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Panel on Welfare Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 12 March 2007**

**Review of the Disability Allowance under the
Social Security Allowance Scheme**

Purpose

This paper provides background information on the system for processing Disability Allowance (DA) under the Social Security Allowance (SSA) Scheme administered by the Social Welfare Department (SWD), and summarises the deliberations of the Panel on Welfare Services on issues relating to the review of DA.

Background

2. DA was first introduced in 1973 to provide some form of financial assistance for the severely disabled to meet their special needs arising from disability. A person is considered to be severely disabled if he/she is certified by a public medical officer as being in a position broadly equivalent to a person with a 100% loss of earning capacity according to the criteria in the First Schedule of the Employees' Compensation Ordinance (Cap. 282). The definition of "severely disabled" is in **Appendix I**. DA is non-contributory and non-means-tested.

3. Since 1988, a higher rate of DA (i.e. Higher Disability Allowance (HDA)) has been introduced for severely disabled persons who are in need of constant attendance from others in their daily life and are not receiving care in a government or subvented residential institution or a medical residential institution under the Hospital Authority (HA), or boarding in a special school under the Education and Manpower Bureau (EMB). For those disabled who are certified to be severely disabled but do not meet the eligibility criteria for HDA, they will receive the Normal Disability Allowance (NDA). The current rates of NDA and HDA are \$1,140 and \$2,280 per month respectively.

System for processing DA applications

4. Upon receipt of a DA application, an officer of SWD will make arrangements for an interview with the applicant. Medical officers will then assess the applicant's degree of disability and make recommendations to SWD with the aid of a standardised "Medical Assessment Form" (MAF) and a professional checklist. MAF sets out the eligibility criteria for DA, and the checklist is drawn up by HA and the Department of Health for assessing disability. After completion of the investigation, a formal notification letter will be sent to the applicant.

5. Case review is conducted by SWD to establish a recipient's continued eligibility and to identify changes in circumstances that might affect the payment of allowance. Normally, no review is required for a NDA case where the recipient has been certified to be permanently disabled. A HDA case where the recipient has been certified to be permanently disabled is reviewed once every three years.

6. If a DA applicant is not satisfied with SWD's decision on his/her application, he/she may appeal to the Social Security Appeal Board (SSAB). SSAB will arrange with HA for the applicant to undergo a medical re-assessment to be processed by an independent medical assessment board (MAB).

The Ombudsman's direct investigation

7. In 2005, 71 overpayment cases involving HDA recipients who had not reported their admission to Government or subvented boarding schools and residential institutions had been detected as a result of SWD's cross-checking exercise. As there was wide public concern about the overpayment cases, the Ombudsman conducted a direct investigation into SWD's system for processing DA cases. A report on the investigation was published in November 2006, which set out a number of recommendations with regard to dissemination of information, mechanisms for approving applications and mechanisms for detecting errors. SWD has undertaken to follow-up the Ombudsman's recommendations with a view to improving the system.

Deliberations of the Panel

8. In the light of the detection of DA overpayment cases, the Panel discussed with the Administration the review of DA under the SSA Scheme at its meetings on 14 November and 12 December 2005, and 10 April and 11 December 2006. At these meetings, the Panel also received views from deputations on the subject.

Eligibility criteria of DA

Definition of "severely disabled"

9. Some members considered the definition of "severely disabled" under the DA Scheme unclear, as different people might have different understanding of the term. They pointed out that some DA recipients were in fact working and had not lost their earning capacity completely. Therefore, it was contradictory and confusing to use "100% loss of earning capacity" as the overriding eligibility criterion for DA, which was non-means-tested and unrelated with the financial condition of the applicant. Members suggested that the eligibility criteria for DA should be reviewed. For instance, the eligibility criteria could be based on the degree of functional disability of the applicant, rather than his/her total loss of earning capacity.

10. The Administration responded that to adopt different percentages of loss of earning capacity or other means as the basis for determining the meaning of "severely disabled" would give rise to a range of complicated questions, such as the criteria for determining different percentages of loss of earning capacity and the different amount of allowance to be accorded. The Administration explained that under the Comprehensive Social Security Allowance (CSSA) Scheme, which was means-tested, there were different rates for people with different degrees of disabilities. However, no such differentiation existed under the DA Scheme, which was to provide some form of financial assistance on a non-means-tested basis for severely disabled persons.

11. The Administration further explained that it would not be an easy task to work out a new definition of "severely disabled" without a reference framework. According to overseas experience, it was difficult to compile a comprehensive list of diseases tantamount to severe disabilities.

Persons with visceral diseases or requiring long-term care

12. Some members expressed support for the deputations' recommendations to relax the eligibility criteria of DA and create some new categories such as "stoma" and "requiring long-term care" under the DA Scheme. They agreed with the deputations that although people with stomas were permanently disabled, their disabling condition was less obvious and had often rendered it difficult for them to obtain DA. Therefore, people with stomas should also be considered as "severely disabled".

13. The Administration explained that patients with visceral disease or requiring long-term care could be eligible for DA if they were medically certified to be "severely disabled" within the meaning of the DA Scheme. The Administration subsequently advised that after taking into account the views of members and deputations, it had revised MAF and the checklist to

spell out explicitly that "visceral disease" was also included in the category of "any other disabling conditions resulting in total disablement". The revised MAF and checklist have been put into use since September 2006.

Medical assessments

14. Some members pointed out that MAF for DA lacked clarity and objectivity and should be reviewed so as to avoid inconsistencies in assessment when being conducted by different public doctors. There was also a suggestion that the eligibility of applicants for DA should be assessed by a team of doctors, health professionals and social workers, instead of a single public doctor, to ensure consistency and objectivity of medical assessment.

15. The Administration responded that to ensure uniformity in assessing the eligibility of DA applicants, a checklist was provided in MAF. While a panel review might enhance objectivity in medical assessment, it would at the same time lengthen the processing time for applications. Having considered the pros and cons of the proposal, the Administration decided to retain its practice of conducting medical assessment by an applicant's attending doctor, who had the best knowledge of the applicant's medical conditions. If the DA applicants were not satisfied with the decision on their application, they could appeal to SSAB. SSAB would then arrange for the applicant to undergo a medical re-assessment to be processed by an independent MAB.

Appeal mechanism

16. Some members were concerned about the long processing time required by SSAB to handle appeal cases on DA which required the decision of a MAB. Members found it unacceptable that the appellants were deprived of the opportunity to attend hearings to put forth their cases directly to SSAB. They also noted with concern that should the appeals be unsuccessful, the appellants would not be provided with the explanations and were not entitled to seek second opinion from other medical doctors. The Administration was requested to give a performance pledge in respect of the maximum processing time for appeals lodged with SSAB. These members also urged the Administration to review the appeal arrangements expeditiously to safeguard the rights of appellants.

17. The Administration explained that it had reviewed constantly the appeal mechanism to enhance the efficiency of the operation. For instance, since August 2006, more private medical doctors had been invited to sit on MAB so that more meetings could be held to expedite the appeal process. The processing time for appeal cases had been shortened by 100 days. In respect of appeal cases on the ground of physical disabilities, SSAB would arrange for the appellants to undergo medical assessment by an independent MAB. As SSAB would reach a decision on the basis of the medical assessment result, it was not necessary to conduct a hearing involving the appellant. However, the

Administration agreed to consult HA regarding the suggestion of providing written explanation of the MAB's conclusion to the appellants.

Rate of DA for recipients boarding in government/subvented special schools or receiving care in medical residential institutions on the Government's subvention

18. Some members echoed the views expressed by deputations that the monthly allowance of DA recipients who were hospitalised should not be deducted since they had to pay for hospital charges and their family members had incurred transport fares to hospitals during their period of hospitalisation. Similarly, the Administration should not deduct the amount of DA for children recipients who had been admitted to government/subvented special schools, as these children normally stayed in school for only four to five days in a week. Members cast doubt on the justifications for reducing the rate of DA if the recipients boarded in special schools or received care in medical residential institutions, having regard to the existing practice that CSSA recipients would be exempted from hospital fees and charges. They urged the Administration to work out a fair mechanism for calculating the amount of DA for these recipients.

19. The Administration explained that the policy of requiring the DA recipients receiving care in government or subvented residential institutions to receive NDA only was meant to prevent double benefit. Non-CSSA disabled persons with financial difficulties could apply to HA for medical fee waiver. A range of community support and rehabilitation services had also been provided to meet their special needs.

Cases of overpayment

20. Noting that the Administration was recovering overpayment from HDA recipients, some members were concerned whether HDA recipients and their families had been clearly apprised of the eligibility criteria for HDA and the changes in circumstances that they had to make timely report to SWD. To reduce overpayment cases, members suggested that the Administration should make available a set of clear, comprehensive and transparent guidelines on the eligibility criteria for DA, in particular HDA.

21. The Administration explained that information had been provided to applicants to help them understand the basic rules governing eligibility for the allowance and their obligations. For example, pamphlets were issued to DA recipients explaining that boarding special schools under EMB fell under the category of government or subvented residential institutions. Furthermore, starting from October 2005, applicants were required to fill in the Application Form by themselves to strengthen their sense of accountability in making the application. The Administration stressed that it was the responsibilities of the applicants and their guardians to report any changes in their eligibility for DA

immediately. To minimise the chances of overpayment, SWD had put in place various cross-checking mechanisms, periodic case reviews and random checks to detect unreported changes.

22. Some members expressed doubt as to whether it was appropriate for the Administration to recover overpayment from the DA recipients, when it had yet to be determined who was responsible for causing such overpayment in the first place. They considered that the Administration should not put the onus of overpayment on the DA recipients, since it was the responsibility of SWD staff to cross-check the information provided by the applicants and to detect irregularities. Moreover, if it was proven that negligence on the part of SWD staff attributed to the overpayment cases, the overpaid amount should be recovered from the staff concerned. Members urged the Administration to review the circumstances of each case, with a view to making an equitable decision on whether the recipients concerned should pay back the overpaid allowance.

23. The Administration stressed that SWD would seek reimbursement in overpayment cases to safeguard the public purse. As a matter of fact, the Director of Audit and the Public Accounts Committee of the Legislative Council had previously called upon SWD to be vigilant against any abuse of social security which was financed entirely by public funds. Failure to adhere to this principle and established practice would have significant read-across implications on recovering other overpayments by the Government. The Administration pointed out that in the Ombudsman's recent report, the latter had endorsed in principle the Administration's position to recover overpayment to properly account for and to preserve public funds.

24. The Administration advised that when compared to other countries, the magnitude of overpayment cases in Hong Kong was considered acceptable given the huge caseload handled by SWD staff. The amount of HDA overpayment as compared with the total HDA expenditure was 1.09%. Moreover, as DA was paid in advance, overpayment was unavoidable due to unreported changes or late reporting of changes by recipients, particularly in cases involving emergency hospitalisation. The Administration assured that when handling the overpayment cases, SWD staff would discuss with the recipients to agree on a reasonable repayment plan, taking into account the financial situation of the recipients concerned. SWD had already worked out repayment arrangements with the majority of applicants for recovering the overpayments.

Relevant papers

25. A list of the relevant papers on the Legislative Council website at <http://www.legco.gov.hk> is in **Appendix II**.

Council Business Division 2
Legislative council Secretariat
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Definition of 'severely disabled'

A person will be considered as severely disabled within the meaning of the SSA Scheme if he/she is certified by the Director of Health or the Chief Executive, Hospital Authority (or under exceptional circumstances by a registered medical practitioner of a private hospital) as falling into one of the following categories :

a. Disabling physical condition or blind

This means that a person is in a position broadly equivalent to a person with a 100% loss of earning capacity according to the criteria in the First Schedule of the Employees' Compensation Ordinance (Cap. 282) :

- (1) Loss of functions of two limbs
- (2) Loss of functions of both hands or all fingers and both thumbs
- (3) Loss of functions of both feet
- (4) Total loss of sight
- (5) Total paralysis (quadriplegia)
- (6) Paraplegia
- (7) Illness, injury or deformity resulting in being bedridden
- (8) Any other conditions including visceral diseases resulting in total disablement

b. Disabling mental condition

This means that a person is suffering from a mental condition which produces a degree of disability broadly equivalent to that in category (a) above :

- (1) Organic brain syndrome
- (2) Mental retardation
- (3) Psychosis
- (4) Neurosis
- (5) Personality disorder
- (6) Any other conditions resulting in total mental disablement

c. Profoundly deaf

This means that a person, who suffers from a perceptive or mixed deafness with a hearing loss of 85 decibels or more in the better ear for pure tone frequencies of 500, 1 000 and 2 000 cycles per second, or 75 to 85 decibels with other physical handicaps such as lack of speech and distortion of hearing.

Appendix II**Relevant Papers/Documents**

<u>Meeting</u>	<u>Meeting Date</u>	<u>Papers/Questions</u>
Legislative Council	1.6.2005	Dr Hon Fernando CHEUNG raised a written question on "Disability Allowance"
	29.6.2005	Dr Hon Fernando CHEUNG raised a written question on "Disability Allowance"
	26.10.2005	Dr Hon Fernando CHEUNG raised a written question on "Return of Overpaid Disability Allowance"
	9.11.2005	Hon Abraham SHEK raised a written question on "Review of Mechanism for Approving Disability Allowance"
	31.1.2007	Hon TAM Heung-man raised an oral question on "Disability Allowance and Old Age Allowance"
Panel on Welfare Services	14.11.2005	Paper provided by the Administration LC Paper No. CB(2)298/05-06(05) Minutes of meeting LC Paper No. CB(2)605/05-06
	12.12.2005	Paper provided by the Administration LC Paper No. CB(2)606/05-06(04) Minutes of meeting LC Paper No. CB(2)770/05-06

	10.4.2006	<p>Paper provided by the Administration LC Paper No. CB(2)1640/05-06(03)</p> <p>The Administration's written response to the views and suggestions raised by deputations on the disability allowance and the checklist for medical assessment LC Paper No. CB(2)2202/05-06(01)</p> <p>Minutes of meeting LC Paper No. CB(2)1902/05-06</p>
	11.12.2006	<p>Paper provided by the Administration LC Paper No. CB(2)554/06-07(06)</p> <p>The Administration's written response to the views and concern raised by members and deputations in respect of the review of the Disability Allowance under the Social Security Allowance Scheme LC Paper No. CB(2)964/06-07(01)</p> <p>Minutes of meeting LC Paper No. CB(2)722/06-07</p>