

Social Security Appeal Board

Thirty-third Annual Report

2010/2011

(1 April 2010 - 31 March 2011)

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I. INTRODUCTION

The Social Security Appeal Board (the Board) was set up on 15 April 1978 as an independent body to provide a means of redress for any person not satisfied with the decision of the Social Welfare Department in respect of eligibility and payment of social security benefits.

2. The Chairman and Members of the Board are all non-officials appointed by the Chief Executive of the Hong Kong Special Administrative Region. The Government provides the Board with office premises and a team of staff from the Social Welfare Department offering secretarial services to the Board and maintaining its records. The head of the team is appointed as Secretary to the Board.

3. The Board deals with appeals lodged by persons applying for, or in receipt of, Comprehensive Social Security Assistance, Social Security Allowance or Traffic Accident Victims Assistance, against the decisions of the Social Welfare Department. Detailed functions of the Board and the appeal procedures are outlined in Appendix 1.

4. This report describes the work of the Board during the year ending 31 March 2011.

II. THE BOARD

Terms of Reference

5. The terms of reference of the Board are : -
- (i) to consider individual appeals against the decisions of the Social Welfare Department on eligibility and payment of social security benefits; and
 - (ii) to publish an annual report on the work of the Board.

Membership

6. The Board consists of the Chairman and six members. Its membership as at 31 March 2011 was : -

Chairman	:	Mr IP Tin-yau	(葉天祐先生)
Member	:	Dr IP Pui-seung, Shirley	(葉珮嫦醫生)
		Mr WAN Kwok-hung, Joseph, CEsCom	(溫國雄先生)
		Ms WONG Susan	(黃瑞珊女士)
		Dr WONG Sheh-wai	(王錫偉醫生)
		Mr CHAN Ka-shun, Wilson, J.P.	(陳嘉信先生)
		Ms FU Pik-chun	(符碧珍女士)

Board Meetings

7. Board meetings are held to consider appeals lodged by the appellants. These meetings are normally attended by the Chairman and two members. Members of the Board therefore work on a roster system.

8. The main duties of the members sitting at a Board meeting are to hear the representations of the appellants, to consider explanations given by the Social Welfare Department, to analyse cases and, finally, to make decisions on the appeals. Where the three members are unable to reach a consensus on an appeal, the decision of the majority will be followed.

III. WORK OF THE BOARD

Handling of Complaints and Enquiries

9. One of the significant roles of the Board is to handle complaints about social security benefits. These complaints may not necessarily become appeals if they can be satisfactorily resolved after explanations given by the staff of the Board or through an individual case review by the Social Welfare Department.

10. When a complaint is received, the Secretary to the Board or his staff will immediately contact the relevant Social Security Field Unit or the Traffic Accident Victims Assistance Section (i.e. the relevant office) to initiate action. The supervisor of the office will then give explanations to clarify the situation or review the case as appropriate. If the complainant is satisfied and does not wish to pursue the complaint further, the case will be considered as settled. Otherwise, he will be assisted to lodge a formal appeal.

11. Complaints, which fall outside the scope of the Board, will be referred to the relevant offices of the Social Welfare Department or other government departments for appropriate action. All complaints are reported to the Chairman and Members of the Board for their information.

12. During the year, 117 complaints were received, of which three (3%) were settled by the staff of the Board, 104 (89%) were referred to the relevant offices for appropriate action and 10 (8%) eventually became appeals. An analysis of the complaints handled in the past three years is shown in the following table:

Complaints lodged at the Board Office

Type and nature of complaints	(A) Total no. of complaints			(B) Of (A), no. of complaints settled by the Board			(C) Of (A), no. of complaints referred to relevant offices			(D) Of (A), no. of complaints leading to appeals		
	2008/09	2009/10	2010/11	2008/09	2009/10	2010/11	2008/09	2009/10	2010/11	2008/09	2009/10	2010/11
Type of Complaints												
Comprehensive Social Security Assistance	69 (60%)	42 (64%)	69 (59%)	3 (4%)	4 (10%)	2 (3%)	64 (93%)	34 (80%)	65 (94%)	2 (3%)	4 (10%)	2 (3%)
Social Security Allowance	46 (40%)	24 (36%)	47 (40%)	1 (2%)	0 (0%)	1 (2%)	38 (83%)	21 (87%)	38 (81%)	7 (15%)	3 (13%)	8 (17%)
Traffic Accident Victims Assistance	0 (0%)	0 (0%)	1 (1%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (100%)	0 (0%)	0 (0%)	0 (0%)
TOTAL	115 (100%)	66 (100%)	117 (100%)	4 (3%)	4 (6%)	3 (3%)	102 (89%)	55 (83%)	104 (89%)	9 (8%)	7 (11%)	10 (8%)
Nature of Complaints												
Refusal of any payment	72 (63%)	29 (44%)	33 (28%)	2 (3%)	0 (0%)	2 (6%)	62 (86%)	25 (86%)	28 (85%)	8 (11%)	4 (14%)	3 (9%)
Amount of payment offered	18 (15%)	22 (33%)	69 (59%)	0 (0%)	1 (4%)	0 (0%)	17 (94%)	18 (82%)	62 (90%)	1 (6%)	3 (14%)	7 (10%)
Date from which payment was offered	0 (0%)	0 (0%)	2 (2%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	2 (100%)	0 (0%)	0 (0%)	0 (0%)
Issue of payment to a person other than the applicant	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Delay of payment	1 (1%)	0 (0%)	2 (2%)	0 (0%)	0 (0%)	0 (0%)	1 (100%)	0 (0%)	2 (100%)	0 (0%)	0 (0%)	0 (0%)
Others	24 (21%)	15 (23%)	11 (9%)	2 (8%)	3 (20%)	1 (9%)	22 (92%)	12 (80%)	10 (91%)	0 (0%)	0 (0%)	0 (0%)
TOTAL	115 (100%)	66 (100%)	117 (100%)	4 (3%)	4 (6%)	3 (3%)	102 (89%)	55 (83%)	104 (89%)	9 (8%)	7 (11%)	10 (8%)

13. Apart from complaints, the Board received a large number of enquiries about social security benefits and other welfare services administered by the Social Welfare Department. These enquiries were, as far as possible, answered by the staff of the Board or referred to the relevant offices for appropriate action.

Number of Appeals

14. During the year, the Board received a total of 507 appeals (including 497 direct appeals and 10 converted from complaints), representing an increase of 12 appeals or 2% as compared with the preceding year.

15. These 507 appeals included 169 Comprehensive Social Security Assistance cases, 336 Social Security Allowance cases and two Traffic Accident Victims Assistance cases. A 3-year comparison is as follows: -

Type of cases	Appeals					
	2008/09		2009/10		2010/11	
	No.	%	No.	%	No.	%
Comprehensive Social Security Assistance	106	24	131	26	169	33
Social Security Allowance	333	75	363	73	336	66
Traffic Accident Victims Assistance	1	1	1	1	2	1
TOTAL	440	100	495	100	507	100

16. As compared with the previous year, there was an increase of 38 appeals (29%) in Comprehensive Social Security Assistance cases, a decrease of 27 appeals (7%) in Social Security Allowance cases and an increase of one appeal (100%) in Traffic Accident Victims Assistance case.

17. Of the 336 Social Security Allowance appeals, 243 were related to Normal Disability Allowance, 89 to Higher Disability Allowance, two to Normal Old Age Allowance and two to Higher Old Age Allowance.

18. Among the 332 Disability Allowance appeals, 238 were lodged against the refusal of payment on medical grounds (i.e. ineligibility for the allowance as certified by the medical authorities concerned) and 89 against the amount of payment on medical grounds (i.e. ineligibility for disability allowance at a higher rate). For the other five Normal Disability Allowance cases, one was lodged against the refusal of backpayment when re-application was made after 12 months from the date of last termination of payment, one against the refusal of payment of Higher Old Age Allowance to a Normal Disability Allowance recipient, one against the refusal of payment due to failure to meet the one-year-continuous-residence rule, and the remaining two cases were against the reduction of payment due to failure to meet the 90-day residence requirement in Hong Kong during receipt of the allowance.

19. For the two Normal Old Age Allowance appeals, one was lodged against the refusal of payment from the date reaching the age of 65 prior to the date of application, and the other against the refusal of payment due to failure to meet the one-year-continuous-residence rule.

20. Among the two Higher Old Age Allowance appeals, one was lodged against the refusal of payment due to failure to meet the one-year-continuous-residence rule, and the other against the reduction of payment due to failure to meet the 90-day residence requirement in Hong Kong during receipt of the allowance.

Appeals involving Medical Decisions

21. Where an appeal concerning a medical assessment done by a doctor of a public hospital/clinic is made, the Board will arrange with the Hospital Authority for the applicant/recipient to undergo a medical re-assessment to be processed by the Medical Assessment Board for social security appeals. This Medical Assessment Board is an independent board and its members consist of doctors from the public and private sectors, who work for the board on a roster basis.

22. During the year, a total of 345 cases (comprising 111 Comprehensive Social Security Assistance cases, 162 Normal Disability Allowance cases and 72 Higher Disability Allowance cases) were decided by the Board on the basis of the decision of the Medical Assessment Board.

23. A number of public doctors and 18 private doctors, namely, Dr CHAN Chi-kuen, Dr CHEUNG Hung-kin, Dr CHOI Kin, Dr CHOI Sum-hung, Dr CHOO Kwong-yin, Dr FUNG Ka-shun, Samuel, Dr LAI Jak-yiu, Professor LAI Shiu-ming, Jimmy, Dr LAU Lai-lin, Lilian, Professor LAW Wai-lun, Dr LEE Ka-yan, David, Dr LEUNG Chi-chiu, Dr PAK Wai, Martin, Dr SHUM Ping-shiu, Dr TAM Mo-shing, Paul, Dr WAI Heung-wah, Dr WONG Pit-see and Professor Rosie YOUNG assisted in assessing medical appeal cases referred to the Medical Assessment Board for assessment in the year.

Place for Lodging Appeals

24. An appellant can lodge an appeal at any one of the following offices :-

- (i) the Office of the Board;
- (ii) the Headquarters of the Social Welfare Department;
- (iii) the Traffic Accident Victims Assistance Section; or
- (iv) any of the 37 social security field units.

25. A statistical breakdown in terms of place for lodging appeals is shown below :-

Place for lodging appeals	Appeals					
	2008/09		2009/10		2010/11	
	No.	%	No.	%	No.	%
Office of the Board	30	6	31	6	35	7
Social Security Field Units	409	93	463	93	471	92
Traffic Accident Victims Assistance Section	1	1	1	1	1	1
TOTAL	440	100	495	100	507	100

(Note : No appeal was lodged at the Headquarters of the Social Welfare Department.)

Handling of Appeals

26. Of the 507 appeals received in the year, 273 were completed, 80 withdrawn by the appellants and 154 carried forward to the year 2011/12 pending medical assessment and decision of the Board. The following table shows the overall position :-

Type of cases	Number of Appeals			
	Received in 2010/11	Decided	Withdrawn	Carried forward to 2011/12
Comprehensive Social Security Assistance	169	92	30	47*
Social Security Allowance	336	181	49	106**
Traffic Accident Victims Assistance	2	0	1	1***
TOTAL	507	273	80	154

* comprising 30 cases pending medical assessment, 16 cases pending decision of the Board and one case pending Board hearing

** comprising 61 cases pending medical assessment and 45 cases pending decision of the Board

*** one case pending Board hearing

27. During the year, the Board decided a total of 356 cases, of which 83 were brought forward from the year 2009/10. No Board decision was required for 23 cases brought forward from the previous year due to the appellants' withdrawal of the appeals. A statistical breakdown in terms of type of cases decided is shown below: -

Type of cases	Appeals decided					
	2008/09		2009/10		2010/11	
	No.	%	No.	%	No.	%
Comprehensive Social Security Assistance	70	21	95	23	117	33
Social Security Allowance	257	78	315	76	239	67
Traffic Accident Victims Assistance	1	1	2	1	0	0
TOTAL	328	100	412	100	356	100

28. Among the 356 cases decided, 345 were appeals involving the result of a medical assessment and 11 were non-medical appeals. All these 345 medical appeals were decided by the Board on the basis of the decision of the Medical Assessment Board. In respect of the 11 non-medical appeals, hearings were conducted at the Office of the Board. The appellants were notified of the hearings beforehand. Seven appellants attended the hearings in person, two sent representative to attend the hearing on their behalf, and the other two were absent from the hearing.

Result of Appeals

29. Of the 356 appeals decided during the year, the Board confirmed the decisions of the Social Welfare Department in 233 cases (65%) and varied its decisions in 123 cases (35%). All the 123 cases involved appeals against medical decisions (including 38 Normal Disability Allowance cases, 35 Higher Disability Allowance cases and 50 Comprehensive Social Security Assistance cases), and decisions of the Board were made in favour of the appellants. A breakdown of cases by nature and by type is given below: -

Type of Appeals Nature of Appeals	Cases where SWD's decisions were confirmed				Cases where SWD's decisions were changed			
	Comprehensive Social Security Assistance	Social Security Allowance	Traffic Accident Victims Assistance	Total	Comprehensive Social Security Assistance	Social Security Allowance	Traffic Accident Victims Assistance	Total
	No.	No.	No.	No.	No.	No.	No.	No.
Refusal of payment	2	127	0	129	0	38	0	38
Amount of payment offered	65	39	0	104	50	35	0	85
Date from which payment was offered	0	0	0	0	0	0	0	0
Issue of payment to a person other than the applicant	0	0	0	0	0	0	0	0
TOTAL	67	166	0	233	50	73	0	123

30. A comparison of the relevant figures over the past three years is provided as follows:

Type of cases	Cases where SWD's decisions were confirmed			Cases where SWD's decisions were changed		
	2008/09	2009/10	2010/11	2008/09	2009/10	2010/11
	No.	No.	No.	No.	No.	No.
Comprehensive Social Security Assistance	34	57	67	36	38	50
Social Security Allowance	165	203	166	92	112	73
Traffic Accident Victims Assistance	0	2	0	1	0	0
TOTAL	199	262	233	129	150	123

Time Frame for Handling of Appeals

31. An appeal not involving a medical assessment is normally heard within one month from the date of receipt of the appeal by the Board. All appellants of any appeal will be notified in writing of the decision of the Board within three weeks after the hearing or receipt of the decision of the Medical Assessment Board. During the year, all the appeals were completed within the specified time limit.

Post-appeal Follow-up

32. As a standing practice, in addition to giving a written notification of its decision to the appellant, the Board will notify the relevant office and the Headquarters of the Social Welfare Department of its decision in writing after each appeal is completed. To ensure that appropriate follow-up action is taken by the Department, the Board will monitor the progress of those appeals where the original decision of the Department has been varied.

Publicity

33. Publicity is arranged through the displaying of posters at the reception area of the Traffic Accident Victims Assistance Section and each of the 37 social security field units. Members of the public can get information about the appeal system and the work of the Board from the explanatory leaflets available for distribution at these offices as well as the Headquarters of the Social Welfare Department and the Office of the Board. They can also find detailed information about the Board and download the application forms for appeal from the homepage of the Social Welfare Department (<http://www.swd.gov.hk>).

34. It is a standard practice of the Social Welfare Department that whenever a person is notified in writing of the result of his application for social security benefits, he will at the same time be informed of his right to appeal to the Board if he is dissatisfied with the Department's decision.

IV. ACKNOWLEDGEMENT

35. On behalf of the Board, I wish to express my appreciation to the Director of Social Welfare and staff of the Social Welfare Department, the Chief Executive and staff of the Hospital Authority and other parties concerned for their unfailing support to the Board all the time. Special thanks are also extended to members of the Medical Assessment Board for social security appeals for their valuable time and good efforts in processing the appeal cases during the year under review.

Mr IP Tin-yau
Chairman

Functions of the Board and Appeal Procedures

Scope of Work

The Board deals with appeals under the Comprehensive Social Security Assistance, Social Security Allowance (comprising Old Age Allowance and Disability Allowance) and Traffic Accident Victims Assistance Schemes.

2. The following categories of persons have the right of appeal : -

- (a) an applicant for or a recipient of social security benefit under any one of the above-mentioned schemes (the person may delegate his next-of-kin through the power of attorney to lodge the appeal on his behalf);
- (b) an appointee acting on behalf of a minor or a mentally handicapped applicant or recipient;
- (c) the executor or the administrator, as proven by the production of "probate" or "letters of administration" granted respectively by the Court as evidence that he is a lawfully appointed personal representative of the deceased applicant or recipient; and
- (d) the Official Administrator (the Registrar of the Court) administering the estate of the deceased applicant or recipient in a summary manner.

3. An appellant may appeal against a decision of the Director of Social Welfare in respect of any of the following matters : -

- (a) the refusal of any payment;
- (b) the amount of payment offered;
- (c) the date from which payment was offered; and
- (d) the issue of payment to a person other than the applicant.

Appeal Procedures

4. To lodge an appeal, the appellant should complete an appeal form (in either English or Chinese) and forward it to one of the following offices : the Office of the Board, the Headquarters of the Social Welfare Department, the Social Security Field Unit concerned, or the Traffic Accident Victims Assistance Section. Appeal forms are obtainable at any of these offices. The form can also be downloaded from the Social Welfare Department homepage (<http://www.swd.gov.hk>).

5. An appeal by an applicant, a recipient (or his next-of-kin appointed through the power of attorney) or an appointee must be lodged within four weeks immediately following the date of notification of the decision from the Director of Social Welfare. An appeal by the personal representative of a deceased applicant or recipient must be lodged within four weeks from the date of a grant of "probate" or "letters of administration" by the Court. In the case of summary administration by the Official Administrator, an appeal must be lodged within four weeks from the date of the getting in of the estate. The Chairman of the Board may allow late appeals if he considers that there were acceptable reasons for the delay.

6. If the appellant wishes to withdraw his appeal, he should complete and sign a withdrawal form to be obtainable from the offices mentioned in paragraph 4 above.

Departmental Reviews

7. When an appeal is received, the Secretary to the Board will examine the case. If it appears to him that there are sufficient grounds for a departmental review before the case is submitted to the Board, he will ask the supervisor of the Social Security Field Unit concerned or the Traffic Accident Victims Assistance Section to review the case. If the supervisor decides to vary the decision, the appellant will be notified in writing of the new decision as well as his right to appeal against it. If the applicant is satisfied with the new decision, he may withdraw the appeal. If he remains dissatisfied, he may appeal against the new decision. If he chooses not to appeal again, the case will not be referred to the Board, which will, nevertheless, be informed of what has occurred.

Processing of appeals

Appeals not involving the result of a medical assessment

8. The Board will normally hear the case within one month from the date of receipt of appeal.

9. Both the appellant and the Director of Social Welfare are given the opportunity to present their case in writing prior to the hearing.

10. At the hearing, the appellant may choose to put forward his case personally and, subject to the appellant's request in writing and the consent of the Board, a friend or relative may also speak on his behalf. The Director of Social Welfare may also be represented at the hearing. No other persons will be allowed to be present at the hearing, and there will be no legal representation.

11. Hearings are informal and conducted in a language convenient to the appellant.

Appeals involving the result of a medical assessment

12. The Board will arrange with the Hospital Authority for the applicant or recipient to undergo a medical assessment to be processed by a Medical Assessment Board.

Decisions of the Board

13. The Board will either confirm the decision appealed against or vary that decision provided that such a decision conforms to approved social security policy.

14. Except for appeals which require the decision of a Medical Assessment Board, the Board will reach a decision on an appeal on the basis of the facts presented to the Board. Its decision on a particular case will not constitute a precedent either for the Director of Social Welfare or for other cases coming before the Board.

15. In respect of appeals which require the decision of a Medical Assessment Board, the Board will give its decision on the basis of the decision of the Medical Assessment Board.

16. The decision of the Board is final and the appellant has no further right of appeal. The Board, however, has the right to review its own decision when necessary.

Notification of Decisions

17. In respect of appeals which do not require the decision of a Medical Assessment Board, the appellant and the Director of Social Welfare will be notified in writing of the decision of the Board normally within three weeks after the hearing. The Chairman of the Board may give reasons for the Board's decision if he so wishes, but is not obliged to do so.

18. In respect of appeals which require the decision of a Medical Assessment Board, the appellant and the Director of Social Welfare will be notified in writing of the decision of the Board normally within three weeks after the receipt of the decision of the Medical Assessment Board.

Travelling Expenses for Appellants

19. Appellants may claim reimbursement of travelling expenses incurred in lodging appeals at the Board and in attending Board hearings at the Office of the Board. The amount of fares they can claim is limited to that charged by the cheapest mode of transport. However, claims in respect of a more expensive form of transport may be allowed for disabled appellants or appellants with mobility difficulties.

APPENDIX 2

Analysis of Complaints Received

Nature of Complaints	Number of Complaints				Percentage
	Comprehensive Social Security Assistance	Social Security Allowance	Traffic Accident Victims Assistance	Total	
Refusal of any payment	12	21	0	33	28%
Amount of payment offered	45	23	1	69	59%
Date from which payment was offered	1	1	0	2	2%
Issue of payment to a person other than the applicant	0	0	0	0	0%
Delay of payment	1	1	0	2	2%
Others	10	1	0	11	9%
Total	69	47	1	117	100%

Analysis of Appeals Received

Nature of Appeals	Number of Appeals							
	Comprehensive Social Security Assistance		Social Security Allowance		Traffic Accident Victims Assistance		Total (Percentage)	
	Medical Decision	Others	Medical Decision	Others	Medical Decision	Others	Medical Decision	Others
Refusal of any payment	5	5	239	7	0	0	244	12
Amount of payment offered	153	6	88	2	1	1	242	9
Date from which payment was offered	0	0	0	0	0	0	0	0
Issue of payment to a person other than the applicant	0	0	0	0	0	0	0	0
Sub-total	158	11	327	9	1	1	486 (96%)	21 (4%)
TOTAL	169		336		2		507 (100%)	

APPENDIX 4

**Breakdown of Comprehensive Social Security Assistance
Appeals Received by Nature of Case**

Nature of Case		No. of Appeals		Percentage
Old Age		70		41%
Permanent Disabilities	Blind	0	11	7%
	Deaf	0		
	Physically Disabled	5		
	Mentally Ill/Mentally Retarded	6		
Temporary Disabilities/Ill Health		42		24%
Single Parent Family		11		7%
Economic Circumstances	Low Earnings	1	34	20%
	Unemployment	33		
Others		1		1%
TOTAL		169		100%

**Breakdown of Social Security Allowance
Appeals Received by Nature of Case or Disability Claimed**

Nature of Case		No. of Appeals			Percentage
		Higher Disability Allowance	Normal Disability Allowance	Total	
I.	Disability Allowance				
	A. Disabling physical condition or blindness				
	(i) loss of functions of two limbs	4	0		
	(ii) loss of functions of both hands, or all fingers and both thumbs	0	0		
	(iii) loss of functions of both feet	0	0		
	(iv) total loss of sight	1	2		
	(v) total paralysis (quadriplegia)	0	0	291	87%
	(vi) paraplegia	0	0		
	(vii) illness, injury or deformity resulting in being bedridden	0	0		
	(viii) any other conditions resulting in total disablement	70	214		
	B. Disabling mental condition (which produces a degree of disability broadly equivalent to that in Category A above)				
	(i) organic brain syndrome	1	0		
	(ii) mental retardation	4	2		
	(iii) psychosis	1	2	25	7%
	(iv) neurosis	1	4		
	(v) personality disorder	0	0		
	(vi) any other conditions resulting in total mental disablement	7	3		
	C. Profoundly deaf	0	14	14	4%
	D. Others	0	2	2	1%
	Sub-total	89	243	332	99%
II.	Old Age Allowance			4	1%
TOTAL				336	100%