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Please quote our reference: PFA/FS/5814/2005/NVC

**Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): J F M Swanepoel v South African Retirement Annuity Fund (“the fund”) and Old Mutual Life Assurance Company (South Africa) Limited (“Old Mutual”)**

### Introduction

[1] Your complaint concerns the fund’s refusal to pay you the monthly pension allocated to you in terms of section 37C of the Act in a lump sum. The complaint was received on 13 October 2005 and a letter acknowledging receipt thereof was sent to you on 18 October 2005. On the same date letters were dispatched to the fund and Old Mutual requesting them to submit responses to your complaint by 8 November 2005. The fund’s response was received on 18 November 2005. On 2 February 2006 the response was sent to you for a reply by 28 February 2006. Your reply was received on 20 February 2006. At the request of this office for more information, the fund’s further responses were received on 13 and 19 December 2006. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

### Factual Background

[2] When your husband, Mr C H M Swanepoel, retired he elected to receive one third of the benefit in a lump sum, and the balance of R20 249.77, in a monthly pension, effective from 1 November 2002. The pension, which amounts to R169.26 per month, was guaranteed for a period of ten years. Since the death of your husband on 27 February 2003, you have been

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V Ngalwana (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), J Mabuza (Assistant Adjudicator), V Abrahams (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), T Thabethe (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator)

Office Manager: L Manuel

receiving the annuity.

### Complaint

- [3] You are unhappy about the respondents' refusal to commute the monthly pension of R169.26 that you are receiving from the fund, since the death of your husband, into a lump sum. You state that you are experiencing dire financial constraints and require a lump sum to clear outstanding loans. You state further that the lump sum would be much more beneficial to you than receiving the minimal monthly income. You want this tribunal to assist you to have the pension converted and paid to you in a lump sum.
- [4] In your letter dated 20 February 2005 in which you reply to the fund's response to your complaint, you raise issues not previously raised in your complaint received by this office on 13 October 2005. In your reply to the response, you are entitled to comment and respond to the various defences raised by the respondents. However, you are not permitted to raise a new issue, or a new cause of action or a new complaint that was not contained in the original complaint. The simple reason for this is that we would then have to give the respondents another opportunity to respond to your new issue or complaint to which you must in turn reply. That would result in continual correspondence which would adversely affect the expedition with which complaints must be resolved. Should you wish to raise an issue or new complaint following your receipt of the response, you are welcome to lodge a new complaint and the turnaround time in respect of the resolution of that complaint will run from the date of lodgement of the new complaint.

### The fund's response

- [5] The fund states that it is prohibited from commuting your monthly pension of R169.26 into a lump sum by virtue of the provisions of the Income Tax Act, 58 of 1962. It states that it may commute pensions of up to R1 800 per annum, and since your pension exceeds this amount it may not be paid in a lump sum. Further, the Income Tax Act prevents the commutation of a pension payable to a beneficiary of a deceased member once six months have elapsed from the date of death of the deceased.
- [6] On specific enquiry from this office the fund also advises that no lump sum was payable on the death of your husband, but the annuity which was due and payable to him, for a guaranteed period of 10 years, and for life thereafter, was allocated to you as the sole beneficiary in terms of section 37C of the Act.
- [7] The fund also advises that a further annuity contract was not issued to you

when it commenced to pay the annuity to you.

Determination and reasons therefor

- [8] Rule 5.5 governs the payment of benefits in the event of the death of a member after retirement. The annuity that was payable to Mr Swanepoel was allocated by the trustees, after allegedly considering the dependants' circumstances, to you as his sole beneficiary, in terms of section 37C of the Act.
- [9] In terms of rule 5.6, a member may commute his annuity for a single payment equal to no more than one-third of such annuity, provided that such option is exercised before the first instalment is paid. The rules also state that the annuity may be commuted in full if the aggregate of the annuities is less than the amount prescribed by legislation from time to time. In its General Note 16, dated 15 September 1997, the Commissioner of Inland Revenue notes this amount as R1 800 per annum.
- [10] The fund is therefore prohibited in terms of its rules from converting your monthly annuity, which is the annuity that Mr Swanepoel received, up to his death, into a lump sum, as he had already elected to receive it in the form of an annuity, and it amounts to more than R1 800 per annum. If the commutation is not sanctioned in terms of the rules I cannot order otherwise. Your personal circumstances cannot override the rules of the fund.
- [11] In terms of paragraph 2 in section 1 of the retirement annuity policy contract, issued to your husband, the monthly annuity was payable to him for a period of ten years up to 1 November 2012, and in the event of his death prior to this date, the annuity would continue to 1 November 2012. In terms of paragraph 2 of section 2 of the policy, a beneficiary may be nominated to receive the annuity after the death of the member, provided the annuity may contractually continue.
- [12] Neither the rules of the fund, nor the terms and conditions of the policy document make provision for the commutation of the monthly pension in a lump sum. In the result, your complaint cannot succeed.

Dated at Cape Town on this the                      day of                      2007.

Yours faithfully

**Vuyani Ngalwana**  
**Pension Funds Adjudicator**