



Centre for Applied
Legal Studies

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Submission

to the

Minister of Social Development

on the

Amendments to the Regulations relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in respect of Eligibility for Social Assistance made in terms of the Social Assistance Act, 2004

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INTRODUCTION

About the Centre for Applied Legal Studies

1. The Centre for Applied Legal Studies (“**CALS**”) welcomes the opportunity to submit comments on the draft Amendments to the Regulations made in terms of the Social Assistance Act, 2004 (“**the draft Regulations**”) in response to the call by the Minister of Social Development (“**the Minister**”). In the event that the Minister hosts public hearings on the Amendment to the Regulations, CALS hereby requests that it be placed on the roll to make oral submissions.
2. CALS is a human rights organisation and registered law clinic based at the School of Law at the University of the Witwatersrand. CALS is committed to the protection of human rights through the empowerment of individuals and communities and the pursuit of systemic change.
3. CALS’ vision is a country and continent where human rights are respected, protected and fulfilled by the state, corporations, individuals and other repositories of power; the dismantling of systemic harm; and a rigorous dedication to justice. It fulfils this mandate by –
 - challenging and reforming systems within Africa which perpetuate harm, inequality and human rights violations;
 - providing professional legal representation to survivors of human rights abuses; and
 - using a combination of strategic litigation, advocacy and research, to challenge systems of power and act on behalf of vulnerable persons and communities.
4. CALS operates across a range of human rights issues, namely basic services, business and human rights, environmental justice, gender justice, and the rule of



law, and adopts a gendered and intersectional approach to interpreting, implementing and – where necessary – promoting the development of the law.

PURPOSE OF THESE COMMENTS: THE RIGHT APPLICANTS FOR AN SRD GRANT TO A FAIR APPEAL PROCESS

5. The draft Regulations provide for the manner in which an application for the Social Relief of Distress (“**SRD**”) grant is to be made and processed, including an appeal of the decision on such an application, in furtherance of the constitutional right of access to social security,

“including, if they are unable to support themselves and their dependants, appropriate social assistance” (Constitution of the Republic of South Africa, 1996 (“**the Constitution**”) s 27(1)(c)).

6. It is trite that applicants for social assistance are vulnerable persons, often without access to necessary information and documentation. These issues are exacerbated when one considers the context in which applications for an SRD grant are made. The ongoing COVID-19 pandemic provides ample evidence of this.
7. The Department of Social Development and the institutions which administer social assistance play an oversized role in South African society, impacting the lives of millions of vulnerable persons. The successful performance of this role is contingent on the protection of those persons, including ensuring that applicants, beneficiaries and recipients of social assistance are in no way prejudiced as a consequence of their substantial need.
8. CALS accordingly seeks to ensure that the draft Regulations adequately protect vulnerable persons from such exploitation, and affords such persons a fair opportunity in which to apply for a much needed grant in times of exacerbated distress.

COMMENT ON THE SUBSTANCE OF THE DRAFT AMENDMENTS TO THE REGULATIONS



9. CALS' comments on the draft Regulations focus on the process and time period for appealing a decision on an application for an SRD grant.

The documents and information permitted to be submitted when appealing a decision on an application for an SRD grant

10. Draft Regulation 14A(1)(b) states that –

“When lodging an appeal as contemplated in regulation 14(5)(b) the applicant or procurator must not be allowed to submit any evidence or information which was not provided to the Agency at the time of the application for social relief of distress.”

11. CALS is advised by its client the Black Sash Trust that applicants for the COVID-19 SRD grant continue to be rejected solely due to information used and relied upon by the South African Social Security Agency (“**SASSA**”) on the databases of the UIF, SARS and NSFAS, which information is either outdated or incorrect. This is compounded by applicants being barred from submitting new evidence or additional documentation in the appeal application.
12. It is manifest that many applicants' employment status has changed over the course of the COVID-19 pandemic and continues to be unstable and affected by the economic downturn resulting from the pandemic. This is indeed one of the many reasons that receiving the COVID-19 SRD grant is crucial for those applicants. It is critical that rejected applicants be permitted, and encouraged, to provide additional documentation to ensure that SASSA has the most up-to-date information on file to ensure that eligible applicants receive this vital grant.
13. CALS accordingly submits that an applicant for an SRD grant who is appealing a refusal to grant them an SRD grant should be permitted to submit evidence which was not provided to SASSA at the time of the initial application for the following reasons:



- 13.1. In times of exacerbated distress and vulnerability which give rise to the need for an SRD grant, an applicant may reasonably have neglected to submit relevant documents or information during the initial application stage;
- 13.2. In such times, updated documentation may not be readily available to applicants when applying on an urgent basis for an SRD grant; and/or
- 13.3. There may be a change in the applicant's circumstances between the initial application and the appeal stage, which change is relevant to the determination of their qualification for the SRD grant. The applicant should be permitted to submit further documents to prove this.

The time period during which an appeal against a decision on an application for an SRD grant is permitted

14. Draft Regulation 14A(1)(e) states that –

“No application for a social relief of distress appeal shall be considered by the Independent Tribunal if not submitted within the prescribed period of 90 days from the date of rejection of such application by the Agency.”

15. CALS commends the extension of the period for lodging an appeal against a decision on an application for an SRD grant to 90 days.
16. CALS nevertheless submits that, given the uncertainty and exacerbated distress under which applicants for an SRD grant may be operating, it is necessary to allow for an extension of the time period for lodging such an appeal in the event that a reasonable explanation for applicant's delay is provided to the Independent Tribunal.

CONCLUSION

17. In summary, CALS calls on the Minister to amend the draft Regulations as follows:
 - That applicants lodging an appeal against the refusal of their application for an SRD grant be allowed and indeed encouraged to submit additional



documentation at the appeal stage to ensure that SASSA has the most up-to-date information on file to ensure that eligible applicants receive this vital grant; and

- That the time period for lodging an appeal against a decision on an application for an SRD grant may be extended by the Independent Tribunal if it is satisfied that there is a reasonable explanation for the applicant's delay.

ENDS.

