

EXECUTIVE SUMMARY

Direct Investigation on System for Processing Applications for Disability Allowance by Social Welfare Department

Background

In the wake of media reports about 71 cases of overpayment of Disability Allowance (“DA”) by the Social Welfare Department (“SWD”) involving \$6,700 to \$160,000 over 6 months to 12 years, The Ombudsman declared a direct investigation on 20 October 2005 to examine SWD’s arrangements relating to:

- (a) dissemination of information to DA 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.

DA Scheme

2. The DA scheme was introduced in 1973 to provide financial assistance for the severely disabled on a non-contributory and non-means-tested basis. Since 1988, there have been two types of DA: Higher Disability Allowance (“HDA”) and Normal Disability Allowance (“NDA”).

3. NDA rate and HDA rate currently stand at \$1,125 and \$2,250 respectively. At the end of the 2005/06 financial year, there were 113,111 DA recipients, of which 98,569 (87.1%) receive NDA and 14,542 (12.9%) receive HDA.

Eligibility

4. All DA applicants must be certified by the Director of Health or the Chief Executive of the Hospital Authority (“Hosp A”) to be “severely disabled”. In addition, they have to satisfy other criteria:

- residence requirements;
- not imprisoned; and
- not in receipt of other social security assistance.

5. For **HDA**, applicants must also be:

- (a) in need of constant attendance from others in daily life; and
- (b) not receiving care in a “Government or subvented residential institution”.

Application Procedures

6. Applications are essentially on a self-declaration system. SWD requires applicants:

- to attest to the truthfulness and completeness of the information provided;
- to report subsequent changes, including admission to “Government or subvented residential institution”; and
- to confirm their understanding of the legal consequences of knowingly giving false statements.

Appeal

7. An independent Social Security Appeal Board considers appeals against SWD decisions on eligibility and amount of payment.

Explanatory Materials

8. Over the years, SWD has provided and updated explanatory materials to help applicants understand the eligibility criteria and application procedures:

- Social Security Allowance Scheme Pamphlet (1973);
- Notice to DA Applicants/Guardians/Appointees (2001); and
- Guidance Notes on Application for Social Security Allowance (2005)

Mechanism for Approving Applications

9. Staff are required to follow the procedures and guidelines in the Social Security Manual of Procedures (“the Manual”). A two-tier process is adopted for checking and approving DA applications by an Investigating Officer (“IO”) (a Social Security Assistant) and an Authorising Officer (normally a Social Security Officer II) respectively.
10. Applicants have to undergo a medical assessment by public medical officers to determine whether their disabling condition qualifies for DA.

Mechanism for Detecting Errors

Case Reviews

11. In case reviews, applicants are required to report any change in circumstances which may affect their eligibility. The frequency of review is as follows:

Type of DA	Disabling condition as certified by medical officer	Frequency of case review
NDA	Permanent	None since March 1992 to simplify procedures
	Non-permanent	Before expiry of the duration of disabling condition as certified in the last medical assessment
HDA	Permanent	Once every 3 years
	Non-permanent	Before expiry of the duration of disabling condition as certified in the last medical assessment

Cross-checking Arrangements

12. Cross-checking arrangements with the Immigration Department (“Imm D”) and Correctional Services Department and other offices within SWD have been introduced over the years to detect unreported changes in recipients’ circumstances that may affect their continuing eligibility. Cross-checking of hospitalisation records with Hosp A was introduced in 2001 and that of records of boarding in special schools with the Education and Manpower Bureau (“EMB”) in 2005.

Random Checks

13. Random checks are conducted biennially on 10% of NDA cases involving recipients aged 70 or above; but none on other cases.

Overpayment

14. DA is paid in advance. HDA overpayment arises mainly from recipients' unreported or undetected admission into "Government or subvented residential institutions".* These include hospitals and special schools with residential services, homes for the elderly and hostels for the disabled.

15. The number of HDA overpayment cases detected increased from 23 in 1988/89 to 1509 in 2004/05; the amount from \$23,000 in 1988/89 to \$4.8 million in 2005/06, peaking at \$5.3 million in 2002/03.

16. Between 2001/02 and 2005/06, there were 6,132 cases** detected, amounting to \$21.2 million. These represent 8.44% of the total HDA caseload (72,686 cases) and 1.09% of the total HDA expenditure (\$1,944.3 million).

Repayment

17. SWD views any overpayment to be money erroneously paid. As the recipient is not entitled to such payment, hence SWD endeavours to seek repayment from the recipients, regardless of the cause of overpayment. Separately, under Government's Financial and Accounting Regulations, officers who approve payments which should not have been authorised may be personally liable to surcharge.

18. In working out repayment arrangements, SWD seeks to avoid undue financial hardship to the recipient.

Case Studies

19. We studied all 71 HDA overpayment cases reported in the media and some other DA cases. A few significant ones are summarised below.

* Overpayment may be unavoidable in cases of late reporting of such admission, particularly in cases of hospitalisation of severely disabled persons, who understandably cannot report promptly to SWD themselves.

** SWD has commented that this figure may include multiple instances of overpayment to the same recipients, e.g. due to frequent and repeated admissions to hospital.

Case 1: Insufficient explanation on terminology and/or enquiries for clarification

20. The HDA recipient is a visually impaired child. In a cross-checking exercise with EMB in January 2005, SWD found her to have boarded at a subsidised special school from September 1992 to July 2004, thus she was ineligible for HDA during that period. \$160,000 had been overpaid.

21. There is no record to show that during any of the reviews in 1993, 1996, 1999 and 2002, the IOs concerned had made it clear to the guardian that the term “Government or subvented residential institution” included EMB-subsidised special schools. It was not until August 2005 that the explanation of this term in the Review Form covered such schools.

Case 2: Delay in processing application

22. Staff did not enter an NDA applicant’s personal particulars into the SWD computer system until three months after his application. Meanwhile, the applicant passed away. Owing to the above delay, SWD failed to check his application against his death record from Imm D. Unaware of his demise, the Department made monthly NDA payments into his bank account from December 1990 to February 2006, amounting to almost \$200,000.

Case 3: Negligence

23. A Normal Old Age Allowance (“NOAA”) recipient’s wife applied for NDA. Her Medical Assessment Form was misplaced by staff in the NOAA file. A newly recruited IO processed the NOAA file as an application for NDA. The IO’s supervisor failed to detect the error and approved the application. Overpayment of about \$3,500 to the husband was involved over eight months.

24. **SWD** comments: Cases 2 and 3 were isolated incidents, caused primarily by human error or staff negligence. Appropriate disciplinary action had been taken against those concerned.

Case 4: Lax attitude towards cause of overpayment

25. In October 1999, SWD discovered that a HDA recipient had begun boarding in a subsidised special school. However, the IO obtained verbal information from the School Social Worker (“SSW”) that the recipient was not a boarder there. SWD then continued to pay him HDA.

26. When the recipient’s mother applied for Comprehensive Social Security Assistance in

late 2004, SWD again “discovered” that the recipient had been boarding in the same special school since October 1999. This was confirmed in writing with the school. SWD recorded the cause of the overpayment as “misunderstanding” by the recipient’s mother or with “acceptable reasons”.

27. Regarding the contradiction between the special school’s written confirmation (in 2004) and the verbal information (in 1999), SWD explained that the SSW might have provided inaccurate information in 1999. However, we suspect that SWD staff might have conveniently attributed overpayment to “misunderstanding”, while the true cause of overpayment could not be ascertained beyond doubt.

Case Cluster: Failure to focus on or verify recipients’ boarding status in reviews

28. This comprises four independent HDA cases where SWD at some stage noted that the recipients had become boarders of subsidised special schools. At first, their HDA payment was rightly converted into NDA.

29. However, in two of the cases, SWD re-granted the recipients HDA upon case review, apparently based only on medical recommendation, without regard to the fact that the recipients remained resident in a subsidised special school. In two other cases, the recipients were rightly re-granted HDA when they ceased to reside in a special school. However, when they subsequently boarded at the special school again, SWD continued to pay them HDA as the guardians had not reported the change as required and the case reviews had not been thorough enough to detect the change.

Observations and Opinions

30. We commend Government for its commitment to caring for those genuinely in need. DA offers a degree of financial support to individuals in dealing with challenges associated with their disabilities.

31. However, charged with administration of the scheme, SWD has the duty to ensure that DA applications are processed properly. Although some overpayment is unavoidable from late reporting of changes by recipients, especially those suddenly hospitalised, this cannot adequately account for the 6,132 HDA overpayment cases (8.44%) between 2001/02 and 2005/06. SWD should, therefore, minimise the scope for overpayment and safeguard the proper use of public funds.

Dissemination of Information to Applicants

Use of Unclear Terminology in Application/Review Forms

32. The prerequisite of a self-declaration system is that clear, correct and complete information is being provided to applicants. An applicant receiving care in a “Government or subvented residential institution” (“政府或受資助院舍”) is not eligible for HDA. However, the meaning of the term has not been entirely clear over the years. The term in Chinese “公立或政府資助院所” used in the Application/Review Forms in the early years was particularly jargonistic and open to interpretation. It was clarified only in August 2005 that such institutions include EMB-subsidised boarding schools.

Unclear Instructions in Internal Guidelines

33. The relevant sections of the past or even current edition of the Manual have not included EMB-subsidised special schools. Furthermore, the Manual does not require IOs to explain to applicants or recipients the definition of the term “Government or subvented residential institution”.

Scanty Records

34. Our case studies have revealed that records as to what information IOs had explained to applicants and recipients were scanty and incomplete. In some cases, there was no record at all.

Inadequate Explanatory Materials

35. Before January 2001, the only explanatory material available to applicants was the Social Security Allowance Scheme Pamphlet. This lacked a clear definition of the institutions within the meaning of “Government or subvented residential institution” until June 2005 when the term was clarified in the Pamphlet.

Mechanism for Approving Applications

Checking Eligibility

36. The Manual does not inform IOs how and where to check whether or not an institution falls within “Government or subvented residential institutions”. The Manual is also not clear on requiring or reminding IOs to ask applicants and recipients specifically on the circumstances

directly relevant to their eligibility. Such inadequacy and its resultant error of overpayment were clearly reflected in the above **Case Cluster**.

Mechanism for Detecting Errors

Review of Continuing Eligibility

37. Given the large number of recipients and the data-matching mechanisms in place, we find the case review mechanism acceptable.

Cross-checking Arrangements

38. We commend SWD for introduction of the comprehensive cross-checking arrangements, though those for records of hospitalisation and boarding were not introduced until 2001 and 2005 respectively.

Random Checks

39. Currently, no random checks are conducted on NDA cases involving recipients aged below 70 and HDA cases. We consider some random checks desirable to deter and detect errors or irregularities.

Repayment

Causes of Overpayment

40. Our case studies have revealed that there seems to have been little attempt by SWD to trace the cause(s) of overpayment or, to be precise, the causes of errors or irregularities. **Case 4** is an example of how SWD readily attributed overpayment to “misunderstanding”, although there had been obvious contradictions and deficiencies in the file records and the mother’s statements.

Recovery of Overpayment

41. In principle, we support SWD’s position to recover overpayment in order to properly account for and to preserve public funds. However, SWD should also keep an open mind to review evidence in cases brought to its attention. If a recipient or his/her guardian can prove that he/she had provided true, accurate and complete information relating to eligibility, SWD should take that into account in deciding on a fair and equitable solution. We also agree that SWD should

work out repayment arrangements so as to avoid financial hardship to the recipients concerned, e.g. recovery by instalment.

42. At the same time, SWD should observe the Financial and Accounting Regulations and, where appropriate, surcharge officers who have approved payments that should not have been authorised.

Recommendations

43. The Ombudsman makes the following recommendations to the Director of Social Welfare:

(a) General

publicise the conditions of the scheme to remind applicants and recipients of their obligation to provide full and truthful information as well as possible legal implications for non-compliance.

(b) Dissemination of Information

- i) draw up guidelines to require IOs to explain clearly to applicants and recipients the definition of the term “政府或受資助院舍” (“Government or subvented residential institution”);
- ii) require IOs to record in a standardised and detailed manner the information that they are obliged to explain to applicants and recipients in application interviews or case reviews;
- iii) review IOs’ interview records periodically to ensure their thoroughness;
- iv) remind IOs of the importance of clear explanation and advice to applicants and recipients.

(c) Mechanism for Approving Applications

- i) inform staff how and where to look for up-to-date information on Government or subvented residential institutions;

- ii) revise the Manual to guide IOs how to make follow-up enquiries for ascertaining any changes of circumstances affecting recipients' eligibility.

(d) Mechanism for Detecting Errors

- i) publicise the cross-checking mechanisms to deter deliberate non-disclosure and fraudulent attempts by applicants or recipients;
- ii) consider conducting random checks on HDA cases and NDA cases involving recipients aged below 70;
- iii) tighten up the guidelines for determining the cause(s) of overpayment in individual cases.

(e) Repayment

to continue to recover overpayment having due regard to evidence in cases brought to its attention.

Comments from SWD

44. SWD has made some comments on our draft investigation report, which we have duly considered and, where appropriate, incorporated into the report.

45. However, on the issue of recovery of overpayment, SWD's and our views remain somewhat different.

46. The position of the Director of Social Welfare is that:

“To safeguard the public purse, as matter of principle SWD will seek repayment of overpaid allowance in all cases. The fact that the recipient has provided true and complete information *per se* does not mean that we should deviate from this principle. But our aim is to work out a fair and equitable repayment arrangement with the recipient concerned to avoid undue hardship.”

Final Remarks

47. The Ombudsman in principle endorses SWD's determination to safeguard the public purse **and** to seek reimbursement. However, we ask SWD to consider evidence brought to its attention to ensure that individual cases are resolved fairly and equitably, particularly when maladministration can be established. In this context and particularly with the system of self-declaration, we consider it fair for the onus to be on the recipients to prove that they had provided SWD with true, accurate and complete information relating to eligibility.

48. This issue apart, The Ombudsman appreciates SWD's reassurance to keep under review its services to DA recipients and general acceptance of our recommendations. We will monitor its progress of implementation.

Office of The Ombudsman

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