16 April 2010

SUBMISSION ON THE SOCIAL ASSISTANCE AMENDMENT BILL, 2010

Introduction
The AIDS Law Project (ALP) welcomes the opportunity to make this submission on the Social Assistance Amendment Bill, 2010 ("the Bill") to the National Assembly Portfolio Committee on Social Development ("the Committee"). In this submission, we deal with two of the proposed amendments to the Social Assistance Act, 2004 ("the Act"): clause one and seven of the Bill.

Purpose and structure of the submission
As a section 21 not-for-profit company and a registered law clinic, the ALP seeks to develop, implement and use laws and policies to protect and advance the rights of people living with HIV/AIDS. In so doing, it aims to ensure a rights-based response to the HIV/AIDS epidemic that it believes is best suited to reducing new HIV infections and minimising the negative social impact of AIDS.

Many people living with HIV/AIDS or other chronic illnesses require social assistance to survive. These chronic illnesses often have a debilitating effect and are rarely cured completely. Those living with chronic illnesses must have access to medication and adequate nutrition in order to live with dignity. Many are currently eligible for the disability grant (DG). The ALP’s interest in the Bill thus relates to the way in which the proposed amendments – if enacted into law – would likely to affect people living with HIV/AIDS or other chronic illnesses.

From the outset, it should be noted that it is not the position of the ALP that people living with HIV/AIDS are, by definition, disabled. It is well documented that HIV infection is ordinarily manageable with appropriate interventions such as highly active antiretroviral (ARV) treatment (HAART) and adequate nutrition. In some cases, however, chronic conditions nevertheless may result in disability, whether temporarily or permanently.

Nor is it the position of the ALP that all people living with chronic illnesses such as HIV/AIDS should have access to a DG. The ALP is concerned instead with a particular category of people who are living in poverty and have no access to necessary health services and/or social assistance. While the availability of health care and medication are both critical in maintaining the wellbeing of individuals with chronic illnesses, the ability to take control of the given condition is often inhibited by
the inability to afford: (1) extra medication; (2) transport to and from clinics; and (3) adequate nutrition and basic necessities (such as housing, sanitation and water), all of which enable one to live a healthy, positive lifestyle.¹

Summary of our key recommendations
In summary, our submission recommends that Parliament -

(a) Provide clarity in respect of the definition of disability; and
(b) Simplify the appeal process by rejecting the amendment to section 18(1) of the Act and delete all references in the remainder of section 18 of the Act to the “reconsidered decision” of the South African Social Security Agency (SASSA); and
(c) Introduce timeframes in respect of the appeal process.

The State’s legal obligations
Section 27 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”) obliges the state to achieve the progressive realisation of the right of everyone to social security by taking reasonable legislative and other measures within its available resources towards that end. All persons in South Africa who are unable to support themselves and their dependents are, by virtue of section 27, entitled to appropriate social assistance.

As with other socio-economic rights, the right to social assistance must be interpreted in light of the fundamental values of the Constitution, including the requirement to protect a person’s right to human dignity. Treating people with dignity requires the state to act in a reasonable manner towards those claiming social security rights.²

The Act was promulgated to provide for the rendering of social assistance by regulating the administration of social assistance and the payment of social grants.

¹ M Schneider and J Goudge, “Developing a policy response to provide social security benefits to people living with chronic diseases”, Human Sciences Research Council (HSRC) draft report (2007)
² In Njongi v MEC, Department of Welfare, Eastern Cape 2008 (4) SA 237, the Constitutional Court stated as follows:

“The vast majority of people who were deprived of their disability grants as a result of the bewildering conduct of the Provincial Government are the poorest people in our society. Sadly they eked out a miserable existence and the unlawful denial of their grants was unthinkably cruel and utterly at odds with the constitutional vision to the achievement of which that Government ought to have been committed. We remind ourselves that the Constitution in its preamble looks to the improvement of the quality of life of all citizens and that the foundational values of our Constitution revolve around “human dignity, the achievement of equality and the advancement of human rights and freedoms.” (at paragraph 17)
It is important to note that the Act is limited to social assistance. It does not address the broader category of social security, which includes social risk elements such as those related to health, unemployment, old age and employment injuries.\(^3\)

The Supreme Court of Appeal (SCA) has stated that the establishment by the state of a legislative and administrative structure for the making of social grants and the appropriation of moneys for that purpose together go a long way towards fulfilling the state’s constitutional obligation, but by themselves are not enough. What is required, in addition, are reasonable measures to make the system effective.\(^4\) In other words, the state has a constitutional duty to assist those people who are in need of social assistance in a manner that actually gives effect to their constitutional rights.

**The definition of disability**

According to the memorandum on the objects of the Bill, the latter’s purpose is to "insert a definition of 'disability' in order to provide clarity on the eligibility for a disability grant". The ALP, however, is of the view that the definition is vague and does not provide clarity as to who is eligible for a DG and for how long he or she may remain eligible.

The Act currently does not define the term but the meaning can be gleaned from other sections of the Act. For example, section 9 of the Act provides that a person is eligible for a DG if he or she meets the age requirements and "owing to a physical or mental disability, [is] 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".

Section 1 of the Employment Equity Act, 1998 (EEA) defines "people with disabilities" as follows:

"people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment"

The Code of Good Practice: Key Aspects on the Employment of People with Disabilities, promulgated in terms of the EEA, provides guidance on the interpretation of the definition in the EEA.\(^5\) Importantly, the guidance indicates that a recurring physical or mental impairment includes chronic conditions, even though these effects on a person may fluctuate. In addition, people living with chronic illnesses are considered as people with disabilities if the impairment is substantially limiting.

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\(^3\) Social Security: A Legal Analysis (Lexis Nexis Butterworths) 2003 Durban at page 23.

\(^4\) *MEC, Department of Welfare v Kate* 2006 (4) SA 478 (SCA) at paragraph 3.

\(^5\) A copy of the extensive guidance is set out in an annexure to this submission.
The United Nations Convention on the Rights of Persons with Disabilities recognises the diversity of definitions of disability around the world and thus does not prescribe a particular definition.\textsuperscript{6} Rather than defining “disability”, the International Labour Organisation (ILO) Code of Practice on Managing Disability in the Workplace provides a definition similar to the EEA definition of “disabled person”.\textsuperscript{7} Central to all of these definitions is a person’s inability to maintain himself or herself through employment by virtue of his or her disability.

This notion is repeated in the Bill, which introduces the following definition of disability:

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.

\textbf{Vagueness}

However, the ALP is of the view that the insertion of this definition of disability does not provide clarity regarding who is eligible to apply for a DG. This is because it is vague. The definition is circular in that it uses the defined term in the definition itself and, given the diversity of definitions and possible interpretation, it is reasonable to conclude that people living with chronic illnesses do in fact fall into the definition. But this is not clear. This loose definition leaves the assessment of whether a person qualifies for a DG up to the subjective interpretation of the assessor.

Research conducted by the Community Agency for Social Enquiry (CASE) found that doctors are confused about the role they are tasked with fulfilling in respect of social assistance due to the lack of clear guidelines. There is also confusion about whether to award a temporary or a permanent DG. In addition, research conducted by the Department of Social Development (DSD) itself shows that the majority of temporary grant recipients remain in the grant system,\textsuperscript{8} illustrating that many of these recipients should have been awarded permanent DGs at the very outset.

This trend places significant strain on both the Department of Health (DoH) and the DSD, as temporary DG recipients repeatedly reinitiate the grant application process.

\textsuperscript{6} Available at \url{http://www.un.org/disabilities/convention/conventionfull.shtml} (accessed 15 April 2010)

\textsuperscript{7} The ILO defines a disabled person as: “an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical, sensory, intellectual or mental impairment”.

\textsuperscript{8} DSD, “Report on Incentive Structures of Social Assistance Grants in South Africa” (2006) at page V.
Of greater concern is the impact of this inefficient and burdensome process on eligible poor people in desperate need of social assistance.

This lack of clarity in the current as well as proposed regime means the decision to award a DG is largely left to the discretion of the relevant SASSA administrator, in the absence of adequate legislative guidance. The general confusion resulting from these issues has led to different health centres, districts and provinces employing widely differing criteria for administering DGs, inevitably infringing many applicants' constitutional rights. In addition, the social assistance system is already overburdened: the continued lack of clarity will only compound problems, including contributing to the backlog in appeals (which is discussed below).

It has long been established that legislation can be declared ultra vires on the ground of vagueness or uncertainty. In addition, the violation of multiple fundamental human rights, including the rights to equality, dignity and access to social assistance, means that the absence of guidance – in and of itself – is unconstitutional. Put differently, the failure of the legislation to guide the public effectively as to who is eligible for a DG (and for how long) is unreasonable and therefore unlawful.

Recognising the needs of vulnerable persons with chronic illnesses
In addition to the vagueness of the Bill, the ALP notes that neither the Act nor the Bill gives sufficient recognition to the social assistance needs of persons living with chronic illnesses such as HIV/AIDS, hypertension, chronic heart disease, mental illnesses or diabetes who are vulnerable but are excluded from consideration for a DG unless they meet the relevant requirements.

The national HIV & AIDS and STI Strategic Plan for South Africa, 2007 – 2011 (“the NSP”) states that people with disabilities are a particularly vulnerable group and some suffer a double stigma arising from discrimination as a result of their disability and HIV status. The NSP also notes that AIDS is increasingly a cause of disability particularly amongst the poor. It follows that while people’s lives are prolonged through medical interventions such as HAART, it is necessary to provide them with care and support in order to maintain those gains.

The limitation in the current and proposed social assistance regime described above has been recognised by the NSP as an area requiring attention. In particular, chapter 12 of the NSP recommends the introduction of a chronic illness grant.

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10 Dawood v Minister of Home Affairs 2000 (3) SA 936 (CC) at paragraph 54.
11 Cora Hoexter, Administrative Law in South Africa (Juta, Cape Town: 2007) at 298
12 *The NSP recommends that strengthening systems to provide food support to children and adults on chronic medication and the Introduction of a Chronic Diseases Grant, a policy choice currently being considered by the Social Cluster of Government* (NSP at page 121)
recommendation in chapter 12, which deals with effective implementation of the NSP, implies the utility of the chronic illness grant in helping to tackle HIV and TB – for example, by creating incentives for testing and treatment and facilitating access to sufficient food.¹³

This is essentially the same argument advanced in the early 2000s for providing access to HAART: ARV treatment is cost effective as some of the expenditure can be reclaimed as a result of decreasing levels of morbidity and avoiding the consequent burden this would otherwise place on the public health system.¹⁴ The negative effect that undernourishment has on disease progression, treatment adherence and treatment efficacy is well established; as is the dangerous relationship between inadequate housing and infectious diseases such as TB (to which people with chronic illnesses are particularly susceptible).

While developed under the auspices of the South African National AIDS Council (SANAC), the NSP is nevertheless a Cabinet-approved policy of government. Parliament now has the opportunity to ensure its full and proper implementation by addressing the hardships faced by people living with chronic illnesses in accessing social assistance. The ALP recommends that it does so explicitly in the Bill.

People who apply for DGs are poor and vulnerable and live in dire socio-economic circumstances. As of January 2010, there are 1.3 million people accessing DGs.¹⁵ According to a CASE study of 2005¹⁶, 96% of people who receive the DG have no other source of income, 93% of households indicated that the grant had improved the general health of the household. It is clear that if Parliament determines that people living with chronic illness are not covered by the DG, they will be without any social assistance and will no doubt be forced to endure the indignity of poverty and worsening health. According to Statistics South Africa, there are 5.2 million people living with HIV/AIDS in South Africa¹⁷, of those, almost one million are accessing ARVs¹⁸ and it is estimated that in the next 5 to 10 years, five million will need treatment. In addition to the ARVs, many also require related interventions to reduce morbidity and mortality, including access to social services. These are significant numbers that require a comprehensive approach to social assistance.

Because there is no chronic illness grant, many of those individuals who would

¹⁴ Ibid
¹⁵ Department of Social Development figures.
¹⁶ CASE, “Investigation into the Increase in Uptake of Disability and Care Dependency Grants” (2005)
¹⁸ According to the National Comprehensive HIV and AIDS Plan Statistics recently released by the DoH, 921,440 adults and children were accessing treatment as at December 2009.
benefit from it instead try to access the state support that they require through the DG. Parliament needs to clarify the circumstances within which people living with chronic illness are eligible for the DG, and if ineligible, what form of social assistance will be made available to those in need.

Whatever decision Parliament takes, it would be unlawful to discontinue assistance to those who are currently receiving a DG granted in terms of legislation applicable at the time of the award. Unfortunately, however, most people with chronic illnesses who are accessing DGs are generally only awarded a temporary grant. Therefore many current DG recipients will, in time, have to reapply in terms of any new requirements. Given the social and economic circumstances of all DG beneficiaries, it would – in our view – be contrary to the state’s constitutional obligations to withdraw social assistance protection from people living with chronic illnesses without catering for them in some other manner.

It is worth noting that while the Harmonized Assessment Tool currently being implemented by the DSD and DoH is designed to streamline the application, evaluation and awarding of DGs, it limits access for people living with chronic illnesses. The tool, however, was designed to be implemented in conjunction with a chronic illness grant. The result of implementing one without the other is to leave people living with chronic illnesses without social assistance, which again is a violation of the constitutional right to have access to social security.

The appeal procedure
Under the current regime, an applicant for a DG may appeal an adverse decision of SASSA to the Minister of Social Development ("the Minister"). The proposed amendment introduces a double internal step requiring an aggrieved applicant to lodge an application with SASSA requesting it to reconsider its own decision. This application must be made within 90 days of becoming aware of the decision. If SASSA confirms its decision, the applicant has recourse to the Minister and must file such an appeal within 90 days of becoming aware of the SASSA decision.

The LRC has advised us that the current appeal procedure, which is effectively undertaken by the DSD’s Independent Appeals Tribunal ("the Tribunal"), is as follows:

1. SASSA makes its decision.
2. The applicant has 90 days to appeal any adverse decision to the Minister.

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19 SANAC technical task team on treatment, care and support, "Access to Social Welfare for Those Living with HIV, TB and Other Chronic Illnesses" (24 November 2008) at page 6
3. The Minister may decide the appeal or appoint an independent tribunal (the current practice is for the Minister to appoint the Tribunal) – there is no specified time period within which the Minister must make this decision.

4. The Tribunal decides the appeal in three steps:
   (a) Pre-adjudication: a lawyer and doctor consider the appeal;
   (b) Adjudication: a lawyer and a doctor consider the appeal and hold a hearing in which the applicant is invited to make representations; and
   (c) Post-adjudication: a further consideration of the appeal by different members of the Tribunal for quality control purposes.

   (There is no specified period within which the Tribunal must make its decision)

5. The Tribunal provides its decision to the Minister.

6. The Minister informs the applicant of the outcome of the appeal – again, no timeframe is prescribed.

7. If the applicant is still not satisfied with the decision, he or she may apply for a review in the High Court.

The proposed amendment does not set out the respective periods within which SASSA and the Minister must decide the relevant appeal and inform the applicant of its outcome. At present, these appeals are not decided within a reasonable period – the average period for a decision on an appeal is between seven and 18 months. In *Kate*, the SCA held that the failure timeously to decide an application for a social grant is a violation of that person’s substantive right to social assistance.\(^{20}\)

We are advised by the Legal Resources Centre (LRC) in Grahamstown that the current appeal process is a lengthy one. The LRC has done extensive work in assisting applicants for social grants in the Eastern Cape and has documented massive problems with the appeals process in respect of DG applications. In collaboration with the Black Sash, the LRC has now instituted legal proceedings – in the *Ntamo* case\(^{21}\) – to address the systemic problems that prevent applicants from receiving much needed social assistance.

A High Court review is a costly, inefficient and time-consuming process. Given the demographics of those trying to access social assistance, this is not ordinarily a viable option to fulfil the realisation of their constitutional rights to social assistance.

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\(^{20}\) See above note 4 at paragraph 22, where Nugent JA held as follows:

"Where, as in this case, the realisation of the substantive right to social assistance is dependent upon lawful and procedurally fair administrative action, and the diligent and prompt performance by the state of its constitutional obligations, the failure to meet those process obligations denies to the beneficiary his or her substantive right to social assistance. What has been denied to *Kate* is not merely the enjoyment of a process in the abstract, but through denial of that process she has been denied her right to social assistance, which is dependant for its realisation upon an effective process."

\(^{21}\) The case has been brought on behalf of Misiwe Rosy Ntamo and 24 individuals against the Minister, SASSA and the Independent Appeals Tribunal of the DSD under case number 689/2010.
It is thus imperative to ensure that applicants for DGs are able to have appropriate and timely recourse at the level of SASSA and the Tribunal. But the proposed amendment does not seek to do this. Instead, it simply inserts an additional appeal procedure after step one, without specifying time periods within which SASSA must finalise its reconsideration.

According to the founding and supporting affidavits in the Ntamo case, the current backlog of appeals before the Tribunal is approximately 47 000, which is estimated to be cleared only in approximately two years.

As already indicated, applicants are presently advised of the outcome of the appeal between seven and 18 months after the adjudication of the appeal. Given the circumstances of the applicants, this is an unreasonably long period for an individual who is already vulnerable and is in desperate need of state support. Introducing a double appeal process will add another 90 days to lodge the application for reconsideration followed by a further unspecified period in which SASSA reconsiders its decision.

It is likely that the proposed additional step in the appeal process, without implementing any supporting mechanisms such as additional departmental capacity to adjudicate the appeals, will result in further delays for the poor and vulnerable applicants for DGs. Neither the current nor the envisaged appeal process adequately protects the rights of those who appeal adverse decisions by SASSA.

It should be noted that the initial application process is also fraught with delays and unnecessary obstacles and difficulties. In this regard, the ALP has been assisting Mr. LV, an HIV positive man who is going blind, with his application process. This began in January 2010, when Mr. LV obtained a medical assessment and a report from an optometrist recommending that he be awarded a DG due to his blindness. However, SASSA required that he be assessed by a particular doctor who was unavailable to conduct the assessment for some weeks. Mr. LV was eventually advised by SASSA that all contracts for assessment doctors and nurses have expired. In the result, he was told that he would have to wait until April 2010 when new contracts are concluded by SASSA with the relevant health practitioners. At this point Mr LV is still without state assistance. An attempt to draw the matter directly to the attention of the Minister did not elicit a reply.\textsuperscript{22}

The ALP is of the view that introducing a double appeal in the form of an application for reconsideration does not provide a solution to the serious service delivery problems in the social assistance system. In any event, SASSA already has an

\textsuperscript{22} Email from Mark Heywood, Executive Director of ALP to Minister dated 9 March 2010.
obligation to ensure that social grants are appropriately awarded. Section 4 of the South African Social Security Agency Act, 2004 ("the SASSA Act") provides that one of the functions of SASSA is to ensure quality control and tackle fraud in the application process.\textsuperscript{23} In other words, the SASSA Act contemplates internal mechanisms for quality control of the social grant system as administered by SASSA. The resort to an additional appeal process suggests that SASSA has not implemented such internal quality control mechanisms.

The ALP suggests that the solution to the problematic appeal process is to streamline existing procedures as administered by SASSA, in particular by requiring SASSA to finalise appeals within certain specified periods. Such timeframes are integral to the applicant’s right to just administrative action, as they would provide guidance to administrators in their decision-making. The Minister previously prescribed timeframes in regulations dated 22 February 2005 (2005 Regulations), which provided that the appeal must be finalised within 30 days.\textsuperscript{24} In 2008, the Minister promulgated further regulations that repealed the 2005 Regulations and which did not include timeframes by which decisions were required to be made by any of the decision-makers.

The ALP recommends that the Bill also include specific timelines for the finalisation of the appeal process. What constitutes a reasonable time for an administrator to process an application for social assistance depends, amongst other things, on –

(a) The nature of the particular application;
(b) The enquiries that need to be made;
(c) The volume of similar applications that need to be dealt with; and
(d) The administrative capacity that is available for processing.\textsuperscript{25}

In the \textit{Kate} case, the SCA indicated that a decision on an application for a DG should take no more than three months. In light of the case law, the ALP recommends that a period of 90 days to decide an appeal is reasonable in light of the abovementioned factors.

The Bill’s failure to provide guidelines to SASSA or the Minister as to the period within which appeal applications are to be finalised will – if enacted – inevitably lead

\textsuperscript{23} Section 4(c) of the SASSA Act provides that one of the functions of SASSA is to "establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained".

\textsuperscript{24} Regulation 18(5) provided that "[a] tribunal appointed by the Minister must dispose of the appeal within 30 days, unless the Minister directs otherwise". Further, regulation 18(11) noted that "[t]he applicant and the beneficiary must be informed of the decision in writing within 30 days of the date of the outcome of the appeal."

\textsuperscript{25} \textit{Kate}, above note 4, at paragraph 10
to interminable delays. Although it is clearly the role of DSD to determine the
particular manner in which DGs are awarded and administered, Parliament should
take this opportunity to address the shortcomings of the social assistance regime by
prescribing the periods within which appeal applications for DGs must be finalised.

Questions to be addressed by the Committee
Clarity on both the issue of the eligibility and the appeal procedure is particularly
important in light of the state’s significant investment in social assistance and its
commitment to achieving identified public health objectives.\textsuperscript{26} With this in mind, we
recommend that the Committee should seek answers to the following questions:

1. Does the definition of disability include persons living with chronic illnesses?
2. If not, will those with chronic illnesses who no longer qualify for a DG receive
   social assistance of some other kind?
3. What is the DSD’s position on the chronic illness grant?
4. What is the budget for and the cost of the whole appeal procedure?
5. What is the envisaged role of the DSD in the appeal process once SASSA
   has reconsidered its decision?
6. What is the role of SASSA in the appeal process?
7. What is the role of SASSA and DSD in relation to the Tribunal?
8. What are the powers and functions of the Tribunal and in terms of what rules
does it operate?

Conclusion
Once again, the ALP thanks the Committee for the opportunity to make this
submission. We request the opportunity to make an oral submission at the public
hearings scheduled for 20 and 21 April 2010. The ALP is, however, only available to
make an oral submission on Wednesday, 21 April 2010. Should the Committee
have any questions on this submission, please contact Umunyana Rugege at
rugege@alp.org.za or by phone at 011 356 4120.

The ALP would like to acknowledge the input of the LRC in the preparation of this
submission.

\textsuperscript{26} According to the DSD, social grants consume on average 3.4\% of the gross domestic product and
about 12\% of the total government expenditure.
Annexure 1:


5. DEFINITION OF PEOPLE WITH DISABILITIES

5.1 Definition of persons with disabilities under the Act

The scope of protection for people with disabilities in employment focuses on the effect of a disability on the person in relation to the working environment, and not on the diagnosis or the impairment.

(i) having a physical or mental impairment;

(ii) which is long term or recurring; and

(iii) which substantially limits their prospects of entry into, or advancement in employment.

5.1.1 Impairment

Section 1 of the Act defines people with disabilities as "people who have a long-term or recurring physical or mental impairment, which substantially limits their prospects of entry into, or advancement in, employment"

(i) An impairment may either be physical or mental or a combination of both.

(ii) ‘Physical’ impairment means a partial or total loss of a bodily function or part of the body. It includes sensory impairments such as being deaf, hearing impaired, or visually impaired.

(iii) ‘Mental’ impairment means a clinically recognized condition or illness that affects a person’s thought processes, judgment or emotions.

5.1.2 Long-term or recurring

(i) ‘Long-term’ means the impairment has lasted or is likely to persist for at least twelve months.

(ii) ‘Recurring impairment’ is one that is likely to happen again and to be substantially limiting (see below). It includes a constant chronic condition, even if its effects on a person fluctuate.
(iii) 'Progressive conditions' are those that are likely to develop or change or recur. People living with progressive conditions or illnesses are considered as people with disabilities once the impairment starts to be substantially limiting. Progressive or recurring conditions which have no overt symptoms or which do not substantially limit a person are not disabilities.

5.1.3 Substantially limiting

(i) An impairment is substantially limiting if, in its nature, duration or effects, it substantially limits the person's ability to perform the essential functions of the job for which they are being considered.

(ii) Some impairments are so easily controlled, corrected or lessened, that they have no limiting effects. For example, a person who wears spectacles or contact lenses does not have a disability unless even with spectacles or contact lenses the person's vision is substantially impaired.

(iii) An assessment to determine whether the effects of an impairment are substantially limiting, must consider if medical treatment or other devices would control or correct the impairment so that its adverse effects are prevented or removed.

(iv) For reasons of public policy certain conditions or impairments may not be considered disabilities. These include but are not limited to -

(a) sexual behaviour disorders that are against public policy;

(b) self-imposed body adornments such as tattoos and body piercing;

(c) compulsive gambling, tendency to steal or light fires;

(d) disorders that affect a person's mental or physical state if they are caused by current use of illegal drugs or alcohol, unless the affected person is participating in a recognized programme of treatment;

(e) normal deviations in height, weight and strength; and conventional physical and mental characteristics and common personality traits.

(v) An assessment may be done by a suitably qualified person if there is uncertainty as to whether an impairment may be substantially limiting.