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THE REQUIREMENT OF THE EXHAUSTION OF INTERNAL REMEDIES IN THE ADMINISTRATION OF SOCIAL ASSISTANCE IN SOUTH AFRICA

by

NKOSANA KOOS MAKHAYA

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Supervisor: Prof. JFD. Brand

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Abstract

In this dissertation I examine the question as to whether or not the requirement of the exhaustion of internal remedies is desirable in the administration of social assistance in South Africa.

An investigation, with particular reference to the reconsiderations of its decisions by the South African Social Security Agency (SASSA), and the decisions of the Independent Tribunal appeal against the decisions of SASSA, revealed that there are delays in obtaining the reasons required for reconsiderations of the decisions by the Agency, as well as information required by the Independent Tribunal for appeal against the decisions of the Agency. I contend that there is sufficient evidence of ignorance of the right to request the reconsiderations of decisions by the Agency, as well as the appeal against such decisions.

There appears to be a dearth of information on the role and function of the Independent Tribunal. There seems to be ineffective communication of decisions of the Agency and the appeals to the applicants.

The fact that the exhaustion of internal remedies in the administration of social assistance is inexpensive and more appropriate than the judicial reviews, does not seem to be justified.

The conclusion recommends some remedial legislative and administrative measures are recommended with a view to addressing this problem. The suggestion is made to investigate some of the questions raised in the research, such as the causes for failure to communicate the decisions of the Agency and the Independent Tribunal to the applicants.

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My greatest debt of gratitude is owed to God for good health, insight and ability to complete this dissertation.

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"Do not hold back good from those to whom it is owing, when it happens to be in the power of your hand to do it**"**(Proverbs 3:27).

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GENEVIEVE WOOD
P.O. BOX 511 WITS 2050 | 0616387159

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Genevieve Wood
PhD candidate in the Humanities
Wits University

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

This chapter provides an overview of the dissertation. It focuses on the basis of the requirement of the exhaustion of internal remedies in administrative law, the rationale of the requirement of the exhaustion of internal remedies, the administration of social assistance by the South African Social Security Agency, and a critical analysis of exhaustion of internal remedies in the administration of social assistance grants. It ends with the conclusion with a consideration of question as to whether or not the requirement of the exhaustion of internal remedies in the administration of social assistance is desirable.

1.2 The research problem

Section 27(1)(c) of the Constitution[1] provides that everyone has the right to have access to social assistance. The state has an obligation to take reasonable legislative and other measures to achieve the progressive realization of this right.[2]

In an attempt to give effect to the sentiments expressed in the provisions of the Constitution, the Social Assistance Act 13 of 2004 and the South African Social Security Agency Act 9 of 2004, were established so as to be responsible for the administration of social assistance.[3] The administration of social assistance falls within the definition of administrative action in Section 1 of the Promotion of Administrative Justice Act.[4]

Section 7(2) of the Promotion of Administrative Justice Act[5] provides that a person aggrieved by the decision of the tribunal can approach the court for judicial review of the decision. However, the aggrieved person must first exhaust the internal remedies before approaching the court.[6]

[1] The Constitution of the Republic of South Africa, 1996.
[2] Section 27(2).
[3] Section 2 read with section 1 of the South African Social Security Agency Act 9 of 2004.
[4] 3 of 2000.
[5] Ibid.
[6] Section 7(2)(a) of Act 3 of 2000.

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In most recent cases the requirement of the exhaustion of internal remedies has been challenged before a court can be approached for judicial review.

In *Qakathayo v The South African Social Agency* (2058/11) [2013] ZAECMHC 19 (17 January 2013), a defence in *limine* was raised that Section 7(2)(a) of the Promotion of Administrative Justice Act[7] prohibits judicial reviewing of the application since the exhaustion of internal remedy for impugning the decision of the South African Social Security Agency, as provided in terms of Section 18 of the Social Assistance Act,[8] substituted by Section 3 of the Social Assistance Amendment Act 5 of 2010, would have to be invoked first. This is primarily a social-economic rights case in which the decision of the Agency was invoked to protect and enforce the rights to access to social assistance.

Section 18 of Social Assistance Act 13 of 2004 makes it peremptory for a person aggrieved by a decision of the Agency to lodge an appeal to the Minister against such a decision. Most of the applications are refused for not having complied with the requirements of the exhaustion of internal remedies.[9]

The requirement of the exhaustion of internal remedies has been a topical issue. In some cases,[10] the courts insisted that the internal remedies be exhausted; while in others it was decided that the applicants may apply for judicial review at any stage provided that the disputes are justiciable.[11]

The courts are required to give meaning to the values and principles contained in the Constitution. It is the task of the judiciary to ensure that the exercise of power complies with established law. To achieve legitimacy, judicial review must be free from political interference, and must enjoy the confidence of the general public.

[7] 3 of 2000.
[8] 13 of 2004.
[9] *Kelebogile Alucia Manyetsa v The South African Security Agency* (265/2007) 7 June 2007 where the Honourable Judge President Mogoeng, found that the applicant should have first communicated her dissatisfaction to the Respondent before lodging the application.
[10] *Nunn v Pretoria Rent Board* 1943 TPD 24.
[11] *Durban City Council v Local Transportation Board* 1964 3 SA 244 (D).

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However, history has shown that the general public has displayed a lack of confidence, and has chosen to approach the courts, rather than exhausting internal remedies.

In the past, the intention of the legislature was to determine whether internal remedies should first be exhausted. However, this has not been ideal, due to lack of clarity.

The general rule is that the internal remedies should be exhausted unless:

(i) the organ reviewing the matter has prejudiced the matter;[12]

(ii) the decision had a fraudulent basis or based on gross dereliction of duty;[13]

(iii) the reviewing body agrees to judicial control, and not really have the power to reshape the act in dispute;[14]

(iv) the dispute relates to the powers of the organ which made the decision, or where the dispute relates to a mistaken of law.[15]

However, Wiechers[16] is of the view that these are merely guidelines and not practical into solving the problem. He further maintains that the administrative law relationship ought to play a part in determining whether internal remedies should be exhausted or not. It is on the basis of this discourse that this research proceeds to determine whether the requirement is desirable or not.

1.3 Assumptions

1.3.1 The exhaustion of internal remedies is an effective measure implemented to enforce the right to social assistance in the administration of social assistance grants.

1.3.2 The exhaustion of internal remedies is not a condition to have access to courts.

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[12] *Lenz Township Co (Pty) Ltd v Lorentz No* 1961 (2) SA 450 (A).
[13] *Bindura Town Management Board v Desai & Co* 1953 (1) SA 358 (A).
[14] *Lawson v Cape Town Municipality* 1982 (4) SA 1 (C).
[15] *Kathrade v Arbitration Tribunal* 1974 (2) SA 535 (C).
[16] Wiechers M *Adminitrative Law* (1985) 272.

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1.3.3 The exhaustion of internal remedies is an effective measure to prevent SASSA from making improper decisions.

1.4 Research questions

1.4.1 Is the requirement of the exhaustion of internal remedies in the administration of social assistance an effective and desirable measure for the enforcement of the right to access to social assistance grants?

1.4.2 Is the exhaustion of the internal remedies in the adninistration of social assistance a condition to have access to court or not?

1.4.3 Is the exhaustion of internal remedies in the administration of social assistance effective measure to prevent SASSA from making improper decisions or not?

To answer these questions, the internal remedies to be exhausted in the administration of social assistance grants are discussed and analysed.

1.5 Motivation

The dissertation focuses on the following aspects:

1.5.1 the rationale for the requirement of exhaustion of internal remedies;

1.5.2 the administration of social assistance by the South African Social Security Agency; and

1.5.3 the analysis of the exhaustion of internal remedies in the administration of social assistance grants.

There was sufficient literature available to successfully complete this study.

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1.6 Approach and method

The research is based on a literature study of books, legislation, case law, and journal articles. All sources are provided in the bibliography.

1.7 Structure/ Chapters

The dissertation has five chapters, outlined as follows:

1.7.1 Chapter One: Introduction
This chapter presents the research problem, assumptions, research questions, motivation, approach and method, structure, and planning/ time line.

1.7.2 Chapter Two: The rationale for the requirement of the exhaustion of internal remedies. The chapter examines the rationale for the requirement to exhaust internal remedies in terms of the common law and the Promotion of Administrative Justice Act (PAJA) and the exemption from the duty to exhaust internal remedies.

1.7.3 Chapter Three: The administration of social assistance by the South African Social Security Agency. The chapter focuses on the administration of social assistance grants, and the requirements for the eligibility to grants in order to provide the basis on which the decisions of the Agency can be challenged through the application of the internal remedies.

1.7.4 Chapter Four: A critical analysis of the exhaustion of internal remedies in the administration of social assistance grants. The chapter examines the effectiveness of the application of the exhaustion of internal remedies in the administration of social assistance grants.

1.7.5 Chapter Five: Summary, conclusion and recommendations. The chapter provides a summary of the entire study and recommendations regarding

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the desirability of the requirement of the exhaustion of internal remedies in the administration of social assistance in South Africa.

1.8 Planning/ Timeline

The planning/ time to complete the dissertation was discussed with the supervisor, Prof. Brand of the University of Pretoria. Prof. Brand was always available for telephone discussions, to reply emails, consultations, guidance and comments on each chapter. This made it possible for the dissertation to be completed and submitted within the planned time.

1.9 Conclusion

This chapter outlined the overview of the dissertation. The next chapter will deal with the rationale for the requirement of the exhaustion of internal remedies.

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CHAPTER TWO

THE RATIONALE FOR THE REQUIREMENT OF THE EXHAUSTION OF INTERNAL REMEDIES

2.1 Introduction

This chapter examines the rationale for the requirement to exhaust internal remedies in terms of the common law and the Promotion of Administrative Justice Act (PAJA),[17] the exemption from the duty to exhaust internal remedies, and presents a conclusion.

2.2 The rationale for the requirement to exhaust internal remedies in the common law and the approach in PAJA

2.2.1 The common law approach

The general rule of the South African was that a person who is aggrieved by a decision of an administrative agency or functionary may be excluded from seeking redress by means of judicial review, unless and until he or she has exhausted all available internal remedies.[18] However, the case law dealing with the rule that internal remedies must be exhausted was not clear. In some cases, it was held that the rule that internal remedies must be exhausted ought to be strictly adhered to,[19] while in other cases, the courts emphasised the principle that the applicant may seek judicial remedy at any stage of the dispute.[20]

In *Radebe and Others v Eastern Transvaal Development Board*[21] the court ruled that if it is clear that the legislature, in creating an obligation, has confined the party complaining of its non-performance or suffering from its breach, to a particular remedy, such a party is restricted thereto and has no further legal

[17] 3 of 2000.
[18] Pretorius D M "The wisdom of Solomon: The obligation to exhaust domestic remedies in South African Administrative Law" (1999) 116 *SALJ* 133.
[19] *Colyvas v Valuation Court Pretoria* 1960 4 SA 54 (T).
[20] *Durban City Council v Local Transportation Board* 1964 3 SA 244 (D) at 251.
[21] 1988 (2) SA 785 (A) see *Kwanobuhle Town Council v Andries and Others* 1988 (2) SA 796 (SE) at 801.

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remedy. This emphasises that there must be a provision of a statute for the exhaustion of internal remedy.

In *Ballinger and another v Hind No and another,*[22] the factors justifying the exhaustion of internal remedies were outlined as the follows:

(i) unreasonableness for a party to rush to court before having exhausted his or her statutory remedies;
(ii) statutory remedies are usually cheaper and more expeditious than judicial remedies;
(iii) the principle requiring exhausting of internal remedies is based on the implied intention of the legislature; and
(iv) the fact that until a final decision adverse to the complainant was given, any alleged irregularity may still be ratified, and it would therefore be premature to approach the courts for relief prior to a final decision having been given.

However, it can be argued that these may not be the only factors. Where the relative expertise of courts and internal remedial institutions to handle a problem may also be found to play a role.

Wiechers[23] raised a valid argument with respect to the common law, namely that the rule that internal remedies must first be exhausted is based on the doctrine of separation of powers. According to this doctrine, the administration must preserve its own autonomy, and use its own procedures to keep its affairs in order.[24] He concluded that the rule does not enjoy absolute precedence, and that courts will entertain any application for judicial control, which is supported by sufficient allegations of excess of power or irregularity.[25]

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[22] 1951 (2) SA 8 (W) at II D-E.
[23] Wiechers M *Administrative Law* (1985)270.
[24] Ibid.
[25] Op cit (n 23) 271.
[26] 1958 1 SA 490 (A) at 502; see also *Bindura Town Management Board v Desai & Co* 1953 1 SA 358 (A) at 367.

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In *Welkom Village Management Board v Letemo,*[26] it was mentioned that whenever domestic remedies are provided in terms of a statute, regulation or conventional association, it is necessary to examine the relevant provisions in order to ascertain how fair it is, if at all, that the ordinary jurisdiction of the court is thereby excluded or deferred. It was further stated that the intention of the legislature should be decisive in the determination of the question whether internal remedies must first be exhausted. This places emphasis on the importance of the duty of the courts to interpret the legislation as it is regarding the exhaustion of the internal remedies.

Wiechers[27] further argued that if the statute requires, either expressly or by implication, that internal remedies first be exhausted, the application for judicial control cannot be entertained until the internal remedies have been exhausted. The Court will have no jurisdiction to hear the dispute or uncertainty. However, the problem with this was that the provisions of the statute may not be clear, or that the applicant may allege serious non-compliance with the requirements for the validity of administrative action, such that it would be impractical and meaningless to continue to exhaust the internal remedies.

Pretorius[28] also supported the argument that a person who is aggrieved by an administrative act may be obliged to exhaust all extrajudicial remedies provided by the statute, in terms of which the offending act was performed, before instituting review proceedings in respect of that act. In order to determine whether, in any given case, such an obligation existed, the language of the relevant statute had to be examined to ascertain whether the legislature intended that the aggrieved person should be restricted to the remedies provided by the statute in seeking redress.[29] If so, the aggrieved person had no right of recourse to the courts except if the act concerned was not performed in accordance with the procedures behests of the statute, or in compliance with the principles of natural justice, or if the decision-making body failed to exercise

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[27] Op cit (n 23) 271.
[28] Op cit (n 18) 128.
[29] Pretorius op cit (n 18)129.

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its discretion honestly and in good faith, or exceeded the limits of its jurisdiction, and only way of review proceedings after the extrajudicial remedies created by the statute have been exhausted.[30]

Where a person is aggrieved by an act performed during the course of the decision making process, he or she would be obliged to wait the finalisation of the initial decision making process and exhaust the internal appeal remedies before approaching the courts for relief.[31] This seems to be intended to discourage the aggrieved party from dual actions.

Baxter[32] has noted:

> when a statute creates an internal appeal or another avenue for redress, short of judicial review, the courts have insisted that an aggrieved party should exhaust his or her internal or domestic remedies before applying for judicial review.

This implies that if there is no provision for internal remedies in the statute, then the aggrieved party may approach the court for review. Burns[33] has maintained that the duty to exhaust internal remedies is an important condition applied to the process of judicial review before the courts can be approached for review.

She further maintained that internal remedies should be exhausted before the courts are approached, so as to ensure that the number of cases which came before courts are limited. This may be seen as a type of sifting process, to prevent the courts from becoming over crowded by administrative matters.

Burns[34] was further more of the view that the administration should be afforded an opportunity of rectifying its mistakes. If the matter is not resolved, then the aggrieved person has the right to approach the court for a final resolution of the

[30] Ibid.
[31] Ibid.
[32] Baxter L. *Administrative Law* (1984) 720.
[33] Burns Y *Administrative law under the 1996 Constitution* (1999) 220.
[34] Op cit (n 33) 222.

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dispute. This is a sound approach, which accords with the doctrine of the separation of powers.

2.2.2 The Promotion of Administrative Justice Act (PAJA) approach

Section 7(2) of the Act provides that:

> (a) subject to paragraph (c), no court or tribunal shall review an administrative action in terms of this Act unless any internal remedy provided for in any other law has first exhausted.
>
> (b) Subject to paragraph (c), a court or tribunal must, if it is not satisfied that any internal remedy referred to in paragraph (a) has been exhausted, direct that the person concerned must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review in terms of this Act.

This is a statutory provision, which presently regulates the requirement of the exhaustion of internal remedies, before the aggrieved party can approach the court for review of administrative action. If there is uncertainty, the court will be required to interpret these provisions. Hoexter[35] argues that, courts are unable to adjudicate effectively on many specialised matters, while administrative bodies are able to do this more informally, quickly, cheaply, and expertly.

This argument suggests that one of the reasons for the need to exhaust internal remedies is that the courts may encounter difficulties in obtaining expert information required to review administrative acts. They will have to request the same administrative bodies to supply them with information.

In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and others*[36] it was affirmed that, the court should take care not to usurp the functions of administrative agencies. Its task is to ensure that the decisions taken by administrative agencies fall within the bounds of reasonableness as required by the Constitution.

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[35] Hoexter C *Administrative Law in South Africa (2007)52.*
[36] 2002 (2) SA 490 (CC) at 45.

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However, this seems to be confusing in that it emphasises the element of separation of powers, which suggests that the administrative bodies should first deal with the problem before review and at the same time the court's function is to control the administrative action of the administrative organs.

In *Nichol and Another v The Registrar of Pension Funds and others,*[37] the Supreme court of Appeal noted as follows:

> "it is now compulsory for the aggrieved party in all cases to exhaust the relevant internal remedies unless exempted from doing so by way of a successful application under section 7 (2) (c). Moreover, the person seeking exemption must satisfy the court that there are exceptional circumstances and that it is in the interest of justice that the exemption be given."

It is argued here that the required exceptional circumstances is intended to limit or avoid aggrieved parties approaching courts before exhausting internal remedies.

In *Koyabe v Minister for Home Affairs,* [38] it was stated that internal remedies are designed to provide immediate and cost-effective relief giving the executive the opportunity to utilise its own mechanisms, rectifying irregularities first, before the aggrieved parties resort to litigation. Although courts play an important role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be discounted.

In *Koyabe v Minister of Home Affairs*[39] it was stated that:

> "approaching a court before the higher administrative body has been given the opportunity to exhaust its existing mechanism undermines the autonomy of the administrative process. It renders the judicial process premature, effectively usurping the executive role and function. The scope of administrative action extends over wide range of circumstances and the crafting of specialist administrative procedures suited to the particular administrative action

[37] 2008 (1) SA 383 (SCA) at 15.
[38] 2010 (4) SA 327 (CC) 35.
[39] Op cit (n 38) para 36.

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in question enhances procedural fairness as enshrined in the Constitution. The need to allow executive agencies to utilize their own procedures is crucial in administrative action."

Although this may seem to protect the administrative body, it actually affords the aggrieved party a fair administrative action.

In *Zondi v MEC for Traditional and Local Government Affairs,*[40] it was stated that courts have often emphasised that what constitutes a fair procedure will depend on the nature of the administrative action and circumstances of the particular case. This indicates that the courts will use different approaches in resolving different administrative issues.

In *Bato Star*[41] O'Regan J argued that:

> "a court should be careful not to attribute itself superior wisdom in relation to matters entrusted to other branches of government. A court should give due weight to findings of fact and policy decisions made by those with special expertise and experience in the filed. The extent to which the court should give weight to these consideration will depend on the character of the decision itself as well as on the identity of the decision maker. A decision that requires an equilibrium to be struck between a range of competing interests or consideration and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve the goal. In such circumstances a court should pay due respect to the route selected by the decision maker."

This emphasises that courts are more analytical in reviewing administrative actions.

Hoexter[42] suggests that:

> "where the public interests and the application of policy predominate, it becomes appropriate for appeal to a suitable qualified and political more accountable official or body."

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[40] [2004] ZACC 19, 2005 (3) SA 589 (CC), 2005 (4) BCLR 347 (CC) at 113-4.
[41] Op cit (n 36) para 48.
[42] Op cit (n 35) 63.

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This suggestion implies that a suitable person will be an appropriate person to consider an administrative action.

In *Koyabe v Minister for Home Affairs,*[43] the Constitutional Court supported a duty to exhaust internal remedies, and described it as valuable and necessary requirement of law. It was explained that to allow litigants to proceed straight to court, would be to undermine the autonomy of the administrative process, where as the administration has specialised or technical knowledge or easier access to the facts and information. The court further made it clear that the mere lapsing of the period within which internal remedy remains available did not satisfy Section7(2), for it would undermine the purpose of the duty if complainants could wait out the period.[44] It was held that an aggrieved party must take reasonable steps to exhaust available internal remedies.[45]

The courts are reluctant to entertain administrative disputes, which might be resolved administratively instead rather than through resort to litigation. In Koyabe[46] it was stated that judicial review can only benefit from a full record of an internal adjudication, particular in the light of the fact that reviewing courts do not ordinarily engage in fact finding, and require a fully developed factual record. The administrators have easier access to the relevant facts and information.

2.3 The Exemption from the duty to exhaust internal remedies

2.3.1 Exemption in terms of the common law

In *Msomi v Abrahams No*[47] it was held that if the internal remedy cannot provide the same satisfaction as judicial review, this indicates that the internal remedy need not be exhausted.

[43] Op cit (n 38) paras 36-8.
[44] Ibid.
[45] Ibid.
[46] Op cit (n 38) para 37.
[47] 1981 (2) SA 256 (N) at 261 B.

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In *Lawson v Cape Town Municipality*,[48] it was acknowledged that the internal remedy was ineffective, because the administrator was too busy to do the internal remedy justice. This acknowledgement seems to be a valid reason for not justifying the exhaustion of internal remedies.

In a situation where internal remedies available to a person aggrieved by administrative action have not been exhausted, a High Court should entertain review proceedings, only in those exceptional cases where grave injustice might otherwise result or where justice might not by other means be attained.[49] It is submitted that this may be a situation where it is not in the interests of justice and that the aggrieved party should not be expected to exhaust internal remedies.

Plasket[50] identifies the following as exceptions:

(i) where the appellate tribunal has in some way prejudged the issue;

(ii) where the decision giving rise to the dispute amounted to no decision at all, or was arrived at fraudulently, or otherwise than as the result of valid proceedings;

(iii) where the empowering statute does not make it peremptory that extrajudicial remedies be resorted to; or

(iv) where the empowering statute makes provision for further administrative action after the offending decision has been made, but such action is in the nature of a remedy which may be invoked by somebody other than the aggrieved party;

(v) where the inferior tribunal has acquiesced in the review;

(vi) where the appellate tribunal concerned does not possess the power to rectify the irregularity complained of or to grant the particular relief sought; and

(vii) where the dispute concerns the jurisdiction of an administrative tribunal which it has no power to decide.

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[48] 1982 (4) SA 1 (C) at 8 G.
[49] *Hayson v Additional Magistrate, Cape Town and Another* 1979 (3) SA 155 (C) at 160A-B.
[50] Plasket C "Administrative Law" (2014) *AS* 81-87.

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Pretorius[51] states that the exclusion of the courts' powers to entertain review applications must flow from the express words of the relevant statute or arise by necessary implication from the relevant provisions of the statute. To the extent that the statute does not expressly exclude the courts' review jurisdiction, the fact that the appeal remedies provided by the statute permit a comprehensive rehearing of the matter in accordance with the rules of natural justice, suggests strongly that the legislature intended that such remedies must be exhausted before review proceedings are instituted.

In *Golube v Oosthuizen*[52] it was stated that the mere fact that the legislature has provided an extra-judicial right of review or repeal or appeal is not sufficient to imply an intention that recourse to a court of law should be barred until the aggrieved person has exhausted his statutory remedies. It is submitted that this holds the implication that a broad interpretation of the intention of the legislature is required in order to determine whether or not the aggrieved person is required to exhaust the internal remedies.

In *Lawson v Cape Town Municipality*[53] it was stated that whether a statute containing an internal remedy should be interpreted to mean that review of decisions subject to that remedy is impliedly precluded or deferred until that remedy has been exhausted is dependent on whether the alleged unlawfulness has undermined or tainted the internal remedy. Plasket[54] points out that the courts are reluctant to imply an intention to defer their jurisdiction until internal remedies have been exhausted.

In *Maluleleke v Member of the Executive Council, Health and Welfare, Northern Province,*[55] Southwood J observed that a failure to exhaust internal remedies will

[51] Op cit (n 18) 129.
[52] 1955 (3) SA 1 (T) at 503 B-C.
[53] 1982 (4) SA 1 (C) at 68-7C.
[54] Plasket C "The exhaustion of internal remedies and section 7 (2) of the Promotion of Administrative Justice Act 3 of 2000" (2002) 119 *SALJ* 51.
[55] 1999 (4) SA 367 (T) at 372 G-H.

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seldom be upheld, where the aggrieved person's complaint is the illegality of the decision which he or she seeks to challenge, and that generally an aggrieved person should have unrestricted access to the court to seek redress. This seems to suggest that an aggrieved party may not be required to exhaust internal remedies if the administrative action was unlawful. This is in compliance with the constitutional right to have access to court for relief.

In *Mahlaela v De Beer No*[56] it was held that:

> The fact that the applicant has an option to appeal does not mean he has an obligation to do so. That obligation he only has if the right to approach this court has been taken away or deferred, until he has exhausted the remedies.

In *Bindura Town Management Board v Desai and Co,*[57] it was held that there is no general rule that a person who considers that he has suffered a wrong is precluded from having recourse to a court of law while there is hope of extra judicial redress.

This is an indication of the exemption from the requirement to exhaust the internal remedies.

Wiechers[58] comments that the effect of the exceptions is that the principle itself is negated completely. A possible solution to this problem would be to limit the scope of each exception. This view seem to suggest that even though there are problems with the exception to the requirement to exhaust internal remedies, there is a need to maintain the exception to a limited extend.

In *Jamile and Others v African Congregation Church,*[59] the situations in which the courts will not require exhaustion of internal remedies prior to review proceedings being instituted were identified as the following:

[56] 1986 (4) SA 782 (T) at 787B-C.
[57] op cit (n 27) AT 362H.
[58] Op cit (n 23) 272.
[59] 1971 (3) SA 836 (D) at 843.

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(i) where two appellate tribunals are provided for, but the first has prejudged the matter and there is no machinery for an appeal direct to the second;

(i) where the trial tribunal has exceeded its powers in a matter which the appellate tribunal cannot validate;

(ii) where the decision at first instance is final;

(iii) where there is a question of law concerning a preliminary or jurisdictional matter; and

(iv) where the machinery provided for the adjudication of disputes has broken down and the only course open to the aggrieved person is to approach the courts of law.

It is suggested that these should however not be regarded as the only exhaustive situations in which exhaustion of internal remedies may not be required. In *Earthlife Africa (Cape Town) v Director- General: Department of Environmental Affairs and Tourism and Another,*[60] the court stated that at Common law, the question was whether the internal remedy was an effective one, or whether it was tainted by the irregularity on which the review is based, and if tainted by irregularity, the court would not insist on exhaustion of internal remedies. This common law approach is applicable in PAJA. [4]

Hoexter[61] notes that:

> The mere existence of an internal remedy is not enough by itself to indicate an intention that the remedy must first be exhausted. There is no general principle at Common law that an aggrieved person may not go to court while there is hope of extrajudicial remedies. In fact, there are indications that the existence of a fundamental illegality, such as fraud or failure to make decision at all, does away with the Common law duty to exhaust domestic remedies altogether.

This seems to be an important and valid justification for exemption from the requirement to exhaust internal remedies.

[60] 2005 (3) SA 156 (C) at para 63.
[61] Op cit (n 35) 479.

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2.3.2 Exemption in terms of the Promotion of the Administrative Justice Act (PAJA)

Section 7(2)(c) of the PAJA provides that a court or tribunal may, in exceptional circumstances and on application by the person concerned, exempt such person from the obligation to exhaust any internal remedy if the court or tribunal deems it in the interest of justice.

It is now a prescribed provision by the legislature, which need to be interpreted by courts when there is uncertainty regarding the exemption from the requirement to exhaust the internal remedies.

Currie and Klaaren[62] have noted that by imposing a strict duty to exhaust domestic remedies, PAJA has considerably reformed the common law. They point out further that the exception to the requirement to exhaust internal remedies is a narrow one. Section 7 (2) (c) refers to exceptional circumstances in the interests of justice, rather than good cause. This is an expression to highlight their concern that there must be a good reason for exceptional circumstance.

In *Koyabe*[63] it was stated that a holding that a person who did not exercise the right to an internal remedy may invariably not institute judicial review, would result in an unconstitutional ouster of courts jurisdiction to be contrary to section 34 of the Constitution. It is submitted that the requirement to exhaust internal remedies should be consistent with the provisions of the Constitution, which is the Supreme law and above all other laws.

In *Koyabe*[64] it was stated that an internal remedy must be readily available and be possible to pursue without any obstruction, whether systematic or arising from unwarranted administrative conduct. Factors such as these should be taken into

[62] Currie I and Klaaren L *The Promotion of Administrative Justice Act Benchbook* (2001) 182.
[63] Op cit (n38) para 2.
[64] Op cit (n38) para 39.

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account when a court determines whether exceptional circumstances exist, making it in the interests of justice to intervene. It was further stated that the requirement should not be rigidly improved, and nor should it be used by administrators to frustrate the efforts of an aggrieved person or to shield the administrative process from judicial scrutiny.

In Bato Star Fishing[65] it was stated that in considering whether a litigant should be granted permission to pursue the review of a decision before exhausting internal remedies, a court needs to ensure that the possibility of duplicate or contradictory relief is avoided. This is a justified reason for the court to exercise its responsibility not to refuse entertaining a review. Once an administrative task is completed, it is for the court to perform its review responsibility, to ensure that the administrative action or decision has been performed or taken in compliance with the relevant Constitutional and other provisions of statutes.[66]

It is submitted that it is the responsibility of the court to ensure that the administrative actions which are contrary to the provisions of law should be reviewed without the requirement for exhaustion of internal remedies. Hoexter[67] contends that internal administrative remedies may require specialised knowledge which may be of technical and / or specialised nature. This is an important contention to determine whether the requirement of exhaustion of internal remedies may be justified or not.

In *Marais v Democratic Alliance*[68] it was stated that:

> "exceptional circumstances which might justify an exemption in terms of section 7 (2) (c) would exist where the available internal remedy would not be able to provide the applicant with effective redress for his or her complaint."

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[65] Op cit (n 36)at 503 B-D.
[66] Ibid.
[67] Op cit (n 35) 63.
[68] [2002] 2 All SA 424 (C) paras 59-63; see also *Governing Body, Mikro Primary school and another v Minister of Education Western Cape, and Others* 2005 (3) SA 504 (C) at 515 F-G.

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This implies that the applicant is required to prove that the internal remedy will not be effective.

2.4 Conclusion

In this chapter the rationale for the exhaustion of the internal remedies in terms of the common law and PAJA have been examined. Before a court can be asked to review an administrative action, there is an important rule of exhaustion of internal remedies. Ordinarily there will be an intention by the legislature, either express or implied, that the internal remedies first be exhausted.

Both in common law and Section 7(2) of PAJA approaches, there are provisions for the general rule and the exemption from the obligation to exhaust internal remedies. This implies that the duty to exhaust internal remedies is not rigid. In order to be make exempt an applicant must make an application and establish the requirements for exemption. An exemption will only be granted in exceptional circumstances and in the interests of justice. However, what constitute exceptional circumstances depends on the facts and circumstances of the case and the nature of the administrative action at issue. Judicial review must be used as a last resort.

The next chapter will focus on the administration of social assistance by the South African Social Security Agency.

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CHAPTER THREE

THE ADMINISTRATION OF SOCIAL ASSISTANCE BY THE SOUTH AFRICAN SOCIAL SECURITY AGENCY

3.1 Introduction

This chapter focuses on the administration of social assistance grants and the requirements for the eligibility to grants. This will provide the basis on which the decisions of the Agency can be challenged through the application of the internal remedies.

3.2 The administration of social assistance grants.

The administration of social assistance grants is regulated in terms of the provisions of the Social Assistance Act,[69] and the South African Social Security Agency Act.[70]

The Constitution[71] guarantees the right of all citizens to have access to social security, including if they are unable to support themselves and their dependents, appropriate social assistance. Section 27 of Chapter 2 of the Bill of Rights states that:

> (1) Everyone has the right to have access to social security, including, if they unable to support themselves and their dependents, appropriate social assistance.
> (2) The state must take reasonable legislative and other measures within its available resource to achieve the progressive realization of the right to social assistance.

Section 27(1)(c) of the Constitution provides that everyone has a right to have access to social security including, if they are unable to support themselves and their dependents, appropriate social assistance. Section 27(2) of the Constitution enjoins the state to take reasonable legislative and other measures within its available resources to achieve the progressive realisation of the right of access

[69] 13 of 2004.
[70] 9 of 2004
[71] The Constitution of the Republic of South Africa,1996.

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to social assistance. In conformity with this constitutional obligation, the state promulgated the Social Assistance Act.[72] The objective of the Act is to provide the administration of social assistance.[73]

The South African Social Security Agency was established by the South African Social Security Agency Act[74] to ensure the efficient and effective administration of social assistance.[75] It administers social assistance grants on behalf of the Department of Social Development.[76] The Social Assistance Act makes provision for the administration and the requirements for a child support grant, care dependency grants, a foster child grant, a disability grant, an older person's grant, a war veteran's grant, and a grant- in-aid.[77]

3.2.1 A child support grant

3.2.1.1 Eligibility

A person is eligible for a child support grant if he or she is the primary care-giver of that child.[78] A child support grant is intended to provide for the basic needs of South African children whose parents or primary care-givers are not able to provide sufficient support due to unemployment or poverty.[79] Parents and primary care-givers qualify for the child support grant if their child is under the age of 18 years.[80]

A primary care-giver can apply for the child support grant on behalf of a child or children in his or her care. A primary care-giver can be a parent, grandparent, or anyone who is mainly responsible for looking after and providing for the basic

[72] 13 of 2004.
[73] s3 of Act 13 of 2004.
[74] s 2 (1) of Act 9 of 2004.
[75] s3 of Act 9 of 2004.
[76] Ibid.
[77] s4 of Act 13 of 2004.
[78] s6 of Act 13 of 2004.
[79] Regulation 6 of the Regulations published under Government Notice R898 in Government Gazette 3156, dated 22 August 2008.
[80] Regulation 6 (2).

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needs of the child. A primary care-giver must be older than 16 years old and does not need to be family of the child.[81]

The grant will be paid for all qualifying biological or legally adopted children.[82] In the case of non-biological children and who are not legally adopted, the grant will be paid for a maximum of six children.[83] The grant is paid to the primary care-giver.[84] In all cases, the grant follows the child. This means that if someone else becomes the primary care-giver, the grant goes to that person. The primary care-giver is responsible for ensuring that the child is fed, clothed, immunised, given access to health-care, as well as for using the money to benefit the child generally.[85] The South African Social Security Agency will consider the financial situation of the primary care-giver and his or her spouse.[86] If the primary care-giver is a single parent, he or she should first try to get money from the child's other parent through applying for a maintenance order.[87]

The primary care-giver must be living with the child in South Africa at the time of the application for the grant, be a South African citizen or permanent resident, and pass the means test.[88] A primary care-giver cannot apply for the grant if being paid to look after a child, someone else is already getting a grant for the child, if he/she represents an institution which takes care of the child, and do not qualify in terms of the means test.[89]

3.2.1.2 The documents

The applicant must submit the following:[90]

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[81] Regulation 6 (5).
[82] Regulation 6 (1) (b).
[83] Ibid.
[84] Ibid.
[85] Ibid.
[86] Regulation 6 (1) (c).
[87] Ibid.
[88] Regulation 6 (1).
[89] Regulation 6 (5).
[90] Regulation 11 (1) (3) (a) (b).

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(i) primary care giver's South African identity document;

(ii) child' s identity document or birth certificate;

(iii) proof that the child has been immunised;

(iv) proof of any maintenance received from a parent of the child, or proof of efforts made to obtain maintenance from a parent;

(v) proof of earnings, if working, the employer must fill in a special form for an employer's report;

(vi) a marriage certificate, if married;

(vii) if divorced, the court order giving details of custody of the child;

(viii) if the primary care-giver is not the parent of the child, a letter or affidavit from the parent, giving the person permission to take care of the child;

(ix) a death certificate if one or both parents are dead, or if the father or mother is missing, proof such as a missing person's report from the police and sworn statements from the applicant and another family member.

3.2.2 A care dependency grant

3.2.2.1 Eligibility

A person is eligible for a care dependency grant if he or she is a parent, primary care-giver, or foster parent of a child who requires and receives permanent care or support services due to his or her physical or mental disability.[91] This is a social grant intended to provide support to parents, primary care-givers or foster parents of any child with severe mental and/ or physical disabilities up to 18 years, requiring full-time home care.[92] Even though the child may make use of professional support services, the child should not be cared for in an institution but at home in order to qualify.[93] The child's disability must be assessed by a medical doctor appointed by SASSA.[94] The person receiving the grant is responsible for ensuring that the child is fed, clothed, receives care and stimulation as well as access to health services.[95]

[91] s 7 (a) of Act 13 of 2004.
[92] Education Training Unit (ETU) *Paralegal manual: chapter 7 Social Welfare* (2011) 15.
[93] Ibid.
[94] Ibid.
[95] Ibid.

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The parents, primary care-giver or foster parents and the child must be a South African citizens, permanent residents or refugees; resident in South Africa at time of application; possession of a medical/ assessment report confirming disability; and qualify in terms of the means test for a care dependency grant.[96]

The primary care-giver must ensure that the child be tested at the age of six years to see if he or she needs special schooling; receives appropriate education according to level of disability; remain in his or her care; be living adequate housing; be fed and give clothes to wear; receive necessary medical and dental care; and not wholly funded state run institution.[97]

3.2.2.2 The documents

The documents required are the following: [98]

(i) parents, primary care-giver, or foster parent identity document;

(ii) child's birth certificate;

(iii) a medical report for the child with a functional assessment stating what the child able to do;

(iv) in the case of the foster parent of the child, the court order making the foster parent;

(v) proof of marital status such as a marriage certificate, divorce papers, or death certificate of spouse, or a sworn statement if never married; and

(vi) proof of the income.

The South African Social Security Agency will discontinue the care dependency grant, if the parents, care-giver or foster parent or; the child dies; or the child is admitted in a wholly funded state institution; when the child turn 18 years; when he or she can apply for a disability grant.[99]

[96] s 5 of Act 13 of 2004, Regulation 8 (a) (b) (c).
[97] Regulation 11 (1).
[98] Regulation 6 (5).
[99] Regulation 28 (4).

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3.2.3 A foster child grant

3.2.3.1 Eligibility

A foster parent is eligible for a foster child grant for a child for as long as that child needs such care.[100] This is a grant intended to provide for the basic needs of foster children who have been placed in the care of foster parent by a children's Court.[101] It is paid to foster parents for children between the ages of 0-18 years. An extension order for foster care can be given until the age of the 21 years if the child is still at secondary school. [102]

The foster parent and the foster child must be resident in South Africa at the time of the application but do not have to be South African citizens; be in possession of a court order that makes the foster care status legal; and qualify in terms of the means test for a foster care grant. If from any country in need of care and protection in South Africa, a child can be fostered. This includes a child who is undocumented, or a child who is a refugee. Only a foreign national who is a refugee can qualify to be a foster parent. There is no means test to qualify for a foster care grant. The child must have been placed in foster care by order of the court before the foster care grant can be applied for.[103]

3.2.3.2 The documents

The applicant must submit the following:[104]

(i) the foster parent's identity document;
(ii) the foster child's RSA or non- RSA identity document or birth certificate;
(iii) the court order indicating foster care status; and
(iv) if there is no birth certificate, the South African Social Security Agency will indicate alternative document required.

[100] s 8 of Act 13 of 2004.
[101] s 8 (b).
[102] Ibid.
[103] s 8 of Act 13 of 2004, Regulation 7 (c).
[104] Regulation 11 (1) (4).

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3.2.4 A disability grant

3.2.4.1 Eligibility

This is a social grant intended to provide for the basic needs of adults, people over 18 years, who are unfit to work due to a mental or physical disability. The applicant should not have refused to do work that he or she is capable to do, and should not have refused treatment. The disability must be confirmed by a valid medical report of a medical officer stating whether the disability is temporary or permanent.[105]

When the application for a disability grant is made the SASSA officer will give the person a medical form to be completed by either a medical officer or an assessment panel. The medical person must write on the form the kind of disability and the period it will last.[106]

The assessment panel consists of medical people such as nurses, psychologists and social workers as well as community leaders such as chief magistrates or priests. The SASSA officer sends the doctor's certificate with the application form. The medical officers in SASSA look at the medical certificate or assessment and see if they agree with disability. If they disagree they turn the application down.[107]

A person can apply for a temporary disability grant where it is believed the disability will last between six months and a year, or a permanent disability grant where it is believed the disability will last longer than a year. The medical certificate for a grant should not be older than three months at the date of application.[108]

[105] s 9 Act 13 of 2004, Regulation 3 (c) (d) (e).
[106] Regulation 3 (b) (i).
[107] Ibid.
[108] Regulation 3 (b) (ii).

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The applicant must be a South African citizen, or a permanent resident or refugee; be resident in South Africa at the time of the application; and be unable to work because of the nature of the disability; if married, a spouse must comply with the means test; and have a valid identity document or alternative identification.[109]

A person can still apply if he or she is in an institution which is partially funded by the state, and may then receive a partial grant, but cannot if he or she is being taken care of by a prison; old age home; state treatment centre; psychiatric hospital; or drug rehabilitation centre.[110]

3.2.4.2 Documents

The applicant must submit the following:[111]

(i) South African identity document;

(ii) if under 60 years bring a medical assessment or report stating that he or she is disabled and cannot work;

(iii) if single, an affidavit stating this fact;

(iv) marriage certificate if married;

(v) divorce papers if divorced;

(vi) an affidavit if spouse has been deserted for more than three consecutive months;

(vii) death certificate, if spouse died;

(viii) if employed, a wage certificate;

(ix) if unemployed, any UIF records of registration, discharge certificate from previous employer and affidavit made at a police station stating unemployment;

(x) proof of private pension if any;

(xi)bank statement of three consecutive months;

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[109] Regulation 3 (b) (i).
[110] Ibid.
[111] Regulation 3 (b) (ii).

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(xii) proof of any other income and assets; and

(xiii) if partner died within the last five years, a copy of the will and the first and final liquidation and distribution accounts.

3.2.5 An older person's grant

3.2.5.1 Eligibility

The applicant must be a South African citizen or a permanent resident; be resident in South Africa at the time of application; be 60 years or older; If married, the spouse must comply with the means test; have a valid document or an alternative identification. If he or she is being taken care of by the prison; old age home and state treatment centre; psychiatric home; and drug rehabilitation centre. However, a person can still apply if he or she is in an institution which is partially funded by the state and the grant would be reduced to 25% if he or she is receiving another adult social grant, unless it is a grant-in-aid.[112]

3.2.5.2 Documents

An applicant must submit the following:[113]

(i) South African identity document;

(ii) if single, an affidavit stating this fact;

(iii) marriage certificate if married;

(iv) divorce papers if divorced;

(v) death certificate; if deceased;

(vi) if employed, a wage certificate

(vii) if unemployed, any UIF record of registration discharge certificate from the previous employer;

(viii) proof of a private pension;

(ix) bank statement of three consecutive months if there is a bank account; and

(x) proof of any other income or assets.

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[112] s 5,10 of Act 13 of 2004, Regulation 2.

[113] Regulation 11 (1) (2) (a).

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3.2.6 A war veteran's grant

3.2.6.1 Eligibility

The applicant must be a South African citizen, or a permanent resident; be resident in South Africa at the time of application; be 60 years and over; have fought in the First World War (1914-1918), the Second World War (1939-1945) or the Korean War (1950-1953); not be cared for in a wholly founded state institution; if married, a spouse must comply with the means test.[114]

3.2.6.2 Documents

Applicants must submit the following:[115]

(i) South African identity document;

(ii) Official War Service (discharge certificate or medals);

(iii) if under 60 years, a medical assessment or report stating that he or she is disabled and cannot work;

(iv) if single, an affidavit stating this fact;

(v) a marriage certificate, if married;

(vi) an affidavit if the spouse has deserted for more than 3 consecutive months;

(vii) death certificate, if spouse died;

(viii) employed, a wage certificate;

(ix) if unemployed, any UIF record of registration, discharge certificate from the previous employer and affidavit made at a police station stating unemployment;

(x) proof of private pension;

(xi) a bank statement of three consecutive months; and

(xii) proof of any other income or assets.

3.2.7 A grant-in-aid

3.2.7.1 Eligibility

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[114] s 5, 11 of Act 13 of 2004,

[115] Regulation 11 (1) (2) (a) (c).

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This is a social grant intended to provide for the basic needs of adults who are unable to care for themselves and certified by a medical officer to be in need of full time care from someone else.[116] It is provided as an additional grant to adults who are already receiving older person's pension, disability or War Veteran grants. It is not paid out on its own. It must be in addition to a main social grant. It is paid to the main grantee and not to the assistant. There is no means test. The applicant must be resident in South Africa at the time of application; be receiving an adult social grant; require full-time care by another due to a physical or mental disability; and not be cared for in a wholly founded state institution.[117]

3.2.7.2 Documents

The applicant must submit the following:[118]

(i) South African identity document;

(ii) medical report or medical assessment report, less than three months;

(iii) if single, an affidavit stating this fact;

(iv) a marriage certificate, if married;

(v) divorce papers, if divorce;

(vi) death certificate if spouse died;

(vii) if employed, a wage certificate;

(viii) if unemployed, any UIF record registration, discharge certificate from previous employer;

(ix)proof of a private pension; and

(x)proof of any other income or assets.

3.2.8. A social relief of distress award

3.2.8.1 Eligibility

[116] s5, s12 of Act 13 of 2004.
[117] s5 (1), Regulation 5.
[118] Regulation 11 (1) (6).

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This is a temporary form of support in voucher, cash or food for people in crisis and in need of immediate help to survive.[119] A relief can be granted to anyone who applied for an award and the award is not yet ready (this relief will be deducted from the grant); who has appealed against the suspension of grant; who is too seek work for less than six months (if a person is sick for more than six months can apply for a disability grant); where the bread winner has just died, gone to prison or treatment centre or hospital; who has experienced a disaster, such as a house burning down or being flooded; or where the household is otherwise experiencing undue hardship. However, relief cannot be received if the whole area has been affected by the disaster and other emergency funds are available for the area.[120] A relief cannot be granted if assistance is received from another organization; or another grant is received.

3.2.8.2 Documents

The applicant must submit the following:[121]

(i) a valid South African identity document including any other alternative proof of identity of the applicant, spouse or children

(ii) proof of minimal resources;

(iii) proof of marital status;

(iv) proof of admission of spouse to prison, treatment centre or hospital or proof of awaiting trial;

(v) proof of temporary medical disability;

(vi) discharge certificate of prison, treatment centre or hospital;

(vii) proof from the magistrate's court for not receiving any maintenance;

(viii) proof of insufficient means by way of a declaration; and

(ix) any other alternative proof may be accepted.

The value of the social relief of distress award in a case of a single person must be equal to an amount not more than the maximum amount payable per

[119] s5, 12 of Act 13 of 2004, Regulation 9.
[120] Regulation 9.
[121] Regulation 15.

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month in respect of an older person's grant. In a case of a married person where both spouses live together, it must be equal to an amount not more than the amount payable per month for each adult. In the case of a child, an amount not more than the maximum of the type of child support grant applied for. If the applicant is not eligible for grant, the amount would be at the discretion of SASSA but should not be less than the amount of the child support grant. When the application is approved, a voucher or food parcel will be issued. This will take less than thirty working days for the application to be processed and checked and either approved or refused. If refused, a letter is given explaining why it has been refused and the right to appeal.[122]

3.3 Review of social assistance grants

The Agency is empowered on review of social assistance grants, to suspend, increase or decrease the amount of social grants.[123]The Agency must within 90 days of the date of review, inform the beneficiary in writing of the date of review.[124] It must review the social grant at any time where it has reason to believe that changes in the beneficiary's financial circumstances may have occurred;[125] on expiry of the validity of the identity document of a beneficiary, if the beneficiary is a refugee;[126] or on expiry of the court order, in case of foster child grant.[127]

If a beneficiary fails to provide the requested information or documentation, the Agency may within 30 days of notifying the beneficiary thereof in writing,

suspend payment of the social grant, in which case the beneficiary must, by completing the relevant documents, apply within 90 days of the suspension for the restoration of the social grant.[128] If an application is made for the restoration

[122] Regulation 16.
[123] Regulation 27.
[124] Regulation 27 (1).
[125] Regulation 27 (2) (a).
[126] Regulation 27 (2) (b).
[127] Regulation 27 (2) (c).
[128] Regulation 27 (4).

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of a social grant, the Agency may restore the social grant from the date on which the social grant was suspended.[129] If a beneficiary applies for a social grant to be increased and the Agency is satisfied, the social grant must be increased with effect from the date of application for increase.[130]

The Agency may suspend or cancel social assistance if the social assistance was obtained fraudulently or through misrepresentation by any person or approved and granted in error.[131] The Agency must before suspending or cancelling social assistance give a beneficiary 90 days written notice of its intention to suspend or cancel the social assistance, and provide the beneficiary with the effective date of the intended suspension or cancellation, the right to make a representation, and the right and procedure for appealing against the decision of the Agency.[132] The notice of suspension or cancellation of social assistance must be delivered to the beneficiary or the curator by hand or sent by registered post to the last known address of the beneficiary or procurator.[133] The Agency must, prior to suspending or cancellation of any social assistance, investigate, obtain and verify all the facts and circumstances surrounding the social assistance.[134]

The beneficiary must be afforded an opportunity to show cause why the social assistance should not be suspended or cancelled, by requiring him or her to appear in person before the Agency or a person designated by the Agency, to submit any reports or certificates as the Agency may direct, and ensuring that the beneficiary obtains the necessary assistance to make representation to the Agency.[135] The decision of the South African Social Security Agency in all applications for social grants will be influenced by the eligibility of the applicants and the required documents. If the applicant is not eligible and the documents are not submitted the application is rejected.

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[129] Regulation 27 (5).
[130] Regulation 27 (6).
[131] Regulation 29 (1) (a) (b).
[132] Regulation 29 (2) (a)-(d).
[133] Regulation 29 (3).
[134] Regulation 29 (4).
[135] Regulation 29 (5) (a)-(c).

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3.4 Conclusion

The present administration of social assistance is regulated by legislation. The Constitution guarantees the right to have access to social security. The South African Social Security Agency was established by the South African Social Security Agency Act to administer social assistance grants on behalf of the Department of Social Development. The administration and the requirements of social assistance grants provide the basis on which the internal remedies can be applied to challenge the decisions of the Agency. The next chapter will focus on the critical analysis of the exhaustion of internal remedies in the administration of social assistance grants.

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CHAPTER FOUR

A CRITICAL ANALYSIS OF THE EXHAUSTION OF INTERNAL REMEDIES IN THE ADMINISTRATION OF SOCIAL ASSISTANCE GRANTS

4.1 Introduction

This chapter examines the effectiveness of the application of the exhaustion of internal remedies in the administration of social assistance grants.

4.2 The application of internal remedies in the administration of social assistance grants

The internal remedies in the administration of social assistance entail the reconsideration of the decisions by the Agency and the Appeal against the decision of the Agency.

4.2.1 The reconsideration of the decisions by the Agency

Section 18(1) of the Social Assistance Act[136] provides that if an applicant or a beneficiary disagrees with a decision made by the Agency in respect of a matter regulated by this Act, that applicant or a person acting on his or her behalf may within 90 days of his or her gaining knowledge of that decision, lodge a written application to the Agency requesting the Agency to reconsider its decision in the prescribed manner.

The application must be lodged with the Agency.[137] It may be delivered by hand, post, fax or electronic mail, and must be accompanied by all required documents.[138] The documentation most required in Form 1 of Annexure A of the regulations are:

(i) copy of a letter of rejection or approval of social assistance application by the Agency;

(ii) copy of the power of attorney or letter of appointment by the applicant or beneficiary;

[136] 13 of 2004.
[137] Regulation 2 (2) (a).
[138] Regulation 2 (2) (a) (b).

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(iii) previous and current medical reports which were presented to the Agency (if applicable);

(iv) proof of grant application to Agency (Receipt issued by the Agency); and

(v) proof of income and/ or assets.

The application must be based on the same information which was supplied to the Agency.[139]

The information may be accompanied by any document provided by the Agency as proof of receipt of an application for social assistance,[140] a copy of a letter of rejection or approval, by the Agency, of an application for social assistance, and any other relevant document in relation to the application.[141] The Chief Executive Officer must assign officials to reconsider applications.[142] The official must occupy a position that is higher in rank to that of the official who considered the application in which the applicant is requesting for reconsideration.[143] The official shall reconsider an application sitting alone.[144] It will be necessary to consider the experience in the administration of social assistance, as the requirement for the appointment of the official.

The Agency must within 90 days of receipt and after reconsideration of the application, uphold the application,[145] dismiss the application and provide reasons therefor,[146] or vary the Agency's decision.[147] The decision and reasons must be communicated within 90 days, to the applicant.[148] It is not clear whether or not the 90 days within which the decision must be communicated to the applicant runs from the date of the decision of the consideration. If so, this period is unreasonable. It is submitted that a reasonable period can be within 30 days to

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[139] Regulation 2 (2) (a).
[140] Regulation 2 (2) (a) (b).
[141] Regulation 2 (4) (b) (ii) (iii).
[142] Regulation 3 (1).
[143] Regulation 3 (2).
[144] Regulation 3 (3).
[145] Regulation 3 (4) (a).
[146] Regulation 3 (4) (b).
[147] Regulation 3 (4) (c).
[148] Regulation 3 (5).

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communicate the decision of the reconsideration to the applicant.

In the case where the Agency fails to reconsider its decision within 90 days of receipt of the application for reconsideration, the Agency will be presumed to have confirmed the decision leading to the application for reconsideration by the applicant.[149] This presumption may create uncertainty about the responsibility of the Agency to reconsider its decision as prescribed by regulations. The applicant may by means of a written notice at any time prior to the finalisation of the reconsideration by the Agency, withdraw the application for reconsideration.[150]

Regulation 2(1) provides that a request for reconsideration should be in a form similar to Form 1 of Annexure A of the regulations. Most applicants are illiterate and cannot complete the form. They require the assistance of the officials from the Agency to complete the application form. There is no provision for the applicant to confirm the information before the person who is reconsidering the decision of the Agency, or signed before the commissioner of oaths. It is therefore possible that the decision of the reconsideration may be influenced by the incorrect information.

4.2.2 Appeal against the decisions of the Agency

Section 18(1A) provides that if an applicant or a beneficiary disagrees with a reconsidered decision made by the Agency in respect of a matter contemplated in subsection (1), that person or an applicant acting on his or her behalf may within 90 days of his or her gaining knowledge of that decision, lodge a written appeal with the Minister against that decision, setting out the reasons why the Minister should vary or set aside that decision. This is the second step of the application of the exhaustion of the internal remedies in the administration of social assistance.

[149] Regulation 3 (6).
[150] Regulation 3 (7).

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The rules of procedure governing courts do not apply. The minister may upon receipt of the written appeal confirm, vary, or appoint an Independent Tribunal to consider an appeal.[151] If the Minister has appointed an Independent Tribunal all appeals must be considered by the Independent Tribunal.[152] The standard required is on a balance of probabilities. The appeal does not give rise to final and binding judicial act. If the aggrieved party is not satisfied with the outcome of the appeal lodged with the Independent Tribunal, he or she may take the decision to court.

In *Qakathayo v The South African Social Security Agency*[153] it was stated that the provision of section 18 of Act 13 of 2004 made it peremptory for a person aggrieved by a decision of the Agency to lodge an appeal to the Minister against such a decision. It emphasises that the aggrieved party should not be allowed to approach the court for review before the exhaustion of internal remedies.

Section 7 (2) of the Promotion of Administrative Justice Act provides that:[154]

> "no court or tribunal shall review an administrative action unless internal remedy has first been exhausted. A court or tribunal must if it is not satisfied that any internal remedy has been exhausted, direct that the person must first exhaust such remedy before instituting proceedings in a court or tribunal for judicial review."

Administrative action means a decision or proposed decision of an administrative nature, made under an empowering provision by an organ of state or private body when exercising a public power or function, that adversely affects rights, and has a direct external legal effects.[155] A decision of an administrative nature excludes legislative and judicial actions. It does not exclude administrative, quasi-judicial functions. For example, compulsory,

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[151] s18 (2) (a) (b) of Act 13 of 2004.
[152] s18 (3).
[153] Unreported case number 2058/ 2011 [2013] ZAECMHC 19 delivered on 17 January 2013 in paragraph 15.
[154] s 7 (2) (a) (b).
[155] See s1 of PAJA.

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statutory arbitration. It excludes broad policy decisions. Affect means deprive or determine rights. This will include application cases such as liquor licences. Rights include all rights (constitutional, common law, contractual or statutory). The administration of social assistance grants is therefore classified as administrative action and falls under the purview of the PAJA.

The Independent Tribunal is constituted by a legal practitioner as the chairperson,[156] a medical practitioner as an assessor, [157] and a member of civil society.[158] A medical practitioner may only form part of the Independent Tribunal in respect of an appeal on disability, care dependency, war veteran's or grant-in-aid grant.[159] While a member of civil society may act in respect of an appeal against the decision of the Agency relating to a social relief of distress grant.[160]

The members of the Independent Tribunal are appointed by the Minister in accordance with terms and conditions as he or she may determine.[161] The legal practitioner must be a person who is an admitted attorney, advocate of the High Court of South Africa or a person with experience in the administration of law.[162] A medical practitioner must be a person who is registered with the health Professions Council of South Africa.[163] A member of civil society must be of good standing in the community.[164] It would be proper if a member of civil society is a social worker, psychologist, or any professional with a social science background. The members of the Independent Tribunal must maintain a high standard of integrity and professionalism.[165] Although this may be difficult for a

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[156] Regulation 5 (1) (a).
[157] Regulation 5 (1) (b).
[158] Regulation 5 (1) (c).
[159] Regulation 5 (2).
[160] Regulation 5 (3).
[161] Regulation 4.
[162] Regulation 6 (a).
[163] Regulation 7 (a).
[164] Regulation 8 (a).
[165] Regulation 13 (1).

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member of civil society without any professional qualification, it can be argued that a high standard of integrity is not dependent on professional qualification.

The Independent Tribunal has the power to consider all applications for appeal by applicants in terms of section 18 (1A). If it is not satisfied with the reasons provided by the applicant, it may request further written reasons from the applicant in a form similar to Form 8A in Annexure A of the regulations, to be submitted within a period of 15 days from the date of receipt of the request by the applicant.[166] If it is not satisfied with the reasons provided by the Agency for rejecting the applicant's request for reconsideration, it may request the Agency to provide further written reasons for its decisions.[167] It has power to give directions to any party to the appeal regarding any matter within its jurisdiction in connection with the appeal,[168] request any person or institution to furnish any written information for the determination of the appeal,[169] refer the applicant for a second and independent medical examination or opinion,[160] postpone the hearing to a date as it may determine, and to consider an appeal relating to the failure of the Agency to reconsider its decision.[171] This seems to be an attempt of the Independent Tribunal to avoid any possibilities for the applicant to approach the court.

The Independent Tribunal, upon receipt of the reasons, the information or medical report and after consideration of the appeal may confirm, vary or set aside the decision.[172] However, the remedies are not final. The applicant has a right to approach the court if not satisfied with the remedies.

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[166] Regulation 12 (1) (b).
[167] Regulation 12 (1) (c).
[168] Regulation 12 (1) (d).
[169] Regulation 12 (1) (e).
[170] Regulation 12 (1) (f).
[171] Regulation 12 (1) (g).
[172] Regulation 12 (1) (h).

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An appeal must be lodged with the Independent Tribunal in a form similar to Form 3 in Annexure A of the regulations.[173] The appeal may be delivered by hand, post, fax, or electronic mail and accompanied by required documents under Form 3 of Annexure A of the regulations.[174] The documentation most required in Form 3 are:[175]

(i) copy of identity document;

(ii) proof of application for reconsideration to the Agency;

(iii) a copy of a letter of rejection or approval of application for reconsideration by the Agency;

(iv) previous and current medical reports which were presented to the Agency (if available);

(vi) name of the hospital/ clinic that the applicant normally attend;

(vii) proof of income and/ or assets;

(viii) a copy of the power of attorney or proof of appointment by the applicant or beneficiary to act;

(ix) any other relevant supporting documentations.

The applicant must not be allowed to produce any evidence or information not provided to the Agency at the time of application for social assistance.[176]

An appeal must be conducted in the absence of the applicant and by consideration of documentary evidence submitted by the Agency and the applicant.[177] This is one of the factors that may cause a delay to finalise the appeal, because the Independent Tribunal may, in addition to the documentation in Form 3 require information from the applicant. This suggests that the documentation in Form 3, may not be sufficient to enable the Independent Tribunal to make a decision. It must be finalised within a period of 90 days from the date on which it was received by the Independent Tribunal.[178]

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[173] Regulation 12 (3), section 18(2)(b) of Act 13 of 2004 .
[174] Regulation 14 (1) (2) (a).
[175] Regulation 14 (2) (b) (c).
[176] Regulation 12 (1) (d).
[177] Regulation 16 (1) (a) (b).
[178] Regulation 16 (2).

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The Independent Tribunal must, where it is unable to make a decision due to the insufficiency, inconclusiveness and contradictory nature of the information in the medical report provided by the Agency or the applicant, refer the applicant to a second and independent medical examination or opinion.[179] The chairperson of the Independent Tribunal must summon the applicant in a form similar to Form 5 of Annexure A of the regulations to appear before it.[180] The chairperson must inform the applicant of the reasons for the referral, the date on and address at which a medical examination will take place, that he or she must submit the medical report within 30 days from the date of being informed of the referral,[181] and that if he or she fails to submit himself or herself to a medical examination or submit a medical report, the appeal will be considered and finalised without a medical report.[182] The medical report must be in a form similar to Form 6 of Annexure A of the regulations.[183]

Where the medical report concludes that the applicant as at the time of refusal of the application of the grant, had a disability, the Independent Tribunal must uphold the appeal.[184] However, this may not prevent the applicant from taking the matter to court, despite the fact that there will be no prospects of the matter being successful.

The Independent Tribunal is responsible to receive and register appeals in an appeal register,[185] acknowledge receipt of an appeal within seven days from the date of receipt, in a form similar to Form 7A of Annexure A of the regulations,[186] prepare files for the adjudication of appeals by ensuring that all relevant and supporting documentation as may be required are included in files, and assess

[179] Regulation 18 (1).
[180] Regulation 18 (2).
[181] Regulation 18 (3) (a)-(c).
[182] Regulation 18 (3) (d).
[183] Regulation 18 (4).
[184] Ibid.
[185] Regulation 18 (10).
[186] Regulation 19 (1) (a).

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the accuracy, validity and reliability of supporting documentation.[187] Despite these control measures, there are still problems of misplacing documentation. This causes unnecessary delay in adjudicating appeals.

Regulation 20 states:

> (1) The Independent Tribunal must communicate the decision and reasons thereof in respect of an appeal to an applicant, beneficiary or a person acting on his behalf and to the Agency, in a form similar to form 9 in Annexure A to the regulations.
> (2) The communication of the decision must be delivered to the address provided by the applicant, beneficiary or a person acting on his or her behalf in his or her form for an application for appeal or by any other method as indicated by the applicant, beneficiary or a person acting on his or her behalf.
> (3) Upon receipt of the finding of the Independent Tribunal by the Agency as contemplated in sub-regulation (1), the Agency must implement such finding within a period of 14 days of receipt thereof.

This Regulation requires the outcome of the appeal to be communicated to the applicant. However, it does not prescribe the period within which the decision and reasons of the Independent Tribunal should be communicated to the applicant.

In *S v Mohammed*[188] it was stated that if a statute proclaims that something should be done without providing a time frame within which it has to be done, the courts usually interpret such a provision to mean that it has to be done within a reasonable time.

The Independent Tribunal must communicate the decision and reasons in respect of an appeal to the applicant and to the Agency in a form similar to Form 9 of Annexure A of the regulations.[189] The communication must be delivered to the address provided by the applicant in his or her form for an

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[187] Regulation 19 (1) (b).
[188] 1997 (2) SA 531 (A).
[189] Regulation 19 (1) (c) (d).

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application for appeal or by any other method as indicated by the applicant.[190] In some cases it becomes a problem where the applicant changes the address without informing the Agency or the Independent Tribunal. This may cause a delay to communicate the decision to the applicant.

The Independent Tribunal shall not be obliged to consider an application which does not constitute an appeal.[191] The applicant may by means of written notice at any time prior to the finalisation of the appeal withdraw an appeal in a form similar to Form 11 of Annexure A of the regulations.[192]

The appeal documents, notification of decision, record of proceedings, and copies of the Agency's file should be retained by the Independent Tribunal for five years from the date of communication of the outcome of the appeal, and the Independent Tribunal is the custodian of the appeal documents.[193]

4.3 A comparison between the Independent Tribunal appeal and the judicial review of the decisions of the Agency

A comparison is important to determine whether the Independent Tribunal appeal is more effective than judicial review. The Independent Tribunal appeal is established specifically to challenge the merits of the decision of the Agency. The Independent Tribunal steps into the shoes of the Agency, as it were and decides the matter anew.[194] Judicial review on the other hand, focuses on the way in which the decision was reached, and not on the justice or correctness of the decision itself.[195] It tests the legality and not the merits of the decision. It is an external safeguard against maladministration of social assistance grants, whereas the Independent Tribunal appeal constitutes an internal remedy.[196]

[190] Regulation 20 (1).
[191] Regulation 20 (2).
[192] Regulation 21 (2).
[193] Regulation 22.
[194] Hoexter, C *Administrative Law in South Africa* (2012) 65.
[195] Ibid.
[196] Ibid.

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Govender[197] explains as follows:

> "Effective administrative appeal tribunals breed confidence in the administration as they give assurance to all aggrieved persons that the decision has been considered at least twice and reaffirmed. More importantly, they include a second decision-maker who is able to exercise a calmer, more objective and effective in reconsidering the issue"

The principal considerations of Independent Tribunal appeal are the need to protect the applicants rights to social assistance grants, and the application of social assistance policy.[198] The courts are the most appropriate forums for the determination of legal rights and interests.[199] Where the public interest and the application of policy predominate, it becomes appropriate for appeal to lie to a more suitable qualified and politically more accountable official or body.[200] The separation of powers makes it undesirable for courts of law to exercise the political function of pronouncing on the merits of administrative matters.

Independent Tribunal appeals are often the best judges of decisions made by the Agency.[201] They are more likely to have the necessary specialist expertise and to have a thorough grasp of the relevant policy decision.[202] They are usually cheaper and speeder than courts of law, whose rolls are often overburdened. However, it can be argued that the speed, efficiency and expertise should not be taken for granted in the administration of social assistance grants.

In *Kate v MEC for the Department of Welfare, Eastern Cape,*[203] Froneman J noted that the courts had become the primary mechanism for ensuring accountability in the administration of social grants.

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[197] Govender K "Administrative Appeals Tribunals" in Bennett T W et al (eds) Administrative Law Reform (1993) 35.
[198] Baxter op cit (n 197) 263-7.
[199] Hoexter op cit (n 194) 66.
[200] Ibid.
[201] Ibid.
[202] Ibid.
[203] 2005 (1) SA 141 (SE) Para4.

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In *MEC: Welfare (KZN) v Machi*[204] Maya AJA noted that the courts in Kwazulu-Natal had since 2000 been inundated with a massive and ever-increasing volume of litigation by thousands of indigent applicants for social assistance seeking relief against the department as a result of its failure to expeditiously process their applications and appeals.

The two cases suggest that it is dangerous to assume that the Independent Tribunal appeals is quicker and speeder than judicial review in the administration of social assistance grants.

The Independent Tribunal may after consideration of the matter, confirm, vary or set aside the decision of the Agency.[205]

The grounds for judicial review of the decisions of the Agency are anyone of the following: [206]

(i) The decision taken by the Agency when he or she was not authorised to do so, acted under a delegation of power not authorised by an empowering provision or was based or reasonably suspected of bias [(Section 6(2) (a)].

(ii) When there is non-compliance with a mandatory and material procedure or condition that was prescribed by an empowering provision [Section 6 (2) (b)].

(iii) Where the decision taken was procedurally unfair [Section 6(2)(c)].

(iv) Where the decision taken was materially influenced by an error of law [Section 6(2)(d)].

(v) Where the decision was taken for a reason not authorised by the empowering provision, taken for an ulterior purpose or motive, if it took into account

[204] [2006]ZASCA 78 (31 May 2006) Para 3.
[205] s18 (2) (b) of Act 13 of 2004.
[206] s 6 (2) of PAJA.

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irrelevant considerations or excluded relevant considerations, because of unauthorised or unwarranted dictates of another person or body or in bad faith or arbitrarily or capriciously [Section 6(2)(e)].

(vi) If the decision taken contravenes a law or is not rationally connected to the purpose for which it was taken, the purpose of the empowering provision or the information before the Agency or the reasons given for it by the Agency [Section 6(2)(f)].

(vii) When the Agency failed to take a decision [Section 6(2)(g)] read with section 6(3)].

The court in proceedings for judicial review in terms of section 6 (1) of PAJA may grant any order that is just and equitable including the following orders:[207]

(i) directing the Agency to give reason or to act in a manner the court requires;

(ii) prohibiting the Agency from acting in a particular manner;

(iii) settling aside the decision of the Agency; and

(iv)remitting the matter for reconsideration by the Agency, with or without direction, or

(v) substituting or varying the decision or correcting a defect resulting from the decision of; or directing the Agency or any party to the proceedings to pay compensation,

(vi) declaring the rights of the applicant to the social assistance grants,

(vii) granting a temporary interdict or other temporary relief, or

(viii) as to costs.

[207] S8 (1) of Act 3 of 2000.

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The court in proceedings for judicial review in terms of section 6(3) of PAJA may grant any order that is just an equitable, including the following orders:[208]

(i) directing the taking of the decision;

(ii) declaring the right of the applicant in relation to the taking of the decision;

(iii) directing the Agency or any party to do or to refrain from doing, any act or to refrain from doing, of which the court considers necessary to do justice between the parties; or

(iv) as to costs.

It appears from the comparison that the Independent Tribunal has only power to confirm, vary or set aside the decision of the Agency, while on the other hand the court in proceedings for judicial review, may grant any order that is just and equitable. This indicates further that the application of the internal remedy may not be regarded as more effective than judicial review in the administration of social assistance grants.

4.4 Conclusion

The Social Assistance Act provides that the Minister has to consider written appeals that will go to the Independent Tribunal for Social Assistance Appeals. Section 18 includes reconsideration of a decision by SASSA. The function of SASSA in terms of section 18 is to reconsider its own decision and make a decision to confirm, vary or set aside its own decision. The functions of the Independent Tribunal are to hear appeals for all social grants and make decisions whether to confirm, vary or set aside the decisions made by SASSA and whether to award the grant temporarily or permanently, and communicate the outcome of the appeal to the applicant and SASSA.

[208] s8 (2) of Act 3 of 2000.

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The analysis of the reconsideration of the decisions by the Agency and appeal against the decisions of the Agency, reveals that the application of the exhaustion of internal remedies in the administration of social assistance grants is not effective, and it cannot be cost effective, as set out in the next chapter.

The next chapter will deal with the conclusion of the dissertation.

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CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 Introduction

This chapter provides the summary and recommendation of the dissertation.

Section 27(1)(c) of the Constitution provides that everyone has the right to have access to social assistance. The Social Assistance Act 13 of 2004 and the *South* African Social Security Agency *Act* 9 of 2004 were established for the administration of social assistance. The administration of social assistance falls within the definition of administrative action in terms of the Promotion of Administrative Justice *Act* 3 of 2000. The Social Assistance Act makes it peremptory for a person aggrieved by a decision of the Agency to lodge an appeal to the Agency/ Minister against such a decision. This is an exhaustion of the internal remedies as required in terms of section 7(2) of the Promotion of Administration Justice Act.

The section provides that the aggrieved person must first exhaust the internal remedies before approaching the court. However, an aggrieved person may be exempted from the exhaustion of the internal remedies only if he or she can satisfy the court that there are exceptional circumstances to justify the exemption and that it will be in the interest of justice that exemption be granted.

5.2 Conclusions

Chapter 2 examined the rationale of the requirement of the exhaustion of internal remedies has been examined. In both the common law and the Promotion of Administrative Justice Act some justifications of the exhaustion of the internal remedies as well as the exemption from the requirement of the exhaustion of internal remedies have been examined.

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Chapter 3 outlined the administration of social assistance grants by the South African Social Security Agency. The present administration of social assistance grants is regulated by the Constitution, the South African Social Security Act and the Social Assistance Act.

Chapter 4 examined the effectiveness of the exhaustion of internal remedies in the administration of social assistance grants. The application of internal remedies entails the reconsideration of the decisions by the Agency and the Appeal against the decision of the Agency. The reconsideration by the Agency and the appeals against the South African Social Security Agency, were analyzed to determine whether the application of internal remedies are effective or not.

5.3 Findings

The research finds the requirement of the exhaustion of internal remedies to be ineffective and reveals that:

5.3.1 The majority of the applicants whose applications for grants have been refused by the Agency are not aware of their rights to request for reconsiderations of the decisions or appeal against such decisions.

5.3.2 There are delays in obtaining written reasons for refusal of applications for grants by the Agency.

5.3.3 In most instances, applicants find it difficult to give reasons for the reconsiderations of the decisions of the Agency or appeal against such decisions.

5.3.4 The regulations do not make provision for the period within which the results of the appeal should be communicated to the applicants.

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5.3.5 There are delays in obtaining the required documentation from the applicants to accompany applications for appeal.

5.3.6 There are delays in finalizing appeals due to incorrect and insufficient information furnished to the Independent Tribunal.

5.3.7 A member of civil society without professional qualification forms part of the Independent Tribunal.

5.3.8 The decisions of the appeals are not communicated to the applicants in the language they understand.

5.3.9 There is no alternative way to communicate the decisions of the appeals in case there are post office strikes.

5.4 Recommendations

In view of the purpose of the research and the conclusion reached, it is therefore recommended that:

5.4.1 The regulations be amended to provide the time within which the outcome of the appeal should be communicated to the applicant.

5.4.2 The notification letters be revised to provide the applicant the right to approach court.

5.4.3 The regulations should make provision that a member of civil society in the Independent Tribunal be a person with professional qualifications.

5.4.4 The causes of delays in obtaining written reasons for refusal of applications for social assistance grants by the Agency should be investigated.

5.4.5 Regular workshops and campaigns about the right of applicants for social assistance grants should be conducted.

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5.4.6 There must be provisions for alternative ways to communicate the decisions of appeals in case there are strikes at post offices.

5.4.7 The decisions of appeals should be communicated to the applicants in the language they understand.

Although an attempt has been made to provide a possible solution to the problem, there may be reasons which may not have been covered, particularly that fall outside the scope of this research. This, therefore, presents opportunities for further research.

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