

REPUBLIC OF SOUTH AFRICA

SOCIAL ASSISTANCE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76);
Bill published in Government Gazette No. 32986 of 1 March 2010)
(The English text is the official text of the Bill)*

(MINISTER OF SOCIAL DEVELOPMENT)

[B 5—2010]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Social Assistance Act, 2004, so as to insert a definition; to further regulate the eligibility for a disability grant; to enable applicants and beneficiaries to apply to the Agency to reconsider its decision; to further regulate appeals against decisions of the Agency; and to effect certain textual corrections; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 13 of 2004

1. Section 1 of the Social Assistance Act, 2004 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of “**Director-General**” of the following definition: 5

“ **‘disability’**, in respect of an applicant, means a moderate to severe limitation to his or her ability to function as a result of a physical, sensory, communication, intellectual or mental disability rendering him or her unable to—
(a) obtain the means needed to enable him or her to provide for his or her own maintenance; or
(b) be gainfully employed;” 10

Amendment of section 5 of Act 13 of 2004

2. Section 5 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) the following paragraph: 15

“(b) subject to section [17] 16 is resident in the Republic;”.

Substitution of section 7 of Act 13 of 2004

3. The following section is hereby substituted for section 7 of the principal Act:

“Care dependency grant

7. [(a)] (1) A person is, subject to section 5, eligible for a care dependency grant if he or she is a parent, primary care giver or foster parent 20

of a child who requires and receives permanent care or support services due to his or her **[physical or mental]** disability.

[(b)] (2) A person contemplated in **[paragraph (a)]** subsection (1) is not eligible for such a grant if the child is cared for on a 24 hour basis for a period exceeding six months in an institution that is funded by the State.”. 5

Substitution of section 9 of Act 13 of 2004

4. The following section is hereby substituted for section 9 of the principal Act:

“Disability grant

9. A person is, subject to section 5, eligible for a disability grant, if he or she has— 10

- (a) **[has attained the prescribed age; and]** a disability;
- (b) **[is, owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance]** met the prescribed requirements of the means test and the income threshold; 15
and
- (c) attained the prescribed age.”.

Amendment of section 11 of Act 13 of 2004

5. Section 11 of the principal Act is hereby amended by the substitution in paragraph (b) for the words preceding subparagraph (i) of the following words: 20

“[owing to a physical or mental] has a disability**[, is unable to provide for his or her maintenance,]** and—”.

Substitution of section 12 of Act 13 of 2004

6. The following section is hereby substituted for section 12 of the principal Act:

“Grant-in-aid 25

12. A person is, subject to section 5, eligible for a grant-in-aid if[, that person **[is in such a physical or mental condition that he or she]** has a disability and as a result requires regular attendance by another person.”.

Substitution of section 18 of Act 13 of 2004, as amended by section 2 of Act 6 of 2008

7. The following section is hereby substituted for section 18 of the principal Act: 30

“[Appeal] Reconsideration of decision by Agency and appeal

18. (1) If an applicant or a beneficiary disagrees with a decision made by the Agency in respect of a matter regulated by this Act, that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written **[appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision.]** application to the Agency requesting the Agency to reconsider its decision in the prescribed manner. 35

(1A) If an applicant or a beneficiary disagrees with a reconsidered decision made by the Agency in respect of a matter contemplated in subsection (1), that person or a person acting on his or her behalf may, within 90 days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision. 40

- (2) The Minister may— 45
- (a) upon receipt of the applicant’s or beneficiary’s written appeal and the Agency’s reasons for the decision confirm, vary or set aside that decision; or

(b) appoint an independent tribunal to consider an appeal contemplated in **[subsection (1) in accordance with such conditions as the Minister may prescribe by notice in the *Gazette*]** subsection (1A) in the prescribed manner and that tribunal may, after consideration of the matter, confirm, vary or set aside that decision **[or make any other decision which is just]**. 5

(3) If the Minister has appointed an independent tribunal in terms of subsection (2)(b) all appeals contemplated in subsection [(1)] (1A) must be considered by that tribunal.

(4) Notwithstanding subsection (1A), the independent tribunal may in the prescribed manner condone any late application by an applicant or a beneficiary.” 10

Short title

8. This Act is called the Social Assistance Amendment Act, 2010.

**MEMORANDUM ON THE OBJECTS OF THE
SOCIAL ASSISTANCE AMENDMENT BILL, 2010**

1. PURPOSE OF BILL

The Bill seeks to—

- insert a definition of “disability” in order to provide clarity on the eligibility for a disability grant;
- allow both applicants and beneficiaries an opportunity, before appealing to the independent tribunal, to request the South African Social Security Agency (the Agency) to reconsider its decisions in order to expedite the resolution of disagreements between applicants, beneficiaries and the Agency;
- allow beneficiaries an opportunity to appeal against a decision of the Agency;
- make provision for the consideration of appeals by the independent tribunal in a manner to be prescribed by regulation; and
- effect certain consequential amendments as a result of the insertion of the new definition and to effect certain textual corrections.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

- The Agency.
- The National Department of Health.
- The Social Sector Cluster of the Forum of South African Directors General.
- The South African Federal Council on Disability.
- South African Disability Alliance.

3. FINANCIAL IMPLICATIONS FOR STATE

The cost in respect of the health professionals that are required to implement the provisions of the Bill is to be determined by the Department of Health. The initial training of 400 officials was conducted by the Department of Social Development at a cost of R462 683. It was estimated that the Department of Health will require R2 million to train 1 000 officials at 400 health facilities across the country.

4. PARLIAMENTARY PROCEDURE

- 4.1 The State Law Advisers and the Department of Social Development are of the opinion that this Bill should be dealt with in terms of the procedure prescribed by the provisions of section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “Welfare services”.
- 4.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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