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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 9 March 2015**

**Review of Disability Allowance
and system for processing relevant applications**

Purpose

This paper summarizes past discussions of the Council and its committees relating to the review of the Disability Allowance ("DA") under the Social Security Allowance Scheme and the system for processing applications for 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 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 \$1,510 and \$3,020 respectively.

4. According to the Administration, the Ombudsman published its Direct Investigation Report on "Granting of Disability Allowance and processing of appeals by the Social Welfare Department" in October 2009. To follow up the Ombudsman's recommendations, the Social Welfare Department ("SWD") set up the Inter-departmental Working Group on Review of the Mechanism for Implementing the DA Scheme ("SWD's Working Group") in November 2009. To achieve consistencies and objectiveness in conducting medical assessments and meet the policy intent of DA, the SWD's Working Group had refined and updated the Medical Assessment Form ("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, as well as the work flow and guidelines of relevant departments/organizations for processing DA applications.

5. At its meeting on 25 February 2013, the Panel on Welfare Services ("the Panel") was informed that the Labour and Welfare Bureau ("LWB") had separately set up the Inter-departmental Working Group on Review of DA ("LWB's Working Group") to study the subject of "allowing people with loss of one limb to apply for DA" as stated by the Chief Executive in his Manifesto and Policy Address. At the Panel's request, the LWB's Working Group would also review MAF based on the recommendations by the SWD's Working Group.

Members' deliberations

Eligibility criteria for DA and definition of "severely disabled"

6. Members 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.

7. 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 SWD's Working Group hence recommended clearly spelling 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.

8. Some Members considered the definition of "severely disabled" under the DA Scheme unclear, as different people might have different understanding of the term. To strengthen the protection of persons with disabilities, they urged the Administration to review the eligibility criteria for DA. 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. They also 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.

9. The Administration advised 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 Assistance 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. Some Members strongly requested the Administration to conduct a comprehensive review of the definition of "severely disabled" under DA and 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 LWB had appointed a consultant to conduct a study on the experience of other places in respect of DA. It would liaise with the consultant to include in its study the Spanish practice.

11. At its meeting on 27 November 2013, the Council passed a motion urging the Administration to allow persons with loss of one limb to receive DA. The Administration advised that the issue was rather complex which involved, among others, the criteria for assessing the disability levels as well as the projection of the number of beneficiaries and relevant financial implication. In the process, the LWB's Working Group would take into account the experience of other places and the next round of survey conducted by the Census and Statistics Department on persons with disabilities, etc. It was expected that the review would be completed by the end of 2014.

The Medical Assessment Form and medical assessment

12. Some Members were of the view that MAF lacked clarity and objectivity and should be reviewed so as to avoid inconsistencies in assessments. The Administration advised 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 applicants with "other physical, mental conditions (including visceral diseases)", the SWD's Working Group recommended removing the applicant's condition regarding his/her ability to "work in the original occupation and perform any other kind of work for which he/she is suited" ("the condition") as a criterion for assessment to avoid confusion and misunderstanding amongst doctors as well as achieve objectivity of the assessments. To address Members' concerns mentioned in paragraph 6 above, the LWB's Working Group proposed to remove the reference to "100% loss of earning capacity" from the new MAF.

13. While supporting the Administration's proposal to remove the reference, some Members cautioned that removing the condition from the assessment criteria would substantially raise the threshold for DA, thereby rendering some persons with severe disabilities (e.g. loss of one limb), who were currently assessed by doctors to be eligible for DA, becoming ineligible. Given that it had a direct implication on applicants' eligibility for DA, they called on the Administration to review the new MAF. At its meeting on 9 December 2013, the Panel passed a motion urging the Administration to implement expeditiously the revisions to MAF by removing the reference as proposed by the Ombudsman, but objecting to the proposed removal of the condition from the Checklist, so that people with loss of one limb or other conditions (including visceral diseases) might have a chance to be diagnosed by doctors as severely disabled and be eligible for DA.

14. The Administration advised that according to HA, many doctors of HA had all along requested the Administration to remove the condition from the Checklist as they found it difficult to assess a DA applicant's ability to "work in the original occupation and performing any other kind of work for which he/she is suited" because it involved social and environmental consideration. According to the Administration, the Ombudsman opined that although doctors had expressed difficulty in making assessment in this regard, SWD maintained that doctors were fully competent to make all necessary assessments prescribed in MAF and that SWD staff were not in a position to challenge a medical assessment. This had left a void in the assessment of this eligibility criterion

and raised a question of whether this criterion had actually been taken into account in assessments. Having regard to the Ombudsman's observation and doctors' views collected by the SWD's Working Group, the Administration therefore proposed to remove the condition as a criterion for assessment.

15. Some Members urged the Administration to retain the condition in the new MAF as the impact of the disability on DA applicants' ability to work would otherwise be disregarded. They considered that doctors would be able to assess whether the disabling condition of a DA applicant would make him/her unable to work in the original occupation and perform any other kind of work for which he/she was suited, so as to determine whether he/she was eligible for DA. They also said that the condition was only one of the four activities in daily living for assessing whether a DA applicant was severely disabled within the meaning of the DA Scheme, and that an applicant would be eligible for DA if he/she satisfied any of these conditions.

16. The Administration advised that for a person to be eligible for DA, he/she must be severely disabled and as a result, needed substantial help from others to cope with daily life. A person would be eligible for DA if he/she could not perform any, but not all, of the activities in daily living as listed in the Checklist. The SWD's Working Group and the Rehabilitation Advisory Committee ("RAC") were of the view that removing the condition would avoid inconsistency in assessments. The Ombudsman also pointed out that the condition could not apply to children or those who were not in employment. As the Panel had objected to the proposal, the SWD's Working Group would further discuss the matter taking into account Members' views and concerns. The Administration would also consult RAC.

17. Some Members 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. 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 persons with disabilities (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

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

Council Business Division 2
Legislative Council Secretariat
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**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 –

Item	Percentage of loss of earning capacity
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 the review of Disability Allowance and system for processing relevant applications

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 to 293 Progress Report
Panel on Welfare Services	10 December 2012 (Item IV)	Agenda Minutes
	25 February 2013 (Item I)	Agenda Minutes

	8 July 2013 (Item IV)	Agenda Minutes
Legislative Council	27 November 2013	Official Record of Proceedings Pages 286 to 389 Progress Report
Panel on Welfare Services	9 December 2013 (Item V)	Agenda Minutes

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