

FUNCTIONAL CAPACITY ASSESSMENT BOARD ACT, 2024

(Act 5 of 2024)

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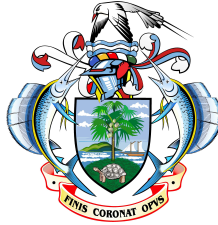
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FUNCTIONAL CAPACITY ASSESSMENT BOARD ACT, 2024

(Act 5 of 2023)

I assent



Wavel Ramkalawan
President

16th July, 2024

AN ACT TO ESTABLISH A FUNCTIONAL CAPACITY ASSESSMENT BOARD TO ASSESS THE FUNCTIONAL CAPACITY OF A PERSON IN ORDER TO DETERMINE WHETHER THAT PERSON IS ELIGIBLE FOR INVALIDITY OR DISABILITY BENEFITS UNDER THE SOCIAL SECURITY ACT (CAP 225) AND THE SEYCHELLES PENSION FUND ACT (CAP 220), AND TO PROVIDE FOR OTHER CONNECTED OR INCIDENTAL MATTERS.

ENACTED by the President and the National Assembly.

PART 1 - PRELIMINARY

Short title and commencement

1. This Act may be cited as the Functional Capacity Assessment Board Act, 2024, and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

Interpretation

2. In this Act, unless the context otherwise requires —

“Board” means the Functional Capacity Assessment Board established under section 3;

“functional assessment tool” means any tool developed by the Board and approved by the Minister in accordance with the standards established for use in the assessment of the functionality of a person seeking invalidity or disability benefits;

“functional capacity assessment” means the process where the Board applies the adopted functional assessment tools to assess and determine the extent of functional capacity of a person referred to it for the eligibility of invalidity or disability benefits and such assessment shall include the reviews of —

- (a) medical reports;
- (b) results of specific social, physical, mental status or psychological test;
- (c) evidence-based expert opinions;
- (d) other documents the Board deems appropriate;

“Manager” means the Manager appointed under section 6;

“Minister” means the Minister responsible for health;

“relevant entity” means the —

- (a) Seychelles Pension Fund; and
- (b) Agency for Social Protection.

“terminal illness” means an incurable condition caused by injury or disease from which there is no prospect of recovery regardless of the application of life-sustaining measures.

PART 2 - FUNCTIONAL CAPACITY ASSESSMENT BOARD

Establishment of the Board

3.(1) There is established a Board known as the Functional Capacity Assessment Board.

(2) The Minister shall appoint the members of the Board on such terms and conditions as the Minister may determine.

(3) The Board shall consist of the following members —

- (a) an allied health professional with experience in disability assessment;
- (b) a medical practitioner specialised in trauma or orthopaedic surgery;
- (c) a social worker;
- (d) a representative from the ministry responsible for employment;
- (e) a medical practitioner specialised in occupational health;
- (f) a medical practitioner specialised in paediatrics;
- (g) a health professional specialised in mental health; and
- (h) the Manager who shall be an *ex-officio* member.

(4) The Minister shall appoint a Chairperson and Vice-Chairperson from among the members and the Vice Chairperson shall, in the absence of the Chairperson, carry out all the responsibilities of the Chairperson.

(5) The Minister shall cause a notice of the names of the Chairperson, Vice-Chairperson and members of the Board to be published in the Gazette.

(6) The members shall have a minimum of three years' work experience in their respective fields.

(7) The members shall be appointed for a period of three years and are eligible for re-appointment for not more than three consecutive terms.

(8) The Minister may, upon the recommendation of the Board, at any time, terminate the appointment of a member who —

- (a) has been found guilty of any misconduct, default or breach of trust in the discharge of his or her duties;
- (b) committed an offence of such nature that renders it desirable that the member's appointment be terminated; and
- (c) is mentally or physically incapable of carrying out his or her duties under this Act.

(9) Any vacancy that arises in the membership of the Board shall be filled by a member who shall be appointed in accordance with subsections (1) and (2), and that member shall hold the tenure of the member whose post has become vacant by virtue of subsection (8).

(10) The members shall be persons of good standing, capable of performing their functions independently, impartially and in compliance with the highest ethical standards.

(11) The members shall be paid such remuneration as may be determined by the Minister responsible for finance in accordance with government policies.

(12) The Board may co-opt such experts as it deems necessary for the purpose of determining a request for invalidity or disability benefits.

(13) The Board shall meet at such time and place as the Chairperson may determine.

(14) The quorum for the meeting of the Board shall be four members.

(15) A decision of the majority of the members of the Board present at a meeting shall constitute a decision of the Board, and in the event of an

equality of votes on any matter, the person presiding shall have a casting vote in addition to his or her vote.

(16) Subject to the provisions of this Act and regulations made under this Act, the Board shall regulate its own proceedings.

Functions of the Board

4. The functions of the Board shall be to —

- (a) assess and determine cases referred to it pertaining to eligibility for invalidity and disability benefits;
- (b) develop and adopt relevant tools for functional assessment for approval by the Minister;
- (c) make recommendations on guidelines and policies to be followed in considering the referral; and
- (d) make recommendations to the relevant entities on whether the person referred to it, is eligible for invalidity or disability benefits;
- (e) make recommendations regarding the support required by a person referred to it;
- (f) perform such other functions as may be conferred upon it by the Minister.

Powers of the Board

5. In the exercise of its functions, the Board shall have the power to —

- (a) consider the referral submitted to it;
- (b) summon a person for an interview before it;
- (c) obtain and review copies of medical records from a health service provider;

- (d) consider any other relevant medical or documentary material;
- (e) adopt assessment tools for making the functional capacity assessment and determinations under section 10; and
- (f) make all determinations and recommendations on cases referred to it;
- (g) vary its own determinations after a set time or upon further referral.

PART 3 - SECRETARIAT

Appointment of the Manager

6.(1) The Minister shall appoint a Manager who shall be the head of the Secretariat.

(2) The Manager shall report to the Chairperson of the Board and shall, *inter alia*, be responsible for —

- (a) implementing the decisions of the Board and managing the affairs of the Secretariat;
- (b) providing the appropriate administrative support in relation to the cases referred to the Board;
- (c) compiling of case files and relevant functional assessment tools for assessment and evaluation by the Board;
- (d) liaising with the relevant entities and organisations to ensure conclusion of cases referred to the Board;
- (e) responding to any queries that members of the Board, a person referred to it or other interested parties may have regarding any matter before the Board;
- (f) explaining the policies and procedures to a person referred to him or her, or other interested parties;

- (g) processing and submitting the concluded cases to the Board;
- (h) ascertaining the status of the applications and maintaining reports for follow ups;
- (i) providing formal replies to the person referred to the Board pertaining to its determination;
- (j) keeping up to date records and statistics of the Board;
- (k) developing relevant standard operating procedures for the management of cases;
- (l) delegating any function of the Manager to a designated officer or employee of the secretariat; and
- (m) performing such other functions as the Board may, from time to time, assign.

Staff of the Secretariat

7. The Manager shall, on such terms and conditions as may be determined by the Minister, employ such number of other officers and employees as may be necessary in the performance of functions of the Secretariat.

PART 4 - ASSESSMENT AND DETERMINATION OF REFERRALS

Referral for assessment by designated persons

8. A person shall be referred for assessment to the Board, by any of the following designated persons —

- (a) a medical practitioner responsible for occupational health;
- (b) a medical specialist; or
- (c) a designated officer from the relevant entity.

Procedures for referral

9. The Board shall determine its own procedures and rules for the assessment and determination of referrals.

Assessment and determination by the Board

10.(1) Following receipt of a referral under section 8, the Board shall assess all relevant medical and other records relating to the referral and make the following determination —

- (a) whether the person has —
 - (i) no functioning restriction;
 - (ii) moderate functioning restrictions;
 - (iii) severe functioning restrictions;
 - (iv) very severe functioning restrictions; or
 - (v) a terminal illness;
- (b) whether the person requires support measures to be made available to him or her, including —
 - (i) physical, medical, infrastructural or psycho-social support;
 - (ii) vocational or educational support to enable the re-skilling of the person; or
 - (iii) financial support measures provided by the relevant entity.

(2) The Board may call for additional information at any stage of the assessment and determination process.

(3) The Board shall communicate in writing, the outcome of its determination to the relevant entity within 14 days after such determination is made.

Register

11. The Board shall keep records of its activities and decisions in a special register, which shall be in the custody and under the control of the Manager at the Secretariat or any other place that the Board may direct.

Appeals

12. A person, or where the person is unable through physical or mental incapacity to do so, his or her guardian, caregiver or person interested in his or her wellbeing, aggrieved by any decision of the Board may, within 28 days of receiving such decision, submit an appeal in writing to the Appeals Committee.

PART 5 - APPEALS COMMITTEE

Appeals Committee

13.(1) There is established an Appeals Committee to hear and determine appeals against the decisions of the Board.

(2) The Appeals Committee shall consist of the following members —

- (a) a specialist medical practitioner;
- (b) an allied health professional with at least three years' experience in disability assessment; and
- (c) a legal practitioner.

(3) The Minister shall appoint the members of the Appeals Committee, including the Chairperson, on such terms and conditions as the Minister may determine.

(4) The Chairperson and other members of the Appeals Committee shall hold office for a term of three years and shall be eligible for reappointment.

(5) The Minister may, upon the recommendation of the Appeals

Committee, at any time terminate the appointment of a member of the Appeals Committee who —

- (a) has been found guilty of any misconduct, default or breach of trust in the discharge of his or her duties;
- (b) has committed an offence of such nature that renders it desirable that the member's appointment be terminated; and
- (c) is mentally or physically incapable of carrying out his or her duties under this Act.

(6) The members of the Appeals Committee shall receive such remuneration as may be determined by the Minister responsible for finance in accordance with government policies.

(7) The Minister may appoint a Secretary to the Appeals Committee who shall be responsible for receiving, processing and submitting appeals received for the consideration of the Appeals Committee.

(8) The Appeals Committee shall set its own procedures and rules for conducting appeals.

Decision on appeal

14.(1) At the hearing of an appeal, the Appeals Committee may —

- (a) confirm the decision of the Board;
- (b) set aside the decision of the Board and recommend that it reassesses the referral and makes a new determination;
- (c) set aside the decision of the Board and make a decision in substitution for it; or
- (d) give such directions to the Board as the Appeals Committee may consider necessary in relation to an Appeal before it.

(2) The Appeals Committee may, whenever it deems appropriate in hearing an appeal, seek the opinion of an expert in any relevant discipline.

PART 6 - MISCELLANEOUS PROVISIONS

Offences and penalties

15.(1) A health service provider who, upon request of the Board fails to furnish complete medical records of his or her patient, commits an offence and is liable, on conviction to a fine not exceeding level 2 on the Standard Scale or imprisonment not exceeding six months or both.

(2) Any person who discloses any information acquired by him or her in the performance of any functions under this Act commits an offence and is liable, on conviction to a fine not exceeding level 2 on the Standard Scale or imprisonment not exceeding six months or both.

Compounding of offences

16.(1) The Chairperson of the Board, in consultation with the Attorney General, may compound any offence committed under this Act in the alternative of instituting legal proceedings or imposing an administrative penalty by accepting a sum of not more than the maximum fine specified for the offence.

(2) Where a minimum fine is provided, no sum of money less than the minimum shall be accepted.

(3) A sum of money received under this section shall be dealt with as though it were a fine imposed by a court.

(4) The Chairperson of the Board shall determine the sum of money to be paid by the offender, having due regard to the provisions of this Act, the nature, circumstances, extent and gravity of the offence and any previous conviction or compounding of offences under this Act.

(5) An ad-hoc compounding committee may be established to advise the Chairperson of the Board in the determination of the sum of money to be paid by the offender in accordance with subsection (1).

(6) Upon determination of the sum of money to be paid by the offender under subsection (4), the Chairperson of the Board shall sign the

compounding agreement and serve it on the offender, who shall pay the sum of money within 14 days from the date of service of the compounding agreement.

(7) In the event the offender fails to pay the sum of money within the period set under subsection (6), the compounding agreement shall be void and judicial proceedings shall be instituted or continued.

(8) On payment of the sums provided under this section, the compounding of any offence under subsection (1) shall be filed in court and the proceedings in connection with the commission of the offence which is pending shall be noted as compounded and the offender absolutely discharged.

(9) The compounding of an offence under this section shall be conclusive and final and no court proceedings shall be instituted for that offence.

(10) In any proceedings brought against any person for an offence under this Act, it shall be a defence if the person proves that the offence has been compounded under this section.

(11) Where a person has committed more than one offence under this Act, the Chairperson of the Board may compound the penalties.

Annual report

17.(1) The Board shall, after the expiration of each year and in any event not later than the 31st day of March in any year, submit to the Minister a report dealing generally with the activities of the Board during the preceding year.

(2) The report referred to under subsection (1) shall include —

- (a) the number of applications processed and determinations made in the period under review;
- (b) any impediment encountered in the discharge of its functions;

- (c) any policy matters that the Board may require to be addressed by the Minister; and
- (d) any other matter that the Board may consider necessary to the discharge of its functions under this Act.

(3) The Minister shall submit the report to the President and a copy shall be laid before the National Assembly.

Directions by the Minister

18. The Minister may give directions of policy to the Board in regard to the discharge of its functions under this Act and the Board shall comply with such directions.

Regulations

19. The Minister may, in consultation with the Board, make regulations for all matters which by or under this Act are required or necessary to be provided for in giving effect to the provisions of this Act.

Protection against legal proceedings

20. A member of the Board, the Manager, or any person acting under the authority of the Board under this Act, shall not be liable for any loss, damage, claim or be subjected to any legal action for any decision made in good faith in the performance of their functions.

Consequential amendments

21. The Social Security Act (Cap 225) and Seychelles Pension Fund Act (Cap 220) are amended to the extent specified in the First Schedule and Second Schedule.

FIRST SCHEDULE

Section 22

CONSEQUENTIAL AMENDMENTS

Amendments to the Social Security Act

Amendment of section 2

1. Section 2 of the Social Security Act (hereinafter referred to as the principal Act) is amended —

- (a) by repealing the definition “Medical Board” and substituting it with the following definition —

“Functional Capacity Assessment Board” means the Board established under section 3 of the Functional Capacity Assessment Board Act.”

Amendment of section 30

2. Section 30 of the principal Act is repealed and substituted with the following —

“Functional Capacity Assessment Board

30. A person who is seeking invalidity or disability benefits shall be assessed by the Functional Capacity Assessment Board and its determination shall be conveyed in writing to the Agency of Social Protection.”

Repeal of Schedule

3. The Schedule to the principal Act is repealed.

SECOND SCHEDULE

Section 22

CONSEQUENTIAL AMENDMENTS

Amendments to the Seychelles Pension Fund Act

Amendment of section 2

1. The Seychelles Pension Fund Act 2005 (hereinafter referred to as the principal Act) is amended in Section 2 by repealing the definition “Medical Board” and substituting it with the following definition —

“Functional Capacity Assessment Board” means the Board established under section 3 of the Functional Capacity Assessment Board Act.”.

Amendment of section 30

2. Section 30 of the principal Act is amended by deleting the word 'permanent' in subsection (e).

Amendment of section 35

3. Section 35 of the principal Act is amended by repealing the words “Medical Board” in subsection (2) and substituting them with the words “Functional Capacity Assessment Board”.

Amendment of section 40

4. Section 40 of the principal Act is repealed and substituted with the following —

“Incapacity pension

40.(1) Where a member of the Pension Fund who has not yet retired is determined by the Functional Capacity Assessment Board to have capacity functioning restrictions under section 10(1)(a)(iii) or (iv) of the Functional Capacity Assessment Board Act and —

- (a) that member qualifies for a pension under section 33 of the Act, then that member will receive a pension for life or for such period of time as determined by the Functional Capacity Assessment Board; or
- (b) that member does not qualify for a pension under section 33 of the Act, the member will receive a lump sum payment of the member's voluntary and mandatory contributions to the Fund.

(2) Where a member who is receiving a retirement pension dies and leaves behind, other than a spouse, a dependent with functioning restrictions determined under section 10(1)(a)(iii) or (iv) of the Functional Capacity Assessment Board Act, the dependant shall receive a pension of 40% of the deceased member's pension provided that the Functional Capacity Assessment Board's determination is furnished in support of the claim.”.

Amendment of section 43

5. Section 43 of the principal Act is amended by repealing the words “Medical Board” in subsection (3) and substituting them with the words “Functional Capacity Assessment Board”.

Amendment of PART VIII

6. The heading of PART VIII of the principal Act is amended by repealing the words “Medical Board” and substituting them with the words “Functional Capacity Assessment Board”.

Amendment of section 56

7. Section 56 of the principal Act is repealed and substituted with the following —

“Functional Capacity Assessment Board

56. A person who is seeking invalidity or disability benefits shall be assessed by the Functional Capacity Assessment Board and its determination shall be conveyed in writing to the Seychelles Pension Fund.”.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 26th June, 2024.



Mrs. Tania Isaac

Clerk to the National Assembly