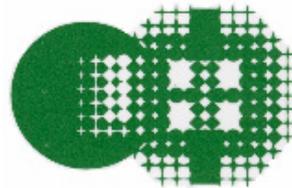


DIRECT INVESTIGATION REPORT

**Granting of Disability Allowance
and Processing of Appeals
by Social Welfare Department**

October 2009



**Office of The Ombudsman
Hong Kong**

CONTENTS

EXECUTIVE SUMMARY

LEGEND OF ABBREVIATIONS

<i>Chapter</i>		<i>Paragraph</i>
<i>1</i>	<i>INTRODUCTION</i>	
	<i>Background</i>	<i>1.1</i>
	<i>Our Investigation</i>	<i>1.2-1.3</i>
	<i>Purpose and Ambit</i>	<i>1.4-1.5</i>
	<i>Methodology</i>	<i>1.6-1.7</i>
	<i>Investigation Report</i>	<i>1.8</i>
<i>2</i>	<i>BACKGROUND OF THE DA SCHEME</i>	
	<i>Social Security Allowance</i>	<i>2.1-2.2</i>
	<i>Objectives</i>	<i>2.3</i>
	<i>Eligibility Criteria</i>	<i>2.4-2.6</i>
	<i>The Medical Assessment Form</i>	<i>2.7-2.16</i>
	<i>Processing Applications and</i>	<i>2.17-2.20</i>
	<i>SWD's Role</i>	
	<i>Changes to Criteria and</i>	<i>2.21-2.28</i>
	<i>Procedures</i>	
<i>3</i>	<i>APPEALS</i>	
	<i>Social Security Appeal Board</i>	<i>3.1-3.2</i>
	<i>Procedures for Appeals</i>	<i>3.3-3.7</i>
	<i>Appeal on Cases</i>	<i>3.8-3.9</i>
<i>4</i>	<i>CASES</i>	
	<i>General</i>	<i>4.1</i>
	<i>Case 1</i>	<i>4.2-4.8</i>
	<i>Case 2</i>	<i>4.9-4.13</i>
	<i>Case 3</i>	<i>4.14-4.18</i>
	<i>Case 4</i>	<i>4.19-4.27</i>
	<i>Case 5</i>	<i>4.28-4.32</i>
	<i>Case 6</i>	<i>4.33-4.36</i>

5	OUR OBSERVATIONS	
	<i>General</i>	5.1
	<i>Eligibility Criteria</i>	5.2-5.15
	<i>SWD's Role</i>	5.16-5.26
	<i>Appeals</i>	5.27-5.28
	<i>Need for Review</i>	5.29
6	Recommendations	
	<i>Recommendations</i>	6.1-6.2
	<i>Acknowledgement</i>	6.3

ANNEXES

I	<i>Summary of opinions and suggestions in public submissions</i>
II (A)	<i>Social Security Allowance (SSA) Scheme</i>
(B)	<i>Medical Assessment Form</i>
(C)	<i>Checklist for Medical Assessment of Eligibility for Normal Disability Allowance for Disabilities other than Profound Deafness</i>
(D)	<i>Supplementary Medical Assessment Form on Need for Constant Attendance (SSA Scheme)</i>
III	<i>Non-governmental Organisations which made submissions to the Legislative Council on review of Disability Allowance between 2005 and 2008</i>
IV	<i>Schema of revised MAF to illustrate the essential elements</i>

EXECUTIVE SUMMARY

Direct Investigation Granting of Disability Allowance and Processing of Appeals by Social Welfare Department

Background

The Disability Allowance (“DA”) scheme under the Social Welfare Department (“SWD”) provides non-means-tested and non-contributory financial assistance to severely disabled persons, irrespective of their employment status.

2. To ascertain whether the scheme is administered in accordance with its purpose and in a fair and consistent manner, The Ombudsman initiated this direct investigation to examine, *inter alia*:

- (a) the eligibility criteria for DA;
- (b) the procedures and practices for processing applications for DA and appeals; and
- (c) the role of SWD as administrator of the scheme and that of its Director as vote controller.

Eligibility Criteria

3. There are two types of DA: Normal Disability Allowance (“NDA”) and Higher Disability Allowance (“HDA”). A person assessed by a doctor of the Department of Health (“DH”) or the Hospital Authority (“HA”) to be in a position broadly equivalent to 100% loss of earning capacity according to the First Schedule of the Employees’ Compensation Ordinance (“ECO”), Cap. 282, is eligible for NDA. The person must also meet certain residence requirements. To be eligible for HDA, a person has, in addition to being eligible for NDA, to be certified to be in need of constant attention.

Medical Assessment Form

4. The doctor is to indicate the condition of the applicant by completing the Medical Assessment Form (“MAF”), which details the eligibility criteria for DA.

5. The doctor is required to assess the applicant against a list of specified conditions adapted from those in the First Schedule to the ECO and another category “*any other conditions resulting in total disablement*”. In assessing “other conditions”, the doctor is to refer to the guidelines in the MAF.

6. According to the guidelines, “*any other conditions resulting in total disablement*” means the applicant has significant restriction or lack of ability or volition so that he/she needs substantial help from others in one or more of the following ways:

- working in the original occupation and performing any other kind of work for which he/she is suited;
- coping with self-care and personal hygiene;

- maintaining his/her posture and dynamic balance;
- expressing his/herself, communicating and interacting with others.

7. For applicants for HDA, the doctor is to indicate whether the applicant requires intensive attention and supervision, to the extent that HDA is recommended.

Processing of Applications

8. **Referral.** Applicants are first interviewed by Social Security Assistants (“SSAs”) or Senior Social Security Assistants (“SSSAs”) at SWD Field Units or by medical social workers in hospitals, before referral to DH or HA for medical assessment.

9. **Medical Assessment.** The MAF is meant to be self-explanatory. The doctor assesses eligibility by ticking the box(es) in the MAF that best describe(s) the applicant’s condition and makes a recommendation for or against DA grant.

10. **Vetting and Authorisation.** Upon receipt of a completed MAF, an SSA or SSSA checks the applicant’s status for residence in Hong Kong and receipt of any other social security benefits (for prevention of double benefits). The SSA or SSSA is also to vet the MAF for inconsistencies or ambiguities in the doctor’s assessment according to SWD’s internal guidelines. An application considered in order will be passed to a Social Security Officer II (“SSOII”) or Social Security Officer I (“SSOI”) for approval.

Changes to Criteria and Procedures

11. Over the years, the Administration has adjusted the scheme in response to requests from HA, professional bodies and patients organisations. However, some issues remain outstanding.

12. Since April 2007, HA has repeatedly urged SWD to review the eligibility criteria and the MAF, as doctors have difficulty assessing whether an applicant needs substantial help in “*working in the original occupation and performing any other kind of work for which he or she is suited*”. HA has also asked SWD to re-examine the misleading reference “100% loss of earning capacity” in the eligibility criteria. HA’s requests have not been taken on board.

Consistency of Assessment

13. Despite the SWD’s internal guidelines (**para. 10**), there is no system to check that applicants with similar condition and circumstances are given consistent assessment. Meetings between SWD and HA on individual cases and other operational aspects are sporadic and not documented. There also seems to be a fundamental lack of consensus between SWD and HA as to who should be primarily responsible for ensuring consistency of assessment.

Appeal

14. DA applicants aggrieved by SWD's decision may appeal to a Social Security Appeal Board comprising non-officials.

15. For appeal against a medical assessment, the Board will arrange for the appellant to first attend a Medical Assessment Board and will then make a decision on the basis of the Assessment Board's recommendation. The Appeal Board's decision is final.

16. The Appeal Board is not obliged to give reasons for its decision. In fact, in most of the cases studied, no detail about the deliberations of the Appeal Board or the Medical Assessment Board is given in the notification letters to appellants. Consequently, neither the appellants nor the doctors making subsequent assessment were apprised of the rationale for Appeal Board decisions.

Our Observations

17. The above and our case studies in **Chapter 4 of the Report** show:

- problems with the eligibility criteria;
- SWD's shirking of responsibility for deciding on DA applications; and
- lack of transparency of deliberations on appeals.

Eligibility Criteria

18. At the inception of the scheme in 1973, the only rough and ready "guide" to disability was in relation to workmen's compensation. Having regard to the change of time and circumstances, particularly the clear irrelevance of employment to the scheme, there is a case for a thorough review of the criteria.

19. (1) "**Any Other Conditions**" – Whether an applicant requires substantial help from others in "*working in the original occupation and performing any other kind of work for which he or she is suited*" is a social and environmental consideration as well as medical factor. Despite doctors' expressed difficulty in assessing this, SWD maintains that doctors are fully competent to make all necessary assessments prescribed in the MAF and that SWD staff are not in a position to challenge a medical assessment. This has left a void in the assessment of this eligibility criterion. This raises the question whether this criterion has actually been taken into account in assessments.

20. Furthermore, the design of the MAF does not facilitate consistency and verification. The doctor is not required to state whether he has taken into account the four areas in the Checklist, whether they apply to the applicant or not and why. As a result, there is no record of the basis for recommending DA to people under "*other conditions*".

21. For clarity of record and consistency in assessment, SWD should revise the MAF, in consultation with HA and DH, so that doctors must indicate on the MAF the specific qualifying condition for making a recommendation to facilitate clear, precise and specific indication of the basis of the recommendation.

22. **(2) “100% Loss of Earning Capacity”** – This reference in the eligibility criteria for DA is misleading and quite irrelevant. The original design of the scheme was intended **not** to take into account applicants’ employability. Moreover, the concept of “earning capacity” cannot apply to some people, e.g. children. This makes it all the more difficult for doctors to make consistent and objective assessment on such people. This reference should, therefore, be removed from the eligibility criteria.

23. **(3) Crude and Outdated Classification** - The MAF lacks concrete guiding principles for assessment of such categories as “mental impairments” and “visceral diseases”. The only guidance given to doctors on these categories is whether it “produces a degree of disablement broadly equivalent to a person with a 100% loss of earning capacity”. Meanwhile, the MAF does not adopt generally accepted grading systems, such as that for “mental retardation” into mild, moderate and severe. SWD should try, in consultation with HA and DH, to refine the DA criteria to facilitate objective assessment.

24. Furthermore, the classification of diseases has been evolving. Realistically, SWD should review the categories of eligible disabling conditions to keep abreast with the times.

25. **(4) Unclear Areas** – Two aspects of the DA scheme require clarification from the Administration:

- (a) whether the availability of rehabilitation or mechanical devices which compensate for loss of functionality should be taken into account when a doctor makes an assessment for DA; and
- (b) whether and why there are different criteria for DA and other schemes, e.g. the Registration Card for People with Disabilities. This bears publicity and consideration of renaming the “Disability Allowance” as “Allowance for the Severely Disabled”.

Role of SWD

26. SWD confines its role to vetting of purely non-medical criteria: residence requirement and receipt of other social security benefits. Our case studies illustrate that the passive and mechanical approach adopted by SWD has resulted in failure to spot even blatant discrepancies and self-evident inconsistencies in DA grants.

27. DSW as vote controller is by law the guardian and administrator of funds for the DA scheme. The Director has to be satisfied that an appropriate system for monitoring and control is in place for economy, efficiency and effectiveness in the disbursement of public funds. However, SWD’s current system for monitoring and control is inadequate.

28. **(1) Lack of Measures for Consistency** – There is no evidence of a proper system for checking medical assessment for inconsistencies, in particular among different applicants with similar disabling conditions. The appeal system can solve only part of the problem as individuals already granted DA by doctors’ mistakes or misunderstanding of the eligibility criteria are not likely to appeal.

29. HA and DH must ensure that doctors have clear and adequate guidelines for making assessment, within the confines of the eligibility criteria in the MAF. For change,

divergence of views and difference in understanding or practice between HA/DH and SWD, it is SWD's responsibility as administrator of the scheme to initiate consultation and to consolidate consensus.

30. **(2) Need for Clarification** – SWD's guidelines require staff to clarify with the doctor when a medical assessment is found self-contradictory or inconsistent. However, our case studies show that they rarely do so, not even in case of obvious discrepancies in medical assessment.

31. **(3) Staff for Processing Applications** – At present, the SSA grade primarily handle DA applications. However, the SSA grade equates with those for providing clerical support in processing applications. It is not reasonable to require SSAs or SSSAs to vet applications; nor realistic to expect them to question doctors' assessments. These duties require professional training and knowledge not available in the SSA grade. We consider that complicated cases should be escalated to their supervisors i.e. SSOII and SSOI. SWD should refine the staff guidelines accordingly.

32. **(4) Notification of Result** – SWD's standard letter to notify applicants of refusal of grant of DA gives little or no explanation. Applicants are deprived of the right to know the reason(s) for refusal. This should be rectified.

Appeals – Transparency of Deliberations

33. The lack of transparency of the deliberations of the Social Security Appeal Board and the Medical Assessment Board does not assist subsequent assessment of the applicant. Without any idea of the Board's rationale, doctors making subsequent assessment have no focus for review.

Recommendations

34. In sum, The Ombudsman recommends that SWD, in consultation with HA and DA as appropriate:

- (a) review the eligibility criteria for fine-tuning;
- (b) review and revise the layout, format and contents of the MAF to enable clear documentation and to facilitate doctors' systematic assessment;
- (c) arrange regular audit of cases to spot systemic irregularities and deficiencies;
- (d) clear discrepancy in views and practices with HA and DH;
- (e) refine guidelines for staff, specifying the circumstances under which to clarify with doctors and the circumstances under which to escalate to senior officers;
- (f) revise the notification letter to applicants, giving specific reason(s) for refusal of DA;

- (g) record in some detail the deliberations of the Medical Assessment Board and the Social Security Appeal Board; and
- (h) consider an overall review of the DA scheme, covering the eligibility criteria, the roles of medical doctors and SWD as well as the assessment mechanism.

**Office of the Ombudsman
October 2009**

LEGEND OF ABBREVIATIONS

CSSA	Comprehensive Social Security Assistance
DA	Disability Allowance
DH	Department of Health
DSW	Director of Social Welfare
ECO	Employees' Compensation Ordinance
ExCo	Executive Council
HA	Hospital Authority
HDA	Higher Disability Allowance
LWB	Labour and Welfare Department
MAF	Medical Assessment Form
NDA	Normal Disability Allowance
SSA	Social Security Assistant
SSAS	Social Security Allowance scheme
SSO	Social Security Officer
SSSA	Senior Social Security Assistant
SSSO	Senior Social Security Officer
SWD	Social Welfare Department

1

INTRODUCTION

BACKGROUND

1.1 The Disability Allowance (“DA”) scheme, administered by the Social Welfare Department (“SWD”), was introduced in 1973 to provide non-means-tested and non-contributory financial assistance to severely disabled persons. The Director of Social Welfare (“DSW”) is the vote controller for this item of public expenditure, which amounts to some \$1.9 billion per year.

OUR INVESTIGATION

1.2 This investigation is a sequel to our study in November 2006, which focused on the processing of DA applications pursuant to public concern over cases of overpayment¹. In the course of that investigation, we identified a number of other issues which required further study².

1.3 In the past three years, we have continued to receive complaints about administration of the DA scheme over issues of unreasonableness or lack of objectivity in the eligibility criteria, inconsistent application of the criteria and

¹ *That investigation covered: (a) dissemination of information to applicants regarding eligibility criteria and restrictions; (b) arrangements for checking and approving applications; and (c) mechanism for preventing and deterring abuse, monitoring and detecting mistakes.*

The Ombudsman made a number of recommendations to SWD, inter alia, to publicise the obligations of applicants and recipients and to take measures to prevent abuse.

² *Those issues include:*

- (a) the definition of “severely disabled” under the DA scheme;*
- (b) consistency and objectivity in medical assessment;*
- (c) procedures for notifying applicants or recipients of the outcome of their applications or reviews; and*
- (d) long processing time for handling DA appeal cases.*

inefficiency in the appeal procedures. Against this background, the former Ombudsman informed DSW on 6 November 2008 of her decision to initiate a direct investigation. This was subsequently declared on 20 November 2008.

PURPOSE AND AMBIT

1.4 The purpose of this direct investigation is to ascertain whether the DA scheme is administered in accordance with its original purpose and in a fair and consistent manner. In particular, whether the eligibility criteria are congruent with the intention of the scheme and whether in practice they are applied with consistency and objectivity. We also see the importance of timely and effective processing of appeals.

1.5 In this context, the investigation covers:

- (a) the eligibility criteria for DA;
- (b) the procedures and practices for processing applications and appeals for DA;
- (c) the role of SWD as administrator of the DA scheme and that of its Director as vote controller; and
- (d) the adequacy and effectiveness of the current mode of operation.

METHODOLOGY

1.6 We have studied source documents and raised questions with SWD. Where appropriate, we have asked for statistics and on several occasions have sought clarification from SWD. We have met with the top management of SWD and its policy bureau, the Labour and Welfare Bureau (“LWB”). We have also sought views from the Hospital Authority (“HA”) in relation to individual cases.

1.7 We have received 15 submissions from members of the public (**Annex I**). We have met with 11 non-government organisations and patient groups, interviewed two practising medical doctors, discussed with the staff representatives of

two SWD Field Units and examined files on 120 randomly sampled cases.

INVESTIGATION REPORT

1.8 A draft investigation report was sent to DSW on 18 August 2009 for comments. Having considered his views, The Ombudsman issued this final report on 23 October 2009.

2

BACKGROUND OF DA SCHEME

SOCIAL SECURITY ALLOWANCE

2.1 DA forms part of the Social Security Allowance scheme³ (“SSAS”), under which certain groups are entitled to a monthly allowance: Normal Disability Allowance (“NDA”) for the severely disabled, Higher Disability Allowance (“HDA”) for the severely disabled who also require intensive attention and supervision, Normal Old Age Allowance for the elderly aged 65 or above and Higher Old Age Allowance for the elderly aged 70 or above. These allowances, except for the Normal Old Age Allowance, are non-means-tested. The allowances are mutually exclusive, i.e. persons receiving one type of allowance cannot receive another.

2.2 NDA and HDA are currently fixed at \$1,280 and \$2,560 respectively.

OBJECTIVES

2.3 The reasons and objectives for introducing the SSAS in 1973 were as follows:

- “(a) the public assistance scheme⁴ does not provide an effective means of channelling additional help to those vulnerable groups in the community (in particular, the severely disabled and the

³ DA was first introduced in 1973 under the broader scheme of “Disability and Infirmity Allowance”. The latter was renamed “Special Needs Allowance” in April 1979 and further revised to “Social Security Allowance” in 1993.

⁴ Replaced by the Comprehensive Social Security Assistance (“CSSA”) scheme in 1993.

elderly infirm, ...) who need extra financial help, because public assistance is designed to provide an adequate income level for the family as a whole;

- (b) a new scheme of financial aid for such groups would provide an effective means of helping a family to continue bearing the burden of caring for a family member, and would reduce the demand for expensive institutional care”.

ELIGIBILITY CRITERIA

2.4 DA was meant for severely disabled persons who need substantial help from others to cope with their daily life, even if they are still able to do a paid job. Persons regarded by the Director of the Department of Health (“DH”) or the Chief Executive of HA (formerly the Director of Medical and Health Services and then the Director of Hospital Services) as being in a position broadly equivalent to 100% loss of earning capacity according to the First Schedule of the Employees’ Compensation Ordinance (“ECO”), formerly known as the Workmen’s Compensation Ordinance, Cap. 282, are deemed to have such need.

2.5 ECO is a separate piece of legislation introduced in 1953 to provide for compensation to workers injured in the course of their employment. ECO provides that compensation be determined by the seriousness of the injury and the degree of loss in earning capacity. As agreed by the Executive Council in 1973, the DA scheme has, since its inception, adopted the requirements of 100% loss of earning capacity in ECO as the benchmark. The intention of the DA scheme is not to consider the actual taking up of a paid job.

2.6 In line with other SSAS allowances, eligibility for DA is subject to a requirement of residence in Hong Kong of at least seven years and a continuous residence of at least one year immediately before the date of application (no more than 56 days of absence from Hong Kong will be treated as having met this requirement).

THE MEDICAL ASSESSMENT FORM

2.7 The eligibility criteria for DA are detailed in the Medical Assessment Form (“MAF”) (**Annex II**). Doctors of DH or HA are to indicate the condition of

DA applicants by completing the MAF, comprising three components:

- Eligible Medical Conditions for NDA;
- Checklist for NDA; and
- Supplementary Medical Assessment Form for HDA.

Eligible Medical Conditions for NDA

2.8 The doctor is required to assess applicants against categories of eligible medical conditions for NDA (**Annex II(B)**). A person, irrespective of his employment status, will be considered “severely disabled” for the purpose of DA if he falls into one of these categories:

- (a) The patient is in a position broadly equivalent to a person with a 100% loss of earning capacity due to -
 - (i) loss of functions of two limbs
 - (ii) loss of functions of both hands or all fingers and both thumbs
 - (iii) loss of functions of both feet
 - (iv) total loss of sight
 - (v) total paralysis (quadriplegia)
 - (vi) paraplegia
 - (vii) illness, injury or deformity resulting in being bedridden
 - (viii) any other conditions including visceral diseases resulting in total disablement (reference should be made to part (II) of the Checklist) _____
(specify)

- (b) The patient is suffering from a condition which produces a degree of disablement broadly equivalent to a person with a 100% loss of earning capacity due to -
 - (i) organic brain syndrome
 - (ii) mental retardation
 - (iii) psychosis
 - (iv) neurosis
 - (v) personality disorder
 - (vi) any other conditions resulting in total mental

disablement _____ (specify)

- (c) Profoundly deaf⁵

2.9 A person assessed to have fulfilled one of the above categories will be deemed to have fulfilled the medical eligibility for NDA. A doctor making the assessment should mark a tick inside the box next to the applicable disabling condition. A doctor ticking against the box “*any other conditions resulting in total mental disablement*” (**para. 2.8(a)(viii)**) should, with reference to the Checklist (**Annex II(C)**), also specify the disabling condition in the space provided.

Checklist for NDA

2.10 The Checklist, not for completion, provides some guidelines for doctors to assess applicants’ disability under the category “*Any Other Conditions*” of the first part of the MAF (**para. 2.8 (a)(viii)**). An applicant should be considered eligible if his physical or mental impairment or other medical conditions have resulted in significant restriction or lack of ability or volition, to the extent that substantial help from others is required in any one of the following areas:

- (a) working in the original occupation and performing any other kind of work for which he/ she is suited;
- (b) coping with self-care and personal hygiene including feeding, dressing, grooming, toileting and bathing;
- (c) 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
- (d) expressing oneself, communicating and interacting with others including speaking, writing, utilising social (community) resources, seeking help from others, and participating in recreational and social activities.

⁵ This means that a person, who suffers from a perceptive or mixed deafness with a hearing loss of 85 decibels or more in the better ear for pure tone frequencies of 500, 1000 and 2000 cycles per second, or 75 to 85 decibels with other physical handicaps such as lack of speech and distortion of hearing.

2.11 Introduced in October 1994, this Checklist was devised after deliberation by SWD and HA to help doctors make assessment. The four areas listed are about the extent to which a person's condition affects his ability to cope with daily living and to engage in employment. To assess this, a doctor should ask relevant questions and exercise his judgment.

2.12 Between 2005 and 2008, over 56% of DA cases were approved on grounds of “*any other conditions resulting in total disablement*”.

Supplementary Medical Assessment Form for HDA

2.13 A person meeting the medical eligibility criteria for NDA (**paras. 2.8 – 2.9**) may be assessed for HDA. The doctor should complete the supplementary assessment form and indicate whether the applicant requires intensive attention and supervision, to the extent that HDA is recommended (**Annex II (D)**).

2.14 An applicant thus certified to be in need of constant attention but is not receiving such care in a Government or subvented residential or medical institution under HA or boarding in a special school under the Education Bureau will be eligible for HDA.

“100% Loss of Earning Capacity” as Common Denominator

2.15 When the Executive Council (“ExCo”) approved the DA scheme in 1973, the eligibility criteria, devised by SWD in consultation with the then Medical and Health Services Department, followed the conditions for “100% loss of earning capacity” under ECO. Over the years, SWD has modified those conditions, e.g. changing “loss of two limbs” to “loss of functions of two limbs” and added new categories, e.g. visceral diseases and disabling mental conditions. In the guidelines laid down by DH, the factors to be considered when doctors assess different types of disabilities were set out⁶. However, they do not spell out the extent of the disabling condition that should be considered broadly equivalent to “100% loss of earning capacity”.

2.16 In fact, earning capacity has no bearing on DA. Whether or not an applicant has a paid job is clearly meant to be **not relevant (para. 2.5)**.

⁶ According to the guidelines of 1999, applicants for DA can be classified under:

- (a) physical disabilities e.g. amputated limbs;
- (b) medical disabilities e.g. Parkinsonism; and
- (c) psychological/neurological disabilities e.g. Dementia, mental retardation

PROCESSING APPLICATIONS AND SWD'S ROLE

2.17 *Referral.* DA applicants are first interviewed by Social Security Assistants (“SSAs”) or Senior Social Security Assistants (“SSSAs”) at SWD Field Units or medical social workers to provide general explanation of the DA scheme, before referral to HA or DH for medical assessment.

2.18 *Medical Assessment.* The MAF is meant to be self-explanatory. The doctor is to assess an applicant’s eligibility by ticking the box(es) that best describe(s) the applicant’s condition (**paras. 2.8 – 2.9**). In doing so, doctors will take into account the applicant’s previous medical records, including records on rehabilitation and treatment by other professionals. In practice, although there is a space for elaborating on the applicant’s condition and the doctor’s assessment, it is rarely used. If doctors wish to clarify certain issues about the DA scheme, they have to call the SSA or SSSA responsible for the case in SWD.

2.19 *Vetting and Authorisation.* Upon receipt of a completed MAF, an SSA or SSSA checks the applicant’s status for residence in Hong Kong and receipt of any other social security benefits (for prevention of double benefits). The SSA or SSSA is also to vet the MAF for inconsistencies or ambiguities in the doctor’s assessment. In this regard, SWD’s internal guidelines stipulate that “clarification should be made when the information in the MAF is doubtful or obviously self-contradictory and inconsistent”. Occasional training sessions on this aspect have been given since December 2007 to SSAs and SSSAs to raise their awareness. If the completed MAF is considered in order, the SSA or SSSA will pass it to a Social Security Officer II (“SSOII”) or Social Security Officer I (“SSOI”), who will decide whether the application should be approved.

2.20 *Renewal.* DA may be granted permanently or for three months or longer. SWD would bring up short-term DA cases before the expiry of the grant for doctors’ assessment. For DA recipients already assessed to have permanent disability, no further medical assessment is required.

CHANGES TO CRITERIA AND PROCEDURES

Reviews and Amendments

2.21 Amendments thus far made to the scheme include:

- (a) April 1978 – DA recipients under institutional care became eligible for the then Disability and Infirmity Allowance;
- (b) April 1981 - eligibility was extended to the profoundly deaf;
- (c) September 1988 – HDA was introduced;
- (d) October 1994 - the Checklist in the second part of MAF was introduced “to help eliminate obvious disparity though individual variations in the standard of assessment were acknowledged to be unavoidable”;
- (e) January 2004 – the residence requirement for DA was revised to tie in with other social security schemes administered by SWD;
- (f) September 2006 - the category “visceral diseases resulting in total disablement” was added, taking into account requests from the disabled and patient groups; and
- (g) February 2008 – in response to The Ombudsman’s recommendation for consistency of assessment, SWD amended internal instructions to highlight the requirement for all staff to refer to applicants’ previous medical records or computer-generated medical reports and medical appointment slips and to attach such documents to MAFs for doctors’ reference.

2.22 SWD conducts regular reviews on individual DA cases, but only with regard to the status and validity of the non-medical condition of the DA recipient, i.e. whether the recipient fulfils the residence requirement and whether he is in a Government or subvented institution⁷.

Other Requests for Review

2.23 In the light of inconsistencies in assessments and practical difficulties in the operation, HA, professional bodies and patients organisations (**Annex III**) have

⁷ During such reviews, DA recipients are required to attest to the truthfulness and completeness of the personal information they provided to SWD. The frequency of review varies according to the type of DA cases. Reviews on non-permanent NDA and HDA cases are conducted before expiry of the duration of the disabling condition as certified in the last medical assessment. Cases of permanent HDA are reviewed once every three years. Those of permanent NDA are not reviewed.

made numerous requests to the Administration for reviewing aspects of the DA scheme. The Administration has accordingly introduced some changes to the eligibility criteria i.e. the inclusion of “visceral diseases” (**para. 2.21(f)**), but other suggestions have not been attended to or comprehensively reviewed. These include:

- (a) the overall eligibility criteria, in particular the reference to 100% loss of earning capacity;
- (b) the contents and format of the MAF;
- (c) the need to involve multi-disciplinary professionals in eligibility assessment; and
- (d) the potential conflict of interest when the same doctor delivers treatment and makes recommendation for DA.

2.24 The Hong Kong Public Doctors’ Association made a submission to the Legislative Council in April 2006 to urge the Administration to address the practical difficulties faced by doctors and to set up a multi-disciplinary team to facilitate comprehensive and objective DA assessments⁸. Since April 2007, HA has repeatedly urged SWD to review the MAF. Specifically, HA’s views are:

- (a) Medical doctors’ assessment is purely medical - doctors assess applicants on the basis of the damage to their body structures and functions.
- (b) Medical doctors should not, and could not, comprehensively assess other factors affecting the application, such as the applicant’s employment needs and other environmental and social factors.
- (c) In cases where the applicant’s disability is assessed to be less than 100%, SWD might need to take into consideration other factors to determine whether DA should be granted.
- (d) SWD should review the criteria, in particular the misleading reference “100% loss of earning capacity” and the MAF.

⁸ *The reference number of the Hong Kong Public Doctors’ Association’s submission to the Legislative Council on 10 April 2006 is CB(2)1665/05-06(01).*

2.25 Meetings were held between HA and SWD, during which HA specifically pointed out that doctors have difficulty assessing whether an applicant needs substantial help in “*working in the original occupation and performing any other kind of work for which he or she is suited*” (**para. 2.10(a)**). However, to date, HA’s requests have not been pursued by SWD.

Consistency of Assessment

2.26 Despite SWD’s internal guidelines (**para. 2.19**), there is no system to check applicants with similar condition and circumstances are given consistent assessment. SWD claims to have met or conversed with HA occasionally, through email or by phone, to discuss discrepancies in assessment of some cases and other operational aspects of the DA scheme. However, SWD could not provide records or dates of such meetings or discussions.

2.27 Furthermore, there appears to be a fundamental lack of consensus between SWD and HA as to who should be primarily responsible for ensuring consistency between assessments. SWD contends that HA and DH, not SWD, should be primarily responsible for ensuring consistency of assessment of DA applicants with similar condition and circumstances. HA views the role of doctors as to assist SWD by making medical assessment and completing the MAF for further processing by SWD, the owner of the DA scheme.

2.28 Apart from this divergence of views on roles, there is also a discrepancy between SWD and HA in the understanding and practices in the assessment of a DA applicant’s capability to work in the original work or work suited to the applicant (**para. 2.25**). As a result, consideration and assessment of applicants in this regard is highly inadequate or completely lacking.

3

APPEALS

SOCIAL SECURITY APPEAL BOARD

3.1 A Social Security Appeal Board was set up in 1978 as an independent body to provide redress for any person not satisfied with SWD's decision on eligibility for or payment of DA and other social security benefits. When notified of the outcome of their applications, DA applicants are also informed of this channel of appeal.

3.2 SWD provides secretariat services to the Board and maintains its records. The Board consists of a Chairman and six members, all non-officials appointed by the Chief Executive, with two members being medical doctors. Members work on a roster. Board meetings to consider appeals are normally attended by the Chairman and two members.

PROCEDURES FOR APPEALS

Cases not involving medical assessment

3.3 For appeals not involving the result of a medical assessment, both the appellant and DSW are given an opportunity to present their case in writing prior to the hearing. The appellant may choose to present his case personally at the hearing or authorise a relative to do so for him. The Board will reach a decision on the basis of the facts presented to the Board.

Cases involving medical assessment

3.4 For appeals involving the result of a medical assessment, the Board will arrange for the appellant to attend a Medical Assessment Board, comprising an

HA doctor and two doctors from the Hong Kong Medical Association on a roster.

3.5 The Appeal Board's decision based on the Assessment Board's assessment and recommendation is final and the appellant has no further right of appeal. The average processing time for appeals in 2006 was about five months and in 2008, about three months.

Notification of Decisions

3.6 For appeals which do not require processing by the Assessment Board, the appellant and DSW will be notified in writing of the decision normally within three weeks of the Appeal Board hearing. In the case of appeals requiring processing by the Assessment Board, the appellant and DSW will be notified in writing of the Appeal Board's decision within three weeks after receipt of assessment and recommendation from the Assessment Board. The Appeal Board may give reasons for the Board's decision, but is not obliged to do so.

3.7 In fact, in most of the cases studied, no observations or details about Appeal Board or Medical Assessment Board deliberations were given in the notification letters. As a result, neither the appellants nor the doctors making subsequent assessment were apprised of the rationale for Appeal Board decisions.

APPEALS ON CASES

3.8 The number and nature of appeals over the past four years are listed below:

Fig.1 Number of appeals between 2005-06 and 2008-09 by type of cases

		Appeals							
		2005-06		2006-07		2007-08		2008-09	
		No.	%	No.	%	No.	%	No.	%
Comprehensive Social Security Assistance		82	28	128	35	103	28	106	24
Social Security Allowance	DA	207	70	237	65	263	71	331	75
	Old Age Allowance	4	1	2	0	1	0	2	0.5
Traffic Accident Victims Assistance		2	1	0	0	1	1	1	0.5
TOTAL		295	100	367	100	368	100	440	100

3.9 Of the DA appeal cases in 2008-09, 85% were related to assessment of “other conditions resulting in total disablement”:

Fig.2 Breakdown of DA appeals received in 2008-09 by category of medical condition

Medical Condition	Appeals		Percentage
	Higher Disability Allowance	Normal Disability Allowance	
(a) Disabling physical condition or blindness			
(i) loss of functions of two limbs	9	2	
(ii) loss of functions of both hands, or all fingers and both thumbs	0	0	
(iv) loss of functions of both feet	2	0	6%
(v) total loss of sight	1	5	
(vi) total paralysis (quadriplegia)	0	0	
(vii) paraplegia	0	1	
(viii) illness, injury or deformity resulting in being bedridden	0	0	
(viii) any other conditions resulting in total disablement	69	207	83 %
(b) Disabling mental condition (which produces a degree of disability broadly equivalent to that in category (a) above)			
(i) organic brain syndrome	2	0	8%
(ii) mental retardation	3	4	
(iii) psychosis	2	6	
(iv) neurosis	3	5	
(v) personality disorder	0	0	
(vi) any other conditions resulting in total mental disablement	4	1	1.5 %
(c) Profoundly deaf	0	5	1.5%
TOTAL	95	236	100%

4

CASES

4.1 The following cases have been taken from complaints handled by The Ombudsman, cases randomly sampled from SWD and interviews with doctors. They illustrate the variety of inconsistencies and problems under the DA scheme.

Case 1: Slack and irresponsible attitude in vetting applications

4.2 In February 2007, Ms W complained to The Ombudsman against SWD for not renewing her DA despite her continuous history of receiving DA since 1993 and there being no significant improvement in her condition.

4.3 Between 1993 and 2007, Ms W made five applications for DA and renewal. Different doctors were involved in making the assessments but the same SWD caseworker processed the applications. The remarks made in the MAFs, on different occasions, offer surprising insight into the processing of DA applications:

Date of assessment		Condition	Outcome	Duration	Assessed by
(1)	Sep 93	“Amputation all fingers L(ef)t hand”	NDA	2 years	Doctor A
(2)	Sep 95	“Amputation of fingers of right hand and psychological trauma ”	NDA	3 years	(Identity of doctor not clear)
(3)	June 98	“ L(ef)t hand amputation”	NDA	3 years	(Identity of doctor not clear)
(4)	Sep 01	“Amputation of L(ef)t H(and) fingers”	NDA	5 years	Doctor B
(5)	Aug 06	“ Left hand crushed injury”, but not to the extent of 100% loss of earning capacity	NDA	permanent	Doctor C
(6)	Jan 07	“Left hand crushed injury”	Not recommended	-	Doctor C

4.4 According to the eligibility criteria, Ms W should not have been recommended for DA in assessments (1), (3) and (4), as she was found to have only lost the functions of one hand. Yet, SWD staff apparently did not notice or decided to ignore the lack of basis for DA and did not attempt to clarify the discrepancies in the assessments. SWD simply approved the grants regardless in all of these instances. In assessment (2), SWD even failed to spot, or considered it insignificant, that the doctor had found disability in a different hand. It was not until assessment (5) when the doctor put ticks in two boxes which indicated contrasting recommendations (one for not recommending NDA, and the other for recommending NDA) that the SWD caseworker sought clarification with Doctor C.

4.5 Upon SWD's request for clarification, Doctor C strictly followed the eligibility criteria in assessment (6) and recommended against granting DA for Ms W. On receiving SWD's notification of rejection of DA grant, Ms W complaint to The Ombudsman.

4.6 In March 2007, Ms W applied for DA again. In the medical assessment, Doctor A assessed that, apart from suffering from "severe crush injury left hand with loss of all digits/ fingers", Ms W also suffered from "total loss of sight" and recommended permanent grant of DA. Despite the absence of any record of visual problem remarked in previous MAFs or observed by SWD staff through interviews with Ms W, SWD approved the grant without seeking clarification with the doctor. Subsequently, this Office called Ms W to enquire about her visual ability and revealed this outrageous mistake.

4.7 SWD subsequently sought and received Doctor A's clarification that the ticking of "total loss of sight" was a mistake. However, Doctor A maintained that Ms W was eligible for NDA, giving reasons that were not provided in the previous MAFs, including the impact of the injury on her ability to carry out the previous occupation; her lack of adjustment after her injury; her lack of success to obtain employment since the injury; and the likely psychological impact done by the injury on her. As a result, SWD granted her NDA on a permanent basis.

Our comments

4.8 We do not expect SWD to challenge doctors' professional diagnosis. However, where the information entered by doctors in the MAF do not provide sufficient justification for the doctors' recommendations in accordance with the eligibility criteria or are blatantly contradictory to SWD's understanding and observations of the applicant, SWD must clarify with the doctors concerned before

making a formal decision for grant. In Ms W’s case, it is inexplicable that SWD staff concerned could have completely ignored or disregarded Ms W’s physical condition and blindly accepted the doctors’ assessment. In this regard, in February 2008, SWD took on our recommendations pursuant to this case to highlight in the internal guidelines the need to seek clarification with doctors (**para. 2.21(g)**). However, detailed guidelines for staff on the circumstances under which clarification should be sought remain lacking.

Case 2: Slackness in vetting applications

4.9 Ms L suffered from poliomyelitis in her right leg. At the medical assessment in August 2004 for her third application for renewal of DA, the doctor recommended against renewal. Accordingly, SWD discontinued granting DA to her. She, therefore, complained to The Ombudsman.

	Date of assessment	Condition	Outcome	Duration	Assessed by
(1)	Mar 03	“Right leg polio”	NDA	6 months	Doctor A
(2)	Sep 03	“Right leg polio”	NDA	6 months	Doctor B
(3)	Feb 04	“OA (osteoarthritis) Lumbar spine”	NDA	6 months	Doctor A
(4)	Aug 04	-	Not recommended	-	Doctor C

4.10 Poliomyelitis affecting one limb *per se* is not an eligible condition for DA. However, in March and September 2003, SWD granted DA to Ms L without query as to whether there are any other conditions resulting in total disablement.

4.11 In response to The Ombudsman’s inquiry in May 2005, SWD asked the two doctors concerned (Doctor A and Doctor B) in January 2006 to elaborate on their assessments made three years ago. Both explained that they had recommended NDA on account of the acute pain in Ms L’s back and knees and the impact thereby caused to their capability to work. These reasons were not stated in the MAFs before.

4.12 Doctor C upheld the decision to reject renewal of DA to Ms L in August 2004.

Our comments

4.13 Again, we do not expect SWD to challenge doctors’ diagnosis. However, it is questionable that SWD did not clarify with doctors over obvious

discrepancies with the criteria before approving applications. We have, pursuant to this case, advised SWD to remind staff to seek clarification with doctors in case of doubt and to exercise care and vigilance in processing the MAF.

Case 3: Lack of transparency

4.14 In 2007, Mr K complained to The Ombudsman against SWD and HA for not renewing his son's NDA.

4.15 Mr K's son was born in 1994 without the right palm. Since 1994, SWD had approved and renewed DA for him. In 2007, the doctor recommended against further renewal. SWD informed Mr K by a standard letter that his son did not meet the eligibility criteria. Mr K's subsequent appeal to the Appeal Board in May 2007 was also unsuccessful. No elaboration or explanation was given by SWD or the Appeal Board.

4.16 Upon The Ombudsman's inquiry, HA clarified that DA had previously been recommended for Mr K's son out of special consideration for his tender age. By 2007, he should have grown accustomed to his congenital defect and as he was psychologically sound, the doctor considered his condition no longer eligible for DA. SWD maintained its decision not to grant DA to Mr K's son.

Our comments

4.17 According to the eligibility criteria, loss of the functions of one limb alone should not qualify for DA. The "special consideration" mentioned above was not recorded in MAFs and SWD had never sought clarification with the doctors concerned.

4.18 The standard letters used by SWD to inform applicants of refusal of grant give little information on the reasons for its decision. The Appeal Board is not required to record its deliberations. Nor is it required to state the substantive reasons or basis for its decision. Applicants are therefore deprived of the right to know the reason(s) for refusal of grant.

Case 4: Unthinking adherence to doctors' assessment

4.19 Mr L complained to The Ombudsman against SWD for unreasonably refusing to grant him DA.

4.20 Aged 57 years old, Mr L had worked for more than 30 years as a manual labourer on container ships. As a result of a work-related accident, he had the lower section of his right leg amputated and became unemployed.

4.21 He applied to SWD for DA five times, but all were rejected on the grounds that he had lost only one limb and did not meet the criterion “broadly equivalent to 100% loss of earning capacity”.

4.22 In response to our inquiry, SWD argued that Mr L could still look for some other suitable job despite his disability. SWD claimed that it must base its decision on the doctor’s medical assessment and recommendation.

4.23 Upon SWD’s suggestion, Mr L subsequently applied for and has been granted Comprehensive Social Security Assistance instead since February 2009.

Our comments

4.24 The Checklist in the MAF specifies that DA could be granted to a person who, as a result of his disability, is significantly restricted or lacks ability or volition to work “*in the original occupation and perform any other kind of work for which he is suited*” (**para. 2.10(a)**). It should be evident from common sense that at his advanced age and with only one leg, it was very difficult, if not impossible, for Mr L to continue working as a manual labourer again or even to be re-trained (and be accepted) for other types of employment.

4.25 In the lack of any account of the condition of Mr L in the MAF, SWD should have sought clarification with the doctor as to whether the latter had taken into account Mr L’s unique circumstances (i.e. old age and always been a manual labourer) in accordance with the first item in the Checklist. However, SWD had failed to take this step despite Mr L’s repeated applications.

4.26 SWD claimed that in accordance with the policy on DA, a person’s social and environmental factors such as age, work ability, and actual employment status should not be taken into account in assessment for DA.

4.27 We observe, however, that whether an applicant requires substantial help from others in “*working in the original occupation and performing any other kind of work for which he or she is suited*” is a social and environmental consideration as well as medical factor. Aside from whether doctors are in the best position to make such an assessment (**paras. 2.24 – 2.25**), SWD, as the authority for approving

DA grant, must be satisfied that all factors relating to the eligibility criteria have been taken into account. Specifically, SWD has to be able to get such information from the MAF. We note that the current MAF is not conducive to this purpose because it does not require doctors to state whether all factors have been taken into account.

Case 5: No transparency of deliberations on appeals

4.28 Ms S had been receiving NDA for psychosis since April 1999. By December 2003, she had been granted or renewed NDA 13 times ranging from three to six months. Five different doctors had been making the assessments.

Date of assessment		Grant	Duration	Assessed by
(1)	Apr 99	NDA	6 months	Doctor A
(2)	Sep 99	NDA	6 months	Doctor B
(3)	Nov 00	NDA	6 months	Doctor C
(4)	May 01	NDA	6 months	Doctor D
(5)	5 Sep 02	NDA	3 months (retrospective: Nov 01 to Feb 02)	Doctor E
(6)	16 Sep 02	NDA	3 months (retrospective: Feb 02 to May 02)	Doctor E
(7)	Feb 03	NDA	3 months (retrospective: May 02 to Aug 02)	Doctor E
(8)	10 Mar 03	NDA	3 months (retrospective: Aug 02 to Nov 02)	Doctor E
(9)	27 Mar 03	NDA	3 months (partly retrospective: Jan 03 to Apr 03)	Doctor E
(10)	May 03	NDA	3 months	Doctor E
(11)	Jul 03	NDA	3 months	Doctor E
(12)	Sep 03	NDA	3 months	Doctor E
(13)	Dec 03	NDA	3 months	Doctor E

4.29 In April 2004, Doctor E recommended against further renewal of DA. She appealed to the Appeal Board. In September 2004, the Assessment Board decided that her NDA should be renewed for three years. However, as the Assessment Board’s deliberations were not recorded, it was impossible to ascertain the rationale for its decision.

4.30 Three years later, in March 2007, another medical assessment was made. The doctor recommended against renewal of DA for Ms S, remarking that (a)

“... no significant abnormality in function was seen” and (b) the Assessment Board deliberations in September 2004 had no input from a psychiatrist.

4.31 Despite that doctor’s open query of the Assessment Board’s deliberations, SWD did not take any follow-up action.

Our comments

4.32 This case reveals that documentation of the basis of the doctor’s recommendation as well as the deliberation of the Assessment Board is inadequate. In the absence of gradation or specification about the degree of the qualifying disabling conditions, the decision on DA grant is subject to doctors’ open, and often contrasting, interpretations. And without specific information about the basis of judgment, there is no way that consistency in assessment can be improved.

Case 6: Doctors’ predicament in assessment

4.33 Doctor H, a psychiatrist, has been assessing for DA for three years. He volunteered to share with us his experience in assessing for DA.

4.34 Without clear guidance on the definition of “100% loss of earning capacity”, Doctor H (like other doctors) could interpret the DA eligibility criteria only from reading the MAF as follows:

“100% impairment = 100% loss of earning capacity = total unemployment”

In this light, he normally would not recommend DA for applicants with employment.

4.35 He would also follow the recommendations in previous assessments.

Our comments

4.36 This suggests that doctors have difficulty interpreting the eligibility criteria and are left to their own devices on assessment for recommendation. This also illustrates the confusion caused by the reference to 100% loss of earning capacity.

5

OUR OBSERVATIONS

5.1 The current operation of the DA scheme carries major aspects of concern:

- Problems with the eligibility criteria
- SWD's shirking of responsibility for deciding on DA applications
- Lack of transparency of deliberations on appeals

I ELIGIBILITY CRITERIA

5.2 At the inception of the scheme in 1973, the only rough and ready "guide" to disability was that in relation to workmen's compensation. Having regard to the change of time and circumstances, particularly the clear irrelevance of employment to the scheme, there is a case for a thorough review of the criteria.

(1) "Any Other Conditions"

5.3 Whether an applicant requires substantial help from others in "*working in the original occupation and performing any other kind of work for which he or she is suited*" (**para. 2.10(a)**) is a social and environmental consideration as well as medical factor. Doctors have expressed difficulty in assessing this (**paras. 2.24(b) and 2.25**). Meanwhile, SWD maintains that doctors are fully competent to make all necessary assessments prescribed in the MAF and that SWD staff are not in a position to challenge a doctor's medical assessment. This has left a void in the assessment of an applicant's capability to take up his original or suitable work and his social or environmental factors. As a result, this raises the question whether this eligibility criterion has actually been taken into account in assessments.

5.4 The design of the MAF does not facilitate consistency and verification. The doctor is not required to state whether he has taken into account the four areas in

the Checklist (**para. 2.10**), whether they apply to the applicant or not and why. As a result, there is no verifiable record of the basis for recommending DA to people under “*other conditions*”. For clarity of record and consistency in assessment, SWD should revise the MAF, in consultation with HA and DH, so that doctors must indicate on the MAF the specific qualifying condition for making a recommendation to facilitate entry of precise and specific information for clear indication of the basis of the recommendation. **Annex IV** sets out, for illustrative purpose, the essential elements to be included in the revised MAF.

5.5 Between 2005 and 2008, over 56% of DA cases were approved under the category of “*any other conditions resulting in total disablement*” (**para. 2.12**). This is also the category that attracts the largest number of appeals (**para. 3.9**). These are indications that the current categorisation has left quite a range of eligible conditions undefined. This is a major cause of inconsistency in assessment. **Case 3** is a case in point.

(2) “100% Loss of Earning Capacity” a Misleading Reference

5.6 This reference in the eligibility criteria for DA is misleading and quite irrelevant. The original design of the scheme was intended **not** to take into account applicants’ employability (**para. 2.5**). Moreover, the concept of “earning capacity” cannot apply to some people, e.g. children and people well past normal retirement age. This makes it all the more difficult for doctors to make consistent and objective assessment on such people.

5.7 The reference “100% of earning capacity” should, therefore, be removed from the eligibility criteria. Doctors and patients that we have interviewed have expressed this view (**Annex I**). This will eliminate possible misunderstanding and unrealistic expectations.

(3) Crude and Outdated Classification

5.8 The MAF lacks concrete guiding principles for assessment of such categories as “mental impairments” and “visceral diseases”. For example, the only guidance given to doctors on mental impairments is whether the named mental condition (i.e. organic brain syndrome, mental retardation, psychosis, neurosis and personality disorder) “*produces a degree of disablement broadly equivalent to a person with a 100% loss of earning capacity*”.

5.9 Some doctors that we have interviewed indicate that terms like “neurosis” are loose references without generally accepted definitions, resulting in inconsistent and subjective assessment (**Case 5**). Meanwhile, MAF does not adopt grading systems that are generally accepted for some mental conditions. For example, MAF merely includes the category “mental retardation”, without gradation into mild, moderate and severe. SWD should try, in consultation with HA and DH, to refine the DA criteria to facilitate objective assessment.

5.10 Furthermore, the classification of diseases has been evolving. Since the eligibility criteria for DA were largely drawn up in the 1970s on the basis of the precursor to ECO, SWD should review the categories of the eligible disabling conditions to be realistic and to keep abreast with the times.

(4) Unclear Areas

5.11 Two aspects of the DA scheme require clarification from the Administration.

5.12 *Use of Rehabilitation Devices or Medicine.* Certain loss of functionality can be compensated or endured with the assistance of rehabilitation or mechanical devices or with the regular intake of medicine. It is not clear whether the availability of these, either real or possible, should be factored in when a doctor makes an assessment for DA. Some doctors refuse to recommend applicants for DA on the grounds that, with the aid of such devices or medication, they should have little or no problem coping with daily living or engaging in work. On the other hand, some members of the public consider that since DA aims at providing financial assistance to the severely disabled and their families in coping with the extra expenses incurred by their disability, the amount of allowance granted should be related to their actual expenses.

5.13 In our view, rehabilitation or self-reliance should be encouraged, not penalised. While the decision one way or another rests with the Administration, we urge SWD to widely publicise the policy among doctors and patients as to whether the use of rehabilitative devices or medicine should be taken into account in the medical assessment of functional capabilities in Part II of the MAF.

5.14 *Public Perception of Eligibility Criteria.* Some people consider the eligibility criteria for DA too stringent, especially when compared with other schemes

for the disabled such as the Registration Card for People with Disabilities⁹. They suggest pegging the eligibility criteria for DA to those for the Registration Card scheme.

5.15 It is natural for different criteria to apply to different schemes for different purposes. The Registration Card is essentially meant to be a documentary proof of disability status. The criteria for that scheme can, therefore, afford to be much more relaxed than those for DA. In order not to confuse the public or breed false hopes among disabled persons, the Administration should strengthen publicity about the different criteria between DA and other schemes. To differentiate DA clearly from other schemes, the Administration could consider renaming “Disability Allowance” as “Allowance for the Severely Disabled”.

II SWD’S ROLE

5.16 SWD confines its role to vetting of purely non-medical criteria: residence requirement and receipt of other social security benefits. **Case 1** and **Case 2** illustrate that the passive and mechanical approach adopted by SWD has resulted in failure to spot even blatant discrepancies and self-evident inconsistencies in DA grants.

5.17 DSW as vote controller is by law the guardian and administrator of funds for the DA scheme. According to section 12(1) of the Public Finance Ordinance (Cap. 2), the vote controller is responsible and accountable for the proper use of the funds voted. The Director should, therefore, satisfy himself that an appropriate system for monitoring and control is in place for economy, efficiency and effectiveness in the disbursement of public funds.

(1) Lack of Measures for Consistency

5.18 There is, however, no evidence of a proper system for checking errors in medical assessment and inconsistencies between assessments:

⁹ *This card is issued by LWB to persons who “have been found to have suffered from a disability which is permanent in nature but the severity of the disability affects one’s major life activities, participation in economic and social activities and/ or mobility, and which takes significantly longer than normal to rehabilitate”.*

Eligible persons are those certified by doctors as having suffered from a disability, including hearing impairment, visual impairment, speech impairment, physical handicap, autism, mental illness, mental handicap and visceral disability/ chronic illness.

- (a) on the same person at different times; and
- (b) on different persons with similar disabling conditions.

5.19 In February 2008, SWD amended its internal guidelines to highlight its requirement for staff to attach previous MAFs on the same person for doctors' reference (**para. 2.21(g)**). However, this is not adequate as it only helps to tackle inconsistencies under (a) above, but not those under (b). Besides, there are no other system in place to ensure consistency between assessments, such as random checking of case files and regular audits.

5.20 The appeal system can solve only part of the problem as individuals already granted DA by doctors' mistakes or misunderstanding of the eligibility criteria are not likely to appeal.

5.21 **Case 1** is a vivid example. The applicant had been granted DA out of the doctors' misunderstanding of the eligibility criteria and erroneous assessments for years and over a series of renewals. Eventually, a doctor conscientiously refused to recommend further renewal of DA. It was only then that the decade-long unjustified grant of DA came to light. The lack of proper monitoring and checking system has meant unfairness to deserving cases and unnecessary waste of public funds in cases not really eligible.

5.22 **Case 1** also illustrates that assessment by different doctors is actually a good check and balance. For consistency in assessment, HA and DH must ensure that doctors have clear and adequate guidelines for making assessment within the confines of the eligibility criteria in the MAF. For change (**paras. 2.23 – 2.25**), divergence of views and difference in understanding or practice between HA/ DH and SWD (**paras. 2.27 – 2.28**), it is SWD's responsibility as administrator of the scheme to initiate consultation to consolidate consensus. In this regard, the problems pointed out by HA in April 2007 have so far not been followed up and pursued by SWD.

(2) Need for Clarification

5.23 SWD's guidelines require staff to clarify with the doctor when a medical assessment is found self-contradictory or inconsistent (**para. 2.19**). However, our case studies show that they rarely do so, not even in case of obvious discrepancies in medical assessment. **Case 1** and **Case 2** are two such examples. There is no evidence to support that this requirement has been duly complied with.

(3) Staff for Processing Applications

5.24 At present, the SSA grade primarily handle applications. SSAs or SSSAs are responsible for receiving applications, making referrals to doctors, vetting MAFs, seeking clarification from doctors and preparing case files for approval by their supervisors, SSOIIs or SSOIs.

5.25 However, the SSA grade equates with those for providing clerical support in processing applications, for example, answering enquiries, receiving applications and ensuring that relevant documents are provided by applicants. It is not reasonable to require SSAs or SSSAs to vet applications; nor realistic to expect them to challenge doctors' assessments. These duties require professional training and knowledge not available in the SSA grade. We consider that complicated cases should be escalated to SSOII and SSOI. SWD should refine the staff guidelines accordingly.

(4) Notification of Result

5.26 As illustrated by **Case 3**, SWD's standard letter to notify applicants of refusal of grant of DA gives little or no substantive explanation. Applicants are deprived of the right to know the reason(s) for refusal. This should be rectified.

III APPEALS

Transparency of Deliberations

5.27 For appeals involving the result of a medical assessment, the Social Security Appeal Board will arrange for the appellant to undergo another medical assessment by a Medical Assessment Board. Members of the Assessment Board are requested to fill in a form to indicate the assessment. However, the form does not require Assessment Board members to provide any elaboration on its deliberations and recommendation.

5.28 The lack of transparency of the deliberations of the Social Security Appeal Board and the Medical Assessment Board does not assist subsequent assessments of the applicant. Without any idea of the Board's rationale, doctors making subsequent assessment have no focus for review.

IV NEED FOR REVIEW

5.29 In view of the numerous problems identified above, SWD should consider an overall review of the DA scheme, covering the eligibility criteria, the roles of medical doctors and SWD, the assessment mechanism, together with documentation and transparency of deliberations in assessments and consideration of appeals.

6

RECOMMENDATIONS

6.1 The DA scheme has for years been a subject of public criticism and complaints. However, SWD as owner, vote controller and administrator of the scheme seems to be quite complacent with its mode of operation and clearly comfortable with just a mechanical vetting of the so-called “non-medical criteria” of applications. Meanwhile, the scheme is evidently fraught with anomalies, lacks proper monitoring and checking and to this day a matter of divergent views between SWD and doctors.

6.2 In sum, The Ombudsman recommends that **SWD, in consultation with HA and DA as appropriate:**

- (a) review the eligibility criteria for fine-tuning (**para. 5.2**);
- (b) review and revise the layout, format and contents of the MAF to enable clear documentation of all factors considered by doctors in their medical assessment and to facilitate doctors’ systematic consideration of all relevant eligible criteria (**paras. 5.3 – 5.10**);
- (c) arrange regular audit of cases by senior officers to spot systemic irregularities and deficiencies (**paras. 5.19 – 5.23**);
- (d) clear discrepancy in views and practices with HA and DH (**para. 5.3**);
- (e) refine guidelines for staff specifying the circumstances under which to clarify with doctors and the circumstances under which they should escalate to senior officers (**paras. 5.24 – 5.25**);

- (f) revise the notification letter to applicants, giving specific reason(s) for refusal of DA (**para. 5.26**);
- (g) record in some detail the deliberations of the Medical Assessment Board and the Social Security Appeal Board for transparency of information to appellants and for doctors' reference in future assessments (**paras. 5.27 – 5.28**); and
- (h) consider an overall review of the DA scheme, covering the eligibility criteria, the roles of medical doctors and SWD as well as the assessment mechanism. (**para. 5.29**).

ACKNOWLEDGEMENT

6.3 The Ombudsman thanks DSW and his colleagues for cooperation and assistance throughout this investigation. His thanks also go to the Permanent Secretary of the Labour and Welfare Bureau and his colleagues for providing comments. We look forward to their progress in implementing our recommendations.

Office of The Ombudsman

Ref.: OMB/DI/167

October 2009

Summary of opinions and suggestions in public submissions

Name (Date of receipt)		Comments	Suggestions for the Administration
DA recipients			
1	Mr K (Nov 08)	<ul style="list-style-type: none"> Mr K was denied renewal of DA after a continuous grant of 8 years. 	
2	Mr W (loss of one limb) (Dec 08)	<ul style="list-style-type: none"> The criteria are confusing, misleading and outdated. The processing lacks transparency. Mr W was misled by SWD staff into thinking that he was not eligible for DA, thereby causing delay in application (and grant) for 13 years. It is not fair that 50% disabled is recognised under CSSA, but not under DA scheme. 	<ul style="list-style-type: none"> To conduct a comprehensive review. To synchronise the policy for disabled people under DA scheme and CSSA scheme.
Medical doctors			
3	Dr L (psychiatrist) (Nov 08)	<ul style="list-style-type: none"> There is no medical definition of "100% loss of earning capacity". Doctors are not trained in assessing earning capacity. There is no guidance for doctors on the eligible degree of mental illnesses. For lack of clear criteria, doctors tend to copy previous assessments and recommendations to avoid disputes and applicants' haggling. This perpetuates undeserving DA grants. It is unfair to rest all burden of approval with doctors, without clear guidance from SWD or HA. Doctors are under great pressure to grant DA in the clinical setting. 	<ul style="list-style-type: none"> To refine classification of illnesses. To set up assessment panel including specialists, SWD, occupational therapists etc. To regularly review criteria. Doctors should be responsible for making objective assessment only; decision to grant should be left to SWD, taking into account assessment by all relevant parties (including whether applicant has duly attended rehabilitation sessions assigned by doctors).
4	Dr H (eye doctor) (Nov 08)	<ul style="list-style-type: none"> The criteria are unclear, resulting in discrepancy in assessment. There is no communication channel for clarification between doctors and SWD. Some applicants unrealistically expect to have their DAs renewed every time, even after treatment and recovery. 	<ul style="list-style-type: none"> To provide clear guidelines to doctors. To provide hotlines for doctors.
5	Dr P (Dec 08)	<ul style="list-style-type: none"> Doctors are under great pressure to yield and grant DA to avoid applicants' criticism and complaints. The concept of "earning capacity" is unclear and confusing. It is also not applicable to children. Channels for clarification are lacking. There is tremendous grey area for those short of total incapacitation. Some doctors grant DA out of sympathy. 	<ul style="list-style-type: none"> To consider specifying the eligible grade of certain illnesses, e.g. mental retardation. To devise a clearer and age appropriate classification system.
Self-help group			
6	Group A (Nov 08)	<ul style="list-style-type: none"> Meeting on 13 Dec 08 with 11 other NGOs 	

7	Group B (Dec 08)	<ul style="list-style-type: none"> ● The objective of DA scheme is a form of benevolence to the disabled and should not be treated as a form of compensation. ● Linking disability to earning capacity is not humane. 	
8	Group C (Dec 08)	<ul style="list-style-type: none"> ● The mutual exclusiveness of HDA and institutionalisation is unreasonable. 	<ul style="list-style-type: none"> ● SWD to abolish the reference to "100% loss of earning capacity". ● To set up a timeframe for the processing of appeals.
9	Group D 23 Feb 2009	<ul style="list-style-type: none"> ● Children with special needs e.g. ADHD, SPLD are not given DA; doctors grant DA according to the school of the child, rejecting children studying in normal schools. 	
The public			
10	Mr C (Dec 08)	<ul style="list-style-type: none"> ● SWD should not contract out its duties to doctors. 	
11	Ms T (Dec 08)		<ul style="list-style-type: none"> ● To cease/limit granting of permanent DA taking into account possibility of technological/ medical advancement. ● To set up mechanism for reporting fraud.
12	Mr N (Dec 08)		<ul style="list-style-type: none"> ● To draw up clear approval criteria. ● To set up appeal mechanism. ● To increase transparency during the approval process. ● To add a higher rate of HDA to assist those who need to purchase expensive life-maintenance devices.
13	Ms C (Dec 08)	<ul style="list-style-type: none"> ● Hospitals seem to have different policies for approving DA. 	<ul style="list-style-type: none"> ● To draw reference from the Registration Card for People with Disabilities
14	Ms H (social worker) (Dec 08)		<ul style="list-style-type: none"> ● To abolish the reference "100% loss of earning capacity". ● To take into account the special needs of DA applicants, such as the amount of expenses arising from disability. ● To increase transparency in the approving process. ● To provide a channel for applicants to seek second opinion from another doctor. ● To explain to applicants the reason for rejection and provide information about appeal. ● To implement HWFB's undertaking at its 10 Apr 2006.
15	Ms W (Jan 09)	<ul style="list-style-type: none"> ● Mutual exclusivity between DA and OAA is not reasonable. 	

Note

The above table has been extracted from the bulk of public submissions we received.

MEMO

From: Supervisor, Social Welfare Department Ref.: Tel.: Date:	To: *Medical Social Worker / Medical Officer-in-charge *Hospital/Clinic Your Ref.: dated:
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Re: *Mr/Ms ()
 *HKIC/BC No.: Age: ()
 Address: Tel. No.:
 Hospital/Clinic: Ref. No.:
 Next follow-up date: Specialty/Ward:

The above-named, who claims suffering from _____ (type of disability), has applied for Disability Allowance under the SSA Scheme. *He/She has given us permission to make the medical enquiry. Available information on *his/her disability *and/or medication is as follows: _____

- 2 A copy of the *previous medical assessment report/follow-up slip/card/X-ray card* is/are* attached/not available.
- 3 The above-named *is/is not a sheltered workshop worker ** (specify only for cases applying for Higher Disability Allowance).
- 4 I should be grateful if you would fill in the relevant sections in the form overleaf and return the original copy of the completed form to the undersigned **on or before** _____. If telephone discussion is desirable, please contact the undersigned or _____ on Tel. No.: _____

Signature: _____
 Name in block letters: _____
 for Supervisor, _____

<p>(For new applications only) From: Medical Social Worker *Hospital/Clinic Ref.: Tel.: Date:</p>	To: Supervisor, Social Welfare Department Your Ref.: dated:
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Re: *Mr/Ms ()
 *HKIC/BC No.: Age: ()
 Address: Tel. No.:
 Hospital/Clinic: Ref. No.:

The above-named has applied for Disability Allowance under the SSA Scheme.

2. I forward overleaf a medical report on the above-named. Additional remarks are as follows:

(Space for official chop)

Signature of Medical Social Worker:
 Name in block letters:
 *Hospital/Clinic

**Checklist for Medical Assessment of
Eligibility for Normal Disability Allowance
for Disabilities other than Profound Deafness**

Eligibility criteria

Subject to other eligibility criteria being met, an applicant certified by the Director of Health or the Chief Executive, Hospital Authority as being in a position broadly equivalent to 100% loss of earning capacity according to the criteria in the First Schedule of the Employees' Compensation Ordinance (Cap. 282) can be eligible for Normal Disability Allowance (NDA) under the Social Security Allowance Scheme.

A profoundly deaf person who is certified to be suffering from a perceptive or mixed deafness with a hearing loss of 85 decibels or more in the better ear for pure tone frequencies of 500, 1 000 and 2 000 cycles per second, or 75 to 85 decibels with other physical handicaps which include lack of speech and distortion of hearing can also be eligible for NDA. Applicants suffering from hearing impairment should be assessed by ENT doctors of the designated specialist clinics/hospitals under the Hospital Authority in order to determine their eligibility for NDA. There is a different set of medical assessment form for cases of profound deafness.

Checklist for medical assessment of eligibility for NDA for disabilities other than profound deafness

- (I) Applicants whose physical/mental impairments or medical conditions have fallen into one of the following categories (which have been defined as 100% loss of earning capacity in the First Schedule of Employees' Compensation Ordinance (Cap. 282) are considered automatically eligible for NDA on medical grounds even though they have taken up employment :
- (i) loss of functions of two limbs
 - (ii) loss of functions of both hands or all fingers and both thumbs
 - (iii) loss of functions of both feet
 - (iv) total loss of sight
 - (v) total paralysis (quadriplegia)
 - (vi) paraplegia
 - (vii) illness, injury or deformity resulting in being bed-ridden
 - (viii) any other conditions including visceral diseases resulting in total disablement (reference should be made to part (II) of the Checklist)

If the applicant's disabling condition does not fall into any of the above categories, please proceed to (II) below.

- (II) Where an applicant's physical/mental impairments or other medical conditions have not fallen into any of the categories in (I) above, a medical assessment should be carried out to determine if the applicant is 'severely disabled' within the meaning of the scheme.

An applicant is considered in a position broadly equivalent to 100% loss of earning capacity and thus eligible for NDA if his/her physical or mental impairment or other medical conditions including visceral diseases have resulted in a significant restriction or lack of ability or volition to perform the following activities in daily living to the extent that substantial help from others is required in any one of the following areas :

- (1) working in the original occupation and performing any other kind of work for which he/she is suited;
- (2) coping with self-care and personal hygiene including feeding, dressing, grooming, toileting and bathing;
- (3) 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
- (4) 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.

**SUPPLEMENTARY MEDICAL ASSESSMENT FORM
ON NEED FOR CONSTANT ATTENDANCE (SSA SCHEME)**

Please ignore this Form **UNLESS** the patient, **IN ADDITION TO** being totally disabled broadly equivalent to a person with a 100% loss of earning capacity, **ALSO REQUIRES** from another person:

- (i) **FREQUENT ATTENTION** throughout the **DAY AND PROLONGED** or **REPEATED ATTENTION** during the **NIGHT** in connection with his/her bodily functions, e.g. totally bedridden, quadriplegia;

OR

- (ii) **CONTINUAL SUPERVISION** in order to avoid endangering himself/herself or others, e.g. severely demented/mentally retarded.

AND

- (iii) For a patient aged under 15, he/she **MUST ALSO REQUIRE CONSTANT ATTENTION** and **SUPERVISION** substantially **IN EXCESS** of that normally required by a child of the same age and sex. Suggested aspects for consideration include life-threatening conditions, hyperactivity uncontrollable by medication and/or therapy, etc.

To make a child eligible, please tick either (i) + (iii) **OR** (ii) + (iii)

Recommendation

#*Mr / Ms qualifies for Higher Disability Allowance for the period specified in (III) of the Medical Assessment Form due to conditions as checked above.

N.B.: Patient certified to be in need of constant attendance will be eligible for a higher rate of Disability Allowance which is **twice** that of the normal rate under the SSA Scheme.

(Space for official chop)

Signature of Medical Officer: _____

Name in block letters: _____

_____ **Hospital/Clinic*

Date: _____

* Delete whichever is inapplicable.

To be completed by SSFU or MSSU.

Non-governmental organisations which made submissions to the Legislative Council
on review of Disability Allowance between 2005 and 2008

1.	Hong Kong Association for Parents of Persons with Physical Disabilities
2.	Hong Kong Stoma Association Ltd
3.	“Invisible disability” Concern Group
4.	Against Elderly Abuse of Hong Kong
5.	Association of Parents of the Severely Mentally Handicapped
6.	關注傷殘津貼聯席
7.	Hong Kong Public Doctors’ Association
8.	關注傷殘津貼小組
9.	器官殘障傷殘津貼關注小組
10.	Renal Patients Mutual Help Association
11.	Hong Kong Public Doctors’ Association
12.	Parents’ Association of Pre-school Handicapped Children
13.	Hong Kong Blind Union
14.	Hong Kong Lupus Association
15.	Patient Mutual Support Division, Community Rehabilitation Network Hong Kong Society for Rehabilitation
16.	Wang Tau Home Centre, Community Rehabilitation Network Hong Kong Society for Rehabilitation

Note: The above groups are listed to the best of our knowledge. They are by no means exhaustive.

**Schema of the revised MAF
to illustrate the essential elements**

Current MAF	Revised MAF																				
<p>Part 1 - Assessment form with lists of specified qualifying disabling physical, mental, sight and hearing conditions and an unspecified “any other conditions”.</p> <p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </p> <p>(specified qualifying conditions; ticking required)</p> <p><input type="checkbox"/> Any Other Conditions (guidelines in Part 2)</p>	<p>Lists of specified qualifying disabling physical, mental, sight and hearing conditions, each with a box for ticking.</p> <p>Qualifying conditions for NDA (tick required):</p> <p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </p> <p>(Qualifying conditions for NDA)</p>																				
<p>Part 2 – Four factors for assessment of eligibility for NDA under “any other conditions”.</p> <p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </p> <p>(guidelines only; no ticking required)</p>	<p>Four factors for assessment under “any other conditions” (tick required):</p> <table border="0"> <thead> <tr> <th></th> <th align="center">Yes</th> <th align="center">No</th> <th align="center">Please elaborate</th> </tr> </thead> <tbody> <tr> <td>1. Working in the original occupation and performing suitable work</td> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> <td align="center">_____</td> </tr> <tr> <td>2. Coping with self-care and personal hygiene</td> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> <td align="center">_____</td> </tr> <tr> <td>3. Maintaining one’s posture and balance for daily activities</td> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> <td align="center">_____</td> </tr> <tr> <td>4. Expressing oneself, communicating and interacting with others</td> <td align="center"><input type="checkbox"/></td> <td align="center"><input type="checkbox"/></td> <td align="center">_____</td> </tr> </tbody> </table>		Yes	No	Please elaborate	1. Working in the original occupation and performing suitable work	<input type="checkbox"/>	<input type="checkbox"/>	_____	2. Coping with self-care and personal hygiene	<input type="checkbox"/>	<input type="checkbox"/>	_____	3. Maintaining one’s posture and balance for daily activities	<input type="checkbox"/>	<input type="checkbox"/>	_____	4. Expressing oneself, communicating and interacting with others	<input type="checkbox"/>	<input type="checkbox"/>	_____
	Yes	No	Please elaborate																		
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3. Maintaining one’s posture and balance for daily activities	<input type="checkbox"/>	<input type="checkbox"/>	_____																		
4. Expressing oneself, communicating and interacting with others	<input type="checkbox"/>	<input type="checkbox"/>	_____																		
<p>Part 3 - Assessment form for HDA with a list of specified qualifying conditions, each with a box for ticking.</p> <p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </p> <p>(specified qualifying conditions; ticking required)</p>	<p>Qualifying conditions for HDA (tick required):</p> <p> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> </p> <p>(qualifying conditions for HDA)</p>																				