

FORM A
FILING SHEET FOR EASTERN CAPE HIGH COURT, MTHATHA
JUDGMENT

PARTIES: **Phakamile Ranelo**

VS

SA. Social Security Agency

- Case No.: 1113/08
- Magistrate:
- High Court: **EASTERN CAPE HIGH COURT, MTHATHA**

DATE HEARD: 7 May 2009

DATE DELIVERED: 04 June 2009.

JUDGE(S): Miller J.

LEGAL REPRESENTATIVES –

Appearances:

- for the Applicant(s): AS. Zono
- for the Respondent(s): Adv. X Nyangiwe

Instructing attorneys:

- Applicant(s): A.S. Zono & Assoc.
- Respondent(s): Zolani Gwama Attorneys.

CASE INFORMATION -

- *Nature of proceedings* : Administrative Action- Termination of Social Grant-Review

**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE HIGH COURT : MTHATHA**

CASE NO. 1113/08

In the matter between:

PHAKAMILE RANELO

Applicant

And

**SOUTH AFRICAN SOCIAL SECURITY
AGENCY**

Respondent

JUDGMENT

MILLER, J.:

[1] The applicant seeks an order declaring unlawful and setting aside the respondent's action of terminating his disability grant and directing the respondent to re-instate his disability grant forthwith.

[2] The applicant states that he suffers from chronic tuberculosis and epilepsy. He applied for a disability grant. He was advised to attend his pension pay point after three months to check if his application was

successful. He did so and was advised that his application had been approved. He started receiving payments in September 2007. His first payment included certain back payments.

[3] During May 2008 he received a letter informing him that he had been awarded a 12 month temporary disability grant, which grant will expire and payment will cease in June 2008. His grant was then terminated during June 2008.

[4] The applicant contends that he believed, from the time that he started receiving payments for the grant, that he had been awarded a permanent disability grant. He states that he was never, before May 2008, informed that his grant was a temporary grant. He denies that he ever received a letter from the respondent that he had been awarded a temporary grant, save for the letter that he received during May 2008. He states that he is still suffering from his ailments and cannot work, particularly because of the epileptic fits he suffers.

[5] The respondent states that the applicant was, on 31 July 2007, granted a 12 month temporary disability grant and that the payment of such grant commenced during September 2007 when applicant received payments for July, August and September 2007. The respondent alleges that it sent a letter dated 13 August 2007, informing him, *inter alia*, that the grant was a 12 month temporary grant and that he has the right to appeal against the decision of the period for which the grant was awarded. The respondent states that the letter was posted to the postal address supplied by the applicant.

[6] The respondent alleges that the applicant presented himself with a complaint that he was suffering from painful eyes, but was diagnosed to be suffering from HIV and that the grant was temporary for reason that it was to cover only the period “of starting ARV therapy”. The respondent states further that the applicant had also been awarded temporary grants during 2003 and 2005 and that in respect of the latter grant his epileptic fits and tuberculosis were categorised as moderate.

[7] The applicant, in his replying affidavit, denies that he received the letter dated 13 August 2007. He also states that he informed the medical practitioner who examined him that he was suffering from the tuberculosis and epileptic fits.

[8] An issue of critical importance in this matter relates to the question whether the applicant received the letter dated 13 August 2007. In this regard Ms Mpunzi, the manager of the respondent in the Eastern Cape, who deposed to the answering affidavit, stated the following in para 15.2 of such affidavit:

“Per letter dated 13 August 2007 sent to the applicant of Mashumi Store, Box 57296 the applicant was informed that the medical officer confirmed a disability for the applicant of a temporary nature which will only last for 12 months. It was further advising the applicant that the temporary disability grant to him will lapse on the 30th June 2008. a copy of the letter marked “M1” is annexed hereto.”

[9] The respondent is, in terms of the regulations, obliged to inform an applicant in writing of the approval of the grant. Such letter, as was done in the case of the letter dated 13 August 2008, should also, in the case of an award of a temporary grant, also inform the applicant that the grant is of a temporary nature and that the applicant has a right to appeal against the decision of the period for which the grant was awarded.

[10] The respondent does not state when the letter was posted or whether it was sent by ordinary post or by registered mail. There is also no evidence to prove either the posting of the letter by the respondent or the actual receipt of the letter by the applicant. In these circumstances it cannot be inferred from the information placed before Court by the respondent that the applicant received the letter. See **Kulati vs MEC for Social Development, Eastern Cape SECLD 512/04 (unreported)**, **Nyatela vs MEC for Social Development, Eastern Cape SECLD 637/06 (unreported)** and **Sikutshwa vs MEC for Social Development, Eastern Cape 2009(3) SA 47(Tk)**. In this regard I did not accept the submission of Mr Nyangiwe, who appeared for the respondent, that it should be found on the probabilities that the applicant received the letter dated 13 August 2009 because he, on his own admission, received the other letter written to him by the respondent during May 2008. In my view, the fact that the applicant received a letter from the respondent in May 2008 does not constitute reliable evidence as to the respondent having an efficient office routine or that the letter of 13 August 2007 was either posted to or received by the applicant. I am accordingly of the view that the applicant's uncontradicted averment that he never received the letter dated 13 August 2007 must stand.

[11] It has been argued on behalf of the respondent that even if it is found that the applicant did not receive the letter dated 13 August 2007, the applicant should have realised that his disability grant was temporary because he on two prior occasions had only been awarded temporary grants. I also did not agree with this argument. It is, in my view, based on a flawed premise. The fact that the applicant had previously received two almost back-to-back disability grants supports his averment that he suffers from chronic ailments and does not render his belief and expectation that his latest disability grant was a permanent grant unreasonable.

[12] The termination of a temporary grant is not brought about by an administrative action as it lapses by operation of law. However, the decision to make a grant a temporary grant is administrative action. The applicant should have been informed of such decision and advised of his right to make representations through an appeal timeously. The applicant received no such information and was therefore denied the right to appeal. In these circumstances it was, in my view, entirely reasonable for him to assume that the grant he was awarded was a permanent grant and, with that, the expectation that there would be a proper review before the payments of his grant were stopped. No such review took place and the respondent can therefore not rely on the automatic lapsing of the grant. See **Mpofu vs MEC Department of Welfare and Population Studies, Gauteng and Ano WLD 2848/99 (unreported)** and **Mdodisa vs MEC for Social Development, Eastern Cape 1033/07 ECM (unreported)**.

[13] The failure to properly apply the regulations or to properly inform the beneficiary of any limitation on his rights renders the entire condition *null and void ab initio* and the temporary grant therefore continues until

stopped on review. See **N. de Villiers: Social Grants and the Promotion of Administrative Justice Act (SAJHR, Vol 18, Part 3, 2002 at page 338)**. See also **Mdodisa's case (supra)** and **Njajula vs MEC Department of Welfare, Eastern Cape 1710/03 SECLD (unreported)**.

[14] Mr Nyangiwe has argued that the application should fail because the onus is on the applicant to prove that he is permanently disabled and that he has been receiving a permanent disability grant but he has not presented any objective evidence to the effect that he was the recipient of a permanent disability grant nor that he is entitled to a permanent disability grant. Again, I am of the view that this argument cannot succeed. The medical report compiled by Dr N. Ndyalvan dated 14 May 2007 which was annexed to the answering affidavit only refers to painful eyes and HIV, yet the hospital records of the applicant, from 2002 to 2008, which were annexed to the founding affidavit, reflect that the applicant has received regular treatment for painful eyes, coughing, chest pains and epilepsy. The applicant, in his replying affidavit, insists that the medical documents annexed to the answering affidavit are not complete because he told the medical practitioner concerned a lot more than what is reflected in those documents, including the fact that he suffers from tuberculosis and epilepsy.

[15] This Court, on the information placed before it, is obviously not in a position to decide whether or not the applicant qualifies for a permanent disability grant and I do not believe that in a matter of this nature the applicant has a duty to prove to the Court that he is permanently disabled. The applicant believes that he is permanently disabled and disputes the correctness of the medical assessment that he is only temporary disabled.

Had he received the letter of 13 August 2007 which informed him, *inter alia*, of his right to appeal against the decision of the period for which the grant was awarded, he would have in all probability, exercised such right and the degree of his disability would have been re-assessed at that stage.

[16] He did not receive the letter and therefore, for the reason stated in paragraphs 13 hereof, his grant continues until it is properly reviewed and his medical condition re-assessed.

[17] The following order is therefore made:

- 1. The decision to terminate the payment of the applicant's disability grant is declared to be invalid and of no force and effect and is set aside.**
- 2. The respondent is ordered to re-instate the applicant's disability grant within a period of four weeks from the date of this order, such re-instatement to be with effect from the date of termination of payments of the applicant's disability grant, that is, 30 June 2008.**
- 3. The respondent is ordered to pay the costs of the application.**

JUDGE OF THE HIGH COURT

HEARD ON : 07 MAY 2009

DELIVERED ON : 04 JUNE 2009

ATTORNEY FOR APPLICANT :A. S. Zono
:of A. S. Zono & Ass.

COUNSEL FOR RESPONDENT :X. S. Nyangiwe
INSTRUCTED BY :Zolani Gwama Attorneys