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DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, OF 1956 (“the Act”) – SJ BEUKES v CAPE JOINT RETIREMENT FUND / BERGRIVER MUNICIPALITY

Introduction

[1] This complaint concerns the repudiation of your claim for a disability benefit. The complaint was received by this office on 19 June 2005 and a letter acknowledging receipt thereof sent to you on 8 July 2005. On 20 July 2005 a letter was dispatched to the respondents giving them until 10 August 2005 to file a response to the complaint. The response dated 4 August 2005 was received on 4 August 2005. On 15 August 2005 the response was sent to you for a reply by 29 August 2005. A reply was received from you on 24 August 2005. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter.

Facts and complaint

- [2] Given my finding in this matter, I find it unnecessary to canvass the facts in detail. Only a brief summary of the facts is set out below.
- [3] In or about July 2004, after a period of illness, you applied to the Cape Joint Retirement Fund (“the fund”) for a disability benefit. Your claim was however rejected by Metropolitan Life Limited (“Metropolitan”), the insurer of the benefit.
- [4] Thereafter you submitted further medical reports. However your further applications were also rejected by Metropolitan. This is the basis of your complaint. You refer to the fact that your disability claim was accepted by

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

Sanlam in terms of the group life insurance policy.

Fund's response

- [5] The fund states that the fact that your claim was accepted by Sanlam is irrelevant. It is governed by its own set of rules and is not bound by any decision taken by a third party not associated with the fund.
- [6] The fund refers to rule 6.1 and contends that in terms thereof the liability of the fund is contingent on acceptance of the disability claim by the insurer, Metropolitan in this instance. The latter has repudiated the claim and therefore, according to the fund, it has no liability to you in this regard.

Employer's response

- [7] The employer (the Bergriver Municipality) contends that it has fulfilled its duties to you both in complying with the Labour Relations Act of 1995 and by assisting and communicating with you regarding the status of your disability claim. According to the employer, any claim which you may have lies solely against the fund.

Determination and reasons therefor

- [8] At the time you applied for disability, rule 6.1 provided as follows:

“The lump sum disability benefits provided to MEMBERS are reinsured with an INSURER, and are subject to the conditions imposed by the INSURER concerned. An excerpt of the INSURER'S terms and conditions are contained in Annexure 2 to these RULES and are supplied for information only.

The full terms and conditions as given in the INSURER'S policy will apply at all times. The INSURER'S terms and conditions may change from time to time.

Depending upon a MEMBER'S chosen category of membership and to the extent that he/she is accepted by the INSURER for such benefits, the MEMBER shall receive the applicable benefits.

MEMBERS in Categories A, B, C and D will receive their MEMBER SHARE in addition to the INSURED RISK BENEFIT as shown in Annexure 2.“

- [9] In terms of the above, a member only becomes entitled to the insured disability benefit on acceptance of the claim by the insurer. Therefore I am satisfied that in terms of rule 6.1, the fund has a valid defense to your claim that since Metropolitan has repudiated your claim, the fund has no liability to you in relation to the insured disability benefit.
- [10] However that is not the end of the matter as it would appear that the fund has overlooked the provisions of rule 9.1 which read:

“LIMITATION

This RULE shall apply notwithstanding anything to the contrary contained in these RULES with regard to the INSURED RISK BENEFITS:

(1) The TRUSTEES may, after consultation with the ACTUARY, reinsure the INSURED RISK BENEFITS whether provided in terms of the RULES of the FUND or elsewhere, with an INSURER. The said benefits shall be subject to the conditions imposed by the INSURER concerned and each MEMBER shall only be entitled to the said benefits to the extent that he is accepted by the said INSURER for such benefits; *provided that the TRUSTEES may, in their absolute discretion and after consultation with the ACTUARY, make provision for payment out of the reserve account of part of any benefit which has been reduced or for payment of the whole benefit, where the said INSURER has refused to admit a claim in respect of such benefit.*” (Emphasis added)

(2) ...

[11] In terms of the above, where the insurer repudiates a claim, the trustees have a discretion to make provision for payment out of the fund’s reserve account.

[12] Functionaries that are vested with a discretionary power are obliged to exercise that power. Although you are not *ipso facto* entitled to the trustees exercising their discretion in terms of rule 9.1 in your favour, at the very least you are entitled to them exercising their discretion.

[13] Baxter, in *Administrative Law*, at page 414, comments in this regard as follows:

“Persons who are entitled to do so may call upon a public authority to exercise its powers. Where a power is discretionary, they are at least entitled to a decision one way or the other: a blatant refusal to exercise the discretion is unlawful.”

[14] The appropriate relief is to refer the matter back to the trustees to exercise their discretion in terms of rule 9.1.

[15] In the affidavit by Arnoldus Jacobus Bredenhann attached to the employer’s response he states that you eventually resigned in order to receive the Sanlam benefit. He then goes on to state “[You] had accordingly accepted all risk of dismissal of the lumpsum disability benefits by the said Metropolitan (and thus of non-payment).”

[16] Firstly, Metropolitan had already repudiated your claim and subsequent claims prior to your resignation. Therefore the repudiation (or repudiations) were unrelated to your resignation. Secondly, in the Act, a “member” excludes a person who has received all the benefits due to him or her by the fund. By implication therefore, a person who has not received all the benefits due to him or her (which is precisely your contention) is still a member of the fund and entitled to exercise his or her rights in terms of the

