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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 15 February 2016**

**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 (Cap. 282) ("the Ordinance"). 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 \$1,580 and \$3,160 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 ("SWDWG") in November 2009. To achieve consistencies and objectiveness in conducting medical assessments and meet the policy intent of DA, SWDWG 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 had separately set up the Inter-departmental Working Group on Review of DA ("LWBWG") to study the subject of "allowing people with loss of one limb to apply for DA" as stated by the Chief Executive ("CE") in his Manifesto and Policy Address. At the Panel's request, LWBWG would also review MAF based on the recommendations by SWDWG. According to the Administration, LWBWG has commissioned a consultancy team from The University of Hong Kong ("the Consultancy Team") to study the practices of other places on the provision of financial assistance for persons with disabilities ("the Study"). The Study mainly covers four places, namely Australia, the United Kingdom, the United States of America and Taiwan. It has also studied the experience of Macao and Spain. The Panel was briefed on the main observations of the Study at its meeting on 9 March 2015.

Members' deliberations

Review of eligibility criteria for DA

6. Noting that the existing DA Scheme only covered persons with severe disabilities who had lost 100% of earning capacity, some Members were concerned that many persons with disabilities had been excluded from the DA Scheme under such restriction. These Members called on the Administration to conduct a comprehensive review of DA, and sought the Consultancy Team's view in this regard. Members noted the view of the Consultancy Team that the existing DA Scheme did not keep pace with the changes in the concept of disability in society. However, the Consultancy Team did not consider it worthwhile to devise an elaborative assessment mechanism for DA if no

changes were made to the prevailing policies on persons with disabilities. Rather, it might be more feasible to consider including mobility disability caused by loss of one lower limb in the assessment criteria for DA.

Reference to "100% loss of earning capacity"

7. Some 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. These Members therefore called on the Administration to remove the reference from the eligibility criteria for DA.

8. 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. SWDWG 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.

Definition of "severely disabled" under DA

9. 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, in many places covered by the Study, persons with disabilities were provided with different tiers of financial assistance according to their degrees of disabilities. The Administration should follow this direction in developing the DA Scheme and conduct a comprehensive study on the needs of persons with different degrees of disabilities so as to address their special needs.

10. 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.

Suggestion of allowing persons with loss of one limb or visceral disabilities to apply for DA

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. According to the Administration, CE had stated in his Manifesto that the Administration would allow persons with loss of one limb to apply for DA. To take this forward, LWBWG would carefully review the eligibility criteria for DA and related matters. In exploring the options, issues in various aspects including policy, implementation and finance would be fully considered. In addition, LWBWG would examine the findings of the Study, the results of the latest survey on persons with disabilities released by the Census and Statistics Department ("C&SD") in end-December 2014, and the poverty situation report on persons with disabilities issued jointly by the Economic Analysis and Business Facilitation Unit under the Financial Secretary's Office and C&SD in end-December 2014. LWBWG expected to complete its work by the end of 2015.

12. Considering that there should not be any dispute on the definition of "loss of one limb", some Members urged the Administration to consider allowing persons with loss of one limb to apply for DA without waiting for the completion of the review. The Administration advised that according to the findings of the Study, persons with loss of one limb alone were not eligible for financial assistance, except in the United States of America where persons who were assessed to be suffering from "ineffective walking" due to loss of one lower limb were eligible for financial assistance. In the case of Hong Kong, public medical officers would assess whether a DA applicant required substantial help from others in maintaining his/her posture and dynamic balance while standing or sitting, managing indoor transfer, travelling to clinic, school, place and work as a result of his/her physical impairment. In exploring the issue of allowing persons with loss of one limb to apply for DA, LWBWG would compare local practices with practices in other places. LWBWG was also discussing with doctor representatives of HA issues in relation to the aforesaid relaxation of eligibility criteria for DA and would explore the feasibility of such a relaxation. However, it might be difficult to include loss of one upper limb as an eligibility criterion for DA given that such impairment was usually not tantamount to severe disability.

13. Some Members were concerned that many people with visceral disabilities or "invisible disabilities" were ineligible to apply for DA under the

existing DA Scheme although they were also in grave need. Noting that the International Classification of Functioning, Disability and Health ("ICF") had already been adopted internationally for assessing the needs of people with disabilities, these Members called on the Administration to consider adopting the relevant international requirements and reforming the DA Scheme. The Administration advised that based on the information provided by the Study, ICF published by the World Health Organization ("WHO") was a classification system instead of an assessment tool. According to the observations of the Study, Taiwan had prepared for the implementation of the ICF-based classification system and the development of the assessment model suitable to the local situation from 2007 to 2012. However, the relevant arrangements were expected to be in full implementation in 2019, and the effectiveness of ICF had yet to be assessed.

MAF and medical assessment

14. 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. Besides, 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)", SWDWG recommended removing from the Checklist 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 regarding earning capacity mentioned in paragraph 7 above, LWBWG proposed to remove the reference to "100% loss of earning capacity" from the new MAF.

15. 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, these Members 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 persons 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.

16. 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 SWDWG, the Administration therefore proposed to remove the Condition as a criterion for assessment.

17. 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.

18. 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. SWDWG 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 for removing the Condition from the Checklist, SWDWG would further discuss the matter taking into account Members' views and concerns. The Administration would also consult RAC.

19. 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 medical officer, 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, 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. From April 2010 to end-February 2015, SSAB ruled on a total of 1 344 appeals on DA applications. SSAB confirmed the decision of SWD in 961 cases (72%) and varied SWD's decision in 383 cases (28%).

Latest Development

20. According to the Administration, CE announced in his 2016 Policy Address that LWBWG has completed the review of the eligibility criteria for DA. As recommended by LWBWG, the Administration will, among others, amend MAF to remove the reference to "100% loss of earning capacity" and the work-related assessment criterion, and invite RAC to continue monitoring the adoption by neighbouring places of the disability classification established by WHO as the basis for assessment mechanism. The Administration will brief the Panel on the review outcome of the eligibility criteria for DA at its meeting on 15 February 2016.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
5 February 2016

**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
Panel on Welfare Services	9 March 2015 (Item III)	Agenda Minutes LC Paper No. CB(2)1306/14-15(01)
Finance Committee	2 April 2015	Administration's replies to members' written questions in examining the Estimates of Expenditure 2015-2016 Pages 552-553
Panel on Welfare Services	25 January 2016 (Item I)	Agenda

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