

立法會
Legislative Council

LC Paper No. CB(2)1601/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/WS

Panel on Welfare Services

Minutes of special meeting
held on Monday, 25 February 2013, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

Members present : Hon CHAN Yuen-han, SBS, JP (Chairman)
Hon CHEUNG Kwok-che (Deputy Chairman)
Hon Albert HO Chun-yan
Hon LEUNG Yiu-chung
Hon TAM Yiu-chung, GBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Dr Hon LEUNG Ka-lau
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon Frankie YICK Chi-ming
Hon CHAN Chi-chuen
Hon CHAN Han-pan
Hon LEUNG Che-cheung, BBS, MH, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu

Member absent : Hon Ronny TONG Ka-wah, SC

Members attending : Hon WONG Kwok-hing, MH
Hon WU Chi-wai, MH

**Public Officers : Item I
attending**

Miss Annie TAM, JP
Permanent Secretary for Labour and Welfare

Mr Donald CHEN
Deputy Secretary for Labour and Welfare (Welfare) 2

Mr Stephen SUI
Commissioner for Rehabilitation
Labour and Welfare Bureau

Mr FUNG Pak-yan
Deputy Director of Social Welfare (Administration)

Ms LUNG Siu-kit
Assistant Director of Social Welfare (Social Security)

Mr NG Wai-kuen
Chief Social Security Officer (Social Security) 1

Dr Daisy DAI
Chief Manager (Primary & Community Services)
Hospital Authority

Dr Christina MAW
Senior Manager (Elderly & Community Care)
Hospital Authority

**Clerk in
attendance** : Mr Colin CHUI
Chief Council Secretary (2) 4

**Staff in
attendance** : Ms Catherina YU
Senior Council Secretary (2) 4

Miss Maggie CHIU
Legislative Assistant (2) 4

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I. Review of the system for processing applications for Disability Allowance under the Social Security Allowance Scheme

[LC Paper Nos. CB(2)290/12-13(08), CB(2)665/12-13(01) to (02) and CB(2)684/12-13(01)]

(The Deputy Chairman took the chair in the temporary absence of the Chairman.)

At the invitation of the Deputy Chairman, Permanent Secretary for Labour and Welfare ("PS(LW)") briefed members on the membership, terms of reference and the major work directions of the Inter-departmental Working Group on Review of the Disability Allowance ("the Working Group") under the Labour and Welfare Bureau as well as the interaction between the Working Group and the Commission on Poverty ("CoP").

2. Deputy Director of Social Welfare (Administration) ("DDSW(A)") said that the Social Welfare Department ("SWD") received views from the Office of the Ombudsman regarding Disability Allowance ("DA") on 15 January 2013. Having regard to the Ombudsman's views and the suggestions made by members on DA at the Panel meeting on 10 December 2012, SWD had updated the Report of the Working Group on Review of the Mechanism for Implementing the Disability Allowance Scheme ("the Review Group"). He briefed members on the Review Group's recommendations which were submitted to the Ombudsman on 4 February 2013.

Transport fare concession for persons with disabilities

3. Mr WONG Kwok-hing said that as the eligibility criteria for DA also applied to the \$2-trip transport fare concession for persons with disabilities ("PWDs"), not all the holders of Registration Card for PWDs could enjoy the \$2-trip transport fare concession. He enquired whether the Administration would consider providing \$2-trip transport fare concession for all holders of Registration Card for PWDs, particularly for people with loss of one limb, before the completion of the review of DA.

4. Noting that the review of the \$2-trip transport fare concession for PWDs had not been included in the terms of reference of the Working Group, Mr WU Chi-wai enquired how the review would be taken forward.

5. PS(LW) responded that the Administration was considering

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extending the Public Transport Fare Concession Scheme for the Elderly and Eligible Persons with Disabilities Scheme ("the Scheme") to cover children with 100% disabilities aged below 12. As regards exploring the feasibility of further extension of the Scheme to cover more PWDs, the Administration would take into account the Working Group's views on the eligibility criteria for DA.

6. Concerning Mr WONG Kwok-hing's call for the Administration to provide DA for people with loss of one limb with retrospective effect from the date on which the Chief Executive ("CE") pledged to allow these people to apply for DA, PS(LW) responded that it would not be possible to accede to Mr WONG's request.

(The Chairman took the chair at this juncture.)

7. Mr WONG Kwok-hing said that the Administration should provide \$2-trip transport fare concession to people with loss of one limb without having to wait for the outcome of the Working Group's review. He strongly urged the Administration to provide the fare concession to all holders of Registration Card for PWDs without delay. The Chairman shared Mr WONG's view and said that instead of creating hurdles, the Administration should extend the \$2-trip transport fare concession to cover holders of Registration Card for PWDs as soon as possible and fine-tune the Scheme at a later stage.

8. PS(LW) responded that the Administration had to take into account, among others, the financial implications and long term sustainability when considering expanding the beneficiaries of the Scheme. Mr WONG Kwok-hing said that the Administration should not worry about the financial aspect given the huge fiscal surplus.

Target completion time for review of DA

9. In response to Mr WONG Kwok-hing's enquiry on when the Working Group would complete its review on DA, PS(LW) said that the Working Group would explore various options in its review. Given the nature and amount of work, the Working Group was unable to draw up a time frame for the completion of its study at this stage. Nevertheless, the Working Group would endeavour to complete the review as soon as practicable. The Working Group would report to and seek steer from CoP's Social Security and Retirement Protection Task Force ("SSRP Task

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Force") regarding its work.

10. Dr Fernando CHEUNG said that the Ombudsman had published a Direct Investigation Report on Granting of Disability Allowance and Processing of Appeals by Social Welfare Department published in 2009 ("the Direct Investigation Report") and made recommendations on the consistency of the assessments of DA applications. As pointed out in the Direct Investigation Report, the Administration should make improvements in a number of aspects and, according to the Ombudsman, SWD had accepted its investigation report and agreed to follow up on the recommendations. Nonetheless, the Administration had not taken any concrete actions since the release of the Direct Investigation Report and worse still, it was unable to provide a timetable for the completion of the review by the Working Group. Dr Fernando CHEUNG was of the view that the Administration was irresponsible and urged the Administration to set a time frame for the review of DA.

11. Dr Fernando CHEUNG further said that it was stated in the Direct Investigation Report that the reference to "100% loss of earning capacity" in the eligibility criteria for DA was misleading and quite irrelevant as the original design of DA was not intended to take into account applicants' employability. Moreover, the concept of "earning capacity (謀生能力)" could not apply to some people, e.g. children, which had made it all the more difficult for doctors to make consistent and objective assessment on such people. The Ombudsman was of the view that the reference should be removed from the eligibility criteria. However, the Administration had not taken on board this view but played with words by simply rewording "100% 謀生能力" to "100% 賺取收入能力". He expressed dissatisfaction about the unduly long time the Administration had taken to implement the recommendations made in the Direct Investigation Report and wondered why the reference to "100% loss of earning capacity" still appeared as a footnote in the new Medical Assessment Form ("MAF").

12. DDSW(A) said that the progress of the Review Group was affected by a judicial review case followed by an appeal lodged by an ex-DA applicant. On legal advice, the Administration had put on hold the staff consultation on DA from March 2010 to July 2011. He further said that given that different departments/organizations with different professionals were involved, and that there were different specialties in the Hospital Authority ("HA"), consultation with the relevant staff had taken several

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months.

13. In respect of the reference to "100% loss of earning capacity", DDSW(A) said that such a criterion stemmed from Schedule 1 to the Employees' Compensation Ordinance (Cap. 282) and was a technical definition for severe disability. There was no linkage between an individual's eligibility for DA and his employment status or ability to work. The Review Group hence recommended to clearly spell out in the internal guidelines for doctors and parties concerned that there was no direct relation between the applicants' employment status and eligibility for DA, and to amend MAF to focus on the assessment of the functional aspects of DA applicants. Recommendation was also made to amend the wording of the MAF to facilitate making medical assessment for children.

14. Dr Fernando CHEUNG maintained his view that the reference should be removed from the eligibility criteria for DA. Mr WONG Kwok-hing was of the view that the Administration had neglected the Ombudsman's recommendations and avoided the review of the definition of disability.

15. Mr Albert HO was of the view that the review of policies should not be affected by a judicial review of the relevant policies. He expressed dissatisfaction that the Administration suspended the review of the mechanism for implementing DA because of the judicial review. As regards the Working Group's review of DA, he found the lack of a timetable for completing the review unacceptable. He urged the Working Group to complete the review within six to 12 months. Dr Fernando CHEUNG condemned the Administration for not being able to draw up a time frame for the completion of the Working Group's review.

16. PS(LW) responded that the Working Group and the Review Group had different roles. The former would review the eligibility criteria for DA and the latter, in response to the Direct Investigation Report, had reviewed the implementation of the DA Scheme under the existing eligibility criteria. The work of the Working Group was not affected by the aforesaid judicial review case.

17. Regarding the work schedule for the review of DA, PS(LW) said that the Working Group might be able to complete the study on allowing people with loss of one limb to apply for DA in a shorter period of time.

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Nevertheless, merely considering loss of one limb as an eligible criterion for DA would not measure up to the expectation of many deputations and members. The Working Group would also wish to look into the assistance to be provided for people whose disabling conditions were similar to or more serious than those of people with loss of one limb. It would explore various options and assess the financial resources required for the implementation of these options. The Working Group had not drawn up a work schedule for the review because its work should not be constrained by a time frame.

18. Dr Fernando CHEUNG expressed great dissatisfaction with the Administration's explanation. He said that as many PWDs were in grave financial difficulties and had pressing needs for assistance, the early completion of the review of DA would help ease their financial burden. He strongly urged the Working Group to set a target completion time for the review.

19. Sharing Dr Fernando CHEUNG's view about setting a target completion time for the review, Mr LEUNG Kwok-hung said that the Working Group would have its hand tied if it was fear of being criticized for providing preferential treatment to people with loss of one limb. To ease its worries, the Working Group should review DA in a holistic manner, evaluate the additional financial resources required if DA was provided for all needy PWDs, and obtain the required funding for the implementation of the new DA Scheme as soon as possible. Mr LEUNG Che-cheung said that the Administration should do its best to follow up the CE's pledge and secure the necessary resources to support PWDs in need.

20. Mr Frederick FUNG declared that he was a member of CoP but did not join its Special Needs Groups Task Force ("SNG Task Force"). He was of the view that the Working Group should complete its tasks within two months. He asked whether the Working Group had to adjust its pace of work to dovetail with that of the SNG Task Force.

21. PS(LW) responded that the Working Group was not required to report to the SNG Task Force and as such, there was no direct connection between the paces of the two.

The work of the Working Group and the Review Group

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22. Mr TANG Ka-piu was of the view that the Administration gave no regard to the Ombudsman's recommendations if the Working Group was set up purely because of CE's pledge to allow people with loss of one limb to apply for DA. PS(LW) responded that following the release of the Direct Investigation Report, SWD had set up the Review Group to review the implementation of the DA Scheme under the existing eligibility criteria.

23. Noting from the Administration's paper (LC Paper No. CB(2)684/12-13(01)) that the Ombudsman had expressed views on the results of the review of the implementation mechanism for DA, Mr TANG Kai-piu requested the Administration to provide information on the Ombudsman's views. DDSW(A) said that the Ombudsman had requested the Administration to respond to his recommendations point by point. The Ombudsman had also requested for supplementary information on (a) how doctors could ensure consistency in assessing the functional status of patients who required or did not require using rehabilitation appliances; (b) how publicity would be enhanced to explain the existing aim and meaning of DA and the eligibility criteria to applicants; (c) the mechanism for strengthening coordination and communication among SWD, HA and the Department of Health; and (d) a sample of the revised version of the notification letter issued by the Social Security Appeal Board. The Administration had given the requisite information to the Ombudsman and a point-by-point response was also provided in Annex II to the Administration's paper (LC Paper No. CB(2)684/12-13(01)). DDSW(A) said that the Administration had then not heard from the Ombudsman regarding the point-by-point response.

24. Given that both the Working Group and the Review Group studied issues relating to DA, Dr Helena WONG expressed concern that there might be duplication of efforts, in areas such as data collection and analysis. In her view, it was unnecessary to have two separate groups to review DA.

25. PS(LW) responded that the Working Group focused on the eligibility criteria for DA while the Review Group, in response to the Direct Investigation Report, was set up to review the implementation of the DA Scheme under the existing eligibility criteria. The Review Group had produced a report on the review of the mechanism for implementing DA and would continue to take follow up actions as necessary.

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26. Mr LEUNG Yiu-chung was concerned that the scope of the review conducted by the Working Group was too narrow as its terms of reference were restricted to reviewing DA for people with loss of one limb as pledged in CE's manifesto. The Working Group should review the definition of disability and the eligibility of various types of disabilities for DA. He suggested that corresponding changes should be made to the terms of reference of the Working Group.

27. In response, PS(LW) reiterated that the Working Group would not only look into the eligibility of people with loss of one limb for DA but would also conduct more review on the eligibility criteria for DA. The Administration would relay Mr LEUNG's view to the Working Group.

28. Considering that one of the main purposes of DA should be facilitating PWDs to integrate with the community, Mr LEUNG Yiu-chung took a strong view against putting the review of DA under the purview of a CoP's Task Force and thereby treating DA as a poverty alleviation measure.

29. PS(LW) said that the work of CoP included formulating policies to alleviate and prevent poverty, promoting social inclusion and upward social mobility. As DA was a component of the social security system, it was appropriate for the Working Group to report to and seek steer from the SSRP Task Force. Such an arrangement would also help the Working Group in conducting its work and enhance the transparency of the review of DA.

30. Mr CHEUNG Kwok-che said that apart from physical disabilities, mental impairment and chronic diseases were some other forms of disabilities. He sought information on the progress of the work of the Working Group, the issues it had studied so far and the difficulties it encountered in the course of its study. He said that the Administration should revert to the Panel on the timetable for the review of DA and how the Administration would define severe disability under the DA Scheme.

31. PS(LW) responded that the Working Group had held the first meeting and was discussing with the relevant parties to try to ascertain the number of potential DA recipients and the possible number of appeals if the definition of disability under the DA Scheme was to be changed.

32. DDSW(A) supplemented that the review of the mechanism for

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implementing the DA Scheme was conducted based on the existing policy objective and intent. Currently, an applicant assessed by a public doctor to be severely disabled as defined under DA (i.e. in a condition broadly equivalent to 100% loss of earning capacity according to the criteria in Schedule 1 to Cap 282) would be eligible for DA. An applicant who required constant attendance from others in his or her daily living would be eligible for a higher rate of DA. DDSW(A) confirmed Mr CHEUNG Kwok-che's understanding that these criteria would continue to be adopted before the completion of the review of DA by the Working Group. As recommended by the Review Group, it would be made clear in the internal guidelines for doctors carrying out medical assessments that the applicant's prospect of getting paid employment in the actual circumstances should not be taken into account. For applicants whose physical or mental conditions including visceral diseases did not render them eligible for DA automatically, the medical assessments should be focused on the functional aspects of the applicants against the conditions set out in the revised MAF.

33. Dr Fernando CHEUNG said that it was confusing to use "100% loss of earning capacity" as a reference on the one hand, and not to take into account an applicant's ability to work when assessing his or her eligibility for DA on the other hand. DDSW(A) explained that the reference "100% loss of earning capacity" was meant for facilitating doctors' assessments on whether the degree of disability of the applicants satisfied the definition of "severe disability" within the meaning of DA. There was no linkage between an individual's eligibility for DA and his/her employability. Dr Fernando CHEUNG held a strong view against retaining "100% loss of earning capacity" as a reference in MAF.

34. Mr TANG Ka-piu said that since the Ombudsman had yet to accept the recommendations of the Review Group as set out in Annex II to LC Paper No. CB(2)684/12-13(01) and the recommendations might be subject to revision, the Administration should put on hold the implementation of the Review Group's recommendations.

35. DDSW(A) responded that recommendations were made by the Review Group to improve the implementation mechanism so as to ensure consistencies and objectiveness in conducting medical assessments. If agreeable, these measures could be implemented by the end of 2013 the earliest, since lead time was required to conduct briefings and training to front-line staff, adjust the computer system, and produce new forms and

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publicity materials, etc. Review for longer term measures would be considered when the Working Group had completed its review on DA.

36. Mr Albert HO said that the Administration should appreciate that some PWDs had genuine difficulties in finding a job although they did not lose 100% of their earning capacity. Given that people with severe disabilities ("PWSDs") needed frequent attention, DA for PWSDs should be substantially increased so that their carers could be provided with sufficient resources to take care of them. Mr HO suggested that different tiers of DA be provided according to the severity of disabilities.

37. PS(LW) responded that the DA Scheme comprised Normal DA and Higher DA and the amount of Higher DA doubled that of Normal DA. Applicants of Higher DA must be assessed by public doctors to be in need of constant attendance from others in their daily living. PS(LW) said that enhancement of support for PWSDs was a subject being considered outside the DA review.

38. Mr WU Chi-wai said that according to the Administration, whether people with loss of one limb would be eligible for DA would be subject to the outcome of the review. As CE had already committed in his Policy Address that people with loss of one limb would be allowed to apply for DA, the provision of DA for them should not be a policy issue but a funding matter. He said that the eligibility of this group of people for DA would serve as an objective criterion for doctors to conduct medical assessments and the reference to "100% loss of earning capacity" should be removed.

(The Chairman left the meeting at this juncture after which the meeting was chaired by the Deputy Chairman.)

Motion

39. Mr TANG Ka-piu moved the following motion –

"本事務委員會要求勞工及福利局成立的「傷殘津貼檢討跨部門工作小組」需於九個月內完成工作及作出建議，並每季向立法會報告，以徹底檢討及改善傷殘津貼的資格及制度。"

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40. Dr Fernando CHEUNG referred other members to the following comments made in the Direct Investigation Report –

- (a) *"Since April 2007, HA has repeatedly urged SWD to review the eligibility criteria and the MAF, as doctors have difficulty assessing whether an applicant needs substantial help in "working in the original occupation and performing any other kind of work for which he or she is suited". HA has also asked SWD to re-examine the misleading reference "100% loss of earning capacity" in the eligibility criteria. HA's requests have not been taken on board"; and*
- (b) *"At the inception of the scheme in 1973, the only rough and ready "guide" to disability was in relation to workmen's compensation. Having regard to the change of time and circumstances, particularly the clear irrelevance of employment to the scheme, there was a case for a thorough review of the criteria".*

Dr CHEUNG said that instead of giving a positive response, the Administration had refuted the Ombudsman's recommendations and insisted on retaining the reference to "100% loss of earning capacity". The Administration also cast doubt on the cost-effectiveness of multi-disciplinary assessment in determining whether a patient was suffering from severe disability and argued that arranging regular audit of cases by senior officers did not help spot inconsistencies and deficiencies between assessments on different persons with similar disabling conditions. He proposed the following amended motion –

"本事務委員會對勞工及福利局成立的「傷殘津貼檢討跨部門工作小組」沒有工作時間表，表示遺憾，並予以譴責；本事務委員會並促請當局需於4個月內完成工作及作出建議，並在夏季前向立法會報告，以徹底檢討及改善傷殘津貼的資格及制度。"

41. For clarity sake, Mr CHAN Chi-chuen suggested rewriting the last sentence of the motion as "以徹底檢討及改善申領傷殘津貼的資格及制度". The Deputy Chairman put the following motion which had incorporated Mr CHAN's proposal (as underlined below) to vote –

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"本事務委員會對勞工及福利局成立的「傷殘津貼檢討跨部門工作小組」沒有工作時間表，表示遺憾，並予以譴責；本事務委員會並促請當局需於4個月內完成工作及作出建議，並在夏季前向立法會報告，以徹底檢討及改善申領傷殘津貼的資格及制度。"

(Translation)

"That this Panel regrets and condemns that the Inter-departmental Working Group on Review of the Disability Allowance established under the Labour and Welfare Bureau has not drawn up any work schedule; this Panel also urges the Administration to complete its work and make recommendations within four months and report to the Legislative Council by this summer, so as to overhaul and improve the eligibility criteria and system for applying for Disability Allowance."

42. All members present voted for the motion. The Deputy Chairman declared that the motion was carried.

II. Any other business

43. There being no other business, the meeting ended at 6:29 pm.

Council Business Division 2
Legislative Council Secretariat
12 July 2013