



#PayTheGrants



CASE SYNOPSIS

The following is a synopsis of IEJ and #PTG’s legal action. For full details, evidence and arguments, please see the [founding affidavit](#).

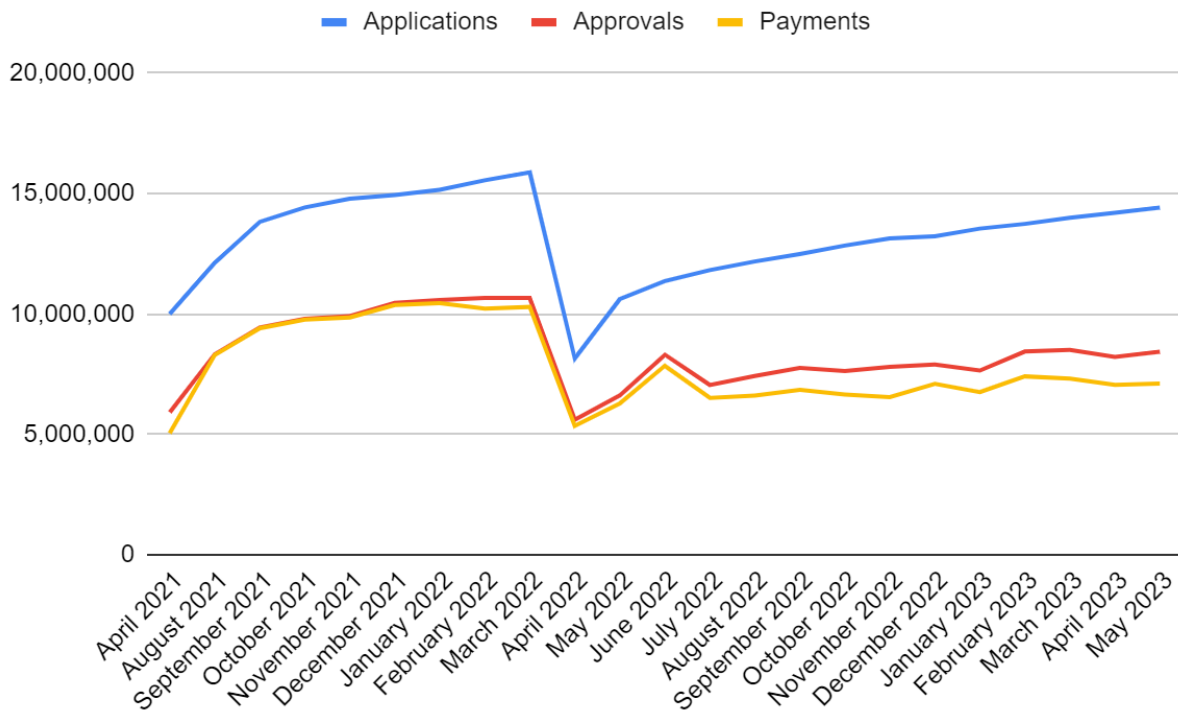
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Introduction

This litigation challenges the lawfulness and constitutionality of the amended Regulations relating to the Covid-19 Social Relief of Distress Grant (GN3210 in GG46271 of 22 April 2022) introduced on 29 March 2023. These Regulations define the eligibility criteria and application procedure for receiving the current iteration of the Covid-19 Social Relief of Distress grant (hereafter “SRD grant”) and the monetary value of the SRD grant.

The applicants contend that the Regulations prevent eligible beneficiaries from accessing the SRD grant and exclude people who are unable to support themselves and who live in poverty from being eligible to receive the grant. The applicants further contend that these exclusionary procedures, together with the low grant value and low income threshold for eligibility, are unlawful, irrational, and in conflict with section 27(c) of the Constitution, which guarantees the right to social assistance. The SRD grant value and eligibility threshold, which have not been increased since the SRD grant was introduced in 2020, and have not kept up with inflation and the cost of living, give rise to an unconstitutional retrogression in access to social assistance. The applicants also challenge the widespread and unexplained failure by the South African Social Assistance Agency (SASSA) to pay the SRD grant to successful applicants.

These factors have resulted in approximately half of intended beneficiaries being excluded from receiving the SRD grant. Various estimates of the number of people who should be eligible to receive the SRD grant have been made by researchers. The lower end of these estimates is 16 million people. Yet, in May 2023, fewer than 8 million received payment of the grant. The graph below shows changes in the number of applications, approvals, and payments using data taken from briefings by SASSA to parliamentary bodies (with the exception of some data points after March 2023, which came from personal communications with officials).



Parties

The first applicant in this challenge is the Institute for Economic Justice (IEJ), a non-profit, independent, economic policy think tank based in South Africa. The IEJ has been actively involved in advocating for the expansion of South Africa's social grant system and the introduction of a universal basic income guarantee (UBIG). Since the introduction of the SRD grant, the IEJ has issued numerous press statements, publications and submissions drawing attention to unfairness and exclusion in the administration of the grant, and has recommended steps to make the grant fairer and more inclusive.

The second applicant is #PayTheGrants (#PTG), a registered non-profit organisation that organises working class communities for the protection and realisation of their right to social security in South Africa. Since its formation, #PTG has provided grant assistance to communities, advocated for the extension of the SRD grant, ensured community participation in UBIG-related policy forum events, and formalised a civil society forum to address SRD system challenges and grievances.

The respondents are the Minister for Social Development and SASSA.

In support of this application, 79 individuals who have been directly affected by unlawful and unconstitutional barriers to access have filed affidavits detailing their experiences.

Background to the SRD grant in the context of the overall social grant framework

The SRD grant was introduced in May 2020, in the early stages of the Covid-19 pandemic and national state of disaster. The grant has been extended multiple times with different eligibility criteria, and was brought under regulations pertaining to the Social Assistance Act in April 2022. Under the current regulations, the SRD grant is set to expire at the end of March 2024.

Government has [stated](#) that there are 18.3 million people aged from 18 to 59 who live below the food poverty line (FPL) determined by Statistics South Africa and who are therefore unable to meet their basic nutritional needs. 20% of South African households are [food insecure](#), and 20% send a member to beg for food. Apart from the SRD grant, there is no permanent social assistance for able-bodied people aged from 18 to 59 who have no income.

Research has shown that the SRD grant has had a significant positive impact on food poverty and on local economies. In 2021, 93.3% of SRD grant recipients used their grant to buy food. Research has estimated that if it weren't for the grant, 2-2.8 million people [would have](#) entered into food poverty in 2020 and 2021.

The SRD grant has also, despite its very low value, helped people to overcome barriers to participation in the labour market, [increasing](#) their likelihood of employment in the first year by three percentage points (or 7%). The grant has also helped people invest in productive assets and enterprises, and has had a [positive impact](#) on spending with informal traders. Evidence

clearly suggests that if the grant is made more inclusive, and increased to a more appropriate value, linked to the national poverty lines, this would lead to a significant increase in this impact.

Many experts and observers have called for the introduction of permanent income support in South Africa. Since the introduction of the SRD grant, most proposals have suggested transforming it into a more extensive and higher-value “basic income grant”.¹

Senior figures in government, including the President, the Minister of Social Development, and the Minister of Finance, have made various statements indicating that the SRD grant is *de facto* permanent, in that income support for adults cannot be withdrawn, and that work is underway to transition the SRD grant into a permanent form of basic income support. The President reiterated this in his 2023 State of the Nation Address. However, to date no concrete plans have been released by government, and time is running out to finalise the legislative and budget processes before the current iteration of the SRD grant expires at the end of March 2024.

Specific flaws in the regulations

1. The over-broad definition of income

In order to be eligible to receive the SRD grant, an applicant must have “insufficient means”; receiving “income” and “financial assistance” below R624 per month, which is equal to the 2021 FPL. SASSA, which implements social grants, is charged with verifying that applicants do not receive income and financial assistance above this threshold. In order to do this, the Regulations authorise SASSA to employ a bank verification procedure that assesses payments made to an applicant’s bank account.

In practice, SASSA treats any money paid into an applicant’s bank account as “income” for the purposes of verifying insufficient means. In doing so, SASSA accepts that “income” and “financial assistance” comprise any payments received by an applicant, for whatever purpose, regardless of frequency or source. This includes *inter alia* monies held on behalf of friends or family; *ad hoc* payments from friends or family to allow a person to survive; and child maintenance payments. Supporting affidavits of unsuccessful SRD grant applicants, which are filed together with the application, confirm that applications have been rejected on the basis of such payments.

This is despite the fact that these types of payments are not regular, cannot be relied upon, are necessitated precisely because the recipient has no income, or are not made to support the

¹ Bodies which have recently called for expanded social security to those between 18 and 60 in South Africa include: the United Nations Committee on Economic Cultural and Social Rights (tasked with monitoring countries’ compliance with their obligations under the International Covenant on Economic Cultural and Social Rights); the Expert Panel on Basic Income Support convened by the Department of Social Development under the supervision of the International Labour Organization; numerous civil society organisations; a group of leading researchers from the Universities of Oxford, Stellenbosch and Cape Town; the Financial and Fiscal Commission; and Parliament’s Select Committee on Appropriations.

recipient, but a person in their care. None of them can be considered dependable income enabling a person to support themselves.

In light of this, the applicants contend in their application that “income” must be understood as money received on a regular basis from formal or informal employment, business activities or investments, and that “financial support” must be understood as regular payments which benefit the recipient, that do not constitute income, and which the recipient has a legal right to receive. The applicants seek declaratory relief from the Court confirming this.

2. Unlawful questions in the online application form

Certain questions in the SRD grant online application form elicit information about payments received by the applicant that constitute neither “income” nor “financial assistance”, properly interpreted.

These questions, which are not necessary for ascertaining whether an applicant has insufficient means, can be used as a basis for rejecting applications made by eligible applicants. The applicants contend that these questions are *ultra vires* the Regulations and accordingly seek an order removing them from the SRD applicant form.

3. The online-only application process

Applications for the SRD grant can only be made online. This is in contrast to all other social grants, which can be applied for in-person. An online-only application procedure disadvantages applicants who do not have access to devices or connectivity, or who lack digital literacy. These are the very applicants who are likely to be the most vulnerable, and the most in need of the grant.

This online-only procedure is unreasonable and amounts to an irrational differentiation between SRD grant applicants and applicants for other social grants. It also constitutes an unreasonable limitation of the right to social assistance. The applicants seek in their application to compel the Department of Social Development (DSD) and SASSA to ensure that SRD grant applications can be made in person, in line with the application procedure for all other social grants.

4. The bank and database verification processes

SASSA verifies applicants’ eligibility for the SRD grant by checking them against several government databases, such as SARS, National Student Financial Aid Scheme (NSFAS) and Unemployment Insurance Fund (UIF) databases, which are meant to confirm whether the applicant is employed or receiving unemployment insurance or NSFAS funding. SASSA also uses monthly bank verification to confirm whether an applicant has insufficient means. These processes are not employed to confirm eligibility for any of the other social grants.

Neither bank verification nor database verification accurately identify which applicants are eligible to receive the SRD grant.

The databases used by SASSA to verify eligibility are widely known to be erroneous and out of date. They have been [shown](#) to exclude up to a third of eligible applicants.

In supporting affidavits filed together with this application, SRD grant applicants confirm that their applications have been rejected on the basis of UIF and NSFAS support which they do not receive.

Given the inaccuracy and unreliability of the database verification, the applicants contend that database verification should be declared unlawful and in violation of section 27(c) of the Constitution to the extent that it deprives persons who have a right to receive the SRD grant from accessing social assistance.

Bank verification is also incapable of accurately assessing an applicant's eligibility. Bank verification treats all money paid into an applicant's bank account as "income" for the purposes of assessing insufficient means, including money held on behalf of friends or family, *ad hoc* payments from friends or family to help the applicant avoid starvation, child maintenance payments, and in some cases the child support grant.

Bank verification is also carried out monthly, and takes a snapshot of an applicant's income in a particular month. This means that it cannot take into account fluctuations in a person's income over time. An applicant who earns income above the R624 threshold in one month may be disqualified in that month despite the fact that she goes on to earn zero income over the next two months. In that scenario, the applicant's average income per month over the three month period would be below the R624 threshold yet the applicant would receive the SRD grant for only two of the three months.

Finally, the use of bank verification is based on an irrational differentiation between SRD grant applicants, who are subjected to bank verification, and applicants for other social grants, who in general are not.

In light of these deficiencies, the applicants seek an order either prohibiting SASSA from employing bank verification at all, or from employing bank verification until such time as the deficiencies the applicants have identified in the procedure are addressed to the Court's satisfaction.

5. Narrow appeals process that excludes new evidence

Millions of people have experienced erroneous and unfair exclusion from the SRD grant as a result of the application process, as well as bank and database verification systems. A significant proportion of unsuccessful applicants have formally appealed their rejections.

However, the appeals process provided for in the Regulations does not allow applicants to submit any new evidence or information that was not provided to SASSA at the time of their application. This prevents appellants from demonstrating, for instance, that they are not in fact receiving UIF, or to provide information or documentation which contextualises and explains payments they have received in their bank accounts which do not constitute income or financial assistance (including, for example, payments received on behalf of family or friends).

Due to these constraints, only 0.5-0.83% of appeals lodged in the months July, August, September, and October 2022 were successful. Notably, *all* appeals lodged in those months against rejections based on the applicant having “means” above the income threshold, were unsuccessful. This totalled between 1.2 and 1.5 million appeals in each month.

The applicants accordingly contend that the narrow appeals process provided for in the Regulations is irrational and unreasonable and unjustifiably limits the constitutional right to administrative justice, and to social assistance.

6. The arbitrary exclusion of qualifying applicants when funds are depleted

The Regulations make payment of the SRD grant to successful applicants subject to the availability of funding from National Treasury, which in the 2023/24 budget provided funding for 8.5 million grant recipients, out of the at least 16 million people who qualify to receive the SRD grant. This in effect imposes a cap on grant payments that arbitrarily excludes applicants who qualify to receive payment after the budget cap has been reached.

The applicants to whom the grant is refused for budgetary reasons will be no different to those who do receive payment of the grant. This is patently unfair. It is also likely to result in the exclusion of beneficiaries who previously received the grant suddenly, without notice, from one month to the next.

The budget cap imposed by the Regulations is arbitrary and breaches the right to social assistance to the extent that it denies payment of the SRD grant to people who are legally entitled to receive it. It effectively amounts to a retrogression in access to social assistance.

7. The real terms reduction of the value of the grant

The value of every social grant other than the SRD grant has increased over time to account for inflation and the rising cost of living. The SRD grant has remained at R350 since it was introduced in 2020. Given headline inflation over 6%, the value of the grant has decreased to R294 in real terms. Inflation in the price of food is even higher than headline inflation, having reached over 11%. Research has shown that the vast majority of SRD grant funds are spent on food. Due to high inflation, the SRD grant buys much less food in 2023 than it could in 2020. Taking into account food inflation, the grant is now worth R273 in real terms.

In supporting affidavits filed together with this application, SRD beneficiaries report that they have resorted to begging for food from neighbours and relatives due to the diminished value of the grant. As one beneficiary put it, the SRD grant “no longer saves me from hunger as it once did”.

In short, the SRD grant now covers a declining proportion of the amount of money that beneficiaries need to meet their basic needs. This constitutes a retrogression (or rolling-back) of benefits that is inconsistent with the constitutional obligation on government to *progressively* realise the right to social assistance.

The value of the SRD grant is also irrational to the extent that it is not linked to any objective measure of income poverty and is in breach of section 27(c) because it does not provide beneficiaries with social assistance that enables them to support themselves.

The applicants accordingly seek orders directing the Minister of Social Development to formulate a plan that redresses the retrogression in the value of the SRD grant and progressively increase the value of the grant, taking into account the right to social assistance in section 27(c), the right to food in section 27(1)(b) of the Constitution, increases in inflation and the cost of living, and the value of the grant in relation to objective measures of income poverty, including the national poverty lines (NPLs) published from time to time by Statistics South Africa (Stats SA).

8. An irrational and retrogressive income threshold

The income threshold to qualify for the SRD grant is set at R624. This was equal to the 2021 FPL. The FPL is now R663, which means that the current income threshold is irrational and arbitrary in that it does not correspond to any objective measure of income poverty or need. In addition, it guarantees that people living in food poverty (sometimes referred to as extreme poverty) are excluded from receiving the grant.

It also excludes millions of people with incomes below the upper-bound poverty line (UBPL) who also live in poverty and who are objectively incapable of supporting themselves. Notably, all other social grants apply income thresholds above the UBPL.

Finally, given the high rate of inflation, the income threshold is retrogressive as it is lower in real terms in 2023 than when it was introduced in August 2022. There are therefore beneficiaries who qualified to receive the grant in August 2022 who would now not qualify for the grant.

The income threshold prescribed by the Regulations is therefore irrational, to the extent that it is based on an irrational differentiation between SRD grant recipients and recipients of other social grants and is not based on any objective measure of income poverty. It is also retrogressive, and therefore infringes section 27(1)(c) of the Constitution.

The applicants accordingly seek orders directing the Minister of Social Development to formulate a plan that redresses the retrogression in the value of the income threshold and progressively increases the income threshold, taking into account the right to social assistance in section 27(1)(c) of the Constitution, increases in inflation and the cost of living, objective measures of income poverty, including the NPLs published by Stats SA, increases in inflation and the cost of living, and the need to ensure that no-one living in poverty is excluded from accessing the grant.

9. The non-payment of approved beneficiaries

The final aspect of the application concerns systemic delays and failures to pay the SRD grant to *approved applicants*. As the graph above demonstrates, the proportion of approved applicants who are actually paid by SASSA has steadily declined in recent months, to about 86% in March 2023.

This means that 14% of applicants who were approved to receive the SRD grant in May 2023 (nearly 1.2 million people) had not been paid by the time of DSD reporting in May 2023. This has had devastating consequences for beneficiaries.

The reasons for this systemic failure to pay beneficiaries are complex and not completely clear. However, one key issue is that the “cash send” and Post Bank systems for paying beneficiaries who elect not to be paid into a personal bank account are not operating properly. On 23 May 2023, SASSA confirmed that 350,000 beneficiaries were awaiting payments via cash send, and nearly 500,000 awaiting payments via accounts with Post Bank. This does not take into account the additional number of beneficiaries who are unable to access payments at retailers through Post Bank. In practice, SASSA’s failure to ensure timely and reliable payments via these channels discriminates against “unbanked” people, and exacerbates financial exclusion.

The applicants accordingly seek an order directing the Minister of Social Development to investigate the cause of widespread delays in payments to successful SRD grant applicants and devise and implement a plan to address those delays.

Conclusion

This application concerns the most vital interests and constitutional rights of the most vulnerable section of society. The SRD grant has assisted millions of people to support themselves since 2020, helping to alleviate extreme poverty.

Statements and briefings by DSD confirm that the Department has *consciously and deliberately* introduced more stringent and impractical application procedures and eligibility criteria that prevent people with incomes below the R624 threshold from accessing the SRD grant in order to remain within the inadequate budget allocated by National Treasury. In a June 2022 briefing to a parliamentary committee, DSD and SASSA noted that the allocation of funds from National Treasury was conditional upon “SASSA and DSD . . . tighten[ing] the regulatory and administrative processes to ensure that they remain within allocation”.

Their presentation stated:

“THE DEPARTMENT ONLY HAS A BUDGET FOR 10.5 MILLION PEOPLE,² HENCE NEEDED TO ADD ADDITIONAL RESTRICTIONS TO REMAIN WITHIN BUDGET.”
[DSD and SASSA’s emphasis]

This reveals that the exclusion of eligible applicants is driven by an arbitrary budget cap, and that DSD and SASSA have erected barriers to prevent otherwise eligible people who cannot support themselves from receiving the SRD grant.

By keeping the value of the SRD grant static at R350 since 2020, government has failed to progressively realise the right to social assistance. SRD grant beneficiaries have been left with rapidly diminishing access to adequate social assistance and must contend with a series of irrational, unlawful, and unconstitutional procedural barriers that deny them access to social assistance they are legally entitled to receive. Millions of eligible people have been prevented from accessing the SRD grant as a result.

The applicants have repeatedly sought to engage government to address these systemic problems, through meetings and written submissions. They have done so constructively, and in good faith. Unfortunately, all the barriers identified in this application remain and, as more time passes without addressing the multiple unfair exclusions and reviewing the value of the grant or the income threshold, the situation will only deteriorate further. Most recently, systemic failures to pay even successful grant applicants their grants have made this application even more urgent.

The crisis of hunger and deprivation is only growing. Social assistance is the most direct and effective tool for fighting hunger, and the Constitution demands that government progressively realise the right to adequate social assistance, and to food.

As policy processes regarding the introduction of permanent basic income support to adults living in income poverty remain ongoing (largely behind closed doors), there is an urgent need to approach the courts for relief that will ensure that the SRD grant is made accessible to all those who are eligible to receive it and that government fulfils its constitutional obligation to progressively realise the right to adequate social assistance.

² The budget has now been reduced to only provide for 8.5 million people.