

August 2015

Our client, a 42-year-old domestic worker, applied to the South Africa Social Security Agency (SASSA) as the mother, legal guardian and primary caregiver of her minor son in order to receive a child support grant on behalf of her son.

Section 27(1)(c) of the Constitution of the Republic of South Africa, 1996 states that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. Section 27(2) also places a duty on the state to take reasonable, legislative and other measures within its available resources to achieve the progressive realisation of this right. This was done by enacting the South African Social Security Agency Act 9 of 2004 and the Social Assistance Act 13 of 2004.

In section 4 of the Act an obligation is placed on the Minister of Social Development with the concurrence of the Minister of Finance in to make a child support grant (among other grants) available out of moneys appropriated by Parliament.

In the Budget Speech 2015 the Minister of Finance announced that the child support grant would be increased by ZAR10 to ZAR330 per month. This might seem like a meagre amount. However, the added benefit is that the South African Schools Act 84 of 1996 Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools allows for the exemption of school fees for recipients of the child support grant.

In terms of sections 14(1) and 14(3)(a), any person who wishes to apply for social assistance must do so in the prescribed manner and, if the applicant qualifies for social assistance in terms of the Act, it must be given.

In order to receive the child support grant the applicant must meet the following requirements:

- The primary caregiver must be a South African citizen, permanent resident or refugee.
- Both the applicant and the child must reside in South Africa.
- The applicant must be the primary caregiver of the child/children concerned.
- The applicant and spouse must meet the requirements of the means test.
- The applicant cannot apply for more than six non-biological children.
- The child cannot be cared for in a state institution.

Our client, as a South African citizen and primary caregiver, resides with her son in Johannesburg. Her monthly income is below the eligibility threshold of ZAR3 300, and so she qualified to receive the child support grant. The only issue our client faced was that her son had previously been in his grandmother's care in the Limpopo Province and she was receiving the grant on his behalf, despite our client resuming full responsibility of her child in 2014.

One of the functions of SASSA, listed in section 4, is to establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained.

Section 19 regulates the abuse of social grants and, as a result, where SASSA has reasonable grounds to suspect that a beneficiary, parent, procurator or a primary caregiver is abusing the social grant, it may appoint a person to investigate such suspected abuse.

If, on objective grounds, the investigator finds that abuse has taken place, SASSA must appoint someone to receive the social grant on behalf of the beneficiary or may even suspend payment.

Interestingly enough, in terms of section 17(1), if SASSA pays money to a person in the belief that the recipient is entitled thereto but then discovers they are not, SASSA must recover the money to which they were not entitled.

Without knowing the law, our client applied to SASSA for the change of beneficiaries of the child support grant in her favour. What one would think would be an easy thing to change turned out to be a more than a year-long run-around. She applied at the SASSA offices in both Germiston and Johannesburg to change the beneficiaries, however, all of these applications were unsuccessful and SASSA offices directed her to the Limpopo offices.

In desperation, in April 2015, she travelled to Limpopo from Johannesburg and applied for a change of beneficiaries at the SASSA office in Seshego. The Seshego office required the grandmother to consent to a change of beneficiaries, but despite repeated attempts by our client to encourage the grandmother to do so, she refused and instead continued to personally benefit from the child support grant.

Our client was then advised to obtain legal assistance and on 5 June 2015 we attended the SASSA offices. Within minutes of stating that we were her attorneys and required assistance, the matter was resolved. By 9 June 2015 the grandmother's grant on behalf of the child was cancelled. The first instalment of the grant will be received by our client in August.

This was a clear triumph and success for our client and her son after all of their attempts in the last year and a half. In the midst of this situation one can't help but feel a sense of social justice being achieved. One can't help but see the ideals represented in the preamble of our Constitution and enacted in section 27, realised.

In the midst of this one can't help but remember the reason behind enacting our Constitution:

"We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic **so as to** -
Heal the divisions of the past and establish a society based on democratic values, **social justice**

and **fundamental human rights**;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is **equally protected by law**;

Improve the quality of life of all citizens and **free the potential of each person**; and

Build a united and democratic South Africa able to take its rightful place **as a sovereign state** in the family of nations."

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