

Opinion Editorial

Foster care crisis: Kinship grant a solution¹

PAN: Children from time to time invites experts in the child rights field to write Opinion Editorials on specific topics to stimulate debate. The opinions expressed in this opinion editorial are those of the author and do not necessarily reflect the views of PAN: Children, HSRC or UNICEF, and neither should it be assumed to do so.

Introduction

‘Grannies to lose out on foster grants’. This was a recent newspaper headline arising from a court case in which the South Gauteng High Court found that grandparents have a common law duty to support their grandchildren and thus children in their grandparents’ care have ‘visible means of support’, rendering them ineligible for foster care orders. This has caused a wave of concern for poor children living with related caregivers. Some civil society organisations have intensified their lobby for a ‘kinship grant’ that can be reached by families caring for orphans, without going through the foster care system.

Social assistance linked to child care

There are three social assistance grants that relate to child care, namely the child support grant, the foster child grant and the care dependency grant. The first two are relevant to this discussion. The child support grant was introduced in 1998. Any primary caregiver of a child is eligible. A primary caregiver is defined as a person, whether or not related to the child, who takes primary responsibility for meeting the daily care needs of the child. The grant was originally targeted specifically to the poorest and youngest children, but has since been progressively increased and is now payable to all poor children below 18 years. It is means-tested on the relatively low basis of household income (matching closely the Statistics SA lower bound poverty line). The grant currently reaches 11 million children through their primary caregivers. The amount is small in monetary terms, only R 280 per child per month, up to a maximum of six children per household.

The other important cash grant is the foster child grant. The term ‘foster care’ was first included in the law in the Children’s Act of 1960. Foster care was originally a ‘classic’ foster care model in which children who were found to be in need of care were placed by a children’s court into foster care with foster parents who were usually not related to them. This cost-effective form of alternative care was and is subsidised by the government through the monthly payment of a cash grant. The foster child grant is free from any means test. Apart from being cost-effective when compared with care in residential centres, foster care is viewed as a preferred form of alternative care for children who are not living with biological parents and for whom adoption is not appropriate. This form of care was utilised in a stable manner over a number of decades from 1960 onwards and the numbers of children in foster care never rose above 40 000. However, in the last decade the situation has changed dramatically, with the numbers of children in foster care showing a marked increase from 2002 to 2012, tapering off since 2010 when the new Children’s Act came into operation. As at September 2012, 585699 children are receiving a foster child grant. The sudden rise in the number of children being fostered has its genesis in the HIV AIDS

¹This editorial opinion was written by Professor Ann Skelton, Centre for Child Law, University of Pretoria, 13 November 2012

pandemic and the concomitant rise in the number of orphans, but government has also punted the foster child grant as a poverty alleviation solution.

Apart from not being subjected to a means test, the value of the foster child grant in 2012 is R770 per child per month, considerably larger than the child support grant at R280. This difference in amount understandably causes poor extended families caring for children to seek regularisation of their child care arrangements through the foster care system. This in turn places burdens on an over-stretched care and protection system. The child support grant can be relatively easily accessed by primary caregivers through an administrative application to the South African Social Assistance Agency. There is no social work involvement before or after the grant is approved. By contrast, foster care is viewed as an alternative care placement and as part of the care and protection system. A decision to place a child in foster care is made by a children's court which is satisfied, on the basis of a social worker's report that the child is in need of care and protection, that the prospective foster parent is fit and proper and that the placement is in the child's best interests. Once a child is placed in foster care, there must be ongoing social work oversight of the placement, and subsequent reports to court, usually every two years, to recommend whether the foster care placement should be extended.

Too much pressure on the foster care system

The system began to lurch in 2010. By January 2011, 123 236 foster care grants had already lapsed. Alarmed, civil society organisations approached the Centre for Child Law, a law clinic based at the University of Pretoria which undertakes litigation on children's rights. The Centre brought an urgent application to the High Court in an attempt to resolve the crisis and prevent any further children from dropping of foster child grant system. It was evident, the court papers averred, that the lapsing of such large numbers of foster care orders was due to systemic failure.

The Department of Social Development did not oppose the application, and a draft order was presented to the North Gauteng High Court by agreement between the parties. The court order provided that until such time as the foster care backlog could be resolved, but not later than the end of 2014, an administrative process similar to the one previously applicable under the Child Care Act must be utilized in respect of children whose foster care orders (originally granted prior to 10 April 2010) were due to lapse. The court order also provided that all orders that had already lapsed would be deemed not to have lapsed. The court order provided a temporary solution, but it is clear that further action is required to properly resolve the crisis.

What is meant by 'visible means of support'?

A second systemic trend has emerged since the implementation of the Children's Act. This centres around section 150(1)(a) of the Act. It is the first in a list of grounds on which children may be found in need of care and protection, and states that a child must be 'orphaned or abandoned and without visible means of support'. A significant number of children's court presiding officers read this as meaning that if a child is already being cared for by extended family members, no foster care order should be made, and the family can simply access the child support grant. A decision along those lines made by the Presiding Officer in the Krugersdorp Magistrate was taken on appeal by the Centre for Child Law, and resulted in a High Court judgment referred to by the child's initials – SS – and it is this case that is referred to in the introductory paragraph as cutting grannies off from grants. In fact, the judgment is more nuanced than that, allowing some room for placement with grannies where the child is in need of care on other grounds listed in section 151, or through a 'best interests' interpretation. However, the presiding officers who previously interpreted this law to deny placement in foster care with relatives see the judgment as supporting their position, and others have started to follow suit.

The solution lies in a 'kinship care' grant

The crisis needs a solution that is led by the executive, and not determined by the courts. Certain civil society organisations such as the Children's Institute, Black Sash and the Centre for Child Law have been lobbying the Department of Social Development to come up with a non-court based solution that links extended family care-givers of children to social assistance that is higher in value than the child support grant, but is similarly easy to access.

At the recent Towards Carnegie 3 conference senior officials from the Department of Social Development revealed a fledgling plan to provide financial support to children being cared for by family members to relieve the pressure on the foster care system. This would take the form of a poverty alleviation grant, directly accessible through the South African Social Assistance Agency and would be made possible through amendments to the regulations to the Social Assistance Act. The details are not yet finalised, and numerous issues need to be discussed such as the involvement of social service professionals and the monetary amount of the grant. Nevertheless, it is understood that discussions are underway between the Department and Treasury. Such an approach would mean that the foster care system is retained for children who are abused or neglected, whilst also providing families caring for children with much needed financial support.

© PAN: Children/ Centre for Child Law (2012)

The opinions expressed herein and any statements represented as fact do not necessarily reflect the views and policies of the HSRC or UNICEF nor should they be assumed to do so. With an identification of PAN: Children/ Centre for Child Law as source, the document may, however, be freely reviewed, abstracted, reproduced and translated, in part or in whole, but not for sale nor for use in conjunction with commercial purposes.

Any comments on this Opinion Editorial can be sent to vfichardt@hsrc.ac.za

First published: December 2012

For more information on PAN: Children, please visit our website:
<http://children.pan.org.za/>