



HEAD OFFICE

Johannesburg

2nd Floor, Sandown House
Sandton Close 2, Sandton, 2196
PO Box 651826, Benmore, 2010
Tel (011) 884-8454 □ Fax (011) 884-1144
E-Mail: enquiries-jhb@pfa.org.za

Cape Town

2nd Floor, Oakdale House, The Oval
Oakdale Road, Newlands, 7700
P O Box 23005, Claremont, 7735
Tel (021) 674-0209 □ Fax (021) 674-0185
E-mail: enquiries@pfa.org.za
Website: www.pfa.org.za

Please quote our reference: PFA/GA/3294/2005/CMS

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”)- DJ VAN DER WALT (“the complainant”) v MARLIN GROUP PROVIDENT FUND (“the first respondent”)/IMPALA GRANITE DEATH AND DISABILITY FUND (“the second respondent”)/ALEXANDER FORBES (“the third respondent”)

1. Introduction

1.1 This complaint relates to the retirement age of the complainant and the cessation of his medical aid. A complaint dated 15 July 2005 was received by this office on the same date. On 19 September 2005 a letter was sent to the complainant acknowledging receipt thereof and on the same day a letter was sent to the first and third respondents giving them until 10 October 2005 to file their responses to the complaint. The third respondent has filed its response on behalf of the first respondent dated 8 November 2005. On 14 November 2005 a letter was sent to the complainant asking him to file a reply to the response on or before 28 November 2005.

1.2 After considering all the written submissions, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

2. Factual Background

M Mohlala (Adjudicator), C Nkuhlu (Snr Assistant Adjudicator), Z Camroodien (Snr Assistant Adjudicator), F Mtayi (Snr Assistant Adjudicator), K MacKenzie (Snr Assistant Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), E De La Ray (Snr Assistant Adjudicator), N van Coller (Assistant Adjudicator), L Mbalo (Assistant Adjudicator), S Gcelu (Assistant Adjudicator), M Ramabulana (Assistant Adjudicator), N Sihlali (Assistant Adjudicator), S Mothupi (Assistant Adjudicator), P Mphephu (Assistant Adjudicator), C Seabela (Assistant Adjudicator), M Qhali (Assistant Adjudicator),

Office Manager: L Manuel, Senior Accountant: F Mantsho

- 2.1 The complainant was an employee of Impala Granite (Pty) Ltd since 10 June 1976 which later changed to Kudu Marlin Group(Pty)Ltd (“the employer”).
 - 2.2 The complainant became a member of the first respondent on June 1992. The complainant was declared permanently disabled on 1 January 1994 and he could not proceed with his normal occupation or any other suitable position with the employer.
 - 2.3 The complainant is currently receiving a monthly disability income from the second respondent.
3. Complaint
- 3.1 The complainant states that after he was disabled, it was agreed that he will receive the disability income and medical aid until April 2010 when he goes on retirement at the age of 65 years.
 - 3.2 The complainant further states that on 31 March 2005 he received a letter from the third respondent informing him that the trustees of the first respondent took a decision that he will go on retirement at the age of 60 years and his medical aid will be terminated.
 - 3.3 It is further stated by the complainant that he is now without medical aid and the third respondent refuse to provide him with the pension statement and/or documents in relation to his contribution to the first respondent.
 - 3.4 The complainant is aggrieved by this state of affairs and he seeks the continuation of the disability income for the next five years (until he reaches the retirement age at 65 years) and he also seeks the continuation of his medical aid.
4. Third Respondent’s Response
- 4.1 The third respondent states the complainant is on disability income from the second respondent underwritten by Old Mutual.
 - 4.2 The third respondent further states that at the of the complainant’s disability, namely, January 1994, the complainant’s normal retirement age was 65 years, due to a miscommunication between Old Mutual and the third respondent, it was understood that in terms of the Old Mutual policy, taken on behalf of the complainant, the complainant’s normal retirement age had been changed to 60 years of age.

4.3 It is further stated by the third respondent that this misunderstanding was clarified by old mutual in a letter dated 23 February 2005, that the complainant's normal retirement age remained at 65 years.

4.4 The third respondent further states that the first respondent has amended rule 5.24, with the amendment effected on 14 August 2000 to the effect that the amended read that:

"5.24 RETIREMENT AGE shall be deemed to be reached on the last day of the month during which a MEMBER attains the age of

5.24.1 in the case of a MEMBER other than a MEMBER falling within the scope of Rule 5.24.2 or 5.24.3, 60 years

5.24.2 in the case of a MEMBER who was a member of the PENSION FUND and at 1 November 1997 elected to retain his retirement age as 63 years, 63 years

5.24.3 in the case of a MEMBER who was a member of the Marble Lime Provident Fund and at 31 May 1999 elected to retain his retirement age as 65 years , 65 years

4.5 The third respondent further states that the complainant will be eligible for the retirement benefit from the first respondent when he attains the age of 60 years because in terms of the amended rule 5.24 of the first respondent, he was not a member of the first respondent on 1 November 1997 in terms of rule 5.24.2 as he had transferred to the first respondent on 1 June 1992, nor was he a member of the Marble Lime Provident Fund in terms of rule 5.24.3.

4.6 It is further stated by the third respondent that the complainant and the trustees are bound the rules of the first respondent and therefor the complainant will go on retirement at the age of 60 years

4.7 The third respondent further states that the complainant should address the issue of the cessation of the medical aid with the employer.

5 Determination and reasons therefor

5.1 The complainant is aggrieved by the decision of the first respondent to place him on retirement at the age of 60 years as opposed to 65 years ant the termination of his medical aid. The third respondent contends that in terms of the amended rule 5.24 of the first respondent, the complainant should retire at the age of 60 years and that the issue of the medical aid should be addressed with the complainant's employer.

5.2 The amended rule 5.24 was registered and approved by the Registrar of the Pension Fund on the 14 August 2000 in terms of section 12 of the Act which reads that:

“(1) A registered fund may, in the manner directed by its rules , alter or rescind any rule or make any additional rule, but no such alteration, rescission or addition shall be valid-

(b) unless it has been approved by the registrar and registered as provided in subsection (4)

5.3 It must be noted that the complainant and the trustees of the first respondent are bound by the rules of the first respondent, in particular rule 5.24. Section 13 of the Act dealing with the binding force of the rules reads that:

“Subject to the of this Act, the rules of a registered fund shall be binding on the fund and the members, shareholders and officers thereof, and on any person who claims under the rules or whose claim is derived from a person so claiming”.

(See also ***Tek Corporation Provident Fund and Others v Lorentz [2000] 3 BPLR 227 (PFA)***)

5.4 It is the finding of this tribunal that the complainant will be eligible for retirement at the age of 60 years, as he does not qualify under the exception contained in sub-rules 5.24.2 and 5.24.3 of the first respondent mentioned above at paragraph 4.4 of this determination.

5.5 On the issue of the termination of the complainant’s medical aid, it is the finding of this tribunal that it does not have jurisdiction to adjudicate upon this matter as it does not constitute a complaint in terms of the Act. Section 1(a) of the Act define a a complaint in the following:

“complaint means a complaint of the complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging-

(a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or any improper exercise of its powers;

(b) that the complainant has sustained any or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;

(c) that a dispute of fact or law has arisen in relation to a fund between a fund or any person and the complainant; or

(d) that the employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund

but shall not include a complaint which does not relate to a specific complaint”

5.6 The complainant may take up this issue with the Council for Medical Schemes which is a statutory body , established by the parliament of South Africa to provide supervision over medical schemes on the following contact details:

Council for Medical Schemes
Private Bag X34
Hatfield
Pretoria
0028

Fax: (012) 430 7644
Tel: (012) 431 0500

6. This complaint can not succeed and is therefore dismissed.

SIGNED IN JOHANNESBURG ON THIS DAY OF 2008.

Yours faithfully

MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR