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Please quote our reference: PFA/GA/11337/2006/CMS

**RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUND S ACT, 24 OF 1956 ("the Act"): V S MOFOKENG ("the complainant") v MILLENNIUM ENTERTAINMENT GROUP PROVIDENT FUND ("first respondent") / ALEXANDER FORBES ("second respondent")**

1. Introduction

- 1.1 This complaint relates to the delay in the payment of death benefits. The complaint was received by this office on the 2<sup>nd</sup> November 2006. A letter acknowledging receipt thereof was sent to the complainant on the 30 November 2006. On the same day a letter was dispatched to the respondents giving them until 29<sup>th</sup> December 2006 to file their response to the complaint. This office received the first respondent's response on the 12<sup>th</sup> December 2006, a copy of which has been sent to you for your information and consideration.
- 1.2 After considering all the written submissions, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

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M Mohlala (Adjudicator), N Jeram (Deputy Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), L Shrosbree (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Nekile (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator)

## 2. Factual Background

- 2.1 The complaint relates to a delay in the payment of death benefits. The complainant is the brother of Sarah Mofokeng ("the deceased"). The deceased was employed as a cashier by Nu Metro ("the employer") when she passed away on the 6<sup>th</sup> April 2006. The deceased was a member of Millennium Entertainment Group Provident Fund ("the first respondent").
- 2.2 The deceased is survived by two children, a boy aged seven years and a girl aged 12 months.

## 3. Complaint

- 3.1 The complainant, as the natural brother of the deceased, is dissatisfied with the non payment of the death benefits. The complainant want the deceased's provident fund and her last salary as per salary advise dated 25 June 2006 amounting to R5 130.00 to be paid in to his bank account.
- 3.2 The complainant states that on the 25 June 2006 they received the deceased's provident fund statement and her salary advise, stating the payment of her bonus and other services, but the money was never deposited into her bank account.

## 4. First Respondent's Response

- 4.1 First respondent stated that in terms of the rules of the fund, death benefits are payable in accordance with the provisions of section 37C of the Pension Funds Act 24 of 1956.
- 4.2 The first respondent further states that, it has 12 months to establish the identity of all dependants and nominees and to decide on the distribution of a death benefit.
- 4.3 The first respondent states further that, it has not yet finalized its investigations and accordingly it has not decided on the distribution of the death benefit.
- 4.4 The first respondent contends that, since the member died on the 6<sup>th</sup> April 2006, the trustees have until the same date in the next year to distribute the death benefit.

## 5. Determination and reasons therefor

- 5.1 Rule 32.3.1 of the first respondent provides that "if the trustees within

12 months of the death of the member becomes aware of or trace a dependant or dependants of the member, the benefit shall be paid in such manner as the trustees shall determine to such dependant or, as may be deemed equitable by the trustees, to one of such dependants or in proportions to some of or all such dependants."

- 5.2 Section 37C(1)(a) provides that "if the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants."

5.3 The period of twelve months has expired ever since the deceased died on the 6 April 2006. The first respondent must know by now as to who the deceased's dependants are. The complainant has also indicated in his complaint that he is one of the deceased's dependants.

5.4 Therefore, it is ordered as follows:-

5.4.1 the first respondent's trustees are ordered to take a decision concerning the distribution and allocation of the death benefits in this matter within six weeks of the date of this determination.

5.4.2 I have no jurisdiction concerning the deceased's unpaid salary, this is a labour matter and must be referred to the relevant tribunal that addresses labour matters.

Yours faithfully

# MAMODUPI MOHLALA PENSION FUNDS ADJUDICATOR