

Over one million orphans desperately need the Foster Child Grant – can the Department of Social Development deliver?

CAPE TOWN, 16 APRIL 2013 - On 12 April 2013 the South Gauteng High Court ruled that Ms M from Kagiso qualified to be a foster parent for her three orphaned grandchildren. Ms M was assisted by the Black Sash, a human rights organisation and represented by Legal Aid South Africa. Ms M is appreciative of the decision after waiting for over four years. She said 'I will use the Foster Child Grant to meet the children's needs such as food, clothing and education....I am now able to use my grant (her old age pension) to attend the doctor, buy spectacles and meet my daily needs.'

This South Gauteng judgement helps solve one of the challenges that has been preventing access to the foster child grant for grandparents. The judgment will bind all magistrates in Gauteng and be of persuasive value to magistrates in other provinces. "We are confident that the ruling will strengthen the legal status of orphaned children, benefitting thousands of other children out there who have been deprived of similar rights," says Legal Aid SA's Civil Attorney, Michael Motaung. He said the ruling had clarified the meaning of section 150(1)(a) of the Children's Act 38 of 2005 and makes it clear that a caregiver who bears a common law legal duty of support (like a grandparent) may still be appointed as a foster parent and is entitled to receive a foster child grant. The Court furthermore provided guidelines for Children's Court's to follow when interpreting s150(1)(a).

Ms M first approached a social worker for a Foster Child Grant in November 2008 after the children's mother passed away making them "orphans" in terms of the Children's Act. Due to the shortage of social workers and the under-funding of Non Profit Organisations like Child Welfare, who employ 50% of the social workers, Ms M waited two and a half years before the social worker completed the investigation and wrote the report that is required for the Children's Court inquiry. This is despite the Children's Act prescribing that the report should be written within three months.

When Ms M eventually got to court in April 2011, the Krugersdorp Children's Court turned down her application to be a foster parent because the Children's Act was not clear as to whether or not family members qualified to be foster parents. With the help of the Black Sash and Legal Aid South Africa, Mrs M appealed to the South Gauteng High Court to review the Children's Court decision. On Friday 12 April 2013 (more than four years since she first applied for state support) the High Court eventually provided relief by ruling that grandparents do qualify to be foster parents and ordered the Department of Social Development to pay the three Foster Child Grants. The Court also ordered that the grants should be back dated to April 2011 – the date of the Children's Court order. However the family received no relief for the two and a half years of lost grant income for the period of 2008 to 2011 that was caused by the delay at the social worker stage.

The same pattern can be observed in the facts of the case of Child S, represented by the Centre for Child Law, which preceded this case. The delay for most foster care applications is clearly lying at the door of the Department of Social Development as they struggle to keep up with the demand.

The Centre for Child Law, Legal Aid SA, the Black Sash and the Children's Institute (University of Cape Town) are concerned that the foster care system is failing to assist family members caring for orphaned children. This is not a new problem but has been occurring since 2002 when the numbers of orphans applying for foster care started to grow rapidly due to the HIV/AIDS pandemic. Besides failing orphans, the system is also failing abused and neglected children who desperately need the services of the overwhelmed social workers and children's courts. Black Sash Regional Manager Thandiwe Zulu said that "Courts are not the appropriate place for grandparents and siblings caring for orphans. It is a fact that the foster care system fails these relatives and that overwhelmed social workers are unable to deliver services for many children in real need of protection. We believe that a non-court based system is long overdue and must be implemented to provide much needed appropriate income support for kinship carers. "

These civil society organisations and many others such as Childline and Child Welfare have been calling for reform for over ten years as they have observed at the coal face how the system is unable to cope with the demand. The foster care system was designed to accommodate 50 000 children yet it now has over 500 000 children.

In 2011, after being approach by Childline and Child Welfare for help, the Centre for Child Law approached the High Court to avoid a looming crash of the foster care system. A court order was granted that temporarily alleviated the pressure on the foster care system created by the backlogs of foster child orders. The backlogs were created by a lack of resources to deal with the high numbers of foster care orders, including overcrowded court rolls and overburdened social workers. Due to the backlogs over 110 000 foster care orders had lapsed and children had lost their income support. The court order provided relief by "deeming" them not to have lapsed and placed a temporary moratorium on further lapsing. This provided time to the Department to introduce the necessary reform. Prof Ann Skelton of the Centre stated that "the purpose of granting the Department of Social Development breathing space was to allow them to develop a solution to solve the systemic problems in the foster care system. Unfortunately the M judgment does not solve the systemic problems that still exist and may in all likelihood add to the pressure on the foster care system as it opens the doors for more people to be placed on an already stretched system."

Prof Skelton also warns that "another lapsing crisis is imminent as all foster care orders deemed to have been extended for two years by the original court order of 2011, will expire on 22 June 2013. If these orders lapse, then the South African Social Assistance Agency will discontinue payment of the foster child grants and we will face the same crisis we did in 2011".

Research by the Children's Institute, UCT, shows that there are over one million orphans living with relatives in poverty yet in 2011 only 460 000 were receiving the Foster Child Grant (Children's Institute analysis of the General Household Survey data). The others are still in the queue while surviving on the much lower Child Support Grant of R290/child/month. Senior researcher at the Institute, Katharine Hall says that "It has taken the Department of Social Development over 10 years to reach these 460 000 orphans with a FCG. And there is every sign that the system cannot accommodate more children. Already

we have seen that grants are lapsing because the system cannot keep up with the numbers. This leaves the majority of orphans without adequate social assistance.”

Programme Manager at the Children’s Institute Paula Proudlock said: “In September 2012 the Department announced its intention to introduce reform aimed at introducing a grant that relatives could access directly via application to SASSA. This would cut out the need for a social worker report and a court inquiry and ensure we reached all the orphans quickly. In November 2012 we attended a consultative workshop with the Department where they gave further details on the proposal which would be implemented as an “Extended Child Support Grant” which would give relatives caring for orphans a larger CSG than the standard CSG amount. If this proposal could be finalised and implemented in 2013 we would see great benefits for both orphans, child headed households and abused children.”

For more information please call:

Children’s Institute, University of Cape Town

Paula Proudlock – 083 412 4458

Katharine Hall – 082 678 5747

Centre for Child Law, University of Pretoria

Prof Ann Skelton – 082 443 2702

Black Sash

Ratula Beukman – 072 174 3507

Thandiwe Zulu – 082 456 2643

Legal Aid South Africa

Michael Motaung – 072 225 0323

Stephen Mofokeng – 083 600 5157