“Accountability”

Report on an investigation into allegations of undue delay by the South African Social Security Agency in implementing the decisions of the Independent Tribunal for Social Assistance Appeals

Report No: 6 of 2014/15

PUBLIC PROTECTOR
SOUTH AFRICA

REPORT NO 6 OF 2014/2015
ISBN 978-1-920692-21-6

"ACCOUNTABILITY"

REPORT ON AN OWN INITIATIVE INVESTIGATION INTO THE UNDUE DELAY BY THE SOUTH AFRICAN SOCIAL SECURITY AGENCY IN IMPLEMENTING THE DECISIONS OF THE INDEPENDENT TRIBUNAL FOR SOCIAL ASSISTANCE APPEALS
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Executive Summary

(i) "Accountability" is my report as the Public Protector on an own initiative investigation that I issue in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector Act 23, 1994.

(ii) The investigation was triggered by an observation by the Public Protector office in the Eastern Cape that some of the decisions of the Independent Tribunal for Social Assistance Appeals (herein after referred to as ITSSA), relating to outcomes of appeals, are not being implemented within a reasonable time by the South African Social Security Agency (herein after referred to as SASSA).

(iii) On analysis of the matter the following issues were considered and investigated:

(a) Does SASSA systematically fail without good reason to implement the decisions of ITSSA? If so, does this constitute maladministration?

(b) Propriety of the process regarding reviewing of the SASSA decisions?

(c) If SASSA fails without good reasons to implement the decisions of ITSSA, does such conduct prejudice the appellants?

(iv) The investigation process involved correspondence, meetings with officials from SASSA and ITSSA, perusal of documents and consideration of applicable legislation and prescripts.

(v) The standard used to judge whether SASSA systematically failed without good reasons to implement the decisions of ITSSA is provided for in Regulation 20(3) of the Regulations issued in terms of the Social
Assistance Act 13 of 2004 as amended. The standard used to judge the propriety of the process regarding the reviewing of SASSA decisions by ITSSA is provided for in Regulation 12(1)(c) and Regulation 20(1) of the aforesaid regulations and section 41(1)(h) of the Constitution. The standard used to judge whether if SASSA fails without good reasons to implement the decisions of ITSSA such conduct prejudices the appellants is provided for in section 27(1)(c) of the Constitution.

(vi) The only issue in dispute was the allegation by SASSA that ITSAA communicates the outcome of appeals directly to appellants without having given SASSA the opportunity to respond.

(vii) SASSA submitted in their response to the provisional report that ITSAA does send the outcome of the appeal directly to the SASSA Regional Offices and Head Office approximately 5 days before the same letter is posted to the appellant.

(viii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

(a) Does SASSA systematically fail without good reasons to implement the decisions of ITSSA? If so, does this constitute maladministration?

(aa) The failure by SASSA to implement the decision of ITSSA where ITSAA has considered an appeal on new grounds instead of those advanced to SASSA by the appellants was improper and in violation of Regulation 20(3). Although there were valid reasons for not implementing such decisions, the failure by SASSA in this regard constitutes maladministration. SASSA had an option to take ITSAA's decisions on review if not satisfied in that regard.
(b) Propriety of the process regarding reviewing of the SASSA decisions

(aa) The allegation by SASSA that ITSAA communicates the outcomes of appeals directly to the appellants without having given it the opportunity to comment and respond could not be substantiated.

(bb) The process followed by ITSAA in reviewing the decision of SASSA by considering the appeal on new grounds instead of those advanced to SASSA by the appellant is improper and violates Regulation 12(1)(c). Such conduct constitutes maladministration.

(cc) The failure by ITSAA to consult with SASSA when considering an appeal is improper and violates the principles of cooperative government and intergovernmental relations as provided for in section 41(1)(h) of the Constitution. Such conduct constitutes maladministration.

(c) If SASSA fails without good reason to implement the decisions of ITSSA, does such conduct prejudice the appellants?

(aa) The delay or failure by SASSA to implement the legitimate findings of ITSAA within the stipulated period of 14 days in terms of Regulation 20(3) is improper and violates the appellants’ rights to have access to social assistance in terms of section 27(1)(c) of the Constitution. Such conduct constitutes maladministration and prejudice to the appellants.

(ix) The appropriate remedial action I am taking in pursuit of section 182(1) of the Constitution is the following:
(a) SASSA

(aa) SASSA must write a letter of apology to ITSAA for failure to communicate its reasons for not implementing its decisions. SASSA must take those decisions of ITSAA which is not satisfied with on review.

(bb) SASSA should write letters of apology to the affected appellants within 30 days upon receipt of this report and also provide the appellants with written reasons stating why it could not implement the decision of ITSAA within the stipulated period of 14 days.

(b) ITSAA

(aa) ITSAA should write a letter of apology to SASSA for considering the appeal on new grounds instead of those advanced to SASSA by the appellants within 30 days upon receipt of this report.

(bb) ITSAA must ensure that it considers the appeals by looking at the evidence that was presented before SASSA and not consider new evidence which was not previously advanced.

(c) ITSSA AND SASSA

(aa) Both institutions are to further improve their communication channels to ensure efficiency.
REPORT ON AN OWN INITIATIVE INVESTIGATION RELATING TO THE UNDUE DELAY BY THE SOUTH AFRICAN SOCIAL SECURITY AGENCY IN IMPLEMENTING THE DECISIONS OF THE INDEPENDENT TRIBUNAL FOR SOCIAL ASSISTANCE APPEALS

1. INTRODUCTION

1.1 "Accountability" is my report as the Public Protector on an own initiative investigation issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act 23, 1994 (the Public Protector Act).

1.2 The report is submitted to the following parties in terms of section 8(1) of the Public Protector Act:

1.2.1 The Chief Executive Officer of the South African Social Security Agency (herein after referred to as SASSA); and

1.2.2 The Regional Manager of the South African Social Security Agency (herein after referred to as SASSA) in the Eastern Cape Province.

1.3 The report relates to an own initiative investigation relating to the undue delay by SASSA in implementing the decisions of ITSA.

2. THE COMPLAINT

2.1 This is an own initiative investigation triggered by an observation by my Eastern Cape office from two cases or complaints previously investigated by that office, that ITSA’s decisions were not implemented within a reasonable time by SASSA. In one of the cases, ITSA set aside SASSA’s decision that rejected the Appellant’s application for social assistance. This outcome was communicated to the Appellant on 18 February 2011. However, by May 2012, SASSA
had not implemented the decision. My office then sought to look into the root cause of the non-implementation of the decisions of ITSAA.

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

3.1 The Public Protector is an independent constitutional institution established under section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution gives the Public Protector 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, to report on that conduct and take appropriate remedial action. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.

3.3 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve the disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.4 SASSA is an organ of state and its conduct amounts to conduct in state affairs. Therefore, the matter falls within the ambit of the Public Protector’s mandate.

3.5 The power and jurisdiction of the Public Protector to investigate were not disputed by any of the parties.
4. THE INVESTIGATION

4.1 Investigation Rationale

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act. Due to the number of previously reported similar complaints, the conduct of SASSA, if left unattended, could result in many people entitled to benefits from the social assistance system being prejudiced.

4.2 Approach to the investigation

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?

4.2.1.4 In the event of maladministration what would it take to remedy the wrong?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on what were the root causes for the undue delay by SASSA in implementing the decisions of ITSAA.
4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by SASSA and ITSAA or organ of state to prevent maladministration and prejudice.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration, with a view to placing the complainant or affected person as close as possible to where he or she would have been but for the maladministration.

4.3 The Public Protector considered and investigated the following issues:

4.3.1 Does SASSA systematically fail without good reasons to implement the decisions of ITSAA? If so, does this constitute maladministration?

4.3.2 Propriety of the process regarding reviewing of the ITSAA decisions?

4.3.3 If SASSA fails without good reason to implement the decisions of ITSAA, does such conduct prejudice the appellants?

4.4 Key Sources of information

4.4.1 Meetings

4.4.1.1 A meeting was held on 15 November 2012 with Mr. Mlambo who is SASSA’s Manager for Customer Service and Mr. Mpeta who is SASSA’s Senior Manager in the Beneficiary Unit at SASSA Regional Office in East London.

4.4.1.2 Another meeting was held on 01 February 2013 with Mr. John Mokele the Director of ITSAA (Pretoria), Mr. Masibulele Mfunzana who is ITSAA’s Eastern Cape Provincial Coordinator, Mr. Nkosinathi
Ngevay and Mr Malcom Majoos who are both SASSA’s officials of the Eastern Cape Regional Office.

4.5 Legislation and other prescripts

4.5.1 The Social Assistance Act 13 of 2004;

4.5.2 The Constitution of the Republic of South Africa, 1996; and

4.5.3 Government Gazette No. 34618/2011, relating to the lodging and consideration of applications for reconsideration of social assistance application by SASSA and social assistance appeals by ITSA.

5. APPLICABLE LAW AND RELATED PRESCRIPTS

5.1 Does SASSA systematically fail without good reasons to implement the decisions of ITSA? If so, does this constitute maladministration?

5.1.1 Regulations relating to the lodging and consideration of applications for reconsideration of social assistance applications by the SASSA and social appeals by the Independent Tribunal (Regulations issued in terms of the Social Assistance Act 13 of 2004 as amended)

5.1.1.1 The issue of whether SASSA systematically fails without good reasons to implement the decisions of ITSA is governed by the Regulations issued in terms of the Social Assistance Act 13 of 2004 as amended (herein after referred to as the Regulations).

5.1.1.2 Regulation 20(3) provides that upon receipt of the finding of the Independent Tribunal (ITSA) by the Agency (SASSA), the Agency (SASSA) must implement such finding within a period of 14 days of receipt thereof. Therefore, on proper reading of the aforesaid
Regulation, it is mandatory for SASSA to implement the finding of ITSSA within a period of 14 days. The regulations are silent on what should happen if ITSSA has misdirected itself with regard to the facts of the appeal or where SASSA does not agree with its findings.

5.1.1.3 However, in terms of Regulation 12(1)(c), ITSSA has the power if it is not satisfied with the reasons provided by SASSA for rejecting the beneficiary's or applicant's request for reconsideration, to request SASSA to provide further written reasons for its decision for rejecting the request for reconsideration in terms of section 18(1) of the Act. Therefore, in terms of the provisions of the aforesaid Regulation the situation should not arise where ITSSA misdirects itself with regard to the facts of an appeal.

5.2 Propriety of the process regarding reviewing of the SASSA decisions

5.2.1 The propriety of the process of review of the SASSA decisions by ITSSA is similarly governed by the Regulations issued in terms of the Social Assistance Act 13 of 2004 as amended.

5.2.1.1 Regulation 12(1)(c) provides that ITSSA has the power if it is not satisfied with the reasons provided by SASSA for rejecting the beneficiary's or applicant's request for reconsideration, to request SASSA to provide further written reasons for its decision for rejecting the request for reconsideration in terms of section 18(1) of the Act. Therefore it is incumbent on ITSSA to request written reasons from SASSA if it is not satisfied with the reasons provided by SASSA for rejecting the beneficiary's or applicant's request for reconsideration. It therefore follows that ITSSA cannot come to a finding which upholds an appeal without engaging SASSA in that regard.
5.2.1.2 Regulation 20(1) stipulates that ITSAA must communicate its decisions and reasons thereof in respect of an appeal to an applicant, beneficiary or a person acting on his or her behalf and to SASSA. It is therefore mandatory for ITSAA to communicate its findings to SASSA at all times.

5.2.1.3 Regulations 20(3) provides that upon receipt of the finding of ITSSA by SASSA, it must implement such finding within a period of 14 days of receipt thereof. It is therefore also mandatory for SASSA to implement ITSAA's findings within a period of 14 days. It then follows that in terms of Regulation 20(3), SASSA does not have discretion whether to implement ITSAA's findings or not.

5.2.2 The relationship between ITSAA and SASSA as organs of state is regulated by the principles of co-operative government and intergovernmental relations as enunciated in section 41 of the Constitution.

5.2.2.1 Section 41(1)(h) of the Constitution provides among others that all spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, informing one another of and consulting one another on matters of common interest and coordinating their actions and legislation with one another. Therefore, it is incumbent on ITSAA and SASSA to inform and consult one another on matters of common interest such as appeals in terms of section 18 of the Social Assistance Act, 2004 as amended.

5.3 If SASSA fails without good reasons to implement the decisions of ITSSA, does such conduct prejudice the appellants?
5.3.1 The issue of whether if SASSA fails without good reason to implement the decisions of ITSAA such conduct prejudices the appellants is regulated by section 27(1)(c) of the Constitution.

5.3.1.1 Section 27(1)(c) of the Constitution provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. The Social Assistance Act, 2004 as amended gives effect to this right. It particularly set the requirements that must be followed by applicants who are in need of social assistance. It also lists the grounds upon which SASSA should refuse applications. Of particular importance in this case are sections 5(2)(a) and (b) of the Social Assistance Act, 2004 as amended. These relates to incomes threshold and the application of the means test.

5.3.1.2 The limiting grounds as enunciated in section 5(2)(a) and (b) of the Social Assistance Act, 2004 as amended passes the test of the limitation of rights as set out in section 36 of the Constitution. They are reasonable and justifiable in that they are intended to limit the right to access social assistance and to ensure that this right is available only to those who are in need of assistance. Therefore the failure by SASSA without good reasons to implement the decisions of ITSAA which are in favour of providing social assistance to the appellants is an infringement of their right to have access to social assistance.

6. EVIDENCE AND INFORMATION OBTAINED

6.1 Meeting held on 15 November 2012 with SASSA Officials

6.1.1 At the meeting of 15 November 2012, Mr. Mpeta gave the following description of how the application and appeals processes worked:
(i) Applications are made at local service offices;

(ii) The processing thereof takes only a day, and an outcome is communicated to the applicant on the same day;

(iii) Upon rejection of the application, the officials at the local service offices are required to provide the applicants with appeal forms in order to give them an opportunity to apply for reconsideration of their applications;

(iv) The reconsideration of the applications is done at the Regional Offices and is finalised within 90 days; and

(v) Upon rejection of the applications at Regional level, detailed reasons are given to the appellants and they are advised of what steps to take if they were still unhappy with the decision. This entails an appeal to the National Minister of Social Development.

(vi) Mr. Mpeta indicated that there are communication gaps between itself (SASSA) and ITSAA that need improvement. He also explained the process of implementing a decision by ITSAA as follows:

(a) Upon receipt of the decisions from ITSAA, SASSA normally takes about a week to implement them as they normally receive few cases from ITSAA in favour of the appellants.

(b) When the decision received from ITSAA involve large sums of money and there is a need for verification of the decision (from SASSA’s side), the period of implementation takes longer.
(c) ITSAA sometimes made findings on issues that are not advanced by SASSA for rejection.

(d) ITSAA communicates the outcome of the appeals directly to the appellants without having given SASSA the opportunity to comment and respond. This is so especially when SASSA’s decisions are not upheld.

(e) In the present case, SASSA did not communicate its reasons for not implementing ITSAA’s decision and indicated that the basis for this was that ITSAA erred in making the decision by upholding the appellants’ appeal based on medical grounds whereas SASSA had rejected the appellants’ application based on the appellants’ household income.

6.2 Meeting with SASSA and ITSAA officials held on 1 February 2013

6.2.1 Mr. Mokoele who is ITSAA’s Appeals Director stated that there were minor mistakes made when considering appeals and that the decisions are communicated to both SASSA and the Appellants. According to Mr. Mokeele, if it happens that SASSA is not in agreement or disputes the decision made by the ITSAA, such matters were referred back to them (SASSA) for reconsideration.

6.2.2 Mr. Mokoele advised that ITSAA did not pay compensation or damages to the Appellants even if it had transpired that there were errors made as that could have dire consequences which could adversely affect their operations.

6.2.3 Mr. Mokoele further stated that communication channels between the two institutions had partially improved.
6.2.4 However, it was agreed by both the ITSA and SASSA at the meeting that there was a need to further improve communication channels between them.

6.3 Does SASSA systematically fail without good reasons to implement the decisions of ITSA? If so, does this constitute maladministration?

6.3.1 SASSA admitted through Mr. Mpeta that in certain instances SASSA does not implement ITSA’s decisions. The reason advanced by SASSA in this regard is that ITSA considered the appeal on new grounds instead of those advanced to SASSA. Mr. Mokoele (from ITSA) admitted that sometimes mistakes were made when considering appeals. Mr. Mpeta further admitted that there are delays in implementing decisions from ITSA especially when they involve huge sums of money as they first need to be verified. Consequently, a decision takes more than one week to be implemented.

6.3.2 In general, the parties admitted that at times mistakes are made during the appeal process.

6.3.3 However, the evaluation of the evidence above does not indicate that SASSA systematically fail without good reason to implement the decisions of ITSA. In the contrary the evidence indicated that SASSA did not implement the decisions of ITSSA where ITSA has considered the appeal on new grounds rather than those advanced to SASSA.

6.4 Propriety of the process regarding reviewing of the SASSA decisions

6.4.1 It is common cause between ITSA and SASSA that there is a lack of communication between the two institutions even though there were signs of improvements. This was admitted by officials from both institutions. However, it was not clear about what caused the difficulties.
in the communication channels between these two institutions. For example, Mr. Mpeta said that ITSAA did not communicate its decisions to SASSA whereas Mr. Mokoele said that ITSAA’s decisions were communicated both to SASSA and the appellants. The version of ITSAA is more probable in this case because SASSA is the one who makes payments to the beneficiaries. Therefore, any decision that is made by ITSAA has to be communicated to SASSA for payment purposes. In the present case, SASSA admitted that it was the one that did not inform ITSAA that it was not implementing its decision.

6.4.1.1 In response to my provisional report, Ms. Virginia Petersen, the Chief Executive Officer of SASSA, indicated that in order to improve the working relationship between ITSAA and SASSA, concerted efforts have been made, in that:

(i) Quarterly meetings between SASSA and ITSAA are held;

(ii) On 24 December 2012, a guide was issued to all SASSA regions on the implementation of ITSAA decisions;

(iii) On 11 June 2013, SASSA signed a Protocol Agreement that standardises the procedure for managing Internal Reconsiderations and Appeals, as well as setting time frames for the matters to be resolved;

6.4.2 It is not disputed that in this case, SASSA did not communicate its reasons for not implementing the decision of ITSAA to uphold the Applicant’s appeal for social grant. The basis for this, it argued, is that ITSAA failed to consider the facts which led SASSA to refuse the Applicant’s application for a social grant, namely, household income. Instead, ITSAA based its decision to grant the applicant’s application on a new ground, that is, medical.
6.4.2.1 In his response to my provisional report, the Regional Manager of SASSA in the Eastern Cape undertook to improve communication lines with ITSAA in order to prevent any possibility of the violation of the beneficiaries' human rights.

6.4.2.2 It is noted that both responses from the Regional Manager of SASSA in the Eastern Cape and Ms. Virginia Petersen, the Chief Executive Officer of SASSA, committed to improve working relationship with ITSAA.

6.4.3 It was initially disputed that ITSAA communicates the outcome of appeals directly to the Appellants without having given SASSA the opportunity to comment and respond as contended by SASSA. ITSAA contended that if it happens that SASSA is not in agreement or disputes its decision, such matters were referred back to SASSA for reconsideration.

6.4.4 In the circumstances ITSAA's version seemed to be the one probable as nothing would have been achieved by it in communicating the outcome of appeals directly to appellants without giving SASSA the opportunity to comment and respond thereto, in the case where it has upheld the appeals. It is inconsequential when ITSAA communicates the outcome of appeals directly to the appellants without informing SASSA where it has rejected such appeals.

6.4.4.1 The issue in dispute was finally settled in a response to my provisional report by Ms. Virginia Petersen, the Chief Executive Officer of SASSA, who conceded that once an appeal has been finalised ITSAA sends a copy of the outcome letter directly to the SASSA's Regional Offices and Head Office approximately 5 days before the letter is posted to the appellant;
6.5 If SASSA fails without good reasons to implement the decisions of ITSSA, does such conduct prejudice the appellants?

6.5.1 Inevitably failure, without good reason, by SASSA to implement the decisions of ITSSA which are in favour of appellants result in prejudice to such appellants.

7. MEASURING CONDUCT AGAINST THE RULES

7.1 Does SASSA systematically fail without good reasons to implement the decisions of ITSSA? If so, does this constitute maladministration?

7.1.1 In terms of Regulation 20(3), SASSA must implement the finding of ITSSA within a period of 14 days after receipt of such finding. Therefore in terms of the aforesaid regulation, SASSA is obliged to implement the findings of ITSSA and does not have discretion in that regard. The evidence obtained has indicated that SASSA failed to implement ITSSA’s findings in an instance where ITSSA had considered the appeal on new grounds rather than those advanced to SASSA by the appellant. The failure by SASSA to implement the findings of ITSSA even if it does not agree with those by virtue of ITSSA having considered the appeal on new grounds as outlined in the evaluation of the evidence constitutes an infringement of Regulation 20(3). However, although the conduct of SASSA was improper in the circumstances, its conduct is justified in that it was improper for ITSSA to consider the appeal on new grounds instead of those advanced to SASSA by the appellant.

7.2 Propriety of the process regarding reviewing of the SASSA decisions

7.2.1 In terms of Regulation 20(1) as encapsulated in Government Notice No. R. 746, ITSSA is obliged to communicate its decisions and reasons
thereof in respect of an appeal to an applicant, beneficiary or a person acting on his or her behalf and to the Agency/SASSA. Therefore, ITSAA was obliged to communicate its decisions and reasons thereof to SASSA and failure to do so would be an infringement of the aforesaid Regulation. The evaluation of the evidence indicated that on the balance of probabilities, the version of ITSAA is the one which is accepted and that it had communicated its findings to SASSA. ITSAA’s version is accepted in that it is logical that it inevitably communicates its findings to SASSA since SASSA is the entity that processes social assistance grants. Therefore, on the balance of probabilities there was no improper conduct on the part of ITSAA in this regard.

7.2.2 In terms of Regulation 12(1)(c), ITSAA has the power if not satisfied with the reasons provided by SASSA for rejecting the beneficiary’s or applicant’s request for reconsideration, to request SASSA to provide written reasons for its decision in that regard. It has been established in the evidence that there was an instance in which SASSA did not implement ITSAA’s finding due to ITSAA having considered the appeal on new grounds instead of those advanced to SASSA by the appellant. The issue of ITSAA considering the appeal on new grounds would not have arisen had it acted in terms of Regulation 12(1)(c) by requesting written reasons from SASSA for its decision in that regard. It then follows that the conduct of ITSAA was improper in the circumstances as it did not act in accordance with Regulation 12(1)(c) by considering the appeal on new grounds instead of those advanced to SASSA by the appellant.

7.2.3 In terms of Section 41(1)(h) of the Constitution all spheres of government and all organs of state within each sphere must co-operate with one another in mutual trust and good faith by fostering friendly relations, assisting and supporting one another, informing one another of and consulting one another on matters of common interest and coordinating their actions and legislation with one another. The evaluation of the evidence indicated that ITSAA failed to consult with
SASSA by requesting its written reasons for rejecting the beneficiary or applicant's request for reconsideration and proceeded to consider an appeal on new grounds instead of those advanced to SASSA by the appellant. The failure by ITSAA to consult with SASSA in this regard is an infringement of the principles of co-operative government and intergovernmental relations as provided for in section 41(1) of the Constitution.

7.2.3.1 It is noted that in her response to my intended findings in the provisional report Ms. Virginia Petersen, the Chief Executive Officer of SASSA, contended that ITSAA is an independent body established in terms of section 18(2) of the Social Assistance Act to deal with all matters related to appeals and for a tribunal so appointed must be independent and therefore does not consult SASSA on individual appeals.

7.2.3.2 While it is acknowledged that ITSAA is an independent tribunal, Ms Petersen's argument in this regard is flawed in that such independence relates to adjudication of appeals and not institutional co-operation with regard to information at the disposal of the other. It is concerning that Ms Petersen recognises that Regulation 19(2) does provide for a mechanism for the exchange of information between ITSSA and SASSA and also alludes to a working co-operative relationship between the two institutions with regard to the exchange of documents, the process for providing appeal outcomes as well as discussing the findings emanating from appeals adjudicated to ensure that SASSA business processes are amended where necessary.

7.2.3.3 However, the willingness to improve working relationship with ITSAA by both the Regional Manager of SASSA in the Eastern Cape and Ms. Virginia Petersen, the Chief Executive Officer of SASSA, as indicated in their response to my provisional report will ensure compliance with the provision of section 41(1)(h) of the Constitution.
7.3 If SASSA fails without good reason to implement the decisions of ITSSA, does such conduct prejudice the appellants?

7.3.1 In terms of section 27(1)(c) of the Constitution, everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. Therefore, everyone who qualifies for a social assistance in terms of section 5 of the Social Assistance Act, 2004 as amended is entitled to such social assistance. It then follows that the delay or failure by SASSA to implement the legitimate findings of ITSSA within the stipulated period of 14 days constitutes prejudice of the appellants.

8. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, I make the following findings:

8.1 Does SASSA systematically fail without good reasons to implement the decisions of ITSSA? If so, does this constitute maladministration?

8.1.1 The failure by SASSA to implement the decisions of ITSSA where ITSSA has considered an appeal on new grounds instead of those advanced to SASSA by the appellants was improper and in violation of Regulation 20(3). Although there were valid reasons for not implementing such decisions, the failure by SASSA in this regard constitutes maladministration. SASSA had an option to take ITSSA’s decisions on review if not satisfied in that regard.
8.2 Propriety of the process regarding reviewing of the SASSA decisions

8.2.1 The allegation by SASSA that ITSSA communicates the outcomes of appeals directly to the appellants without having given it the opportunity to comment and respond could not be substantiated.

8.2.2 The process followed by ITSSA in reviewing the decision of SASSA by considering the appeal on new grounds instead of those advanced to SASSA by the appellant is improper and violates Regulation 12(1)(c). Such conduct constitutes maladministration.

8.2.3 The failure by ITSSA to consult with SASSA when considering an appeal is improper and violates the principles of co-operative government and intergovernmental relations as provided for in section 41(1)(h) of the Constitution. Such conduct constitutes maladministration.

8.3 If SASSA fails without good reason to implement the decisions of ITSSA, does such conduct prejudice the appellants?

8.3.1 In general a delay or failure by SASSA to implement the legitimate findings of ITSSA within the stipulated period of 14 days in terms of Regulation 20(3) is improper and violates the appellants' rights to have access to social assistance in terms of section 27(1)(c) of the Constitution. Such conduct constitutes maladministration and prejudice to the appellants.

9. REMEDIAL ACTION

The appropriate remedial action I am taking in pursuit of section 182(1) of the Constitution is the following:
9.1 **SASSA**

9.1.1 SASSA must write a letter of apology to ITSSA for failure to communicate its reasons for not implementing its decisions. SASSA must take those decisions of ITSSA which it is not satisfied with on review.

9.1.2 SASSA should write letters of apology to the affected appellants within 30 days upon receipt of this report and also provide them with written reasons stating why it could not implement the decision of ITSSA within the stipulated period of 14 days.

9.2 **ITSSA**

9.2.1 ITSSA must write a letter of apology to SASSA for considering the appeal on new grounds instead of those advanced to SASSA by the appellants within 30 days upon receipt of this report.

9.2.2 ITSSA must ensure that it considers the appeals by looking at the evidence that was presented before SASSA and not consider new evidence which was not previously advanced.

9.3 **ITSSA AND SASSA**

9.3.1 Both institutions are to further improve their communication channels to ensure efficiency.

10. **MONITORING**

10.1 The Public Protector will monitor the implementation of the remedial action referred to in paragraph 9 by requiring:
10.1.1 The Chairperson of ITSAA to provide a copy of the letter of apology referred to in paragraph 9.2.1 and an action plan on the manner in which ITSAA intends to implement the remedial action referred to in paragraph 9.2.2 and paragraph 9.3.1; and

10.1.2 The Regional Manager of SASSA to provide copies of letters of apology referred to in paragraph 9.1.1 and paragraph 9.1.2 and an action plan on the manner in which SASSA intend to implement the remedial action referred to in paragraph 9.3.1.

10.2 The copies of all the documents on the implementation of the remedial action referred to above should be submitted within 30 days of receipt of this report.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 20/09/2014

Assisted by: Mr. M K Ndlebe, Investigator: Eastern Cape