

FAMILY ALLOWANCE ACT

Act 62 of 1961 – 1 January 1962

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FAMILY ALLOWANCE ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Family Allowance Act.

2. Interpretation

In this Act—

“allowance” means a family allowance payable under this Act;

“benefit authority” means the Principal Assistant Secretary of the Ministry responsible for the subject of social security or any other person appointed by the Minister;

“child” means an unmarried person under the age of 14;

“claimant” means a person entitled to claim an allowance under this Act, and, in the case of a married couple living together, the husband;

“determining authority” means an awarding officer, appeal tribunal or umpire;

“family”, in relation to any claimant, means—

- (a) the claimant;
- (b) where the claimant is a married man, his wife, if he is living together with her; and
- (c) children residing with the claimant who are issue of the claimant or his wife or of the deceased husband or wife of the claimant;

“issue” means issue of the first generation.

[S. 2 reprinted by Reprint 1 of 1983.]

PART II — BENEFIT

3. Provision of allowance

(1) Subject to this Act, every claimant in whose case the conditions laid down in this Act are satisfied shall be entitled to receive an allowance for so long as those conditions are satisfied.

(2) The allowance shall be paid out of the Consolidated Fund for the benefit of the family as a whole and shall consist of such equal monthly payments as the Minister may prescribe.

4. Conditions for receipt of allowances

Subject to this Act, every claimant shall, in order to be entitled to receive an allowance, satisfy the following conditions—

- (a) he has a family of 3 or more children;
- (b) he is in Mauritius;
- (c) in the case of a person not born in any of the islands under the jurisdiction of the State of Mauritius, other than a woman whose deceased husband had been in receipt of an allowance, he (or, where the person is living together with his wife, either of them) has resided in Mauritius for a period of at least 2 years immediately before the month in respect of which the allowance is claimed;
- (d) he is not disqualified from receiving the allowance under this Act;
- (e) he makes a claim in the form provided by the benefit authority or in such manner as that authority may accept as sufficient in his case, and produces such documents, information and evidence as the determining authority may require for the purpose of determining the claim, and attends for that purpose at such office or place as the benefit authority may direct;
- (f) his yearly income does not exceed the prescribed amount; and

- (g) no child's allowance or orphan's pension is payable under the National Pensions Act in respect of the child for whom an allowance is claimed.

5. Commencement and duration of allowances

(1) Subject to this Act, an allowance shall begin to accrue, where the claim is made—

- (a) within 6 months following the month of entitlement, as from the month of entitlement; or
- (b) after the expiry of 6 months following the month of entitlement, as from the sixth month preceding the month in which the claim is made,

and shall continue to accrue until the end of the month in which the conditions specified in section 4 are no longer satisfied.

(2) In this section, "month of entitlement" means the month during which the conditions in section 4 became satisfied in relation to a claimant or, if they had become so satisfied more than once, the month during which they last became satisfied.

(3) Notwithstanding this section, claims for allowances may be made and disposed of before the month in which the conditions specified in section 4 are satisfied, but no allowances shall be paid before those conditions have become satisfied.

6. —

7. Payment of allowances

(1) Subject to the directions of the benefit authority, allowances shall be paid during the months in respect of which they are granted, on such dates and at such places and subject to such conditions as the benefit authority may direct and impose.

(2) Where payment of any sum by way of allowance has not been obtained within 6 months of the date on which it became payable, the right to payment of that sum shall be extinguished, unless the benefit authority in its absolute discretion decides otherwise in any particular case.

8. Additional provision in special cases

Where any person is absent from Mauritius, or is imprisoned or detained in legal custody, and immediately before such absence, imprisonment or detention was entitled to an allowance, sums equivalent to the allowance may, at the absolute discretion of the benefit authority, be paid to some other person in Mauritius for the benefit of the children of such person's family in Mauritius, and any such sums shall be paid and accounted for as if they were sums by way of allowances under this Act.

9. Allowances to be inalienable

Every assignment of or charge on, and every agreement to assign or charge, an allowance shall be void.

10. Overpayment of allowances

(1) Any person who, because of the non-disclosure or misrepresentation of a material fact (whether such non-disclosure or misrepresentation was or was not fraudulent), has received any sum by way of allowance which he was not entitled to receive shall be liable to repay the sum so received, unless it is shown to the satisfaction of the determining authority that he received the sum in good faith and without knowledge that he was not entitled to it.

(2) Where any person is liable to repay any sum received by way of allowance, the benefit authority may, without prejudice to any other powers of recovery and to section 25, direct the deduction of those sums, in such manner as the benefit authority may in its absolute discretion decide, from any sums to which that person may later become entitled by way of allowance.

11. Temporary absences

For the purpose of determining whether children are residing with any claimant, no account shall be taken of temporary absences in hospital or of other temporary absences amounting to not more than 3 months at any one time.

12. Unmarried couples

For the purposes of this Act, an unmarried couple residing together with 3 or more children, each child being issue of both of them, shall be treated as if they were married, and the meaning of "husband" and "wife" shall be extended accordingly.

13. Husband and wife living in separation

A man and his wife shall not be deemed to be living otherwise than together unless they are permanently living in separation.

PART III — ADJUDICATION

14. Umpires and awarding officers

For the purposes of this Act—

- (a) the Minister may appoint one or more umpires from among persons who hold or have held judicial office;
- (b) the benefit authority may appoint officers, hereinafter referred to as "awarding officers", to act for such areas as the benefit authority may direct; and
- (c) the benefit authority may pay such fees to the umpires as the Minister may direct.

15. Constitution of appeal tribunals

(1) An appeal tribunal for the purposes of this Act shall—

- (a) relate to such area as the Minister may direct; and
- (b) consist of a Chairperson and not more than 4 members drawn from a panel of persons appointed in accordance with this section.

(2) The Chairperson of an appeal tribunal and the members of the panel for any area shall be appointed by the Minister after consulting such representative bodies and such organisations concerned with the interest of persons in the area as he thinks fit.

(3) (a) As far as practicable, each member of a panel shall be summoned to serve in turn on the appeal tribunal.

(b) (i) No member shall serve during the consideration of a case by which he is or may be directly affected or in which he appears as representative of the claimant.

(ii) Where the appellant is a woman, at least one of the members of the tribunal, if practicable, shall be a woman.

(4) The quorum of an appeal tribunal shall be 3, inclusive of the Chairperson who shall have a second or casting vote in the event the votes are equally divided.

16. Expenses of appeal tribunals

The benefit authority may pay such fees to the Chairperson and members of an appeal tribunal as the Minister may direct, and may authorise the reimbursement of expenses incurred in connection with the sitting of any tribunal.

17. Determination of claims

(1) Every claim for an allowance shall be submitted forthwith to an awarding officer who shall allow or disallow it.

(2) Where an awarding officer has disallowed a claim, the claimant shall be informed in writing of the reasons for such disallowance.

(3) Where a claimant is dissatisfied with a decision of an awarding officer he may appeal to an appeal tribunal within one month of the notification of such decision or within such further time as the Chairperson of the appeal tribunal may allow.

(4) The claimant and the awarding officer shall be entitled to be heard by the appeal tribunal and the claimant may be represented by any other person, but, for the purpose of discussing the case, the tribunal may require all persons who are not members of the tribunal to withdraw.

(5) The decision of the majority of the appeal tribunal shall be the decision of the tribunal, shall be in writing and shall include a statement of the facts on which such decision is founded.

(6) The decision of the appeal tribunal shall, as soon as possible, be communicated to the claimant and to any other person who appears to the tribunal to be interested in such decision.

18. Appeals to umpires

(1) An appeal may be made to an umpire from any decision of an appeal tribunal by an awarding officer or a claimant.

(2) Any appeal to an umpire shall be made within 3 months of the date of the appeal tribunal's decision or within such further time as the umpire may allow.

(3) An umpire's decision on any appeal shall be final.

19. Power to review decisions

(1) Any decision on a claim for an allowance under this Act may be reviewed at any time, in the case of a decision of an awarding officer or of an appeal tribunal, by an awarding officer, and in the case of a decision of an umpire, by an umpire, where the awarding officer or umpire, as the case may be, is satisfied that that such decision was given in ignorance of, or was based on a mistake as to, some material fact.

(2) Any decision on a claim for an allowance under this Act may be reviewed at any time by an awarding officer where he is satisfied that, since the date of the decision, there has been a relevant change of circumstances.

(3) The awarding officer or umpire, as the case may be, may give a revised decision to have effect either as from the same date as the original decision or from a subsequent date.

(4) A claimant who is dissatisfied with the revised decision of an awarding officer may appeal against such revised decision in accordance with sections 17 and 18.

20. Proceedings before tribunal and umpire

Subject to this Act, the procedure for the consideration and determination of appeals by an appeal tribunal or an umpire shall be such as the appeal tribunal or the umpire, as the case may be, shall determine.

21. Payment of allowances pending appeal

(1) Where an appeal tribunal allows an appeal, payment of allowances shall be made in accordance with the decision of the appeal tribunal.

(2) No payment shall be made where the awarding officer lodges an appeal with an umpire within 7 days of such decision.

22. New claims

Where a claim for an allowance has been rejected, no subsequent claim by the same claimant shall be considered during the period of 6 months from the date of such rejection unless in special circumstances the benefit authority otherwise decides.

23. Determination of questions

For the purposes of sections 14 to 22, references to claims and appeals include any questions arising in connection with such claims and appeals other than questions relating the chargeability or otherwise of any person to income tax for any income tax year of assessment.

PART IV – ADMINISTRATIVE PROVISIONS

24. Proof of age and parentage

(1) Subject to this section, proof of age and parentage shall be supplied by the production of a birth certificate.

(2) Where a claimant does not produce a birth certificate but produces a vaccination certificate in relation to a child born in Mauritius, the benefit authority may apply to the Registrar of Civil Status who shall inform him of the date of birth and parentage of the child or supply such information as will help to establish the date of birth and parentage of the child.

(3) Where a claimant fails to produce documents from which proof of age and parentage may be established either directly or by reference to the records of the Registrar of Civil Status, the benefit authority may direct the claimant to swear an affidavit before a Magistrate in the form set out in the Schedule.

(4) Any such affidavit shall be exempt from stamp duty and other duties and fees.

25. Penalty for false statements

Where, for the purpose of obtaining payment of an allowance, or of continuing an allowance in payment, whether for himself or for any other person, a person knowingly makes a false statement or false representation or fails to disclose a material fact, he shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

26. Disclosure of information

Notwithstanding the obligation as to secrecy imposed by statute or otherwise on persons employed in relation to income tax, the Director-General of the Mauritius Revenue Authority may supply information required for the operation of this Act with regard to assessment or collection of income tax.

27. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500 rupees and to imprisonment for a term not exceeding 3 months.

SCHEDULE

[Section 24 (3)]

I do make and say—

That my name is

That I am by profession or calling

That, to the best of my knowledge and belief, I was born in/out of Mauritius

That I have resided for at least 2 years in Mauritius (applicable if born out of Mauritius).

That I am civilly married/religiously married/cohabitating with

with whom I have the following children—

(1) born on

(1) born on

(2) born on

(3) born on

(4) born on

.....
Signature of deponent

Sworn (or solemnly affirmed)

by the abovenamed, the contents of the foregoing having previously been duly explained to him/her.

Date

.....
District Magistrate
