Defining Disability

1. Conceptual Background

Before attempts are made to define disability, disability must be conceptualised. Conceptualisation of disability dependent on the core assumptions made about the nature of disabilities and the obligations of both individuals and society. These core assumptions can be grouped into two major models. These models are the medical – and the social model.

1.1 Disability a Chronic Illness?

Under the provisions of section 11(1) of the Children’s Act, in any matter concerning a child with a disability or chronic illness due consideration must be given to –

- provide the child with parental care, family care or special care as and when appropriate;
- make it possible for the child to participate in social, cultural, religious and educational activities, recognising the special needs that the child may have;
- provide the child with conditions that ensure dignity, promote self-reliance and facilitate active participation in the community; and
- provide the child and the child’s care-giver with the necessary support services.

Unfortunately, neither “disability” nor “chronic illness” was defined in the Act. In the absence of these definitions, it is trite law that the ordinary meaning of these words must be used in the interpretation of the Act. However, this rule is qualified in that, technical words and phrases must be understood in their technical sense.
Medilexicon does not define “chronic illness” as a phrase. “Chronic” refers “to a health-related state, lasting a long time”\(^5\) and as a synonym to illness, “disease” is defined as “an interruption, cessation, or disorder of a body, system, or organ structure or function”\(^6\) “Disability” is defined as “any restriction or lack of ability to perform an activity in a manner or within the range considered normal for a human being.”\(^7\)

“Chronic illness” and “disability” are two distinct concepts each with their own meaning. “Chronic illness” is a long lasting medical condition whilst “disability” is a restriction or lack of ability to perform an activity in a manner or within the range considered normal for a human being.

However, it is recognised that a chronic illness can have disabling consequences. For example; if diabetes specifically, type 1, goes untreated gangrene may set in, in an injured limb resulting in that limb being amputated. At this point the person with diabetes (chronic illness) will also become a person with a physical disability.

1.2 The Medical Model

The medical model views disability as a feature of the person, directly caused by disease, trauma or other health condition, which requires medical care provided in the form of individual treatment by professionals. Disability, on this model, calls for medical or other treatment or intervention, to 'correct' the problem with the individual.\(^8\)

As the emphasis of the medical model focuses on provision of treatment or creating alternatives to begging or “hiding away,”\(^9\) it means that all interventions are based on assessment, diagnosis and labelling, with separately developed therapy programmes.


\(^{9}\) ibid
and alternative services. Generally, ordinary needs of the disabled were not taken into account.

1.3 The Social Model

Since the mid 1980’s disability rights movement, has shifted from individual impairment to a social inclusion. In contrast, the social model recognises disability as a socially created problem and not at all an attribute of an individual. Disability is created by an unaccommodating physical environment brought about by attitudes and other features of the social environment. It follows that disability is not a medical condition but, rather determined by the limitations in carrying out activities of daily living, and the barriers to participating in the social, economic, political and cultural life of the community.

1.4 Key differences between the models

<table>
<thead>
<tr>
<th>Medical Model</th>
<th>Social Model</th>
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<tbody>
<tr>
<td>Disability is a deficiency or abnormality.</td>
<td>Disability is a difference.</td>
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<tr>
<td>Being disabled is negative</td>
<td>Being disabled, in itself, is neutral.</td>
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<tr>
<td>Disability resides in the individual.</td>
<td>Disability derives from interaction between the individual and society.</td>
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<tr>
<td>The remedy for disability-related problems is cure or normalisation of the individual</td>
<td>The remedy for disability-related problems is a change in the interaction between the individual and society.</td>
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<tr>
<td>The agent of remedy is the professional</td>
<td>The agent of remedy can be the individual, an advocate, or anyone who affects the arrangements between the individual and society.</td>
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11 Towards a Common Language for Disability Functioning and Health
12 Report of the Technical Advisory Committee Disability Tax Fairness
13 http://bid-info.org/Impairment_vs_Disability
2. **Defining Disability in South Africa**

2.1 **Convention on the Rights of Persons with Disabilities**

South Africa was a signatory to and has under Section 231 of the Constitution ratified the Convention on 30 November 2007 and therefore binds the Republic. In Article 1 of the Convention disability is defined as:

> “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”

2.2 **Social Assistance Act, 2001**

Disability has not been defined but, disabled person has. “Disabled person” mean a person contemplated in section 9(b) Section 9 states that –

> “A person is, subject to section 5, eligible for a disability grant, if he or she –

(a) has attained the prescribed age; and

(b) is owing to a physical or mental disability, unfit to obtain by virtue of any service, employment or profession the means needed to enable him or her to provide for his or her maintenance.”

For the purposes of determining eligibility for a Disability Grant and Free Medical Heath Care a more specific and purpose driven definition of disability is used. Disability means –
“a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment”

2.3 Employment Equity Act, 1998

Once again, disability has not been defined but, “people with disabilities” has. “People with disabilities”\(^{16}\) means –

“people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in, employment”

2.4 Cabinet Definition

In 2006 Cabinet adopted the definition of disability in terms of this decision disability is defined as \(^{17}\) –

“the loss or elimination of opportunities to take part in the life of the community equitably with others that is encountered by persons having physical, sensory, psychological, developmental, learning, neurological, or other impairments, which may be permanent, temporary, or episodic in nature, thereby causing activity limitations and participation restriction with the mainstream society”

2.5 Income Tax Act, 1962

For the purposes of the deduction for expenses incurred and paid as a consequence of disability, “disability” means\(^{18}\) –

\(^{16}\) Sec 1
\(^{17}\) Dept of Public Service and Administration \textit{Handbook on Reasonable Accommodation for People with Disabilities in the Public Service} 3
\(^{18}\) Sec 18(3)
“a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if—

(a) the limitation has lasted or has a prognosis of lasting more than a year; and

(b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.”

4. Conclusion

It is apparent that there is a clear distinction between “chronic illness” and “disability.” From the definitions of disability it may be deduced that South Africa has well and truly embraced the Social Model on Disability. In terms of this model “disability” is not an illness, disease or medical condition but, rather limitations in carrying out activities of daily living caused by an unaccommodating physical environment and other features of the social environment.