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***Legislative Council***

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**Panel on Welfare Services**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 9 December 2013**

**System for processing applications for Disability Allowance under the  
Social Security Allowance Scheme**

**Purpose**

This paper summarizes past discussions of the Legislative Council and its committees relating to the system for processing Disability Allowance ("DA") under the Social Security Allowance Scheme.

**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 Schedule 1 to the Employees' Compensation Ordinance ("the Ordinance")(Cap. 282). Schedule 1 to the Ordinance is in **Appendix I**.

3. DA is non-contributory and non-means-tested and is classified into Normal DA and Higher DA. Applicants of Higher DA must be assessed by doctors of the Department of Health or the Hospital Authority ("HA") to be in need of constant attendance from others in their daily life; and they are not receiving care in residential institutions subsidized by the government (including subsidized places in subvented/contract homes and residential care homes under various bought place schemes) or public hospitals and institutions under HA, or boarding in special schools under the Education Bureau. The current monthly rates of Normal DA and Higher DA are \$1,450 and \$2,900 respectively.

## **Members' deliberations**

### The Ombudsman's direct investigation

4. The Ombudsman published its Direct Investigation Report on "Granting of Disability Allowance and processing of appeals by the Social Welfare Department" in October 2009. The Ombudsman recommended that the Administration should fine-tune the implementation details for DA eligibility criteria, revise the Medical Assessment Form ("MAF") to improve the assessment mechanism and procedures, and consider an overall review of the DA scheme. The review should cover the eligibility criteria, the roles of medical doctors and the Social Welfare Department ("SWD") as well as the assessment mechanism.

5. Members of the Panel on Welfare Services ("the Panel") expressed great dissatisfaction about the Administration's inaction in taking forward the Ombudsman's recommendations.

6. The Administration advised that in November 2009, SWD set up a Working Group on Review of the Mechanism for Implementing the DA Scheme ("the Review Group") to follow up the Ombudsman's recommendations. To achieve consistencies and objectiveness in conducting medical assessments and meet the policy intent of DA, the Review Group had refined and updated the guidelines, MAF and the Checklist for Medical Assessment of Eligibility for Normal Disability Allowance for Disabilities other than Profound Deafness ("the Checklist") used in medical assessments and the work flow of relevant departments/organizations. According to the Administration, the Review Group had basically concluded its review. The Administration expected to implement the recommendations of the Review Group by the end of 2013 the earliest.

### Definition of "severely disabled"

7. Some members of the Panel 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 to the financial condition of the applicant. They 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.

8. 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 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.

9. Some members strongly requested the Administration to make reference to the Spanish practice under which level of disability was categorized into 30%, 60% and 100%. While the Administration might not go so far as to categorize disability into three levels, it should at least divide it in two categories, i.e. 50% and 100%. The Administration advised that it had invited the Central Policy Unit ("CPU") to commission a consultancy to study practices of other places in respect of DA. It would liaise with the consultant to be commissioned by CPU to include in its study the Spanish practice.

#### Eligibility criteria for DA

10. Members of the Panel shared the Ombudsman's view 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 the DA scheme was not intended to take into account an applicant's employability. Moreover, the concept of "earning capacity" 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. Members called on the Administration to remove the reference from the eligibility criteria.

11. The Administration explained that the criterion of "100% loss of earning capacity" stemmed from Schedule 1 to the Ordinance and was a technical definition for severe disability. There was no linkage between an individual's eligibility for DA and his/her 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. Recommendations were also made to amend MAF to focus on the assessment of the functional aspects of DA applicants and its wording to facilitate making medical assessment for children.

12. At the Council meeting of 9 November 2011, a motion was passed urging the Administration to conduct a comprehensive review on DA, 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.

13. 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.

#### The Medical Assessment Form and medical assessment

14. Some members of the Panel pointed out that MAF lacked clarity and objectivity and should be reviewed so as to avoid inconsistencies in assessment. The Administration responded that the layout and content of MAF had been revised to improve the entry and presentation of information. MAF had been amended to highlight severe disability as the focus of the medical assessment to facilitate doctors' assessment on whether the nature and degree of disability of the applicants satisfied the definition of "severe disability" within the meaning of DA. In assessing patients with "other physical, mental conditions (including visceral diseases)", the Review Group recommended removing the patient's ability to "work in the original occupation and perform any other kind of work for which he/she is suited " as a criterion for assessment to avoid confusion and misunderstanding amongst doctors as well as achieve objectivity of the assessments. To improve transparency, a doctor was also required to tick one or more of the three qualifying conditions against which the patient was considered suffering from severe disability; or confirm that all the three qualifying conditions were not met if, according to the doctor's assessment, the patient was not suffering from severe disability.

15. Some members of the Panel cautioned that removing the patient's ability to "work in the original occupation and perform any other kind of work for which he/she is suited" from the assessment criteria would substantially raise the threshold for DA. Given that it had a direct implication on applicants' eligibility for DA, they called on the Administration to review the new MAF.

16. Some members suggested that to enable clear documentation of all factors considered by doctors in their assessment and to facilitate doctors' systematic consideration of all relevant eligible criteria, the guidelines listed on the Checklist should be moved to MAF. MAF would then include the specification that an applicant was considered in a position broadly equivalent to 100% loss of earning capacity. He/she would thus be eligible for Normal DA, if his/her physical or mental impairment or other medical conditions had resulted in a significant restriction or lack of ability or volition to perform the activities in daily living to the extent that substantial help from others were required. These members further suggested another criterion under which an applicant should be considered eligible for DA if his/her physical or mental impairment had caused him/her to incur additional medical expenses.

17. Some members pointed out that the reference to "100% loss of earning capacity" still appeared as a footnote in the new MAF. The Administration agreed to consider members' views and concerns about that reference in MAF.

18. Some members of the Panel suggested 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. According to the Administration, 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. 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. If a DA applicant was not satisfied with the decision on his/her application, he/she could appeal to the Social Security Appeal Board ("SSAB"). SSAB would then arrange for the applicant to undergo a medical re-assessment to be processed by an independent medical assessment board.

### **Relevant papers**

20. A list of the relevant papers on the Legislative Council website is in **Appendix II**.

Council Business Division 2  
Legislative Council Secretariat  
4 December 2013

**Schedule 1 to the Employees' Compensation Ordinance  
Percentage of Loss of Earning Capacity**

- Under Schedule 1, injuries causing 100% loss of earning capacity include –

Item	Percentage of loss of earning capacity	Note
Loss of 2 limbs	100	Eligible for existing Disability Allowance
Loss of both hands or of all fingers and both thumbs		
Loss of both feet		
Total loss of sight		
Total paralysis		
Injuries resulting in being permanently bedridden		
Paraplegia		
Any other injury causing permanent total disablement		
Total loss of hearing, both ears		

- Under Schedule 1, “loss of leg below knee” represents 65% loss of earning capacity. Items of injury with equivalent or higher percentage of loss of earning capacity include –

Item	Percentage of loss of earning capacity
Loss of leg below knee	65
Loss of 4 fingers of one hand	65(preferred hand)
Loss of one kidney (if the other kidney is abnormal)	65 - 90
Loss of arm between wrist and elbow	70 75(preferred hand)
Loss of hand at wrist	70 75(preferred hand)
Loss of 4 fingers and thumb of one hand	70 75(preferred hand)
Loss of leg at or above knee	75
Loss of arm at shoulder	75 80(preferred hand)
Loss of arm between elbow and shoulder	75 80(preferred hand)
Loss of arm at elbow	75 80(preferred hand)
Loss of leg at hip	80

- Under Schedule 1, items of injuries representing 50% to 64% loss of earning capacity include –

<b>Item</b>	<b>Percentage of loss of earning capacity</b>
Loss of sight of one eye	50
Ankylosis of the elbow joint (in worst position)	50
Ankylosis of hip joint (in worst position)	50
Loss of foot*	55
Ankylosis of shoulder joint (in worst position)	55
Loss of 4 fingers of one hand (not preferred hand)	60
Impairment of urinary bladder function (no reflex and no voluntary control)	38-60

\*Note: sole



## Appendix II

### Relevant papers on system for processing applications for Disability Allowance under the Social Security Allowance Scheme

Committee	Date of meeting	Papers
Panel on Welfare Services	14 November 2005 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	12 December 2005 (Item V)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	10 April 2006 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	11 December 2006 (Item VI)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	12 March 2007 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	14 May 2007 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	14 October 2008 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	11 May 2009 (Item III)	<a href="#">Agenda</a> <a href="#">Minutes</a>
Legislative Council	9 November 2011	<a href="#">Official Record of Proceedings</a> Pages 247 - 293  <a href="#">Progress Report</a>
Panel on Welfare Services	10 December 2012 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>
	25 February 2013	<a href="#">Agenda</a>

	(Item I)	<a href="#">Minutes</a>
	8 July 2013 (Item IV)	<a href="#">Agenda</a> <a href="#">Minutes</a>

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