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Please quote our ref: PFA/WE/8516/06/CN

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”)

**MR. FG MURRAY (“the complainant”)
CAPE JOINT RETIREMENT FUND (“the respondent”)**

[1] INTRODUCTION

1.1 This complaint relates to the reduction of the amount of a monthly disability income benefit, which was paid by the fund to the complainant, upon his reaching the age of 60 years.

1.2 The complaint was received by this office on 10 May 2006, and a letter acknowledging receipt thereof sent to the complainant on 17 May 2006. On the same date a letter was dispatched to the respondent requesting the respondent to submit its response by no later than 7 June 2006. The response, dated 7 June 2006, was received by this office on 12 June 2006 and was subsequently forwarded to the complainant for a reply. The reply was received on 13 June 2006.

1.3 After considering all the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and the reasons therefor are set out below.

[2] THE COMPLAINT

2.1 The complainant, who has been receiving a disability income benefit in terms of rule 6.2 of the fund since 1 January 1999, is challenging the fund’s decision to reduce the amount of the said benefit with effect

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)

Office Manager: L Manuel

from 1 November 2006. According to him, the reduction of the amount is unfair on him since it will make it difficult for him to meet his financial commitments.

2.2 He further submits that the normal retirement age for males is 65 years, and the fund can only reduce the amount of the disability income benefit when he reaches that age, and not on attainment of sixty years of age.

[3] THE RESPONSE

3.1 The fund states that the normal retirement age for all fund members in terms of the rules is 60 years. It further states that rule 6.2.4 provides for the reduction of the amount of the disability income benefit on attainment of the normal retirement age, by that portion of his pension that represents the amount granted to him by the trustees in terms of rule 6.2.1, together with all escalations on such amount up to his normal retirement date. The amount granted in terms of rule 6.2.1 is the greater of the expected pension or 50% of the member's final salary or 75% of the member's final salary.

3.2 It concludes that the complainant's disability income benefit would be reduced by an amount equal to 75% of his salary at the date of disablement in accordance with the provisions of rule 6.2.4.

[4] DETERMINATION AND REASONS THEREFOR

4.1 The rules of the fund define "normal retirement age" as the age of 60 years. The complainant was born during October 1946 and thus reached the normal retirement age in terms of the rules during October 2006.

4.2 He commenced receiving a disability income benefit in terms of rule 6.2 on 1 January 1999, the payment of which would, in terms of the rules, cease on the earliest of his resumption of his duties; or his death; or his attainment of the normal retirement age; or his ceasing to be disabled in terms of the rules.

4.3 Rule 6.2.4 states as follows:

"On attainment of his NORMAL RETIREMENT DATE, the PENSIONER'S benefit in terms of this RULE shall be reduced by that portion of his PENSION that represents the amount granted to him by the TRUSTEES in terms of RULE 6.2.1 above, together with all escalations on such amount up to his NORMAL RETIREMENT DATE".

4.4 The amount that was granted to the complainant in terms of rule 6.2.1

was an insured risk benefit of 75% of his final salary at the date of disablement. A lump sum of R75 888 as also paid to him on 4 January 1999. It is the amount of the insured risk benefit that would have fallen away when the complainant reached the age of 60 years. The fund has, over the years (4 January 1999, 31 October 2003, and 12 July 2004) informed the complainant that the disability income benefit amount would be reduced at the end of October 2006 after he had attained the age of 60 years. Thus, he was given adequate notice, as well as an opportunity to challenge that decision, before the benefit was reduced.

4.5 The rules of the fund are binding alike on the fund, its members, officers, shareholders and beneficiaries: (See section 13 of the Act). The Supreme Court of Appeal has pronounced on the binding effect of the rules in *Tek Corporation Provident Fund & Others v Lorentz* [2000] 3 BPLR 227 (SCA) at paragraph [28]. Since the fund is bound by its rules to reduce the amount of the disability income benefit upon the complainant reaching the age of 60 years, it would be acting unlawfully if it did not comply with the said rule provision.

4.6 In the result, there is no basis in law for upholding this complaint. Thus, the complaint is dismissed.

SIGNED IN CAPE TOWN ON THIS DAY OF 2007

Yours faithfully

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MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR