SUPPLEMENTARY SUBMISSION ON SOCIAL ASSISTANCE AMENDMENT BILL, 2010

Introduction

The AIDS Law Project (ALP) is grateful for the opportunity to make this supplementary submission on the Social Assistance Amendment Bill, 2010 (“the Bill”) to the Portfolio Committee on Social Development in the National Assembly (“the Committee”). Following our oral presentation to the Committee on 20 April 2010, the ALP was requested to recommend a definition of disability that addresses the concerns raised in our written and oral submissions.

As discussed in our first submission, defining a disability as a physical or mental disability – as the Bill currently does – is both circular and vague and will inevitably cause further uncertainty at various levels of decision-making. We therefore recommend that “disability” be defined in section 1 of the Social Assistance Act (“the Act”) as follows:

‘disability’, in respect of an applicant, means a physical or mental impairment that substantially limits his or her ability to –

(a) obtain the means necessary to enable him or her to provide for his or her own maintenance; or
(b) be gainfully employed

In addition, physical and mental impairments should be defined in section 1 of the Act as follows:

‘Physical impairment’ means any physiological disorder or condition or anatomical loss affecting one or more of a person’s body systems; and

‘Mental impairment’ means a positive diagnosis of a mental health related illness in terms of accepted diagnostic criteria made by a mental health care practitioner.

We are advised that South African Social Security Agency (SASSA) officials sometimes

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consider applications for disability grants without having regard to the specific circumstances of the applicant. For example, the reason given for the rejection of certain applications by clients of the Legal Resources Centre (LRC) is that the “chronic medical condition is controllable with regular medication from the clinic”,\(^1\) notwithstanding the fact that the condition of those individual applicants is not – in fact – ameliorated or controlled by medication.

For this reason, we suggest the inclusion after section 9 of the Act of a provision requiring SASSA officials to take into account the specific circumstances of each applicant, such as whether he or she in fact has access and is responding well to appropriate medication. Our proposed section 9A thus reads as follows:

> The determination of whether an impairment substantially limits an applicant’s ability to maintain himself or herself or be gainfully employed shall be made on a case by case basis, without having regard to the potential ameliorating effects of medication or medical supplies to which the applicant does not have access or is not responding well (with the exception of eyeglasses or contact lenses that correct vision).

It became clear during the preparation of this submission that providing appropriate guidance to SASSA officials requires, in addition to a clear definition, specific guidance on the medical conditions that are deemed to be impairments. In this regard, we recommend that the Minister prescribe, by way of regulations, a list of medical conditions that are automatically deemed to be impairments. We emphasise that an impairment, in an of itself, is not a disability – it should only be considered as a disability for the purposes of the Bill if and when the impairment substantially limits that person’s ability to provide for himself or herself or be gainfully employed.

Although the proposed list of medical conditions will not cure all of the problems in the current system, the ALP is of the view that such a list will go a long way towards ensuring an administratively fair procedure for the awarding of disability grants. In this regard, kindly refer to the attached annexure, which sets out a graphic illustration of how the proposed list fits into the disability grant procedure.

\(^1\) *Ntamo v Minister of Social Development and Others*, case no. 689 (Eastern Cape High Court, Grahamstown) at pages 7-9 of Sarah Sephton’s supporting affidavit.
We envisage the proposed list of medical conditions to be compiled by an expert committee established by the Minister and consisting of a cross-section of health practitioners with the requisite expertise in mental and physical conditions. The list should be comprehensive but not exhaustive. In other words, a health practitioner should still be able to determine whether a medical condition that does not appear on the list qualifies as a physical or mental impairment.

In light of the above, the ALP recommends the insertion of the following clauses to empower the Minister to establish a committee to compile a list of conditions that are automatically deemed to be impairments and to publish such a list in regulations:

**Committee on Physical and Mental Impairments**

9B(1) There is hereby established a committee to be known as the Committee on Physical and Mental Impairments, which may exercise the powers and shall perform the functions conferred upon or assigned to the committee by or in terms of this Act.

(2) The Minister shall prescribe the composition of, and the process in terms of which members are appointed to, the Committee on Physical and Mental Impairments.

(3) The Committee on Physical and Mental Impairments shall, within six months of its establishment, recommend a list of medical conditions that are deemed to be impairments for the purposes of this Act.

(4) The Minister shall, on the recommendation of the Committee on Disability Impairments, prescribe a list of medical conditions that are deemed to be impairments for the purposes of this Act.

**Conclusion**

Once again we thank the Committee for the opportunity to make this supplementary submission and invite the Committee to contact Umunyana Rugege with any questions at rugege@alp.org.za or 011 356 4120. Kindly note that our original submission was endorsed by the Treatment Action Campaign (TAC), the LRC and the Socio-Economic Rights Institute of South Africa (SERI).