

## **SOCIAL SECURITY**

### **November 2019 Exam Memo**

#### **QUESTION ONE**

In *S v Grootboom*, the Constitutional court observed that:

“Affording socio-economic rights to all people therefore enables them to enjoy the other rights enshrined in Chapter 2. The realisation of these rights is also key to the advancement of race and gender equality and the evolution of a society in which men and women are equally able to achieve their full potential.”

With reference to case law, critically discuss the constitutional provisions that underpin the State's obligations to provide social security to its citizens and qualifying foreigners. In your answer, comment on the potential limitation of socio-economic rights as well as the state's obligation to “progressively realise” these rights.

#### **Answer**

- brief historical perspective (apartheid and its consequences)
- S3 common citizenship, no preferential treatment
- S9 equality, equal treatment and equal access
- S10 dignity, social security is aimed at ensuring live a life of dignity and are, if possible, cushioned from the denigrating consequences of poverty.
- S 27(1)(c) guarantees the right to access to social security
- the Bill of Rights binds the legislature, executive, the judiciary and all organs of state (s 8)
- Certification* case – socio-economic rights are justiciable even though their enforcement may have direct financial and budgetary implications
- internal and external limitation.
- S36, general limitation.
- S27(2), internal limitation, “within available resources” and “progressive realization”
- Available resources – *Sobramoney*.
- refusal because section 27(3) dealing with emergency medical treatment not wide enough to include kidney dialysis.
- Grootboom* – progressive realization.
- The measures must be reasonable and capable of being achieved.
- TAC* and *Grootboom* – the courts will more readily come to the assistance of historically deprived and disadvantaged groups than will be the case in respect of an individual seeking judicial in
- *Khosa*, social security vis-à-vis foreigners in the Republic

## **QUESTION TWO**

Distinguish between residential and domiciliary care as provided for in the Older Persons Act 13 of 2006. With reference to specific provisions of the Act, critically discuss how this legislation endeavours to ensure the protection and independence of older persons living in residential facilities.

[10]

### **Answer**

Residential (institutional) care: long term care in an old age home, a nursing home or another type of institution is regarded as residential care – elderly are provided care as well as accommodation.(2)

Domiciliary care: it is the care afforded to elderly persons who are not residing in state-run or state-subsidized institutions. This includes service centres, day care programmes, private nurses and recreational facilities provided either by the state or by welfare org's (2)

S16, Rights of older persons in residential facilities. (1)

S 17 Services at residential facilities.(1)

S19 Prohibition on the operation of unregistered facilities.(1)

S20 Residential committees in residential facilities.(1)

S21 Admission to residential facility.(1)

Register of abuser of older persons (1)

These rights are aimed at ensuring that the elderly in residential facilities are protected, given the best possible care, and aware and can exercise their rights (explanation in this regard (1)

## **QUESTION THREE**

Natasha, a 57 year old widow, was attacked by a stray dog in January 2019. She was admitted at Helen Joseph hospital for three days where doctors treated her open wounds and discharged her. Unbeknown to her and the doctors, the dog had infected her with Capnocytophaga bacteria. As a result, the wound developed gangrene and the doctors had no option but to amputate her right leg just above the knee. Because of this disability, Natasha is contemplating approaching the South African Social

Security Agency (SASSA) for assistance. She approaches you for advice and in a consultation you establish that;

a) she is 57 years old, unemployed and survives through collecting recycling waste, from which she earns between R2200.00 and R3000.00 a month;

b) she wants to know what she “needs to prove” to be successful with her application for a disability grant; and

c) she wants to know if she can “rest easy” after being awarded the grant knowing that she will receive this assistance until she dies.

[15]

### **Answer**

To be successful with an application for a disability grant she will have to fulfil the following:

- must be a South African citizen; permanent resident or refugee;
- must be resident in South Africa;
- must be 18 to 59 years of age;
- must submit a medical / assessment report confirming disability;
- Medical assessment must not be older than 3 months at date of application.
- spouse meet the requirements of the means test;
- must not be maintained or cared for in a State Institution;
- must not be in receipt of another social grant in respect of him or herself. (6)

-qualifies for the grant.(1)

-Qualifies because she is 57.(1)

-satisfies the means test because she earns little and has no spouse.(1)

-Does not receive social assistance and is not cared for in a state institution.(1)

-Cannot “rest easy” after being granted the grant because it terminates when she turns 60. (1)

-Will have to apply for the Older Persons Grant. Disability grant is not automatically converted. (1)

To be successful with the Older persons Grant she will have to prove the following.

- Are a South African citizen, permanent resident or refugee
- Are a permanent resident of South Africa
- Are 60 years or older
- And your spouse (if you have one) pass the means test
- Are not living in a state institution
- Are not receiving payments from another social grant. (3)

## **QUESTION FOUR**

Critically discuss the advantages and disadvantages of the proposed National Health Insurance in South Africa. In your answer, begin by defining what is meant by National Health Insurance and focus your discussion on the constitutional rights to health care, dignity and equality.

[10]

### **Answer**

UHC is defined as a system designed to ensure that all people can use promotive, preventative, curative, rehabilitative and palliative services they need, of sufficient quality to be effective, while also ensuring that the use of these services does not expose the user to financial hardship. (2)

This definition of UHC embodies three related objectives:

- equity in access to health services – those who need the services should get them, not only those who can pay for them;
- that the quality of health services is good enough to improve the health of those receiving health services; and
- financial risk protection ensuring that the cost of using care does not put the people at risk of financial hardship.
- UHC brings the hope of better health and protection from poverty for hundreds of millions of people especially those in the most vulnerable situations.(2)

### **Advantages**

- Possible fulfilment of the state's constitutional obligation to provide healthcare.(1)
- has the potential of extending quality healthcare to remote and marginalized areas. (dignity) (1).
- if successful, will bridge the gap between the rich and the poor.(1)

### **Disadvantages**

- financial constraints, SA economy is not performing well and NHI requires a lot of money to implement. (1)
- Possible mismanagement of funds, corruption is rampant (1).
- lack of human resources for such a huge project.(1)
- Information and research-The NHI will bring with it the proposed National Health Information Repository and Data system. This aims to improve monitoring and to track health status, quality assurance and healthcare utilisation. However, there is a lack of monitoring and evaluation mechanisms at all levels of the health system, and

inadequate human resources to provide such services. Furthermore, past studies have shown SA to be 'data rich but information poor'. (1)

### **QUESTION 5**

Jayden and his unemployed wife, Ariella, have adopted a six-month-old baby. Jayden would like to take some time off from his job as a pharmacist at a pharmaceutical company to bond with his new baby.

Critically advise Jayden on:

a) the unemployment benefits he is likely to qualify for as well as the requirements to be complied with; and

b) whether his adopted child/dependant is likely to qualify for any benefits under unemployment benefits in the event of his death. In your answer, you must state the requirements to be complied with.

**[10]**

### **Answer.**

- Qualifies for adoption benefits
- Payable to a contributor who adopts a child.
- Only one contributor of the adopting couple is entitled to adoption benefits.
- The child must have been adopted in terms of the Child Care Act.
- The period during which the contributor is not working must be spent caring for the child.
- The adopted child must be below the age of two
- Application must be made in accordance with the prescribed procedures.
- Entitlement to benefits commences on the date at which the court has granted an adoption order.
- The benefit may not exceed the remuneration the contributor would have earned if the contributor had been at work.
- The application for benefits must be lodged within six months after the date of the order of adoption.
- UIC has the discretion to accept late application if good cause is shown.
- The child can qualify for dependant's benefits
- has to be a dependant at law (which he is –after adoption).
- however, these are available in the first place to the surviving spouse or life partner of a deceased contributor.
- An application must be lodged in accordance with the prescribed requirements.

- This must be done within eighteen months of the death of the contributor. If surviving spouse does not claim
- UIA does not define 'surviving spouse' and 'dependent' and it ranks beneficiaries.