The CSG 'Top-Up' for orphans

Frequently Asked Questions

25 August 2022

Background

On 1 June 2022, the Department of Social Development and SASSA started implementing the Child Support Grant Top-Up of R240 for orphans in the care of family members.

This means that a family member who is caring for an orphaned child, can now receive a higher value CSG of R720 for that child, instead of the standard CSG amount of R480 per child per month.

The CSG Top-Up is aimed at ensuring that family members caring for orphans have quick access to an adequate social grant without first having to go through the foster care system.

The majority of orphans in the care of family members are living in poverty. It is important to ensure that they have quick and easy access to an adequate social grant to ensure that their basic needs are provided for. However, over the past two decades, the majority of family members caring for orphans have been unable to get the Foster Child Grant (FCG). This is because the Foster Care system, which was designed to cope with a small number of children in need of monitoring, protection, family reunification and therapeutic services, became overwhelmed by the number of orphaned children whose caregivers needed income support but not necessarily child protection services. The larger Foster Child Grant (FCG) became an incentive for poor caregivers to seek a foster care order from a court, rather than applying for a CSG – which is quicker and easier to access but provides a smaller grant. The preference for foster care, even among those who did not need protection services, created an enormous administrative workload for social workers (who needed to review each foster care application and monitor all children in foster care), and for the courts (which needed to hear each case separately, place each child in foster care and review each case every two years).

Of the total number of orphans in need of a social grant, one third are in foster care and receive the FCG of R1070, another third receive the CSG of R480 and the last third get no grant at all. This has been the scenario since before 2010 when the Children's Act was

implemented and has not changed despite an increase in the number of social workers over the same period.

The third who are already receiving the FCG are at risk of their grants being stopped by SASSA every two years if social workers and children's courts do not extend their court orders in time. This risk has been mitigated by a High Court order dating back to 2011, which kept FCGs in payment and required the Department of Social Development to design and implement a comprehensive legal solution. The conceptual, legal and logistical work of designing the solution took ten years, during which time the High Court order was extended four times to keep grants in payment. But the High Court order cannot be extended indefinitely and all parties involved are hoping that the High Court order will not be needed beyond the end of November 2022. The CSG Top-Up, made possible by an amendment to the Social Assistance Act and its Regulations, is part of the solution because it will reduce the number of orphaned children in the foster care system by providing them with an alternative and easier route to access an adequate social grant.

The CSG Top-Up is available at all SASSA offices and family members do not need to first get a social worker report or a court order to access it. They just need to prove that the child is an orphan by providing the death certificates of the child's parents. It may not always be possible to prove the death of both parents, particularly as many fathers are not recorded on children's birth registers and may not even be known to the family. If the family only has one death certificate and does not know whether the other parent is dead or alive, then they can fill in an affidavit at SASSA explaining this.

SASSA is required to provide the provincial Social Development Departments with a detailed list of all the primary caregivers and children on the CSG Top-Up every month. This means that the Department can, if resources permit, do follow up home visits to assess whether the family and child need any additional support (e.g. prevention or therapeutic services) or whether there is a protection or care issue that may warrant a child care and protection inquiry in terms of the Children's Act.

The CSG Top-Up system will therefore ensure that all orphans living in poverty have quick access to an adequate social grant for their basic needs, and that social workers can visit their homes to provide follow up support if necessary. However, a social worker review will no longer be a pre-requisite for receiving the grant. This will help to remove the delays and blockages in providing income support to orphans which has been occurring under the foster care system.

The second part of the solution is in the Children's Amendment Bill, which is still before Parliament. The amendment to the Children's Act is aimed at providing clarity that orphans living in the care of family members should not be assumed to be in need of statutory care and protection. This is in line with a policy decision taken by the Department of Social Development in 2019 and included in the Cabinet-approved National Child Care and Protection Policy. Section 150(1) (a) is being amended to make it clear that an orphaned child in the care of a family member is not in need of care and protection simply because they are an orphan. Like all other children, they will only be considered in need of statutory care or protection if they are being abused or neglected by their caregiver. Sections 24 and 45 are

also being amended to enable the Children's Court to grant legal guardianship. This will ensure that family members caring for orphans can obtain legal guardianship from their local magistrate's court instead of having to incur the lawyer fees and transport costs required for a High Court application. Guardianship orders will ensure they have full parental rights and responsibilities and the paperwork to prove this to any private or government institution that requires it.

Frequently Asked Questions about the CSG Top-Up

Some questions have arisen from social service practitioners, magistrates, SASSA officials and the public in the first two months of implementation of the CSG Top-Up. Below we list the questions coming up most frequently and provide some answers to aid the implementation process.

FAQ 1**. "Why do we need another grant for this category of children if the Foster Child Grant already provides for them?"**

Answer: While in law the FCG is available for orphans in the care of relatives, in reality only a third of the eligible orphans have been able to get the FCG of R1070. This has been the situation for the past 20 years despite substantial increases in the number of social workers over the same period. Because the FCG is not accessible, many family members caring for orphans are rather receiving the CSG of R480, and many are not receiving any grant at all. This is creating inequality across the country for a particularly vulnerable group of children.

Due to the large numbers of orphans in South Africa, social workers and children's courts are unable to keep up with the demand for new foster care applications and the requirement of two-yearly alternative care order reviews and extensions. The Court therefore ordered the Department of Social Development to design and implement a comprehensive legal solution. With all the evidence showing that there was a mismatch between the size of the target group and the capacity of the foster care system, a decision was made to rather design a system that enabled family members caring for orphans to apply directly to SASSA for an adequate social grant.

The CSG of R480 was not seen as adequate because it is below the food poverty line of R624 and less than half of the value of the FCG of R1070. Therefore it was decided to 'top-up' the CSG for orphans to reach an amount of R720. While the amount is less than the FCG, it's ease of access is likely to result in families receiving the grants earlier in the child's life and therefore for a longer period of time resulting in more income received in total. It will be easier to access because a social worker report and a court order is not needed. As a result, families will be able to access it quicker and for more orphans and will not be at risk of losing it every two years. The net effect will be increased income support for family members caring for orphaned children.

FAQ 2: **"Is the Foster Care Grant being phased out?"**

Answer: The Foster Care Grant is not being phased out. It will continue to be available for children who are placed in foster care by the courts because they are in need of care or protection. For example if a child is removed by the court from their mother due to the mother having a drug problem and neglecting the child. This child will be able to be placed in foster care, and the foster parent (whether related to the child or not) will be able to get the FCG while the child is in foster care with them. This is because this family and child needs to be under the supervision of a social worker so that the social worker can help the mother address her drug problem, support the mother and child to be re-unified, and continue to protect the child from harm.

Orphans who are in the care of family members do not need to be placed in foster care because they already have family care. There is no need for the state to intervene in their care arrangement because their family has already stepped in and provided care. These caregivers and children should be referred to SASSA to get the CSG Top-Up, supported with other prevention programmes (eg grief counselling or parenting programmes) and if necessary, referred to the Children's Court to acquire parental rights and responsibilities.

FAQ 3: **"Family members do not have a legal duty to support orphans - why are they now subject to a means test when applying for the CSG Top-Up, whereas for the FCG there is no means test?"**

Answer: Grandparents do have a legal duty of support under the common law and aunts and uncles have a legal duty of support under customary law (depending on the custom of the family). The South African Bill of Rights provides every child with the right to family, parental or alternative care. These words were chosen in recognition that many children in South Africa are cared for by family members and not their biological parents [approximately 4 million children, of whom most are NOT orphans]. Care by extended family members is therefore not an unusual care arrangement and should not be treated as if it is 'state alternative care'. State alternative care, including foster care, is only required if the child's parent or extended family is not providing adequate care or protection to the child.

The CSG means test is set at an income threshold of ten times the value of the CSG for a single caregiver (R4800 per month in 2022) and double that for the combined income of the caregiver and her spouse if the caregiver is married (R9600 in 2022). This income threshold includes most people living in quintiles 1, 2 and 3 which means the CSG (and the Top-Up) is available to the people most in need of income support.

FAQ 4: **"If a family member caring for an orphan earns above the means test threshold, can we rather get the FCG for them?"**

Answer: No – the Children's Act is being amended to make it clear that orphans in the care of family are not in need of state care and protection and therefore not in need of being placed in foster care. If you refer primary caregivers who earn income above

the CSG means test to rather get the FCG, the result will be that the poorer families get the lower grant of R720 while families with more resources get the larger FCG of R1070. This will result in further inequity and is not the policy intent.

The policy intent is that only children in need of care and protection should be placed in the foster care system, where they should also receive regular monitoring and support services from social service practitioners and the children's court. If they are safely with their granny or another relative and the only concern is poverty, then they are not in need of care and protection. If they are in the care of relatives and they are being abused, then they are in need of care and protection. In other words, there must be a protection issue as referred to in s. 150(1) (b) to (i) or (2) (a) – (b) of the Children's Act. The mere fact of being an orphan does not mean there is a care or protection issue.

FAQ 5: **"The Children's Act is not yet amended, so orphans in the care of relatives do still qualify to be placed in foster care. How do I decide whether to follow a foster care process or to refer the family to SASSA for the CSG Top-Up?"**

Answer: The Children's Amendment Bill has not yet been finalised by Parliament but is half-way there. The Bill was passed by the National Assembly's Portfolio Committee on Social Development in July 2022 and is on its way to the National Council of Provinces (NCOP). The Department of Social Development has assured the North Gauteng High Court that the bill should be passed by the end of October 2022, whereafter it will go to the President for signing into law. Regulations will be needed before some sections can be put into effect and this may delay those sections being implemented. But the amendments affecting orphans in the care of relatives in section 150(1)(a), s24 and s45, s159 and s186 do not need regulations and can be put into effect as soon as the Amendment Act is signed by the President. Therefore, it will be less than a period of 6 months in which the CSG Top-Up and the Children's Act are not clearly aligned.

In the meantime, the Department of Social Development has been relying on section 156(1) (e) of the Act to advise its social workers to refer families in need of poverty relief to SASSA to get the CSG and Top-Up. Section 156(1) (e) provides that a child may only be placed in alternative care if they do not have a 'parent or caregiver' or their parent or caregiver is unable or unsuitable to care for them. Therefore, orphaned children who are already in the care of relatives, already have a caregiver, and therefore should not be placed in foster care.

Foster Care placements should only be started for orphaned or abandoned children who do not have caregivers. For example, they are living on their own and need to be placed with a foster parent or they are being abused or neglected by their caregiver.

FAQ 6: **"What will happen to the orphaned children who are already getting the FCG when the new amendment to s150(1) (a) comes into effect in early 2023? Will Magistrates still be able to extend their foster care placements in terms of s159 when their cases come up for review?"**

Answer: All orphans already in foster care with family members should remain in foster care and their court orders should continue to be brought to court to be extended in terms of s159 and s186 until they age out of the system [at age 18 with the option to extend to 21 if still in education]. These children should not be changed over to the CSG Top-Up. This would be regressive action for children already in receipt of the FCG because their grant will drop from R1070 to R720.

Once the Children's Amendment Act is in effect these children will still be able to have their foster care orders extended because of a transitional clause (s159 [2B]) that has been included in the Amendment Bill specifically to protect them from losing their existing FCGs.

When these children's cases do come up for review in the Children's Court, the option of extending their placement orders until they are 18, that is provided for in section 186, should be used as much as possible to reduce the backlog of expired court orders and promote permanency planning for the child.

The majority of orphans in foster care are teenagers or young adults. In March 2022, 57% of all FCG beneficiaries were teenage children aged 13-17, and another 12% were youth between the ages of 18 and 21. This is because, at present, most FCG beneficiaries are still orphans, and younger children are less likely than older children to be orphaned. It also takes a long time, sometimes many years, to place a child in Foster Care and get them onto the FCG. So many of them are already teenagers by the time they get onto the FCG.

As teenage beneficiaries turn 18 (or 21 if still in education) it is projected that the number of children in foster care will decline by between 20 000 and 30 000 per year over the next 3 years, bringing the total number of FCGs in payment to around 200 000 by March 2025. As orphans age out of the foster care system and more children in need of protection are placed in foster care, the balance will shift, until the majority of cases are 'classic' foster care – i.e. cases where there is a care or protection issue in need of continual social worker supervision and court review. The foster care system will be better able to cope with these lower numbers and to ensure that cases are being properly managed to safeguard the child, promote family reintegration and permanency planning.

FAQ 7: **"Many orphaned children in the care of family members do not have birth certificates. Will they be able to get the CSG Top-Up?"**

Answer: Regulation 13 (previously 11.1) of the Social Assistance Act allows SASSA to accept alternative proof of identity for a CSG or a CSG Top-Up application if the child does not have a birth certificate. There are approximately 32 000 children without

birth certificates currently receiving the CSG. Some of these children are now also receiving the Top-Up.

The caregiver will need to provide alternative proof of the child's identity. An affidavit explaining the reason why the child does not have a birth certificate and giving the child's details; plus the child's Road to Health Card or a letter from the chief or the school principal usually suffices as alternative proof for SASSA. The caregiver is not obliged to provide proof that she has applied to Home Affairs when she applies for the CSG and/or Top-Up, however many SASSA offices do insist on this proof. This is a challenge for family members caring for orphans because Home Affairs will not let them lodge an application for birth registration until they obtain a court order and they are reliant on social workers to assist them to do this. They therefore cannot obtain proof of lodging an application at Home Affairs.

If a SASSA official insists on a birth certificate or proof of application to Home Affairs, please escalate the case to the SASSA office manager and then to the SASSA district and regional managers. Remind them of the 2019 "Reg 11(1)" Practice Note that was issued by SASSA National Office that clarified that proof of application to Home Affairs is NOT a requirement at the grant application stage. If you still have no success after escalating the matter, please contact mbonisi.nyathi@uct.ac.za for further legal assistance.

SASSA used to cancel CSGs of children without birth certificates or proof of application to Home Affairs after three months. But this unlawful cancellation practice has been suspended by DSD and SASSA since June 2020 after legal advocacy by the Children's Institute UCT and Legal Resources Centre. Late registration of birth is a lengthy process and children cannot be deprived access to social grants that are essential for their survival and development, while waiting on Home Affairs processes.

Not all local SASSA offices know that the three-month cancellation practice has been suspended by the National SASSA office. Many offices still issue award letters containing the condition and tell applicants that their grants will be cancelled after three months. Please inform these officials that National SASSA is no longer cancelling Reg 11(1) [Now Reg 13(1)] grants after three months and they therefore should not be telling caregivers that their grants will be cancelled. Advise the SASSA official to phone their regional manager for confirmation if they do not believe you.

FAQ 8: **"Does the CSG Top-Up require a referral letter or a report from a social worker?"**

Answer: If caregivers already have the CSG and they are applying just for the top-up, they do not need to submit a letter or report from a social worker to SASSA to qualify for the Top-Up. The only documents required to qualify for the Top-Up are death certificates of the child's parents, or if only one death certificate is available, then that one death certificate and an affidavit attesting to the caregiver's lack of knowledge as to whether the other parent is dead or alive. This affidavit can be filled in at SASSA on a SASSA form. If a local SASSA office does not have copies of the SASSA affidavit, they

may ask the caregiver to write the affidavit themselves and get it confirmed at the police station.

If a caregiver does not yet have a CSG and is applying for both the CSG and the Top-Up in one application, they will also need to provide all the documents needed for a new CSG application. For caregivers applying for children that are not their own biological children, they will need to provide proof that they are the child's primary caregiver. The CSG regulations have always allowed caregivers to provide any one of the four documents listed below:

(a) An affidavit written by the caregiver saying that they are the primary caregiver of the child [confirmed and stamped at SAPS];
(b) An affidavit written by the child's parent(s) giving the caregiver permission to be the child's primary caregiver [confirmed and stamped by a commissioner of oaths];
(c) A letter from the school principal of the school that the child attends; or
(d) A letter from a social worker.

Option (b) is not possible in CSG Top-Up cases as both parents are deceased or one is deceased and the other is not known. The caregiver can hand in either options (a), (c) or (d). A letter from a social worker is therefore one of the options that a caregiver can utilise when applying for the CSG, but it is not the only option. SASSA is therefore obliged by the regulations to accept any one of the four options and cannot insist that an applicant must have a social worker letter.

FAQ 9: **"How many children can a caregiver apply for the CSG Top-Up for?"**

Answer: A caregiver who is caring for children who are not his or her own biological children (eg orphans), can receive a maximum of six CSGs. They can therefore also receive a maximum of six Top-Ups.

FAQ 10: **"Can a caregiver currently receiving the CSG who is caring for a related orphan child apply to change to the CSG Top-Up?"**

Answer: There is no need to apply for a change. All the caregiver needs to do is apply for the 'Top-Up' or 'additional amount' that will be added to their already existing CSG. So if they are already getting a R480 CSG for an orphaned child, they should go apply for the R240 Top-Up. They will then start receiving a total of R720/child/month from SASSA instead of R480.

SASSA may say that they need to cancel the existing CSG and do a new application for the CSG and the Top-Up. This is happening because the SASSA computer system has not yet been re-designed to enable linking of the existing CSG to the new top-up. This is unfortunate as it may result in existing CSG beneficiaries being told to bring documents required for a fresh CSG application, eg bank statements and proof of address, whereas all they arrived at the office with are the documents needed for a Top-Up. This could result in the caregiver having to make two trips to SASSA and incur unnecessary transport costs. For caregivers living in poverty, this is likely to delay their

application and receipt of the top-up by one to two months as they will need to save for the second trip to SASSA.

Some beneficiaries who are using SASSA cards or post office as their paypoint may be asked to open a bank account first because SASSA is encouraging beneficiaries to join the banking system as it is the most reliable payment system for SASSA.

FAQ 11: **"Can male caregivers apply for the CSG Top-Up? "**

Answer: To qualify for the CSG or the Top-Up, a person must be the child's 'primary caregiver'. This means that the adult and the child live together in the same household and they provide for the child's daily care needs. For example, an orphan child may be living in the care of his paternal uncle. In such a case, the paternal uncle is the child's primary caregiver and qualifies to apply for the CSG and for the Top-Up. Other male primary caregivers that would qualify for the Top-Up include grandfathers, great uncles, older brothers and cousins. The same proof of being the child's primary caregiver from the CSG Regulations outlined in FAQ 8 applies to all caregivers, whether male or female.

FAQ 12: **"Can a caregiver apply for the CSG and the CSG Top-Up at the same time?"**

Answer: A caregiver should be able to apply at SASSA for both a CSG and a Top-Up in one application. The application form has two spaces on it, one for the CSG and one for the Top-Up. Both sections would need to be filled in.

If the caregiver does not have an ID or the child does not have a birth certificate and the SASSA office therefore has to use the alternative Reg 13(1) procedure to make the application, the application process may take longer. If caregivers arrive early at the SASSA office, they are more likely to have their application done in one day.

FAQ 13: **"Is the CSG Top-Up only for orphans living in child-headed households?"**

Answer: The CSG Top-Up is for any orphan child who is living in the care of a family member/relative. That relative could be an adult or a child. The majority of orphaned children in SA are living with adult relatives, and very few live in child headed households. For those that do live in child headed households, only children aged 16 and above qualify to be a primary caregiver of their orphaned siblings. They will need a letter of recognition from the provincial Department of Social Development or from a designated Child Protection Organisation (eg Child Welfare) before they can approach SASSA to apply for a CSG and or a Top-Up.

FAQ 14: **"I only have one death certificate and don't have any information about the child's other parent, will I qualify for the Top-Up?"**

Answer: The regulations recognise that there are many cases where only one death certificate is available. This could be for a variety of reasons, including that the child's

other parent was never known to the relative, or he/she was known but they have lost contact and the relative does not know whether they are dead or alive. For example a young woman leaves home to look for work in another province. She returns home in a bad state of health with a 4- year-old child. She passes away when the child is 5-years-old, leaving him in the care of her mother, the child's maternal grandmother. The child's father lived in another province, he and the child's mother were separated before the child was born, the maternal grandmother has never met him, and the child's mother did not provide any information about him to the maternal grandmother other than his name. In such a case, the maternal grandmother would fill in an affidavit explaining that she has no knowledge of whether the father of the child is dead or alive.

Approximately 65% of all births registered at Home Affairs do not contain any details of the child's father. This statistic is likely to be higher for orphaned children. It is therefore difficult to link orphaned children to their fathers, particularly in cases where the mother has died and the maternal family has no or little information on the father.

If you have a question that has not been answered above, please email us so that we can continually update this document and channel any implementation challenges to the Departments of Social Development and Justice.

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