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Panel on Welfare Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 10 December 2012**

**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 Council and the Panel on Welfare Services ("the Panel") 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 Bureau. 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 \$1,395 and \$2,790 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 an NDA case where the recipient has been certified to be permanently disabled. An 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").

Deliberations of the Council and the Panel

7. The review of DA and the system for processing DA applications have been discussed at meetings of the Council and the Panel. The key concerns and requests raised are summarised in the ensuing paragraphs.

Eligibility criteria of DA

Definition of "severely disabled"

8. Some members of the Panel of the Third Legislative Council ("LegCo") 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.

9. 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.

10. 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.

11. At its meeting on 9 November 2011, the Council passed a motion on "Comprehensively reviewing the Disability Allowance scheme" ("the carried Motion") urging the Administration to conduct the comprehensive review which included, inter alia, -

- (a) reviewing the criteria for the granting of DA, including granting an allowance proportionate to the degree of disability of the applicants; and
- (b) comprehensively reviewing the definition of "severely disabled" under the existing DA scheme, and relax the statutory criteria mentioned in paragraph 2 above, so as to strengthen the protection of persons with disabilities ("PWDs").

12. According to the Administration, DA aimed to help Hong Kong residents who had severe disability meet their special needs arising from that disabling condition. As the allowance was non-contributory and non-means-tested, to ensure the proper use of public funds, its target recipients were those in greater need and medically assessed to have severe disability.

13. Noting that the Chief Executive ("CE") had proposed, in his election manifesto, to allow people with the loss of one limb to apply for DA and that the Administration would address issues regarding the definition of disability for DA in following up CE's manifesto, some members of the Panel of the current (Fifth) LegCo reiterated their request for the Administration to review the definition of "severely disabled" under DA.

Persons with visceral diseases or requiring long-term care

14. In discussing the review of DA at meetings of the Panel of the Third LegCo, 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".

15. The Administration explained that patients with visceral diseases 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 of the Panel and deputations, it had revised MAF and the checklist to spell out explicitly that "visceral diseases" was also included in the category of "any other disabling conditions resulting in total disablement". The revised MAF and checklist had been put into use since September 2006.

16. Under the carried Motion, the Administration was urged to conduct a comprehensive review which included, inter alia, reviewing MAF and the checklist used for assessing a DA's applicant's degree of disability, and clearly specifying the definition of and criteria on "visceral diseases".

17. According to the Administration, specifying the criteria on "visceral diseases" in MAF and the checklist would contradict the principle of assessing applications according to the degree of disability rather than the type of disease.

Consistency and objectivity of medical assessments

Medical Assessment Form and assessing officers

18. Some members of the Panel of the Third LegCo 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.

19. 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.

20. Under the carried Motion, the Administration was urged to conduct a comprehensive review which included, inter alia, consideration of including professional social workers' "whole-person assessment" as one of the criteria in the vetting and approval process, rather than relying solely on medical practitioners for determining applicant's eligibility or otherwise based on the degree of disability of the applicant.

21. The Administration advised that as DA did not aim at addressing all the various needs of PWDs (such as financial support, rehabilitation services, job-seeking and transport), eligibility for DA should be based on medical assessment results without regard to other factors such as the social background, family, employment and financial status of the applicants.

Appeal mechanism

22. Some members of the Panel of the Third LegCo 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.

23. The Administration explained that it had reviewed constantly the appeal mechanism to enhance the efficiency and transparency of the operation.

Having consulted HA, the Administration had revised the medical assessment form for MABs to provide explanations for unsuccessful appeals and additional comments, if available.

24. Expressing dissatisfaction at the Administration's response, the Panel passed a motion at its meeting on 14 May 2007 urging the Administration to immediately make a performance pledge, thereby prescribing a time frame for processing appeals and specifying performance indicators for the appeal mechanism, and conduct an independent and transparent review on the mechanism.

The Ombudsman's direct investigation

25. After conducting a direct investigation into SWD's grant of DA and processing of appeals, The Ombudsman published a report in October 2009 recommending that the Administration should fine-tune the implementation details for DA eligibility criteria, revise MAF to improve the assessment mechanism and procedures, and consider an overall review of the DA scheme, covering the eligibility criteria, the roles of medical doctors and SWD as well as the assessment mechanism. Having regard to the recommendations, SWD set up an inter-departmental working group to conduct a review with a view to further enhancing the implementation arrangements for DA under the system.

26. Noting that SWD's review had been completed but the review report had not yet been released, some members of the Panel of the current LegCo urged the Panel to discuss, as soon as possible, the review of the system for processing DA, so as to push for an early release of the review results.

Other requests raised by Members

27. Under the carried Motion, the Administration was urged to conduct a comprehensive review which also included -

- (a) comprehensively reviewing the applicability of the various public transport concessions available at present to PWDs and the payment arrangements;
- (b) applying the concept of Portable CSSA Scheme to DA and remove the permissible limit of absence from Hong Kong, so that eligible PWDs residing in Guangdong and Fujian could also receive DA;
- (c) allowing elderly recipients of DA to receive the Old Age Allowance ("OAA") at the same time; and

- (d) including proof of disabilities as an eligibility criterion for approving compassionate rehousing to public rental housing ("PRH"), so that PWDs could be rehoused to PRH units as early as possible and resolve their housing difficulties.

28. The Administration advised that –

- (a) as proposed in the 2011-2012 Policy Address, public transport concessions would be provided for CSSA recipients aged between 12 to 64 with 100% disability and DA recipients of the same age group and elders aged 65 or above to travel on the general lines of MTR, franchised buses and ferries at a concessionary fare of \$2 per trip on all days and at all times. Furthermore, through subvention to a non-governmental organization for the operation of Rehabus, the Government provided transport services to PWDs who had difficulties in using normal modes of public transport;
- (b) the standards of rehabilitation service on the Mainland and in Hong Kong were different. Without the support of appropriate rehabilitation service, granting DA alone to PWDs who had moved to the Mainland could not meet the objective of Hong Kong's rehabilitation policy. Moreover, it was difficult to conduct medical assessment for recipients on the Mainland at regular intervals to ascertain eligibility. As for the Guangdong Scheme, it was introduced on the basis of the existing OAA. The Administration aimed to implement the Scheme for the elderly first;
- (c) the designs of DA and OAA had already taken into account the special needs of their respective target beneficiaries. As such, a person might only receive either DA or OAA but not both at the same time. Such an arrangement was to avoid the receipt of double benefit. The Administration had no plan to review or change this rule; and
- (d) compassionate rehousing aimed to provide housing assistance to individuals and families with genuine, imminent and long term housing needs but were not able to solve the problems by themselves. In considering whether to make recommendations for compassionate rehousing, social workers would make assessment as per the actual situation of the applicants by taking into account, among others, their medical grounds (such as an applicant's health/disability condition) or social grounds (such as the resources available to the applicant).

Relevant papers

29. A list of the relevant papers on the LegCo website is in **Appendix II**.

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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 on the review of the Disability Allowance under the Social Security Allowance Scheme

Committee	Date of meeting	Papers
Panel on Welfare Services	14 November 2005 (Item V)	Agenda Minutes
	12 December 2005 (Item V)	Agenda Minutes
	10 April 2006 (Item III)	Agenda Minutes
	11 December 2006 (Item VI)	Agenda Minutes
	12 March 2007 (Item IV)	Agenda Minutes
	14 May 2007 (Item IV)	Agenda Minutes
	14 October 2008 (Item III)	Agenda Minutes
	11 May 2009 (Item III)	Agenda Minutes
Legislative Council	9 November 2011	Official Record of Proceedings Pages 247 - 293 Progress Report

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