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Panel on Welfare Services

**Updated background brief prepared by the Legislative Council Secretariat
for the special meeting on 4 May 2017**

**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 \$1,695 and \$3,390 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") has 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 assessment and meet the policy intent of DA, SWDWG has revised 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 assessment. One of the revisions is to remove from the Checklist the applicants' ability to "work in the original occupation and perform any other kind of work for which he/she is suited" ("the work-related criterion") as a criterion for assessment. In addition, SWDWG has refined 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. Upon completion of its work, LWBWG has put forward a total of nine recommendations, which include two recommendations relating to the enhancement of the existing DA assessment mechanism. The recommendations are (i) revising MAF for DA to achieve consistency and objectiveness in medical assessment; and (ii) standardizing the arrangements about the use of rehabilitation devices in the course of DA assessment.

Members' deliberations

Recommendations on revising Medical Assessment Form

6. According to the Administration, LWBWG had proposed a number of amendments to MAF with an aim to better facilitate doctors' assessment and to

achieve consistency and objectiveness in the assessment. The proposed amendments included the removal of the work-related criterion from the Checklist as well as the removal of the reference to "100% loss of earning capacity" ("the Reference") and the six conditions (i.e. organic brain syndrome, mental retardation, psychosis, neurosis, personality disorder and any other conditions resulting in total mental disablement) ("the Six Conditions") from Part I(B) of MAF. The proposed amendments aimed to clarify that the granting of DA was not related to an applicant's employability, and that there was no need to highlight these categories of disabilities under the Six Conditions.

7. While supporting the proposal to remove the Reference, some Members cautioned that removing the work-related criterion 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 work-related criterion 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.

8. Stressing that it did not intend to tighten the eligibility criteria for DA, the Administration advised that public medical officers making assessment for DA had not hitherto been required to indicate whether a DA applicant met the work-related criterion or any one or more of the other three daily activities criteria as listed in the Checklist.¹ It did not see how the deletion of the work-related criterion could result in existing DA recipients becoming ineligible for DA. On the other hand, according to HA, many doctors of HA had all along requested the Administration to remove the work-related criterion from the Checklist as they found it difficult to assess a DA applicant's ability to "work in the original occupation and perform 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

¹ The other three daily activities criteria are (a) coping with self-care and personal hygiene including feeding, dressing, grooming, toileting and bathing; (b) maintaining one's posture and dynamic balance while standing or sitting, for daily activities, managing indoor transfer (bed/chair, floor/chair, toilet transfer), travelling to clinic, school, place and work; and (c) expressing oneself, communicating and interacting with others including speaking, writing, utilizing social (community) resources, seeking help from others, and participating in recreational and social activities.

had expressed difficulty in making assessment in this regard, SWD maintained that doctors were fully competent to make all necessary assessment 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 assessment. Having regard to the Ombudsman's observation and doctors' views collected by SWDWG, the Administration therefore proposed removing from the Checklist the work-related criterion as a criterion for assessment.

9. Some Members urged the Administration to retain the work-related criterion 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 work-related criterion 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 criteria. The proposed removal of the work-related criterion would reduce an applicant's opportunity to receive DA.

10. At the special meeting of the Panel on 3 May 2016, some deputations/individuals objected to the proposed removal of the work-related criterion as they considered that the criterion could serve as a reference for public medical officers to assess daily needs of DA applicants, and such removal would render some applicants with visceral disabilities ineligible for DA. Some other deputations/individuals strongly objected to remove from MAF the Six Conditions mentioned in paragraph 6 above. They queried about how public medical officers could assess the eligibility for DA for an applicant with autism and/or intellectual disabilities if the Six Conditions were removed.

11. 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 work-related criterion would avoid inconsistency in assessment. The Ombudsman also pointed out that the work-related criterion could not apply to children or those who were not in employment. That said, having regard to the views on the proposed amendments to MAF expressed by some stakeholders mentioned in paragraph 10 above, the Administration decided to temporarily defer making the proposed amendments to MAF. The

Administration would focus on the implementation of the other recommendations of LWBWG.²

12. At the Panel meeting on 13 March 2017, Members noted that the Administration had met with stakeholders on the proposed amendments to MAF and further explained its recommendations. The Administration advised that LWBWG had recommended the removal of the Reference and the work-related criterion from MAF so as to clarify that the eligibility for DA was not related to whether a person was engaged in a paid job. It would not be logically nor operationally desirable if the Reference were to be removed while the work-related criterion were to be retained. The Administration reiterated that doctors had expressed difficulty in making assessment of the work-related criterion as explained in paragraph 8 above. Besides, LWBWG considered that the removal of the Six Conditions would not restrict the eligibility of DA. Nevertheless, given the concern of some persons with disabilities about the proposed removal of the Six Conditions, the Administration might explore whether the Six Conditions might be retained in the revised MAF in the form of examples for doctors' reference. Notwithstanding the Administration's advice, the Panel passed two motions (wording of the motions in **Appendix II**) reiterating its support to the proposed removal of the Reference but objecting to the proposed removal of the work-related criterion and the Six Conditions from MAF.

Suggestion of allowing persons with loss of one limb to apply for Disability Allowance

13. 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.

14. At its meeting on 27 November 2013, the Council passed a motion urging

² The implementation progress of the recommendations of the Inter-departmental Working Group on Review of the Disability Allowance was set out in the Annex 2 to LC Paper No. CB(2)666/16-17(01) provided by the Administration for the policy briefing of the Panel on Welfare Services on 26 January 2017.

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 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.

15. Following completion of the LWBWG's review of DA, the Administration advised that one of the nine recommendations put forward by LWBWG was to standardize the arrangements for the use of rehabilitation and mechanical devices in medical assessment. It was expected that more people with loss of one limb and fitted with a prosthesis would be eligible for DA after the aforesaid standardized arrangement was implemented. At the policy briefing on 26 January 2017, the Panel noted that starting from 21 December 2016, public medical officers had been adopting a standardized approach in conducting medical assessment of DA applicants on the basis of their condition without the use of rehabilitation and mechanical devices, which included prosthesis, hearing aids and artificial cochlea.

Other suggestions on enhancing Disability Allowance Scheme

16. 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.

17. 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.

18. 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.

19. The Administration advised that based on the information provided by the Study, ICF published by the World Health Organization 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. As recommended by LWBWG, the Administration would invite RAC to continue to monitor the adoption of ICF in neighbouring places (in particular Taiwan), with a view to exploring how to devise a set of comprehensive and widely accepted definition of disability and the level of disability.

20. 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 might at the same time incur disproportionate costs and 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"). 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%).³

21. Some Members, however, called on the Administration to consider reforming the existing appeal mechanism for DA, which included introducing the assessment of social factors and making comprehensive considerations, to ensure that the DA-related appeal cases could be processed in a fair manner. The Administration advised that under the existing appeal mechanism for DA, upon receiving an appeal involving medical assessment, SSAB and HA would arrange the appellant to undergo another round of medical assessment. The assessment would be conducted by the Medical Assessment Board ("MAB") which was responsible for social security appeals. Members of MAB comprised doctors from both public and private medical institutions. MAB would conduct the assessment with reference to the appellant's disabling condition, results of previous medical assessment, the appellant's submissions, etc. MAB would then submit a report to SSAB, which comprised members from the community, medical and health sector, business sector, etc. After receiving the assessment report, SSAB would make a decision on individual appeals. SWD had no plan to change the aforesaid mechanism.

Relevant papers

22. A list of the relevant papers on the Legislative Council website is in **Appendix III**.

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³ According to the Administration, in the 2015-2016 financial year (as at end-December 2015), the Social Security Appeal Board received 286 DA appeal cases involving medical assessment.

**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

福利事務委員會

**在2017年3月13日會議上就議程第V項
"傷殘津貼檢討及處理有關申請的制度"
通過的議案**

本委員會認同不能"從事原有的職業及擔任其適合的任何其他種類的工作"是符合領取傷殘津貼的考慮條件之一。因此，政府不應刪除醫療評估表格上有關的提述。

動議人：張超雄議員

(Translation)

Panel on Welfare Services

**Motion passed under agenda item V
"Review of Disability Allowance and the system for processing application
thereof"
at the meeting on 13 March 2017**

This Panel agrees that the incapability of "working in the original occupation and performing any other kind of work for which he/she is suited" is one of the eligibility criteria to be considered for the Disability Allowance. Therefore, the Government should not delete such reference¹ from the Medical Assessment Form.

Moved by : Dr Hon Fernando CHEUNG Chiu-hung

¹ The reference is equivalent to the work-related criterion in the main text of the background brief.

福利事務委員會

在2017年3月13日會議上就議程第V項 "傷殘津貼檢討及處理有關申請的制度" 通過的議案

本委員會認同申訴專員在2009年就"社會福利署如何審批傷殘津貼及處理上訴個案"的主動調查報告建議，應刪除傷殘津貼申領準則"喪失100%謀生能力"的提述；但反對政府將醫療評估表格上(I)殘疾性質/程度(B)項刪除，因為這可能會令智障人士、精神病患者、認知障礙患者等喪失領取傷殘津貼的資格。本委員會認為該(B)項應予保留。

動議人：張超雄議員

(Translation)

Panel on Welfare Services

Motion passed under agenda item V "Review of Disability Allowance and the system for processing application thereof" at the meeting on 13 March 2017

This Panel agrees to the recommendation made by the Ombudsman in its Direct Investigation Report on "Granting of Disability Allowance ("DA") and processing of appeals by the Social Welfare Department" in 2009 that the reference to "100% loss of earning capacity"² should be deleted from the eligibility criteria for DA; but objects to the Government's removal of Item (B) of (I) Nature/Degree of disability³ from the Medical Assessment Form, as persons with intellectual disabilities, persons with mental illness, dementia patients, etc. may become ineligible for DA as a result. This Panel is of the view that Item (B) should be retained.

Moved by : Dr Hon Fernando CHEUNG Chiu-hung

² The reference is equivalent to the Reference in the main text of the background brief.

³ The Item is equivalent to the Six Conditions in the main text of the background brief.

Appendix III

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 Minutes
Panel on Welfare Services	15 February 2016 (Item IV)	Agenda Minutes
Finance Committee	8 April 2016	Administration's replies to members' written questions in examining the Estimates of Expenditure 2016-2017 Pages 356-357 and 597-598
Panel on Welfare Services	3 May 2016 (Item I)	Agenda Minutes
Legislative Council	29 June 2016	Official Record of Proceedings Pages 91-95

Panel on Welfare Services	26 January 2017 (Item I)	Agenda LC Paper No. CB(2)666/16-17(01)
Panel on Welfare Services	13 March 2017 (Item V)	Agenda

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