator** is a person who acts on behalf of a beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

How does someone apply for the Older Person's Grant?

The process for applying for the Older Person's Grant is the same as for all other grants (see Chapter 3) – and details of SASSA offices are given in Appendix E. However, before applying, they should check that they have the documents listed on the previous page.

How can an Older Person's Grant be paid out?

Older Person's Grants are paid in the same way as for all grants, as outlined in Chapter 3.

Where a beneficiary is unable to collect their own grant due to illness or frailty, they may appoint a **procurator** (a person who acts for them) to do so. The role of a procurator – how they are appointed and what they must do – is also given in Chapter 3.

What other financial resources could be accessed?

A person receiving an Older Person's Grant may receive a Grant-in-Aid but may not receive either of the other grants for adults, namely the Disability Grant or the War Veterans' Grant.

Case study: Accessing concession for older persons

In 2008 Ms Msinga, a 72-year old pensioner who was receiving an Older Person's Grant, was visited by TV licence inspectors. As a result, she understood that she should begin paying her TV licence and by the end of the year she had paid R475. However, in December 2008 she received a letter demanding an amount of R472.50 which was in arrears.

Ms Msinga went to the Black Sash Offices on 9 February 2009 and told a paralegal about the money she owed for the TV licence. The paralegal phoned the SABC TV licence department and found out that the arrears amount was for the year 2007. But as Ms Msinga was receiving an Older Person's Grant at that time, he thought that she was eligible for a concessionary TV licence.

What the Black Sash did

The paralegal wrote to SASSA requesting a letter confirming that she had been receiving this grant in 2007. On receiving it he sent an application for a concessionary TV licence to SABC, which included an affidavit from Ms Msinga, a copy of her ID, and the letter from SASSA. It also included a proposal that the SABC would credit Ms Msinga's account if the application succeeded.

Outcome

On the 20 March 2009 the Black Sash paralegal received a response from the SABC which said that Ms Msinga's application had been approved and her account had been credited. In addition it confirmed that Ms Msinga was entitled to a concessionary rate for pensioners and that the reduced annual licence fees that she should have paid for 2007 and 2008 were less than the R475 she had already paid. They confirmed that the R65.00 she had to pay for her 2009 licence was therefore already paid for by her.

People who receive an Older Person's Grant also have access to special housing subsidies. It would be worth asking the client about his/her housing needs and advise them that an application could be made at the Department of Human Settlements at their local municipality.

In some areas there are also service centres or luncheon clubs for older people where some of their basic needs are met. These are community-based facilities where older people can receive a meal and other primary services which enable them to remain in their community and not move to a home for older persons. Find out from the Department of Social Development if one of their 120 service centres or luncheon clubs are in your client's area.

There are also a number of other concessions available to older people, and particularly those receiving the grant, as can be seen in the case study below.



Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000.

Commonly called PAIA and PAJA, these laws make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Advocacy issues

Achievement: Equalisation of the Older Person's Grant

Advocacy around the Older Person's Grant, undertaken by civil society organisations, including the Black Sash, focused for some time on the equalisation of the pensionable age for women and men to the age of 60 years. Men used to receive the grant at 65 years and women at 60 years.

This campaign was won in 2008 with the publication of the Social Assistance Amendment Act of 2008 which said that this gap should be narrowed over three years from 2008 to 2010. In April 2010 this will finally have been achieved, thus making the 'pension' available to thousands of needy men who had not accessed it before.

Issue: Older Person's Grant to be extended to refugees

Currently refugees who receive the Disability Grant have this automatically converted to the Older Person's Grant when they turn 60, as is the case for South African citizens and permanent residents. But refugees over 60 who have not been receiving a Disability Grant are not allowed to apply for an Older Person's Grant.

The Black Sash advocates that older people who are refugees and live in South Africa should receive the Older Person's Grant because they are just as vulnerable as South African older people. This follows the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1996 of the United Nations which says that 'all persons should be covered by the social security system, especially individuals belonging to the most disadvantaged and marginalised groups, without discrimination (on prohibited grounds)'. (Article 9 Paragraph 23, General Comment 19 of 2008.) The number of people who would be affected by this would be small and therefore this extension is likely to be affordable.



Chapter 14

WAR VETERANS' GRANT

Grant to support veterans from particular wars



To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are disabled etc.

WAR VETERANS' GRANT

Who is the War Veterans' Grant for?

The War Veterans' Grant is intended to provide for the basic needs of a person in need who served in the First World War (1914-1918) and/or the Second World War (1939-1945) and/or the Korean War (1950-1953). The applicant must be older than 60 years or can be younger than this if disabled (though in reality no-one who fought in these wars can be younger than 60 any more).

Assistance for combatants from other wars

As this grant is only for combatants in the three wars listed above, people involved in any other conflict, including the recent struggle for democracy in South Africa, are not **eligible** for this grant.

There are two ways in which those who were active in the struggle for democracy can access financial support, however, but both are in the form of a pension rather than a grant. A brief overview of these is given at the end of this chapter – but as this guide focuses on grants, these will not be addressed in any detail here.

Legislation which applies to the War Veterans' Grant

Primary legislation

- The Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
- The Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008

Secondary legislation

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Older Person's Act, 2006 (Act No. 13 of 2006)
- Older Person's Amendment Act, 1998 (Act No. 100 of 1998)
- South African Social Security Act, 2000 (Act No. 2 of 2000)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

Where to obtain copies

As it may be useful as a paralegal to have these laws and regulations in your office, you can get copies from the government printers or download copies from the internet at www.legislation.gov.za or www.polity.gov.za or www.socdev.gov.za.

What is the grant amount and how is it calculated?

The amount of the War Veterans' Grant changes every year – but in 2010/11 the maximum a **beneficiary** could receive was R1 100 per month. This is R20 more than the other grant for adults.

Unlike grants for children, the amount received by adults depends on the beneficiary's income – or, where applicable, the joint income of the beneficiary, their spouse and/or dependent children. So after an **applicant** has passed the means test and is found eligible for the grant, the next assessment is how much they will actually receive.

This is calculated on a sliding scale, such that the more someone earns, the less they will get from the grant. (For example single beneficiaries who receive a regular monthly income of R648 or less, will receive the full grant amount of R1 100 (R1 080 plus the R20 extra applicable to war veterans) – but if they earn R808 a month, the grant amount will be reduced to R1 020 a month. Those who earn as much as R2 608 will get the minimum amount possible – namely R120 which is R100 plus the R20 additional amount a month. The sliding scale for 2010/2011 is given in Appendix C.

Who is eligible for the War Veterans' Grant?

People applying for the War Veterans' Grant must have been in the naval, military or air force services during one of the following wars:

- First World War (1914-1918)
- Second World War (1939-1945)
- Korean War (1950-1953)

In addition they must

- be a South African citizen or permanent resident; and
- be living in South Africa; and
- be 60 years or older; or owing to a disability be unable to support themselves; and
- have **assets** and income that meet the means test for being 'in need' (see below).

Who cannot get the War Veterans' Grant?

The applicant cannot benefit from the War Veterans' Grant if:

- s/he is in receipt of the Older Person's Grant or a Disability Grant; and/or
- they are living in, or are maintained or cared for by, an institution wholly funded by the state – for example a home for older persons, a psychiatric hospital or prison, a treatment centre (as defined in Section 1 of the Prevention and Treatment of Drug Dependency Act, 1992).

If they are maintained or cared for in certain institutions which are contracted by the state, such as the Lifecare or Smithfield Institutions, their grant is reduced to 25% of the maximum amount of the War Veterans' Grant payable. People who are admitted to state hospitals, such as Baragwanath, do not

A **beneficiary** is a person who receives social assistance.

An **applicant** is the person applying for a grant or award.

Assets are the things that a person – or a married couple – owns. They can be actual things (like a house) or they can be investments – like cash in the bank, money invested in a pension fund etc.

The **threshold** is the maximum value of the income a grant applicant – and their spouse and/ or dependent children – is allowed to earn and, in the case of adult grants, also the maximum value of the goods they may own in order to be eligible for a grant. If they have less than the threshold they will be eligible. But if they earn or own more, they are not eligible.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

lose the War Veterans' Grant, however, as state hospitals are not considered state-funded institutions for the purpose of social assistance.

What is the means test for the War Veterans' Grant?

The means test entails assessing how much money someone has in terms of their possessions (assets) and how much they earn (income) to see if they can be considered to be 'in need'.

In 2010 when this guide was published, the **threshold** – that is, the maximum value of their assets and income they are allowed to have and still qualify to get the grant – was the same for all grants for adults.

In 2010/2011, the asset threshold was

- a maximum of R518 400 for a single person; and
- a total maximum of R1 036 800 for married people.

And the income threshold was

- a maximum of R31 296 per year for a single person (which averages out at R2 608 a month); and
- a total maximum of R62 592 per year for married people (which averages out at R5 216 a month).

(Appendix D provides space for you to record the new amounts as they change each year.)

What conditions relate to this grant?

The War Veterans' Grant lapses when the beneficiary dies. No-one can inherit someone else's War Veterans' Grant. As all grant beneficiaries are entitled to the grant until the last day of the month in which he or she dies, however, there may be benefits still to be claimed after they have died. These can be claimed either by the estate of the late beneficiary or by the person liable for the funeral expenses.

The War Veterans' Grant may be suspended or cancelled following an annual review of the beneficiary's circumstances to assess if they are still eligible for the grant. Suspension or cancellation could result from

- their being admitted to a state-funded institution for over six months; or
- their income/assets (including those of their spouse and/or dependent children) increasing such that they no longer qualify for the grant in terms of the means test.

The beneficiary has several opportunities to ensure that the grant is not cancelled. See Chapter 3 and Chapter 5 for details.

The beneficiary – or their estate – must inform **SASSA** of any changes in their circumstances which may affect their eligibility for the grant. Receiving a grant when a person is not eligible for it is fraud and a criminal offence.

Documents required to apply for the War Veterans' Grant

IDENTIFICATION OF BENEFICIARIES	√
South African 13-digit bar-coded identity document	
AND Proof of beneficiary's war service e.g. certificate of war service or war medals	
MARITAL STATUS OF BENEFICIARIES	
<ul style="list-style-type: none"> If single, the SASSA affidavit stating this If married, a marriage certificate (which includes spouse's identity number) If married through customary law, an affidavit from a headman or a certificate from the Register of Customary Unions If married by Muslim Rites, an affidavit stating this If divorced, their divorce order If spouse is deceased, the spouse's death certificate If married and the spouse has deserted for more than three months, an affidavit saying this (If living together as domestic partners but not formally married, no documentation needed.) 	
AND, if applicable, spouse/partner's identity document	
MEANS – of beneficiary and their spouse and/or dependent children, where applicable	
Assets:	
Municipal rates account of property owned but not occupied by the beneficiary or spouse	
Deeds of immovable property owned by the beneficiary or spouse, or property under leasehold	
Proof of any outstanding bond on property owned and not occupied by the beneficiary or spouse	
Deeds of any property rights held by the beneficiary or spouse	
Proof of whether a working farm which generates income is owned or being rented	
Statements of cash investments, bonds or loan receipts or any other outstanding debts in favour of applicant or their spouse	
Certificates of shares or share capital or statements of interests in assets in a company or other institutions	
Endowment policies after maturity date, and declaration of cash in hand and statements of any accounts in financial institutions	
Recent bank statements for three recent consecutive months	
Documentary evidence of any lump sum invested by the beneficiary or spouse in a company or financial institution	
Income:	
Affidavit on SASSA's prescribed form listing the total income of the adult applicant and his/her spouse (if applicable). This to be supported by any of the documents below.	
<ul style="list-style-type: none"> If employed, their wage certificate(s)/pay slip(s) If unemployed and had been formally employed; an Unemployment Insurance Fund (UIF) card or receipt; or a declaration of this on the SASSA affidavit If never employed, a declaration of this on the SASSA affidavit 	
Income other than employment:	
<ul style="list-style-type: none"> Evidence of profit from a business concern or a farm Rental agreements if rental income received Evidence of income from any property rights Proof of receiving compensation e.g. from RAF, UIF, COIDF Evidence of receipt of ex gratia amounts (such as once-off or bonus payments) Evidence of income of financial support from an organisation – be this local or international Evidence of receipt of monies from a trust or inheritance, particularly of dependent children Proof of receipt of a private pension or annuity Documentation showing the interest and dividends earned on any investments Maintenance court order stating maintenance being paid; or documents affidavit showing attempts to get it Receipts of any maintenance received for a child Receipts of any maintenance received as an ex-spouse 	
<i>Where no valid proof is obtainable for a form of income, the details can be declared on the standard SASSA affidavit</i>	
Deductions – Original documentation is required. Alternative documentation not accepted	
Obligatory contributions to a pension, retirement annuity or provident fund or voluntary contributions to a pension, retirement annuity or provident fund – but this to be no more than 22% of the net income of the applicant	
Tax deducted from the applicant or spouse's salary or wage, as well as standard income tax paid by them	
Membership fees which they pay to an approved medical scheme – for beneficiary or spouse and/or dependent children	
Contributions to the Unemployment Insurance Fund	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
South African 13-digit bar-coded identity document	
OR Passport	
OR Driver's licence	
OR ID document from country of origin	
AND Affidavit by the procurator (on the SASSA application form) agreeing to this responsibility.	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the
Black Sash Help Line on 072 663 3739 for FREE paralegal advice and support.

A **procurator** is a person who acts on behalf of a beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

How does someone apply for the War Veterans' Grant?

The process for applying for the War Veterans' Grant is the same as for all other grants (see Chapter 3 above) – and details of SASSA offices are given in Appendix E. However, before applying, they should check that they have the documents listed on the previous page.

How can a War Veterans' Grant be paid out?

War Veterans' Grants are paid in the same way as for all grants, as outlined in Chapter 3. Where a beneficiary is unable to collect their own grant due to illness or frailty, they may appoint a **procurator** (a person who acts for them) to do so. The role of a procurator – how they are appointed and what they must do – is also given in Chapter 3.

What other financial resources could be accessed?

People receiving the War Veterans' Grant may receive the Grant-in-Aid as an additional grant, if the beneficiary cannot look after themselves and needs regular attendance by another person. (See Chapter 15.)

Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000. Commonly called PAIA and PAJA, these laws make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

The Special Pension

Special Pension Act, 1996 (Act No. 69 of 1996)

Special Pensions Amendment Acts (Act No. 75 of 1998, Act No. 21 of 2003, Act No. 30 of 2003, Act No. 27 of 2005 and Act No. 13 of 2008)

The Special Pensions Act (as amended) makes provision for pension payments to people who made significant sacrifices in fighting for a democratic South Africa, which meant that they were unable to save, and/or were prevented from saving, for their old age. In addition, it says that in the event of the death of those who fought, their survivors may receive a pension or lump sum payment.

The first pension is for those who were 'prevented from providing for a pension prior to 2 February 1990' given that they 'made sacrifices' through their involvement in anti-apartheid activities.

There are two categories of eligibility for this pension – both of which broadly entail full-time involvement, often accompanied by some incarceration. The second category specifies that the person has become disabled as a result of their participation.

As applications for this pension closed on 31 December 2006, it is currently only possible to follow up on issues of non-payment, rather than application.

The second provision is for those who were in 'non-statutory forces or services' such as

- Umkhonto we Sizwe (MK);
- the Azanian People's Liberation Army (APLA);
- the former Department of Intelligence and Security of the ANC; and
- the former Pan Africanist Security Services of the PAC (Pan African Congress)
- who have been drawn into departments such as South African Police Services (SAPS) or the National Intelligence Agency (NIA). These people can have their period in these non-statutory forces or services recognised as pensionable.

When former Deputy Minister of Finance, Gill Marcus, introduced the Special Pensions Act to this House of Assembly in 1996, she said that

- 'the Act reflected the pain and anguish, torture and deprivation that so many people experienced under apartheid';
- 'this Act cannot provide full restitution or correct all the ills, misfortune and hardship caused by the Apartheid years'; and
- 'while nothing can compensate for that, the provisions of this Act are aimed at addressing the dire needs that these people may experience in their old age'; and
- 'people who may have been eligible for this pension – given their political involvements – must have applied for it by 31 December 2006'.

Eligibility

People are eligible who, in contributing towards the establishment of a democratic, non-racial South Africa, sacrificed many opportunities, including to save for their old age. They must also

- have been at least 35 years old in 1996, at the commencement date of the special pension; and
- be citizens, or are entitled to be citizens, of South Africa.

Process and contacts

The applicant must complete the prescribed application form – which can be downloaded from www.gepf.gov.za/SPA_1.pdf or obtained through the post from the address below.

The completed application form must be accompanied by

- certified copies of their identity document; and
- a political biography which can be supplemented by certified copies of original documents, news clippings etc and which has been witnessed by at least two people from their party who attest to the applicant's involvement in politics and their role in fighting for a democratic South Africa.

These must be sent via registered post to:
Government Employees' Pension Fund
Special Pensions
Private Bag X68, Pretoria 0001

If you need more information you can contact the Government Employees' Pension Fund at:
Phone: 0807 723 646 (toll free)
Address: 34 Hamilton Street, Pretoria



Chapter 15

GRANT-IN-AID

Grants for adults who need regular care at home

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are disabled etc.

An **applicant** is the person applying for a grant or award.

GRANT-IN-AID

Who is the Grant-in-Aid for?

The Grant-in-Aid is intended for adults who are in need of regular attendance by another person due to their disability. They may only receive this grant if they are already receiving one of the other three grants for adults, however.

The amount of the Grant-in-Aid changes every year. In 2010/2011 it was R250 per month.

Who is eligible for the Grant-in-Aid?

To be **eligible** for the Grant-in-Aid, the person must

- be living in South Africa; and
- be a South African citizen or permanent resident over the age of 18; and
- be an **applicant** or recipient of one of the other social grants for adults; and
- require regular attendance by another person due to his/her disability.

Who cannot get the Grant-in-Aid?

A Grant-in-Aid cannot be obtained if the person in need of care is living in, or is maintained or cared for by, an institution wholly funded by the state – for example a home for older persons, a psychiatric hospital or prison, a treatment centre (as defined in Section 1 of the Prevention and Treatment of Drug Dependency Act of 1992).

If they are maintained or cared for in certain institutions which are contracted by the state, such as the Lifecare or Smithfield Institutions, they receive 25% of the maximum amount of the Grant-in-Aid. People who are

Legislation which applies to the Grant-in-Aid

Primary legislation

- South African Constitution Act, 1996 (Act No. 108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance - 22 August 2008
- Refugees Act, 1998 (Act No. 130 of 1998)

Secondary legislation

- Maintenance Act, 1998 (Act No. 99 of 1998)
- Older Person's Act, 2006 (Act No. 13 of 2006)
- Older Person's Amendment Act, 1998 (Act No. 100 of 1998)
- South African Social Security Agency Act, 2004 (Act No. 9 of 2004)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

Where to obtain copies

As it may be useful as a paralegal to have these laws and regulations in your office, you can get copies from the government printers or download copies from the internet at www.legislation.gov.za or www.polity.gov.za or www.socdev.gov.za.

admitted to state hospitals, such as Baragwanath, do not lose the Grant-in-Aid, however, as state hospitals are not considered state-funded institutions for the purpose of social assistance.

What is the means test for the Grant-in-Aid?

There is no **means test** for the Grant-in-Aid, as the person in need of care will have been assessed already when they became eligible for one of the other adult grants.

What conditions relate to this grant?

The Grant-in-Aid is not paid out on its own. As mentioned above, it is an additional grant given to adults who are already receiving one of the other grants – namely an Older Person's Grant or a Disability Grant or a War Veterans' Grant.

The Grant-in-Aid lapses when the beneficiary dies. No-one can inherit someone else's Grant-in-Aid. As all grant beneficiaries are entitled to the grant until the last day of the month in which they die, however, there may be benefits still to be claimed after they have died. These can be claimed either by the estate of the late beneficiary or by the person liable for the funeral expenses.

The Grant-in-Aid lapses when the beneficiary's refugee status expires, making them ineligible for the Disability Grant on which this grant depends.

The grant may be suspended or cancelled following an annual review of the beneficiary's circumstances to assess if they are still eligible for the grant. Suspension or cancellation could result from

- their being admitted to a state-funded institution for over six months; or
- their income/assets (including those of their spouse and/or dependent children) increasing such that they no longer qualify for the grant in terms of the means test; or
- a medical assessment that found that the beneficiary was no longer in need of regular attendance by another person.

The beneficiary has several opportunities to ensure that the grant is not cancelled. See Chapter 3 and Chapter 5 for details.

The beneficiary – or their estate – must inform **SASSA** of any changes in their circumstances which may affect their eligibility for the grant. Receiving a grant when a person is not eligible for it is fraud and a criminal offence.

How does someone apply for the Grant-in-Aid?

The application for the Grant-in-Aid can be made either

- at the same time as the grant to which it is linked; or
- when a person becomes in need of regular attendance by another person.

The process for applying for the Grant-in-Aid is similar to that for all other grants (see Chapter 3 above) – and details of SASSA offices are given in Appendix E. The only difference is that they do not need to undergo a means test as this was done when they applied for the grant on which getting the Grant-in-Aid depended. The applicant will be required to sign a standard **affidavit** at SASSA specifically for the Grant-in-Aid, however, to support the

Means is a word used for how much someone earns and, sometimes, owns.

A **means test** is an assessment of how much money is earned (income) by a grant applicant and their spouse and/or dependent children – and sometimes also of the value of their possessions (assets), in order to see if they are eligible for a grant.

The main purpose of **SASSA** – the South African Social Security Agency – is to provide administration, management and payment of social assistance for the Department of Social Development.

An **affidavit** is a document in which a person makes statements and promises that they are true. By signing the statement in front of a commissioner of oaths they make it a legal document.

medical assessment they must provide the documents listed in the table on the next page.

How can a Grant-in-Aid be paid out?

A Grant-in-Aid is paid in the same way as all other grants, as outlined in Chapter 3. As it is likely that the beneficiary will not be able to collect their own grant due to their condition, they might appoint a procurator (a person who acts for them) to do so. The role of a procurator – how they are appointed and what they must do – is also given in Chapter 3.

Case Study: Applying for a Grant-in-Aid at home

Samuel Jantjies is a 47-year-old South African citizen who lives with his wife and his brother. Mr Jantjies, the primary breadwinner, had been receiving a temporary Disability Grant for the last five months while he recovered from a stroke. However instead of improving, his condition had deteriorated to such an extent that he was unable to care for himself any more. Mrs Jantjies approached the Black Sash to find out what they could do. She said her husband was unable to go to the SASSA offices to apply for a grant as he could not stand in the queues. She explained that she looks after him during the day because there is no-one else who could do so.

What the Black Sash did

The Black Sash advised Mrs Jantjies that it was likely that her husband would be eligible for a permanent Disability Grant as well as a Grant-in-Aid (as he was in need of regular attendance by another person). They also asked her to get a doctor's note explaining why he could not visit the SASSA office, as SASSA conducted home visits in their area. (Although they were aware that the Jantjies household was experiencing financial stress, they did not think that they would be eligible for SRD, so did not suggest this.)

Mrs Jantjies returned with the doctor's note just after the temporary Disability Grant came to an end – and the Black Sash contacted SASSA to request that they visit Mr Jantjies at home so that he could complete grant applications in the presence of a SASSA official.

Outcome

SASSA visited the Jantjies' house and Mr Jantjies applied for a permanent Disability Grant and Grant-in-Aid, with Mrs Jantjies named as the procurator who would manage the money. The SASSA official referred Mr Jantjies to a state-appointed doctor to assess his condition. A fortnight later Mr and Mrs Jantjies went to the doctor who produced a report indicating that Mr Jantjies was physically unfit to work, was unable to support himself and that his disability would last for longer than twelve months. The doctor also stated that Mr Jantjies was in need of regular attendance by another person. Mrs Jantjies took the report to the SASSA offices to finalise their application.

Six weeks later the Jantjies' received a letter saying that both grants had been approved and that the money would be paid into their bank account, including back-pay from the date of application.

Documents required to apply for the Grant-in-Aid

IDENTIFICATION OF BENEFICIARIES	√
South African 13-digit bar-coded identity document	
Refugee ID document (only if they are a beneficiary of a Disability Grant)	
OR Refugee status permit and/or proof of having applied for an ID from the Dept of Home Affairs	
MARITAL STATUS OF BENEFICIARIES	
<ul style="list-style-type: none"> • If single, the SASSA affidavit stating this • If married, a marriage certificate (which includes spouse's identity number) • If married through customary law, an affidavit from a headman stating this or a certificate from the Register of Customary Unions • If married by Muslim Rites, an affidavit stating this • If divorced, their divorce order • If spouse is deceased, the spouse's death certificate • If married and the spouse has deserted for more than three months, an affidavit stating this (in which case they are treated as single for the purpose of the means test) • (If living together as domestic partners but not formally married, no documentation needed as co-habitation not considered a spousal relationship.) <p><i>Where these are not available they can be substituted by an affidavit at SASSA – but wherever possible originals should be presented.</i></p>	
AND, if applicable, spouse/partner's identity document	
BENEFICIARIES' WELLBEING / HEALTH / CIRCUMSTANCES	
A referral report from the potential beneficiary's own medical practitioner <i>(SASSA will then send the potential beneficiary for a medical assessment by a medical officer/practitioner employed by or contracted by the state)</i>	
MEANS – of beneficiary and their spouse (where applicable)	
<i>In the case of Grant-in-Aid, there is no means test as the beneficiary must be in receipt of one of the other adult grants for which they have been means tested.</i>	
IDENTIFICATION OF PROCURATORS (people acting on behalf of beneficiaries)	
South African 13-digit bar-coded identity document	
OR Passport	
OR Driver's licence	
OR ID document from country of origin	
AND Affidavit by the procurator – which is part of the SASSA grant application form – to the effect that they will apply and/or collect and deliver social assistance to the beneficiary	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the
Black Sash Help Line on 072 663 3739 for FREE paralegal advice and support.

A procurator is a person who acts on behalf of a beneficiary, either when they are unable to act for themselves, or need assistance in managing the grant properly. They must be officially recognised by SASSA as acting on that person's behalf and sign an affidavit saying they will apply for and/or collect and deliver social assistance to the beneficiary.

What other financial resources could be accessed?

The beneficiary must be in receipt of either an Older Person's Grant or a Disability Grant or a War Veterans' Grant.

Accessing information and administrative justice

When you suspect that your client may have been unfairly treated and/or they do not have access to information about their grant (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act of 2000 and the Promotion of Administrative Justice Act of 2000. Commonly called PAIA and PAJA, these laws make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Advocacy issues

Issue: Extending the Grant-in-Aid to beneficiaries of the Care Dependency Grant (those who care for children)

It is common for people to look after family members who are in need of care or to provide care for someone in their community. This is because they want the person – and perhaps particularly children – to be able to stay in their own home and/or with their family, and want to help them to do so. Sometimes it is because there are no other options.

As described above, the Grant-in-Aid is currently intended for adults who are disabled and need regular attendance by another person. It is not, however, available to those who look after children.

We advocate that the Grant-in-Aid be extended to those in receipt of the Care Dependency Grant, as there is no reason why there should be a difference between the care needs of a child compared to an adult. The proposal is that this would work in the same way as it does for adults – namely that receiving the Grant-in-Aid would be dependent on the receipt of the Care Dependency Grant and therefore would not be means tested again.



Chapter 16

SOCIAL RELIEF OF DISTRESS

Immediate temporary assistance

Means is a word used for how much someone earns and, sometimes, owns.

SOCIAL RELIEF OF DISTRESS

What is the Social Relief of Distress – and what is it meant for?

The Social Relief of Distress (SRD) award provides immediate temporary assistance for a short period. It is intended to help people in need who do not have sufficient **means** to provide for themselves and/or their dependants.

The Social Relief of Distress award can be given in the form of vouchers, food parcels or money. It is usually only given for up to three months – but can be extended for a further three months in exceptional cases. It is not a grant, as a grant is always paid in the form of money and is usually awarded for a longer period of time.

While the amount of a SRD award is not specified, the guideline is that no SRD amount must exceed the grant amount for an Older Person's Grant for an adult or a Child Support Grant for a child. Where a parent or caregiver is waiting to receive an approved Care Dependency Grant or a Foster Child Grant, however, the SRD amount can be equal to these grant amounts.

Legislation which applies to the Social Relief of Distress award

Primary legislation

- South African Constitution, Act 1996 (Act No. 108 of 1996)
- Social Assistance Act, 2004 (Act No. 13 of 2004)
- Social Assistance Act, 2004 (Act No. 13 of 2004) Regulation 31356: Regulations relating to the application for and payment of social assistance and the requirements or conditions in respect of eligibility for social assistance – 22 August 2008

Secondary legislation

- Refugees Act, 1998 (Act No. 130 of 1998)
- Maintenance Act, Maintenance Act, 1998 (Act No. 99 of 1998)
- Disaster Management Act, 2002 (Act No. 57 of 2002)
- Children's Act, 2005 (Act No. 38 of 2005)
- Children's Amendment Act, 2007 (Act No. 41 of 2007)
- Child Care Act, 1983 (Act No. 74 of 1983)
- Older Person's Act, 2006 (Act No. 13 of 2006)
- Older Person's Amendment Act, 1998 (Act No. 100 of 1998)
- South African Social Security Agency Act, 2004 (Act No. 9 of 2004)
- Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)
- Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

Further guidelines for the processing and granting of Social Relief of Distress can be found in the *Procedure Manual for Social Relief of Distress* (October 2006) issued by the Department of Social Development.

Where to obtain copies

As it may be useful as a paralegal to have these laws and regulations in your office, you can get copies from the government printers or download copies from the internet at www.legislation.gov.za or www.polity.gov.za or www.socdev.gov.za.

Who is eligible for Social Relief of Distress?

In order to access SRD, a person must be

- a child living in South Africa;
- an adult who is a South African citizen or permanent resident; or
- an adult with refugee status and who is disabled or a foster parent.

Applicants should be in need of 'immediate temporary assistance' as a result of their not having 'sufficient means' to be able to provide for their basic needs.

A Social Relief of Distress award is more broadly available than social grants. Guidelines describing the material circumstances which may make people **eligible** for a SRD award are listed in Regulation 9 of the 2008 Regulations of the Social Assistance Act of 2004.

As the eligibility criteria are open to discretion, however, guidelines in the form of a SRD Procedure Manual have been made available to the SASSA officials. These are particularly important in relation to issuing SRD in circumstances of undue hardship.

The circumstances which may mean a person is eligible for a SRD are as follows.

Awaiting income /Lost income

- The person is *waiting to receive an approved grant*.
- The person has not received *maintenance* from a member of their family and has proof of their unsuccessful efforts to trace the person obliged to pay it or to obtain the maintenance.
- The *breadwinner has been admitted to a state-funded institution* e.g. a prison, a state psychiatric hospital, a home for the aged, a care and treatment centre and/or treatment centre for drug dependants.
- The *breadwinner in the family has died* and there is no other means of support available to the family. SRD must be applied for within three months of the death of a breadwinner.

In the situation where a breadwinner has been lost, the people in need may be eligible for a grant e.g. a Child Support Grant, given their changed financial circumstances. This would be a more permanent solution to their distress.

Physically unable

The person has been found *medically unfit to work for a period of less than six months*. (They should apply for a Disability Grant if they are likely to be disabled for longer than six months – See Chapter 12.)

Disaster

The person has been affected by a *disaster* as defined in the Disaster Management Act of 2002 (e.g. their house has burnt down or been flooded).

Undue hardship

The person – and their household – will experience **undue hardship** (as defined in the SRD Procedure Manual) if assistance in the form of a SRD is not given. This honours Section 27(1) of the country's Constitution by helping people who 'are unable to support themselves or their dependants'.

To be **eligible** to receive a grant, a person must meet the criteria given for that grant. The criteria could be their age, how much (or little) they earn, the value of their assets, whether or not they are sick or disabled etc.

Undue hardship can be understood in a variety of ways. The Department of Social Development's Procedure Manual for SRD says e.g. that a 50-year old who cannot get work and therefore cannot support themselves and/or their dependants (because of their age) – and cannot get a pension (as they are too young) – may suffer 'undue hardship'.

Similarly an adult whose caring for children prevents them from seeking employment – and who therefore cannot feed their children – could be deemed to suffer 'undue hardship'. In such cases, a social worker or community development worker should assist the client to access more sustainable solutions.

Examples

Some examples of the types of circumstances in which SRD could be applied for are as follows.

Mr Petrus who is 51 years old, has lived on a fruit farm in the Breede River for most of his working life. The farmer recently sold the farm, and served eviction notices on all his workers. As a result Mr Petrus lost his job and his home and went to live on the streets in Worcester, frequently eating very little. Another farmer met him in the town and offered him seasonal employment on a small fruit farm, but the work was only available in two months' time. The farmer recommended that he apply for SRD in the meanwhile and so he went down to the SASSA office to explain his situation to the official. Mr Petrus was given a SRD award which comprised a food parcel and food vouchers and thus was able to sustain himself until it was time to start work.

Test:

- ✓ SA citizen
- ✓ Insufficient means
- ✓ Is receiving no other grant in respect of self
- ✓ Refusal of a SRD would cause undue hardship

Vusi, who has been supporting his unemployed sister Nomonde, has been admitted to a state-funded psychiatric hospital after attempting to commit suicide. Nomonde is unable to find work and has been evicted from the backyard shack in which they had been living. As she is desperate, she goes to a local welfare agency where she receives a food parcel but is not encouraged to return. Only after approaching the Black Sash office was Nomonde told about SRD – which highlighted the fact that social workers are not aware of SRD and/or often do not encourage people to apply for SRD, even where the person is destitute. Nomonde received SRD after applying for it.

Test:

- ✓ SA citizen
- ✓ Breadwinner brother in state institution
- ✓ Insufficient means
- ✓ No other grant for herself

Widowed refugee Mrs Amina Nadifa Aziza, who came to South Africa in 2003 from Somalia, is caring for six grandchildren who live with her in Nelspruit. The parents of two of the children have died and the parents of the remaining four have gone to Johannesburg to run a small shop from where they send her money to support them. But the money is not sufficient to feed, clothe, educate and house the children and, as a refugee, Mrs Amina Nadifa Aziza does not qualify for an Older Person's Grant. As a primary caregiver, she is concerned that the children are becoming malnourished and that they may have to leave school as she cannot afford to pay transport to school and needs the older children to try and find work. Child Support Grants have been approved for five of the six children as they are under 18 years old. Mrs Amina Nadifa Aziza was advised to apply for SRD while waiting for the grants to be processed and for the first payment to arrive.

Test:

- ✓ Refugee who is a foster parent
- ✓ Potential beneficiaries not receiving any other grants
- ✓ Children in danger of malnourishment
- ✓ Waiting for approved social grants

Vanessa Naidoo is 20 years old and has just been discharged from prison where she had served a two-year sentence for shoplifting. She has no job and is trying to help her 56-year old grandmother care for her three younger siblings and one cousin, following the death of their parents from AIDS-related illnesses. She earns R150 a week selling sweets and spices at a stall on the street. They are battling to feed and clothe the children.

Despite her circumstances she has applied to foster the children. The social worker processing her application notices the desperate circumstances in which she is trying to care for these children and applies for SRD to ensure they are supported in the short-term.

While Vanessa knows they need the money, she is initially reluctant to apply for SRD, as she has heard that to qualify she would have to answer many questions and produce many documents. She does not want to expose herself to so many questions and formalities – or the risk of being discriminated against, given her prison record. She finally goes to SASSA with her grandmother, however, and although there is a lot of paperwork to do, they are glad of the relief the SRD will give them.

Test:

- ✓ SA citizen
- ✓ Discharged from prison
- ✓ Insufficient means
- ✓ No other grant in respect of self
- ✓ Waiting for an approved social grant

Who cannot get the Social Relief of Distress award?

A person will not be given a Social Relief of Distress award if they

- are deemed by SASSA officials to have 'sufficient means'; and/or
- are already receiving a grant for themselves (although in these circumstances someone else in their household is allowed to receive the SRD award); and/or
- do not apply for the award in time (e.g. within three months after a breadwinner dies); and/or
- are foreign nationals or children cared for by them. (Refugees who are disabled or are foster parents, and permanent residents, are entitled to apply for SRD, however.)

What is the means test for the Social Relief of Distress award?

Before a SRD award is made, the officials responsible for recommending and authorising it must be satisfied that the person qualifies in terms of the eligibility criteria and that they have all the documents they may need. (A range of possible documents which would provide evidence of their circumstances is given below.)

Unlike social grants, there is no formal **means test** for this award. A basic assessment of their income is done, however, to test that they do indeed have 'insufficient means' – but the decision is also based on their circumstances.

What form does the assistance take – and how is it calculated?

A SRD award can be given to individuals or to a whole household. For instance a household of three adults and four children could either receive one award (based on the number of adults and children in that household) or three awards (for instance if there are three members of the house waiting for a grant). It largely depends on the circumstances and discretion of the official who is authorised to assess the needs of each case.

A **means test** is an assessment of how much money a person – and their spouse – earns (their income) and the value of their possessions (their assets) in order to see if they are eligible for a grant.



While an award can be paid out as cash, it is more commonly given in the form of a food parcel or a money voucher (made out to a specific food supplier). Vouchers are only redeemable at the suppliers that SASSA has contracted in each area.

It is usually only given for up to three months – but can be extended for a further three months in exceptional cases.

Value of the award

The value of a SRD award ultimately depends on the applicants' circumstances and the discretion of the SASSA official. However, the value of the award may not be more than the maximum value of a Child Support Grant in the case of a child, and the Older Person's Grant in the case of an adult. (Where two adults applying for SRD live together and are in a spousal relationship, the value of the award may not be more than the value of the Older Person's Grant for each spouse.)

Where a caregiver is waiting to receive an approved Care Dependency Grant or a Foster Child Grant, however, the SRD amount can be equal to these grant amounts.

SRD and grants

People will need to pay back any cash received from a SRD if they subsequently receive arrears payments of a grant for the same period. So in the example above, when Mrs Amina Nadifa Aziza receives five Child Support Grants (totalling R1 250) as well as back-pay, she must pay back the amount of R3 750 which she received while waiting for the grants. They need not pay any money if they had been issued with food parcels as relief, however.

How does someone apply for the Social Relief of Distress award?

As for social grants, SASSA is responsible for administering the SRD award – although the process of application is slightly different.

The application process is as follows:

1. The applicant completes the prescribed form at the local SASSA office. (Contact details of SASSA regional offices are given in Appendix E.) This includes an interview with the SASSA official during which they assess the applicant's circumstances and income, using whatever documentation the applicant is able to bring with them. (Where identity documents are not available, alternative documentation can be used to prove a person's identity, like an affidavit from a person of standing (a school principal or religious leader) or a local official of some kind.)
2. The first SASSA official checks and finalises the application and a second official approves or rejects the application. In some situations, the official responsible for approving or rejecting applications may be based at another office in another area. Even if this is the case, a decision about a Social Relief of Distress award should be made on the date of application and, where it is agreed to, the award should be made available immediately.
3. The applicant should be given a receipt. (This must be dated and stamped with the official stamp and must contain the name of the applicant, date of application and the name of the attesting officer.)

An **affidavit** is a document in which a person makes statements and promises that they are true. By signing the statement in front of a commissioner of oaths they make it a legal document.

4. If the applicant does not produce any of the documentation that may be required when they apply, they should be informed by the attesting officer that the documentation must be submitted before the second and subsequent monthly payments of relief are made.

A social worker's report is not always needed when people apply for SRD for the first time. However, a social worker's report may be requested – especially where the application is on the basis of undue hardship, as SRD should be only one aspect of the state's intervention. A social worker's report is always needed when there is a request to extend the award beyond the three-month limit. Here SASSA must re-evaluate the application on the recommendation of a social worker or any other person authorised by SASSA to do this.

Documents required

Ideally, applicants should have the documents given in the list on the previous page when applying for SRD. But where their documents have been lost or destroyed – for example in a fire or flood – SASSA may allow an application for SRD to be completed, attested to and approved in the absence of the required documentation.



Case Study: Accessing relief

The Black Sash was approached by Mrs Viljoen who had previously received a Disability Grant until she married about five years ago, when the grant stopped as she no longer qualified in terms of the means test. But Mrs Viljoen's husband died, leaving her without any form of income. When she came to the Black Sash office, she had already applied for provident fund benefits and Unemployment Insurance dependents' benefits, but these were taking a long time to finalise and in the meantime she was in desperate need of support.

What the Black Sash did

The paralegal explained to Mrs Viljoen that she may qualify for social assistance on two grounds.

- Firstly as her husband was the breadwinner and had died, and she had no income until the funds are paid out, she may be eligible for SRD. They warned her that the maximum amount she would be given would be equivalent to the amount of the Older Person's Grant (which happened to be the same as the Disability Grant) and that this was likely to only be for three months.
- Secondly, as her income had reduced with the death of her husband, she may be eligible for the Disability Grant again. This would depend on the amounts she might receive from the provident fund and the Unemployment Insurance dependents' benefit. They advised her to find out what these amounts may be – and how long they would be paid out for. They asked her to visit their offices again so that they could help her to decide when to apply for a Disability Grant – given that her means would be tested. They also told Mrs Viljoen that if she applied for the Disability Grant and it was approved, she would have to pay back any cash she had received as SRD (although not the value of any food parcels).

They referred Mrs Viljoen to her closest SASSA service office and gave her a list of the documents that would help her to make an application for SRD.

Documents required to apply for the Social Relief of Distress

IDENTIFICATION OF CHILD BENEFICIARIES	√
Children who are South African citizens: South African birth certificate (abridged or unabridged) with 13-digit identity	
OR South African 13-digit bar-coded identity document (only available to children over 16)	
OR Passport	
Children who are foreign nationals (be they documented (refugees, asylum seekers or migrant workers) or undocumented): Birth certificate or identity documents from the child's country of origin e.g. a passport	
Children who are permanent residents: Any of the above – either from South Africa or from their country of origin	
IDENTIFICATION OF ADULT BENEFICIARIES	
South African 13-digit bar-coded identity document	
OR Refugee ID document	
OR Refugee status permit AND proof of having applied for an ID from the Dept of Home Affairs	
MARITAL STATUS OF ADULT BENEFICIARIES	
<ul style="list-style-type: none"> • If single, the SASSA affidavit stating this • If married, a marriage certificate (which includes spouse's identity number) • If married through customary law, an affidavit from a headman stating this or a certificate from the Register of Customary Unions • If married by Muslim Rites, an affidavit stating this • If divorced, their divorce order • If spouse is deceased, the spouse's death certificate • If married and the spouse has deserted for more than three months, an affidavit stating this (in which case they are treated as single for the purpose of the means test) • (If living together as domestic partners but not formally married, no documentation needed as co-habitation not considered a spousal relationship.) <p><i>Where these are not available they can be substituted by an affidavit at SASSA – but wherever possible originals should be presented.</i></p>	
AND, if applicable, spouse/partner's identity document	
MEANS – of beneficiary and their spouse and/or dependent children (where applicable)	
In the case of SROD, SASSA will accept an application without sufficient documentation in circumstances in which documentation was lost, stolen or destroyed. The application form includes space for a declaration-of insufficient means. This could be supported by any of the following documents:	
If employed, their wage certificate(s)/pay slip(s)	
If unemployed and had been formally employed:	
<ul style="list-style-type: none"> • an Unemployment Insurance Fund (UIF) card or receipt; or • a declaration of this on the SASSA affidavit. 	
If never employed, a declaration of this on the SASSA affidavit.	
Income other than employment	
<ul style="list-style-type: none"> • Evidence of profit from a business concern or a farm • Rental agreements if rental income received • Evidence of income from any property rights • Proof of receiving compensation e.g. amounts from the Road Accident Fund (RAF), the Unemployment Insurance Fund (UIF), the Compensation for Occupational Injuries and Diseases Act (COIDF). • Evidence of receipt of ex gratia amounts (such as once-off or bonus payments) • Evidence of income of financial support from an organisation – be this local or international • Evidence of receipt of monies from a trust or inheritance (especially of dependent children) • Proof of receipt of a private pension or annuity 	
OTHER SUPPORTING DOCS	
<ul style="list-style-type: none"> • Proof of temporary medical disability i.e. under six months (For purposes of SRD only, this can be from a private doctor or a state doctor. This does not apply to assessment for a Disability Grant, however.) • Proof of admission of spouse to prison, treatment centre or hospital • Discharge certificate of prison, treatment centre or hospital • Proof that applicant is awaiting trial 	
Additional documents that could be useful:	
<ul style="list-style-type: none"> • Death certificate • Municipal bills • Bank account details • Letters or reports from an organisation or public person (e.g. social worker, religious leader or medical practitioner) 	

Note: Section 11(1) of the 2008 Regulations of the Social Assistance Act of 2004 says SASSA may accept alternative proof of identification where the person has no valid proof (an identity document or a birth certificate). (See Chapter 4.)

If you have any queries about social grants, please contact the **Black Sash Help Line on 072 663 3739** for FREE paralegal advice and support.

However where the applicant can reasonably be expected to get documentation – e.g. a letter from a doctor or prison, and including alternative forms of personal identification – they may be required to produce these before a SRD award is extended beyond the second month. Similarly, where the applicant's identification documents exist but they simply did not have them that day, they must produce them before receiving the second payment.

Documentation is certainly required during the social worker's assessment to support any recommendation she may make for an extension of SRD.

What other financial resources could be accessed?

People in distress can also access various services, like those offered by churches or welfare agencies, where these are available.

Accessing information and administrative justice

If you suspect that your client may have been unfairly treated and/or they do not have access to information about SRD (e.g. why it was refused or why it was taking a long time to process) you could use the Promotion of Access to Information Act (2 of 2000) and the Promotion of Administrative Justice Act (3 of 2000). Commonly called PAIA and PAJA, these laws make it possible for people to insist that they are treated fairly and are given the information they are entitled to, particularly by government departments and institutions. Summaries of each are given in Appendices H and I.

To submit a request for information from a public body (under PAIA) the standard form should be used. This should be obtainable from all government departments and institutions – including SASSA.

Advocacy issues

Achievement: Alternative forms of identification accepted

In July 2008, there was finally a legal acknowledgement that, due to service delivery failures in the Department of Home Affairs, applicants for all social assistance including the Social Relief of Distress award can use alternative forms of identification to apply for this short-term relief.

Achievement: Increased budget in 2008

In 2008, an amount of R500 million was added to the annual SRD budget of R124 million, as a result of lobbying by civil society, spearheaded by COSATU. This was to draw attention to the massively increasing cost of food and fuel and the effects of this particularly on the poor. While these additional funds were an achievement, it was allocated four months before a national election and had to be spent in that period, placing considerable strain on SASSA and leading to allegations of campaign irregularities linked to awards. The Black Sash argued that a greater budget should be allocated to SRD on a consistent basis and that every care should be taken to separate such awards from the political process.

Issue: Increase the budget

The amount allocated by the National Department of Social Development to provide Social Relief of Distress to households and individuals facing hardship is insufficient to address the huge need in South Africa. In fact, it represents a very small amount of money relative to the needs of the poor



and vulnerable and at the time of publishing this guide, remains a tiny fraction of the monies made available for grants. Given the escalation of the poverty crisis, particularly with the dramatic increases in the prices of food and fuel, the Black Sash argues that additional dedicated funds must be allocated to SRD.

Issue: Disaster Fund

Where there is a significant national crisis or disaster – such as the xenophobic attacks in 2008 – the government has used the monies allocated to SRD for relief associated with these crises. This effectively empties this fund for its intended purposes. The Black Sash argues that a significant Disaster Fund should be established and used in these kinds of circumstances, rather than using the standard budget allocated for SRD.

Issue: More publicity

The Black Sash has found that far too many people are not aware that they could be eligible for SRD – and that it is available to South Africans as well as permanent residents and refugees (who are disabled or are foster parents). We therefore urge the Department of Social Development to advertise the criteria for – as well as the process to access it – in newspapers and radio stations across the country, particularly in rural communities.

Issue: Comprehensive social security – and alleviation of poverty

The Social Relief of Distress is designed only to provide temporary relief to those in dire material need. As such, it is just a bridging mechanism for families who have temporarily fallen on hard times or who are waiting for grants or government programmes for which they are eligible. It does not provide security to families suffering from long-term financial deprivation – people unable to access either jobs or cash support from the state.

At present, the only families that can access regular cash support in the form of grants are those that include children under 18 (although the CSG is still being rolled out), people over 60 or those who are disabled. Unemployed, able-bodied, poor adults have no legal access to cash grants, representing a disastrous gap in the social security system that the government erroneously refers to as 'comprehensive'. Those who receive the Social Relief of Distress should be given the chance to move on to more permanent forms of social assistance.

A review of the system should be undertaken as a matter of urgency. We argue for a bold, comprehensive and sustainable plan to alleviate poverty, including income support to the unemployed and working poor, which will give everyone access to the constitutional right to social assistance.

APPENDICES

Appendix A: SUMMARY OF GRANTS

GRANTS FOR CHILDREN (i.e. people under 18 years old)

	CHILD SUPPORT GRANT	FOSTER CHILD GRANT	CARE DEPENDENCY GRANT
Chapter in this guide	8	9	10
Who may apply – as biological or foster parent or primary caregiver of a child?			
Age/role	Biological parents and primary caregivers who are in need. A primary caregiver must be older than 16 years.	Foster parents (adults over 18) who are legally appointed by a court. They may not be the child's legal guardian or biological parents – but may be family members. (They do not have to be defined as 'in need' as there is no means test for this grant.)	Primary caregivers and biological parents who are in need as well as foster parents. A primary caregiver must be older than 16 years.
National status	Adults who are SA citizens or permanent residents living in South Africa. This <i>excludes</i> all foreign nationals, be they 'documented' or 'undocumented'.	Adults who are SA citizens or permanent residents or refugees living in South Africa. This <i>excludes</i> all other foreign nationals, be they 'documented' or 'undocumented'.	Adults who are SA citizens or who are permanent residents or foster parents, whether they are South African or not. This <i>excludes</i> all other foreign nationals, be they 'documented' or 'undocumented'.
Who is eligible to be a procurator?			
Age/role	An adult (person aged 18 and older) appointed to apply and/or collect the grant for the beneficiary. <i>(In practice, procurators may also administer the grant on behalf of an adult who is unable to do so for themselves.)</i>		
National status	They need not be a SA citizen or a permanent resident but must have some form of identification.		
Which children are being cared for?			
Age and circumstances	Children born on or after 31 December 1993, and under 18 years old.	Children under the age of 18 who have been fostered as their parents are unable to care for them; or are absent, unfit or deceased. Can be extended beyond the age of 18 if the child is still attending school or special school.	Children under the age of 18 years who are in need of regular care or support services, given their disability.
National status/citizenship	All children, depending on the national status of their biological parents or primary caregivers (above).	All children, depending on the national status of the foster parent (above).	All children, depending on the national status of the biological parent, foster parent or primary caregiver (above).
How is an applicant (biological parent or primary caregiver) means tested? <i>(The amounts of the threshold for eligibility for each grant – i.e. how much the applicant may earn – are listed in Appendix D.)</i>			
Whose means are tested?	Biological parent/primary caregiver – and spouse – and dependent children.	Nobody's means are tested.	Biological parent/primary caregiver – and spouse. (Foster parents are not means tested).
What is tested?	Income only (not assets).	Nothing.	Income only (not assets).
What other grants may a beneficiary also access?			
May also receive	No other social grant for children	Care Dependency Grant	Foster Child Grant
May not also receive	Foster Child Grant Care Dependency Grant	Child Support Grant	Child Support Grant

GRANTS FOR ADULTS (i.e. people 18 years old and older)

Name of grant	DISABILITY GRANT	OLDER PERSON'S GRANT ('OLD-AGE PENSION')	WAR VETERANS' GRANT	GRANT-IN-AID
Chapter in this guide	12	13	14	15
Who is eligible to apply?				
Age and circumstances	Adults under 60 years old and who are in need. Applicants must have a disability which leaves them unfit to support themselves.	Adults 60 years and older who are in need.	Adults 60 years and older who are in need and who served in a World War and/ or the Korean War.	Adults of any age who are in receipt of a Disability Grant, War Veterans' Grant or Older Person's Grant and are in need of regular attendance by another person.
National status/ citizenship	SA citizens, permanent residents and refugees living in South Africa. This <i>excludes</i> all other foreign nationals, be they 'documented' or 'undocumented'.	SA citizens and permanent residents living in South Africa. This <i>excludes</i> all other foreign nationals, be they 'documented' or 'undocumented'.	SA citizens and permanent residents living in South Africa. This <i>excludes</i> all other foreign nationals, be they 'documented' or 'undocumented'.	SA citizens, permanent residents and refugees living in South Africa. This <i>excludes</i> all other foreign nationals, be they 'documented' or 'undocumented'.
Who is eligible to be a procurator?				
Age/role	An adult (person aged 18 and older) appointed to apply and/or collect the grant for the beneficiary. <i>(In practice, procurators may also administer the grant on behalf of an adult who is unable to do so for themselves.)</i>			
National status	They need not be a SA citizen or a permanent resident but must have some form of identification.			
How is an applicant means tested? <i>(The amounts of the threshold for eligibility for each grant – i.e. how much the applicant may own or earn – are listed in Appendix D.)</i>				
Means test (whose means are tested?)	Applicant and their spouse and dependent children			No means test as this grant is only given together with one of the other grants, for which their means have already been tested.
Means test (what is tested?)	Assets and income			Nothing
What may the beneficiary also access?				
May also receive (subject to the amounts in the means test)	Grant-in-Aid <i>and any of the child grants for a child in their care</i>			This grant cannot be awarded by itself. It MUST be given in addition to either a <ul style="list-style-type: none"> • Disability Grant OR • Older Person's Grant OR • War Veterans' Grant
May not also receive	Older Person's Grant OR War Veterans' Grant	Disability Grant OR War Veterans' Grant	Older Person's Grant OR Disability Grant	n/a

SOCIAL RELIEF OF DISTRESS (SRD) AWARD

Chapter in this guide	16
Who may apply?	
Age and circumstances	<p>People in need of immediate temporary assistance who are unable to provide for the basic needs of themselves and their dependants as they do not have sufficient means to do so.</p> <p>All children (under 18) may only access this award through their caregiver, as long as the caregiver themselves meets the national status requirements.</p> <p>Examples of circumstances are:</p> <ul style="list-style-type: none"> • while waiting to receive a grant that has been approved; • where child maintenance is not received after efforts have been made to access it; • when the breadwinner becomes temporarily disabled (less than 6 months); or when they are admitted to a state institution – like a prison, psychiatric treatment centre, drug treatment centre; • when a breadwinner dies; • following a natural disaster (under certain circumstances); • where refusal of this grant would cause 'undue hardship'.
National status*	<p>Adults: South African citizens and permanent residents. Refugees who are disabled adults or foster parents. Not available to 'undocumented' foreign nationals or to other categories of documented foreign nationals.</p> <p>Children: All children – depending on the citizenship status of their caregiver (above).</p>
How is an applicant means tested?	
Means test (<i>what is tested?</i>)	There is no formal means test (and therefore no thresholds) for SRD, which is awarded according to the material circumstances of the children and/or adults who are in need of assistance. This is at the discretion of the SASSA official who interviews the applicants and assesses any available documentation.
What may the beneficiary also access?	
May also receive	Depends on the official's discretion based on that person's circumstances.
May not also receive	Any other social grant.

* A *documented foreign national* is someone who is living in South Africa and has documents recognised by the Department of Home Affairs allowing them to be in the country. They include permanent residents, refugees, asylum seekers and migrant workers. An *undocumented foreign national* might have documents (e.g. their own passport), but none that is recognised by the South African Department of Home Affairs as giving them permission to be here.

Appendix B: FOREIGN NATIONALS & SOCIAL ASSISTANCE

DEFINITIONS AND IDENTIFICATION DOCUMENTS

	Who are they?	Identification documents – official
DOCUMENTED		
Permanent residents	Person who has been granted permanent residence while remaining a foreign national.	Adult: South African 13-digit bar-coded ID book (issued in SA) Child: Under 16: Birth certificate from country of origin AND permanent res. permit Over 16: South African 13-digit bar-coded ID book (issued in SA)
Migrant workers and students	Person permitted to be in the country for a specific time & purpose – e.g. migrant workers, students.	Adult: Temporary work or study visa Child: Birth certificate OR passport OR study visa
Refugees	Person who has been granted refugee status under the Refugee Act of 1998 (Act No.130 of 1998).	Adult: Refugee identification document (issued in SA) OR Refugee status permit (Sec 24) AND proof that they have applied for ID Child: Birth certificate OR Refugee identification document (issued in SA) OR Refugee status permit (Sec 24) AND proof that they have applied for ID
Asylum seekers	Person who is formally seeking recognition as a refugee under the Refugee Act of 1998 (Act No.130 of 1998).	Adult: Asylum seeker permit (Sec 22) Child: Birth certificate AND/OR Identification documents from country of origin AND temporary permit (Sec 22) indicating application for refugee status.
UNDOCUMENTED		
Person who is in the country without legal documents as they have not engaged with any formal processes to legalise their residence, are in the process of legalising their stay – or have engaged unsuccessfully.		Adult: n/a Child: Birth certificate AND/OR identification documents from country of origin

GRANTS FOR WHICH FOREIGN NATIONALS ARE ELIGIBLE

	DOCUMENTED								UNDOCUMENTED	
	Permanent residents		Migrant workers and students		Refugees		Asylum seekers		Adult	Child
	Adult	Child	Adult	Child	Adult	Child	Adult	Child	Adult	Child
FOR CHILDREN										
Child Support Grant	Yes	(Dependant)	No	n/a	No	(Dependant – if primary caregiver is SA citizen or permanent resident)	No	(Dependant – if primary caregiver is SA citizen or permanent resident)	No	(Dependant – if primary caregiver is SA citizen or permanent resident)
Foster Child Grant	Yes	(Dependant)	No	n/a	Yes	(Dependant – if caregiver is SA citizen, permanent resident or refugee)	No	(Dependant – if caregiver is SA citizen, permanent resident or refugee)	No	(Dependant – if caregiver is SA citizen, permanent resident or refugee)
Care Dependency Grant	Yes	(Dependant)	No	n/a	Yes, if foster parent	(Dependant – if caregiver is SA citizen, permanent resident or refugee foster parent)	No	(Dependant – if caregiver is SA citizen, permanent resident or refugee foster parent)	No	(Dependant – if caregiver is SA citizen, permanent resident or refugee foster parent)
FOR ADULTS										
Disability Grant	Yes	n/a	No	n/a	Yes	n/a	No	n/a	No	n/a
Older Person's Grant	Yes	n/a	No	n/a	Yes, if received Disability Grant	n/a	No	n/a	No	n/a
War Veterans' Grant	Yes	n/a	No	n/a	No	n/a	No	n/a	No	n/a
Grant-in-Aid	Yes	n/a	No	n/a	Yes	n/a	No	n/a	No	n/a
Social Relief of Distress Award	Yes	(Beneficiary – if caregiver is SA citizen, permanent resident or refugee disabled or foster parent)	No	(Beneficiary – if caregiver is SA citizen, permanent resident or refugee disabled or foster parent)	Yes, if disabled or a foster parent	(Beneficiary – if caregiver is SA citizen, permanent resident or refugee – disabled or foster parent)	No	(Beneficiary – if caregiver is SA citizen, permanent resident or refugee – disabled or foster parent)	No	(Beneficiary – if caregiver is SA citizen, permanent resident or refugee – disabled or foster parent)

Appendix C: MONTHLY AMOUNT OF EACH GRANT

	2009/10	2010/11	2011/12	2012/2013
CHILDREN				
Child Support Grant	R240	R250		
Foster Child Grant	R680	R710		
Care Dependency Grant	RI 010	RI 080		
ADULTS (see sliding scales below)				
Disability Grant	Max RI 010	Max RI 080		
Older Person's Grant	Max RI 010	Max RI 080		
War Veterans' Grant	Max RI 030	Max RI 100		
Grant-in-Aid	R240	R250		
CHILDREN AND ADULTS IN CRISIS				
Social Relief of Distress Award	May not exceed the amount of a Child Support Grant in the case of children and an Older Person's Grant in the case of adults. However, where payment of an approved Foster Child Grant or Care Dependency Grant is awaited, the SRD can be equal to these grant amounts. (A person may not receive a grant and SRD at the same time. Should this occur the amount received simultaneously will be recovered.)			

Slidingscales:monthly amounts of adult grants

Amounts given valid as of 1 April 2010. Up-to-date amounts obtainable from the website of SASSA: www.sassa.gov.za

Except for Grant-in-Aid, the amounts for grants for adults are relative to the beneficiary's income – even when they have passed the means test. They are based on these sliding scales.

There are two sets of income given: one for single people and the other for beneficiaries who are married, where both incomes are added together. So in 2010/2011, single beneficiaries who receive a regular monthly income of R648 will receive the full grant amount (RI 080) whereas if they earn R808 a month, it is reduced to RI 000 a month – and if they earn as much as R2 608, they will get RI00 a month.

NOTE: For the War Veterans' Grant, please add R20 to the grant amount received. So instead of starting at RI 080, they start at RI 100.

Income R		Grant	Income R		Grant	Income R		Grant
single	married		single	married		single	married	
648	1296	1080	1308	2616	750	1968	3936	420
668	1336	1070	1328	2656	740	1988	3976	410
688	1376	1060	1348	2696	730	2008	4016	400
708	1416	1050	1368	2736	720	2028	4056	390
728	1456	1040	1388	2776	710	2048	4096	380
748	1496	1030	1408	2816	700	2068	4136	370
768	1536	1020	1428	2856	690	2088	4176	360
788	1576	1010	1448	2896	680	2108	4216	350
808	1616	1000	1468	2936	670	2128	4256	340
828	1656	990	1488	2976	660	2148	4296	330
848	1696	980	1508	3016	650	2168	4336	320
868	1736	970	1528	3056	640	2188	4376	310
888	1776	960	1548	3096	630	2208	4416	300
908	1816	950	1568	3136	620	2228	4456	290
928	1856	940	1588	3176	610	2248	4496	280
948	1896	930	1608	3216	600	2268	4536	270
968	1936	920	1628	3256	590	2288	4576	260
988	1976	910	1648	3296	580	2308	4616	250
1008	2016	900	1668	3336	570	2328	4656	240
1028	2056	890	1688	3376	560	2348	4696	230
1048	2096	880	1708	3416	550	2368	4736	220
1068	2136	870	1728	3456	540	2388	4776	210
1088	2176	860	1748	3496	530	2408	4816	200
1108	2216	850	1768	3536	520	2428	4856	190
1128	2256	840	1788	3576	510	2448	4896	180
1148	2296	830	1808	3616	500	2468	4936	170
1168	2336	820	1828	3656	490	2488	4976	160
1188	2376	810	1848	3696	480	2508	5016	150
1208	2416	800	1868	3736	470	2528	5056	140
1228	2456	790	1888	3776	460	2548	5096	130
1248	2496	780	1908	3816	450	2568	5136	120
1268	2536	770	1928	3856	440	2588	5176	110
1288	2576	760	1948	3896	430	2608	5216	100

Appendix D: THRESHOLDS FOR MEANS TESTS

All means tests assess the beneficiary, their spouse and/or their dependent children (under 18), where applicable.

- In the case of grants for children, the test includes the income of the biological parent or primary caregiver; the income of their partner or spouse, and in the case of the CSG, the income of the dependent child. (The means of foster parents are not tested.)
- In the case of grants for adults, both income and assets of the beneficiary – and their partner or spouse and/or dependent children, are tested.

	2009/10	2010/11	2011/12	2012/13
CHILD GRANTS				
Child Support Grant				
Income: single caregiver (and dependent children)	R28 800	R30 000		
Income: married caregiver (and spouse and dependent children)	R57 600	R60 000		
Foster Child Grant				
<i>There is no means test for a Foster Child Grant</i>	n/a	n/a		
Care Dependency Grant				
Income: single caregiver	R121 200	R129 600		
Income: married caregiver (and spouse)	R242 400	R259 200		
ADULT GRANTS				
Disability Grant				
Assets: single person (and dependent children)	R484 800	R518 400		
Assets: married couple (and dependent children)	R969 600	R1 036 800		
Income: single person (and dependent children)	R29 112	R31 296		
Income: married couple (and dependent children)	R58 224	R62 592		
Grant-in-Aid				
<i>There is no means test for a Grant-in-Aid</i>	n/a	n/a		
Older Person's Grant (pension)				
Assets: single person (and dependent children)	R484 800	R518 400		
Assets: married couple (and dependent children)	R969 600	R1 036 800		
Income: single person (and dependent children)	R29 112	R31 296		
Income: married couple (and dependent children)	R58 224	R62 592		
War Veterans' Grant				
Assets: single person (and dependent children)	R484 800	R518 400		
Assets: married people (and dependent children)	R969 600	R1 036 800		
Income: single person (and dependent children)	R29 112	R31 296		
Income: married couple (and dependent children)	R58 224	R62 592		

There is no means test – and therefore no thresholds – for the Social Relief of Distress award, which is awarded to people with insufficient means and at the discretion of the official, according to circumstances. Although there is no formal means test, their income and assets are taken into account, to determine whether the applicant does require assistance.

Appendix E: SOUTH AFRICAN SOCIAL SECURITY AGENCY (SASSA)

Toll-Free Helpline: 0800 601 011

SASSA NATIONAL OFFICE

SASSA House
501 Prodinsa Building, Cnr Beatrix and Pretorius Street, Pretoria
Private Bag X55662, Arcadia, Pretoria, 0083
Phone: 012-400 2000

SASSA REGIONAL EXECUTIVE MANAGERS

KWAZULU-NATAL

1 Bank Street, Pietermaritzburg
Private Bag X9146, Pietermaritzburg,
3201

Regional executive manager: Mr. Ngidi
Phone: 033-846 3330
Fax: 033-846 9595
nhlanhlavn@sassa.gov.za

Grants manager: Mrs Setlaba
Ph: 033-846 3370

NORTH WEST

SASSA House, University Drive, Mmabatho
Private Bag X44, Mmabatho, 2735

Regional executive manager: Mrs Mvulane
Phone: 018-389 4005
zodwam@sassa.gov.za

General manager – Grants: Mr van Heerden
Phone: 018-389 4108
denverh@sassa.gov.za

Senior manager – Communication & Marketing: Ms Selemeni
Phone: 018-389 4029
smangas@sassa.gov.za

SASSA REGIONAL OFFICES

WESTERN CAPE

Golden Acre, Adderley St, Cape Town
Private Bag X9189
Cape Town, 8000

Phone: 021-469 0200
Fax: 021-469 0260

FREE STATE

African Life Building
75 St Andrews St, Bloemfontein
Private Bag X20553
Bloemfontein, 9300

Phone: 051-409 0837
Fax: 051-409 0857

LIMPOPO

43 Landros Mare St, Polokwane
Private Bag X9677
Polokwane, 0700

Phone: 015-291 7400
Fax: 015-291 7996

NORTHERN CAPE

2 Cecil Sussman Rd, Kimberley
Private Bag X6011
Kimberley, 8300

Phone: 053-802 4900
Fax: 053-832 5225

NORTH WEST

Master Centre Industrial, Mafikeng
Private Bag X6
Mmabatho, 2735

Phone: 018-381 7400
Fax: 018-381 4014

KWAZULU-NATAL

1 Bank St, Pietermaritzburg
Private Bag X9146
Pietermaritzburg, 3201

Phone: 033-846 3300
Fax: 033-846 9595

EASTERN CAPE

3-33 Phillip Frame Rd
Waverley Offices
Chiselhurst, East London

Phone: 043-707 6460
Fax: 043-707 6480

GAUTENG

28 Harrison St, Johannesburg
Private Bag X3
Marshalltown, 2170

Phone: 011-374 1600
Fax: 011-833 4014

MPUMALANGA

2 Bester St, Progress House, Nelspruit
Private Bag X11230
Nelspruit, 1200

Phone: 013-753 5400
Fax: 013-753 5109

Appendix F: SOCIAL DEVELOPMENT

MINISTRY

PRETORIA

HSRC Building, 134 Pretorius Street,
Private Bag X885, Pretoria, 0001
Tel: 012-312 7636
Fax: 012-325 7071

CAPE TOWN

10th Floor, 120 Plein Street, Cape Town
Private Bag X9153, Cape Town, 8000
Tel: 021-465 4011
Fax: 021-465 4469

DEPARTMENT: PROVINCIAL OFFICES

NORTHERN CAPE

Mimo's Complex, Barkley Road,
Kimberley, 8301
Private Bag X5042, Kimberley 8301

Mr Herman Mooketsi
Phone: 053-874 4832
Fax: 053-871 1062
Cell: 082 593 3930

HOD: hmoomketsi@ncpg.gov.za
imanyane@ncpg.gov.za
Secretaries: ncorns@ncpg.gov.za

MPUMALANGA

Building Nr 3, Nr 7 Government
Boulevard, Riverside Park, Nelspruit 1200
Private Bag X11213, Nelspruit 1200

Ms NL Mlangeni
Phone: 013-766 3082
Fax: 086 520 7302, 013-766 3465
Cell: 082 824 4544

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EASTERN CAPE

Phalo House, Nr 141, Bisho 5605
Private Bag X0039, Bisho 5605

Mr DA Webb
Phone: 040-608 9133/4
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HOD: gavin.marshall@socdev.ecprov.gov.za

NORTH WEST

4th Floor, Provident House, University
Drive, Mmabatho, 2745
Private Bag X6, Mmabatho 2745

Ms LM Kgasi (Acting)
Phone: 018-387 0110
Fax: 018-384 5967
Cell: 083 625 6456

HOD: mkgasi@nwpg.gov.za
Secretaries: molated@nwpg.gov.za

WESTERN CAPE

Union House, 14 Queen Victoria Road,
Cape Town, 8001
Private Bag X9112, Cape Town 8000

Ms L Koleka
Phone: 021-483 3083
Fax: 021-483 4783
Cell: 082 887 7827

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FREE STATE

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Phone: 012-312 7407/7531

DURBAN OFFICE

20 Intersite Avenue, Springfield Park, Durban

Appendix G: EXAMPLES OF LETTERS

Letter requesting SASSA to reconsider its decision with respect to a grant

[Letterhead]

[Date]

Our Reference: _____

Your Reference: _____

Dear Sir/Madam,

Re: Request for SASSA to reconsider its decision in the matter of Mr/Mrs. XXX with ID no. 0000000000000000

In my capacity as (*e.g. paralegal at XX community advice office*) I am assisting the above-mentioned client to communicate with SASSA in terms of Section of the amended Social Assistance Act of 2010, which I hereby do within the 90 days stipulated by the Act. Ms/Mr. [name] has mandated me to ask the Agency to reconsider its decision with respect to his/her grant; and to follow up and receive all correspondence relating to this matter.

On (date), Mr/ Mrs XX received correspondence from SASSA in which it was stated that(*application for a grant was rejected/temporary disability grant was given when permanent requested/amount of the grant was less than anticipated etc*).

(*if relevant*) Unfortunately, no reasons/insufficient reasons were given for this decision.

Kindly take note that Ms/Mr. [XX] lodged all documentation required in terms of the regulations. Ms/Mr. XX believes that the relevant SASSA service centre officer did not apply her/his mind to the application and the supporting documents and I therefore request that you reconsider your decision on the following grounds:

(*Here you must explain why you believe the client's application should have been favourably received, and refer to the documentation that supported the application. Re-attach this documentation.*)

We look forward to a positive outcome to this request within 30 days of this letter. If you should reject this request, however, we ask that in your reply, you furnish us with sufficient reasons for your decision to enable us to consider an appeal on behalf of our client.

Yours sincerely

[Name]

Note: This chapter has been written in accordance with the new Social Assistance Amendment Bill which was tabled in Parliament in March 2010. The Bill is concerned largely with the definition of disability, and the mechanisms for reconsideration and appeal of SASSA decisions. We anticipate that the Bill will be passed by parliament and that regulations will follow. It will be important to refer to these as soon as they are available.

Letter of appeal

[Letterhead]

[Date]

Our Reference: _____

Your Reference: _____

Honourable Minister

Re: Appeal in the matter of Mr/Mrs. XX with ID no. 0000000000000000

In my capacity as (*e.g. paralegal at XX community advice office*) I am assisting the above-mentioned client to communicate with you in terms of Section 18(1) of the Social Assistance Act 13 of 2004. Ms/Mr. [XX] has mandated me to appeal SASSA's decision with respect to his/her grant; and to follow up and receive all correspondence relating to this matter.

On [date], Mr/ Mrs XXX received correspondence from SASSA in which it was stated that(*application for a grant was rejected/temporary disability grant was given when permanent requested/amount of the grant was less than anticipated etc*). We wrote to SASSA on [date] requesting that they reconsider this decision, but on [date] we received their correspondence confirming that they had upheld their initial decision.

(if relevant) Unfortunately, no reasons/insufficient reasons were given for this decision.

Kindly take note that Ms/Mr. [name] lodged all documentation required in terms of the regulations. Ms/Mr. XX believes that the relevant official at SASSA did not apply his/her mind to our request for reconsideration together with the supporting documents. Our client would therefore like to appeal SASSA's decision on the following grounds:

(Here you must explain why you believe the client's application should have been favourably received, and refer to the documentation that supported the application. Re-attach this documentation.)

We therefore ask for an appeal hearing date within 30 days of your office receiving this correspondence.

We trust this appeal application is in order and await the date of the appeal.

Yours sincerely,

[Name]

Appendix H:

INTERPRETATIVE SUMMARY:

Promotion of Access to Information Act (PAIA), No. 2 of 2000

During apartheid there was secrecy in government that meant citizens could not access information from public bodies.

Section 32 of the South African Constitution (Act 108 of 1996) states that 'everyone has the right of access to any information held by the state'. Following this principle, the government enacted a new law to ensure that all citizens can access any information that is held by the state, or another person, which is required to enable them to protect and exercise their rights. This new law, the Promotion of Access to Information Act (No. 2 of 2000) – referred to as PAIA – was enforceable from 9 March 2001.

According to PAIA, the South African Social Security Agency (SASSA) is a public body. Therefore, they have to comply with certain provisions to make their information accessible to the public. The most important provisions relating to accessing information about social grants applicants and beneficiaries are as follows:

- SASSA's Chief Executive Officer is the information officer. She/he may delegate other SASSA officials to act as deputy information officers. The information officer and/or the deputy information officer(s) must provide access to information requested (Sec 1) within 30 days (with another 30-day extension if necessary, after giving a notice of deferment).
- SASSA must provide information about the Agency, especially its functions and contact details (Sec 14(1)) by means of a manual in at least three official languages which is updated regularly.
- The Agency should make sure that the public knows what information they can access automatically (Sec 15(1)) – for example annual reports and policy documents of the Agency as well as what information is free and which needs to be paid for.
- SASSA must have a proper system for handling requests for information regarding, for example, reasons why an application for a grant has been rejected.

- The Agency must have a procedure for internal appeal which may be used by the person requesting information when they are refused access to information; or are charged high fees for accessing information; or when their request for information is not responded to within the specified 30-day period (called a 'deemed refusal') (Sec 74).
- An applicant for, or beneficiary of, a social grant (Sec 11(1)) (or their procurator – Sec 1) can request information about their record in any form that it was recorded (Sec 1 and Sec 4) without having to pay the R35 request fee. The person requesting the information will need to pay an access fee for locating and photocopying the record (Sec 22). However, the PAIA Regulations published on 15 October 2005 stipulate that the access fees are not payable if the person requesting the information earns less than R14 700 per annum.
- If the information requested cannot be found because it does not exist or is lost, SASSA must say this in an affidavit.
- PAIA provides a special form, printed in Government Notice R223, 9 March 2001, that can be sent to SASSA by post, fax or e-mail (Sec 18(1)) to request information about an application. The request should state the requester's name and address or fax number as well as the preferred language of the record requested. If the person who wants information cannot read/write or is a person with a disability, then they are able to just ask for the information without filling in the form. The SASSA information officers must fill in the form for them and give them a copy (Sec 18).
- The SASSA information officer/s must give all the necessary help to the person who wants to request information, for example fill out the request form or give correct reasons why information cannot be provided (Sec 19).
- If a request has been made to SASSA and the information is actually held by the Department of Social Development, then the request must

be forwarded to the Department by the Agency within 14 days (Sec 20(2)).

- A SASSA official cannot refuse to provide information about their function, position, title, contact details and responsibilities.

There are only a few reasons why it would be acceptable to refuse information. These include:

- protecting someone else's confidential information unless the other person gives permission to share their information (Sec 34);
- protecting the life or physical safety of people, as well as the safety and security of buildings or equipment (Sec 38);
- protecting police dockets in bail hearings as well as law enforcement and legal proceedings (Sec 39) and documents from these proceedings (Sec 40);
- the fact that a record that is only an opinion, advice or report prepared for consultation or discussion to help formulate a policy (Sec 44);
- protecting the health and well-being of the requester by consulting with a doctor about the effect of disclosing the record.

However, in all these cases there is also a 'public interest override' which means even if the record or document requested belongs to a category of information to which access may or must be refused, that record or document can and must be disclosed or released to the person requesting it if it contains information showing evidence of serious violation of the law.

If a request for information is refused and the applicant believes this was not fair, then they can lodge an internal appeal against SASSA (Sec 74(1)(a)). A prescribed form must be sent to the information officer within 60 days (Sec 75(1)(a-b)). In addition, the applicant must provide their contact details of where to be notified of the decision, as well as the appeal fee (Sec 75 (1)(c)). Within 10 days of receiving this appeal form, the information officer will need to send it to the relevant authority (which may be the Minister or provincial MEC) with their reasons for refusal. The decision of an internal appeal must be made within 30 days of receiving the notice of appeal if no-one else is affected by the decision (Sec 77(4)). The requester may then go to court to challenge the decision of the internal appeal (Sec 75(5)).

You may obtain further information on PAIA by contacting the Open Democracy Advice Centre (ODAC) in Cape Town:

Advice centre helpline: 0800 525 352 (Toll-free number)
 Telephone no.: 021-461 3096
 Fax no.: 021-461 3021
 E-mail: odac@opendemocracy.org.za
 Website: www.opendemocracy.org.za

ODAC is an NGO and law centre whose mission is to promote transparent democracy, foster a culture of corporate and government accountability and assist people to realise their human rights. It supports the effective implementation of rights and laws that enable access to, and disclosure of, information, such as PAJA and PAIA. ODAC undertakes various initiatives in respect of access to information and protection of whistleblowers – including support to organisations and individuals requesting information, advising whistleblowers, litigating on the Acts and conducting policy work in respect of the legislation.

Appendix I: INTERPRETATIVE SUMMARY: Promotion of Administrative Justice Act (PAJA), No. 3 of 2000

The Constitution protects the rights of everyone to lawful and fair government procedures and decisions. When these rights are not fulfilled, written reasons must be provided. The Promotion of Administrative Justice Act – or 'PAJA' – was enacted to ensure that government is transparent, accountable and open to the public.

An unfair administrative action is when a government body (or a company that fulfils a public function) takes a decision, or fails to take a decision, which affects the people adversely and leads to a direct, external legal effect. This administrative action is deemed therefore not to respect the rights of citizens and is not in accordance with the law (Sec 1).

All administrative actions must be fair in the procedure that it follows (Sec 3(1)). The conditions to be met for a procedure to be fair include that the person must

- be told what the proposed administrative action entails;
- be given the opportunity to make input into the process – alone or with assistance of, for example, a lawyer (Sec 3(2) to 5);
- be given reasons for the action; and
- be told that they will be able to appeal the decision (Sec 3(2)(a–e)).

For example, South African citizens have a right to social grants if they meet the specified criteria. The South African Social Security Agency (SASSA) requests that each person completes an application form for a grant. If in assessing the application, SASSA decides that the grant will be refused, they have to do certain things – that is, they have certain obligations.

1. The applicant has the right to contribute actively to the application process. This would include, for example, stating all the reasons and providing all the proof why they feel they require the grant.
2. The applicant must be notified of the decision in writing – and reasons for refusal must be given.
3. The applicant has the right to disagree with SASSA's decision to refuse the grant and may, in terms of Section 18, lodge an appeal with the Minister of Social Development within 90 days of notification of the outcome of the application. Note that in all letters of rejection or where a

reduced or temporary grant is awarded, the person concerned is informed of his or her right of appeal to the Minister of Social Development. If the appeal upholds the previous decision, the applicant can take the matter to court.

An administrator (government official) can only decide not to follow the above steps if reasonable and justifiable, after considering what the need is for this process. They must also decide whether it is urgent and will promote efficient administration. Alternately, the administrator can follow a different process but it must still be fair (Sec 4–5).

An administrative action that affects the public as a whole will be procedurally fair if it:

- includes the holding of a public inquiry;
- gives notice to all who may be interested in and affected by the proceedings; and
- invites public comments on the matter (Sec 4(1)(a–c)).

When a different process is followed, it still needs to be fair by giving the chance for public engagement with the matter (Sec 4(a)).

The public enquiry must be held either by the administrator or a suitable person or panel of persons. It must include a public hearing and follow all other procedures including the compilation of a written report of the public hearing and reason given for the proposed administrative action. Thereafter, the report should be published in the Government Gazette in English and another official language, and in other forms of mass media.

When a person has become aware that an administrative action has negatively influenced their rights, they should request written reasons for the actions from the administrator within 90 days (Sec 5(1)) or less (Sec 9(1)(a)). The administrator must then respond in writing within 90 days (Sec 5(2)). If no reasons are given, a court of law can decide that there was no good reason for the administrative action (Sec 5(3)). The administrator may decide not to give any reasons only after considering what the need is for the reasons and whether it is urgent and will promote efficient administration. Alternately, the administrator can follow a different process but it must still be fair (Sec 5(5)). However,

the administrator can ask the Minister of Justice whether they can publish reasons for their actions in the Gazette without the public asking for these reasons (Sec 5(6)).

Anyone may ask for the review of an administrative action in a court or tribunal (Sec 6(1)):

- if the administrator is found not to be authorised, is suspected of bias (Sec 6(2)(a)) or has not taken the action in the prescribed time (Sec 6(3)); and/or
- if a procedure was not followed correctly

and fairly, or it contravened law, or when a administrative action/decision was not taken (Sec 6(2)(b-i)).

The court may

- find that the decision was fair and ask the administrator to provide reasons; and/or
- prohibit the administrator from performing an action; and/or
- set aside the action (Sec 8(1)); and/or
- grant temporary relief or an order to costs.

You may obtain further information on PAJA by contacting the Open Democracy Advice Centre (ODAC) in Cape Town:

Advice centre help line: 0800 525 352 (toll-free number)
 Telephone no.: 021-461 3096
 Fax no.: 021-461 3021
 E-mail: odac@opendemocracy.org.za
 Website: www.opendemocracy.org.za

ODAC is an NGO and law centre whose mission is to promote transparent democracy, foster a culture of corporate and government accountability and assist people to realise their human rights. It supports the effective implementation of rights and laws that enable access to, and disclosure of, information, such as PAJA and the Promotion of Access to Information Act (PAIA). ODAC undertakes various initiatives in respect of access to information and protection of whistleblowers – including support to organisations and individuals requesting information, advising whistleblowers, litigating on the Acts and conducting policy work in respect of the legislation.

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