

B L A C K S A S H

MAKING HUMAN RIGHTS REAL

Black Sash Submission to the Gauteng Provincial Legislature

Re: Social Assistance Amendment Bill B 5B - 2010

Sent via email to the Gauteng Provincial Legislature: Ndlovu@gpl.gov.za

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Introduction

The Black Sash Trust welcomes the opportunity to make a public submission on the Social Assistance Amendment Bill [**B 5B - 2010**].

We make our submission in accordance with sections 70(1) and 72(1) of the Constitution of the Republic of South Africa, Act 108 of 1996.

Our submission deals primarily with:

- (a) The Bill's proposal for SASSA to conduct an internal review (reconsideration of an application) and the Social Assistance Appeals crisis;
- (b) The initial Bill's proposed definition of disability and its implications for those suffering a chronic illness.

In our Submission, we raise fundamental concerns about the proposed Bill, which if not addressed adequately, would have a severe and negative impact on the quality of life (and right to social assistance) of thousands of people in South Africa.

Short notice period for public participation and poor inter-governmental co-ordination of the process

The five day notice period given to respond to the proposed Bill simply does not provide the public (especially organisations with limited resources) with adequate time to engage properly with its content and make critical and meaningful input. The Black Sash would therefore like to place on record our concern over the short notice period provided by the NCOP Provincial Committee.

We call on the committee to extend the deadline for written submissions as well as the public hearings, and to ensure that affected communities are adequately informed (by advertising on community radio stations and in community newspapers) and given sufficient time to respond to the proposed Bill.

A. Internal Review and Appeals backlog

1. Internal Review

The Black Sash believes the Bill's proposal to automatically and uniformly conduct an internal review of all unsuccessful applications before allowing an independent appeal, would be a mistake and would jeopardise an applicant's right to appeal. Currently, standard practice requires SASSA officials to issue a receipt once all relevant documents are submitted together with the grant application. We would argue that internal reviews should only be conducted before an independent appeal, if it is found that the application requires additional technical information and the gathering of this information would avoid the necessity of an appeal.

The proposed automatic internal review process only makes sense in instances where applicants have been rejected for technical reasons i.e. the official failed to check or collect the correct documentation or an applicant failed to provide the appropriate medical or financial evidence. In these cases, we would agree that applicants should not have to go through the entire appeal process just to rectify technical or administrative mistakes. For this reason we argue that the primary purpose of internal review or reconsideration of an application should be to resolve, finalize and approve applications to the satisfaction of the beneficiary, in instances where it is found that the submission of additional technical and administrative information could avoid the necessity of an appeal.

Where the reconsideration of an application requires SASSA to review medical assessments, The Black Sash recommends that SASSA provides as part of the written response to the applicant proof which shows that all of the medical reports by the various medical practitioner's on file is part of the internal review. Once a valid proof is provided and the applicant is satisfied, only then will SASSA's review constitute a valid reconsideration which dispels any loophole which could purport that SASSA just 'rubber stamps' the recommendations made by its own medical advisors.

The Black Sash however, cannot support the proposed "blanket" internal review process for those who have provided all the correct documentation but whose application is turned down, for example if SASSA's medical practitioner does not approve their need for a Disability Grant after considering the complete documentary evidence. In these instances, the Black Sash would recommend that the applicant be able to appeal directly to the Minister of Social Development without having to go through an internal review process first.

We would also recommend that the proposed internal review take no longer than 30 days. If the application has not been processed within the suggested period or is again rejected, the applicant must retain their right to an independent appeal.

2. Appeals backlog

The Black Sash would like to use this opportunity to alert the Gauteng Provincial Legislature to the massive backlog in appeals which the Department of Social Development is failing to manage. We urge the Committee to urgently seek effective ways of resolving the crisis so that the tens of thousands of people affected by these unacceptable administrative delays can finally realise their right to an independent and speedy appeal hearing.

As suggested above, one of the effective ways is to have crystal clear and proper procedures at the application point. The applications rejected on technical ground are to be subjected to internal review, those that falls outside this bracket automatically go straight to appeals process.

We are deeply concerned that the proposed Bill makes no reference to the current backlog crisis. The Social Assistance Act, 2004 requires that all appeals be heard by the Minister of Social Development or by a Tribunal appointed by the Minister. However, the Department of Social Development failed to establish a Tribunal when the Act was first introduced in 2005. It was eventually set up in 2008, inheriting a logistical and administrative nightmare as appeal hearings had been suspended up until 2007. These unacceptable delays have had a

serious and devastating effect on the health and livelihoods of tens of thousands of very vulnerable people.

In 2008, Black Sash Regional Offices reported on their fruitless attempts to resolve the cases of clients who had waited for months if not years for appeal hearing dates. According to the Department of Social Development's own 2010 figures, about 60 000 people across the country remain trapped in this systemic appeals backlog. The appointed Tribunal is attempting to address the problem but at its current rate and allocated resources, it will take at least two to five years to remedy the situation (according to some DSD officials).

The Black Sash has persistently engaged with DSD, the Tribunal and the Minister in an effort to find a solution. For more than a year, we held meetings, wrote letters and even entered into formal agreements in a bid to address the backlog. After finding no viable way forward, we joined 24 disabled people from the Eastern Cape and have instituted legal action against the Department of Social Development.

B. Definition of disability and its implications for those with a chronic illness.

The initial Bill, published and presented by the Department of Social Development to the Portfolio Committee for Social Development, proposed a definition of disability. The Black Sash argued at the time that if the Bill was passed with these provisions, it would have had serious implications for those with chronic illnesses.

We are aware that the version of the Bill presented to the National Council of Provinces does not include this definition of disability. The Black Sash would, however, like to make this committee aware of our concerns around the initial proposals in case such a Bill is reintroduced in future. We have attached for the detailed argument we made to the Portfolio Committee for Social Development but would like to highlight some of the more important observations.

Black Sash has for many years expressed its concern that there has been no agreed definition of disability or consistent application of a standardised tool to assess disability. This has subjected many of our clients to the discretion of medical practitioners and officials, which contradicts the basic principles of administrative justice.

For this reason, we do understand the need to implement the standardized disability tool (known as the Harmonised Assessment Tool, or HAT) based on a clear definition of disability linked to functionality. We are, however, very conscious of the possible implications of reforms for people who are chronically ill. Many people with chronic illnesses, notably HIV/AIDS, will inevitably be excluded from the disability grant with the application of the HAT.

In principle, we do not think it is appropriate for people who have chronic illnesses to necessarily be defined as disabled, as it both misrepresents these people's potential for health and works perversely against health-affirming behaviours. For example, most people can manage a chronic illness (whether communicable or non-communicable) if they have

access to medication and can maintain a healthy lifestyle. It is important to note however, that both these preconditions are dependent on sufficient income.

It has been our observation that the health of chronically ill people who received the disability grant improved but deteriorated again, when the grant was withdrawn. We would argue that if the only form of income support available to people with chronic illnesses is one associated with deteriorating health (often to the point of functional disability), our society is essentially encouraging those who are ill to become disabled too. We believe that this policy trajectory will create an intolerable burden for individuals, families, communities and our public health systems.

It is in this context, that we would like to make the case for the inclusion of a provision (in a future Bill) for those who are chronically ill to receive income support. We would argue that it would be a grave error if any proposed Bill dealing with a definition of disability goes ahead without a provision for chronic illness. Such provision should provide surety that chronically ill people who currently receive the disability grant (as well as those who are not yet on the social assistance system) are considered for an alternative grant to provide some income support.

The dire consequences for thousands of chronically ill beneficiaries and their families (who currently depend on the state assistance and who are likely to lose the grant) cannot be ignored. Even though the longer term effects on the thousands of people that stand to lose their disability grant is difficult to quantify, we know it will be extremely detrimental to both the beneficiary and his or her household.

We share our thinking with this Committee and urge it to engage on a Provincial and National level around this critical area and to collectively start thinking about how our social assistance system can include people with chronic illnesses.

C. The Black Sash Trust

The Black Sash Trust is a non-profit human rights organisation dedicated to ensuring the recognition and protection of all our citizens' human rights – by law and through monitoring the implementation of these laws.

Our aim is to empower marginalised communities and people (with the emphasis on vulnerable groups) to recognise and exercise their human rights, particularly their social and economic rights, and to create a society which has effective laws and delivery systems including comprehensive social protection for the most vulnerable.

Our advocacy work includes both primary and secondary advocacy strategies: Primary advocacy targets decision makers in government, in industry and in civil society who have the power and the resources to effect the desired change. Secondary advocacy targets individuals, groups and organisations that have the power to work together to persuade the decision makers to effect the desired change.

D. Organisations and individuals who endorse our submission to the Portfolio committee of Social Development:

- 1) Treatment Action Campaign
- 2) PHANGO Patient Health Alliance of Nongovernmental Organisations with at least 22 member organisations
- 3) Alliance for Children's Entitlement to Social Security an alliance with at least 1300 member organisations
- 4) Pierre de Vos, Claude Leon Foundation Chair in Constitutional Governance, Department of Public Law, University of Cape Town
- 5) Dr. Monde Makiwane, Senior Research Specialist, HSRC