
REPORT NO. 23 OF 2009/10

REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE SOUTH AFRICAN SOCIAL SECURITY AGENCY SUSPENDED PAYMENT OF A CHILD SUPPORT GRANT WITHOUT FURNISHING WRITTEN REASONS
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Executive Summary

(i) The Office of the Public Protector investigated a complaint relating to an allegation that Ms N N Kenene (the Complainant) of Mooiplaas, East London, has been a recipient of a child support grant since 2005 on behalf of her minor child, Likhona Kenene (Child 1). The South African Social Security Agency (SASSA) allegedly suspended the grant in June 2006.

(ii) When she enquired from SASSA she was allegedly informed that there was a duplication of payment of the same grant to another beneficiary, Ms P Majiya (the Guardian), of Peddie in the Eastern Cape Province. The latter is a guardian of another child Likhona Kenene (Child 2), bearing the same particulars as the Complainant’s child. The biological mother of the child under guardianship is Ms N M Kenene (the Mother) of Mdantsane in East London.

(iii) The following key findings were made:

(a) SASSA suspended the child support grants of both the Complainant and Guardian without notifying them in writing of the reasons thereof; and

(b) The cancellation of the grant was improper.

(iv) The following recommendations were made:

a) The Complainant and Guardian should be paid the amount of arrears due to them, including interest calculated at the prescribed rate;

(b) The payments to the Mother should be terminated and SASSA should initiate steps to recover payments already made to her;
(c) In instances where an application has to be approved on the basis of an affidavit, SASSA must verify the birth registration of a child with the Department of Home Affairs;

(d) SASSA should at all times furnish beneficiaries and/or applicants of social grants with written reasons whenever a decision is taken that adversely affects their interest; and

(c) The Department of Social Development should as a matter of urgency appoint a social worker to assess the wellbeing of Child 2.
REPORT ON AN INVESTIGATION INTO AN ALLEGATION THAT THE SOUTH AFRICAN SOCIAL SECURITY AGENCY SUSPENDED PAYMENT OF A CHILD SUPPORT GRANT WITHOUT FURNISHING WRITTEN REASONS

1. INTRODUCTION

1.1 This report is submitted to the Minister of Social Development, the Member of the Executive Council responsible for Social Development in the Eastern Cape Province (MEC), the Director General of the Department of Social Development, the Chief Executive Officer of the South African Social Security Agency (SASSA) and the Regional Executive Manager, SASSA, Eastern Cape Province in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 It relates to an investigation into an allegation that SASSA suspended the child support grant (the grant) due to Ms N N Kenene. nee Mlahlwa (the Complainant), the mother of Likhona Kenene (Child 1), on the ground that the grant was being paid to another beneficiary, Ms P Majiya (the Guardian), in respect of a child, Likhona Kenene (Child 2), bearing the same particulars as the Complainant’s child.

2. THE COMPLAINT

2.1 The Office of the Public Protector (OPP) received a complaint on 2 April 2008 from the Complainant who alleged that she has been a recipient of the grant on behalf of Child 1. SASSA allegedly suspended the grant in June 2006 without written reasons.

2.2 The Complainant approached SASSA and requested an explanation for the suspension of the grant whereupon she was informed verbally that the grant was
being paid to the Guardian. The biological mother of Child 2 is Ms N M Kenene (the Mother) of Mdantsane in East London.

2.3 After various enquiries from SASSA without assistance, the Complainant requested the OPP to intervene.

2.4 Hereunder is the diagram that explains the complaint, as outlined in paragraph 2.1 to 2.2:

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Complainant          Guardian          Mother
    A                  B                 C
        X                Y
LIKHONA KENENE (1)  LIKHONA KENENE (2)
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2.5 A represents the Complainant, the biological mother of X, Child 1.

2.6 B is the Guardian of Y, Child 2.

2.7 C is the biological mother of Y, Child 2.

2.8 A is not related to B and C.

2.9 B and C are recipients of a grant in respect of Y.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

3.1 Section 181(1) of the Constitution provides that the Public Protector has the power to investigate any conduct in state affairs or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.
3.2 On conclusion of the investigation, the Public Protector has to report on the conduct investigated and take appropriate remedial action.

3.3 In terms of section 6(4)(a)(ii) of the Public Protector Act, the Public Protector has the power to investigate any alleged abuse of power or other improper conduct by a person performing a public function.

3.4 SASSA is an organ of state which performs a public function.

3.5 The Public Protector therefore has the powers and the jurisdiction to investigate the complaint.

4. **THE INVESTIGATION**

4.1 The investigation was conducted in terms of section 6 and 7 of the Public Protector Act and comprised the following:

4.1.1 Consultation with the Complainant and perusal of the documents submitted in support of her application;

4.1.2 Consultation with the Guardian, the Mother, Principals of Ayliff and Nyara Primary Schools, and SASSA officials;

4.1.3 Perusal of the SASSA files relating to the two minor children; and

4.1.4 Consideration of the relevant legislation.

4.2 **Consultation with the Complainant**

4.2.1 Consultation with the Complainant revealed that:
4.2.1.1 She is not related to the Guardian;

4.2.1.2 In 2005 she applied for the grant and it was approved. She received payments until June 2006, when the grant was suspended by SASSA; and

4.2.1.3 In September 2007, she re-applied and the application was approved. She was paid an amount of R 200.00 in January 2008 and February 2008, respectively. In March 2008, the payments were once again stopped, until to date.

4.3 Consultation with the Guardian

4.3.1 Consultation with the Guardian revealed that:

4.3.1.1 She is not related to the Complainant and is the guardian of Child 2;

4.3.1.2 Child 2 was introduced to her by one Brenda Kenene who requested her to take care of the child, as the Mother was a drunkard and misusing the grant paid to her;

4.3.1.3 Subsequent to taking custody of Child 2 she registered her as a learner at Ayliff Public Primary School, applied for the grant and in support thereof she accordingly submitted an affidavit as she did not have the necessary documentation for Child 2;

4.3.1.4 The application was approved, and payments were received from August 2007 to October 2007 when the grant was suspended by SASSA without furnishing reasons; and

4.3.1.5 The grant was re-instated with effect from March 2008, and is payable to date.

4.4 Consultation with the Principals of Nyara and Ayliff Primary Schools
4.4.1 Consultations were conducted with the Principal of Nyara Primary School where Child 1 was a learner and the following was revealed by the Principal:

4.4.1.1 Child 1 was registered at the school and her parent is the Complainant; and

4.4.1.2 In terms of the school records the child was born on 10 October 1999.

4.4.2 The Principal provided the OPP with copies of the register of attendance and copies of an internal progression schedule in respect of Child 1.

4.4.3 Ayliff Primary School was also visited by SASSA officials to verify the identity and the attendance records of a child also known as Likhona Kenene and the following information was obtained:

4.4.3.1 Child 2 was registered at the School as a learner by the Guardian, but the Mother is her biological mother; and

4.4.3.2 She was admitted at the school in January 2004 when she was in Grade A.

4.5 Consultation with the Mother

4.5.1 Consultations with the Mother revealed the following:

4.5.1.1 Child 2 was born on 27 April 1997, not 10 October 1999, and she was not in possession of a copy of her birth certificate;

4.5.1.2 Child 2 is staying with the Guardian who is her cousin. The Guardian requested custody of Child 2. Child 2 left when she was eight years old and at the time she was a recipient of a grant and is still receiving the grant to date;

4.5.1.3 The last time she saw Child 2 was on 2 February 2008 when the latter was admitted to Hospital for a minor stroke;
4.5.1.4 She is not maintaining Child 2 despite the fact that she is receiving the grant because the Guardian undertook to take care of Child 2; and

4.5.1.5 The social workers were not informed of the transfer of custody, although she and the Guardian initially agreed to report the matter to social workers.

4.6 Consultation with the SASSA officials

4.6.1 Consultation with the SASSA officials revealed the following:

4.6.1.1 The Complainant was informed of the suspension verbally when she enquired about the suspension of the grant. The reason given for the suspension was that the grant in respect of Child 1 was being paid to the Guardian and that the last time payment made to the latter was in August 2008 at Peddie;

4.6.1.2 Mr Ntlanganiso, the supervisor at SASSA service office, confirmed that according to the system, the Guardian is reflected as a guardian of Child 2;

4.6.1.3 The grant in respect of Child 2 was suspended from September 2007 to February 2008. No notification letter was given to the Guardian relating to the reasons for the suspension thereof; and

4.6.1.4 On 20 February 2008, the Guardian re-applied and her application was approved with effect from March 2008.

4.7 Perusal of the SASSA files relating to the two minors

4.7.1 The Regional Office of SASSA, East London, was visited and the following transpired:
4.7.1.1 There are three files relating to the two minor children. The files belong to the Complainant, Mother and Guardian;

4.7.1.2 The Complainant’s grant was suspended on the basis that Child 1 is sharing the same ID number, name and surname with Child 2; and

4.7.1.3 Both the Mother and the Guardian receive grants in respect of Child 2.

5. LEGISLATIVE AND POLICY FRAMEWORK GOVERNING SOCIAL GRANTS

5.1 The Constitution

5.1.1 Section 27(1)(c) of the Constitution provides that everyone has the right to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

5.1.2 Section 27(2) provides that the state must take reasonable legislative and other measures within its available resources, to achieve the progressive realisation of this right.

5.1.3 Section 28(1)(c) provides that every child has the right to basic nutrition, shelter, basic health care services and social services.

5.1.4 Section 28(2) provides that a child’s best interest are of paramount importance in every matter concerning the child, and

5.1.5 Section 28(3) provides that in this section “child” means a person under the age of 18 years.

5.2. Social Assistance Act, 2004
5.2.1 The Social Assistance Act, 2004 (Social Assistance Act) was passed in pursuance of section 27(2) of the Constitution and its object is set out in Section 3 thereof. The object of the Social Assistance Act is set out as follows:-

"a) To provide for the administration of social assistance and payment of social grants;

b) To make provision for social assistance and to determine the qualification requirements in respect thereof;

c) To ensure that minimum norms and standards are prescribed for the delivery of social assistance; and

d) To provide for the establishment of an Inspectorate for social assistance."

5.2.2 The Social Assistance Act defines a "child" as a person under the age of 18 years and a child support grant means a grant made in terms of section 6.

5.2.3 Section 6 of the Social Assistance Act provides that a person is eligible for a child support grant if he or she is the primary care giver of that child.

5.3 The South African Social Security Agency Act, 2004

5.3.1 Section 4(1)(a) provides that the Agency must administer social assistance in terms of Chapter 3 of the Social Assistance Act and perform any function delegated to it under this Act.

5.3.2 Section 4(1)(b) provides that the Agency should collect, collate, maintain and administer such information as is necessary for the payment of social security, as well as for the central reconciliation and management of payment of transfer funds, in a national data base of all applicants for, and beneficiaries of social assistance.
5.3.3 The section further provides that the Agency should establish a compliance and fraud mechanism to ensure that the integrity of the social security system is maintained.

5.4 The Promotion of Administrative Justice Act, 2000

5.4.1 Section 33(1) of the Constitution provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

5.4.2 Section 33(2) of the Constitution provides that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.

5.4.3 Section 3(1) of the Promotion of Administrative Justice Act, 2000 (PAJA) provides that administrative action which materially affects the rights or legitimate expectations of any person must be procedurally fair.

5.4.4 Section 3(b) of PAJA provides that “in order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4), must give a person referred to in subsection (1)- adequate notice of the nature and purpose of the proposed administrative action and a clear statement of the administrative action.”

6. OBSERVATIONS AND FINDINGS

6.1 Applications by the Complainant and the Guardian for the grants were made and approved by SASSA in accordance with the provisions of Section 6 of the Social Assistance Act.

6.2 The Guardian did not have the required supporting documents for the application, and she accordingly submitted an affidavit in support thereof.
6.3 Contrary to the provisions of Section 33(1) of the Constitution read with Section 5(1) of PAJA, SASSA failed to furnish the Complainant and the Guardian with reasons in writing after it had taken an adverse decision to cancel payment of the grants.

6.4 The suspension of the Complainant and Guardian's grants was improper.

6.5 Both the Guardian and the Mother receive the grants in respect of Child 2.

6.6 The Mother was found to be indulging excessively in liquor.

6.7 It is evident that the system employed by SASSA in the allocation of grants cannot detect duplication relating to the names and ID numbers of children.

7. RECOMMENDATIONS

It is recommended in terms of the provisions of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, that:

7.1 SASSA should pay the Complainant and the Guardian the amount of arrears due to them, including interest calculated at the prescribed rate;

7.2 The payments to the Mother should be terminated and SASSA should take steps to recover the payments already made to her;

7.3 In instances where an application has to be approved on the basis of an affidavit, SASSA must ensure and verify the birth registration of the child with the Department of Home Affairs;
7.4 SASSA should at all times furnish beneficiaries and / or applicants of grants with written reasons whenever a decision is taken that adversely affects their interest; and

7.5 The Department of Social Development should as a matter of urgency appoint a social worker to assess the wellbeing of Child 2.

8. CONCLUSION

8.1 The OPP will monitor the implementation of the recommendations referred to in paragraph 7 at intervals of 3 months from the date of this report.

ADV M L MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: {8} 09 09

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