



**IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR
HELD IN JOHANNESBURG**

CASE NO: PFA/GA/5827/05/VIA

In the complaint between:

ELIZABETH MNGUNI

Complainant

And

**ABBOTT LABORATORIES SOUTH AFRICA (PTY)
LIMITED PENSION FUND**

1st Respondent

**OLD MUTUAL LIFE ASSURANCE COMPANY (SOUTH AFRICA)
LIMITED t/a PENCARE ANNUITY BUSINESS**

2nd Respondent

GLENRAND MIB

3rd Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24
OF 1956 ("the Act")**

1. The introduction

1.1 This matter concerns the computation and payment of a spouse's pension in terms of the rules of the first respondent. The complaint was received by this Tribunal on 10 October 2005. On 18 October 2005 letters were dispatched to the first and second respondent ("hereinafter collectively referred to as the respondents") giving them until 8 November 2005 to file their respective responses to the complaint. A combined response was received from the respondents on 7 November 2005. A copy of the response was sent to the complainant on 12 November 2005 for a reply by 25 November 2005. On 27 November 2006 Glenrand MIB Benefit Services (Pty) Ltd ("the administrator"), the first respondent's administrator, submitted a further response.

1.2 After considering the written submissions before me, I find it unnecessary to hold a hearing in this matter. My determination and the reasons therefor follow.

2. The background facts

2.1 The complainant is the surviving spouse of the late Mr. P.M.Mguni ("the deceased"). He passed away on 24 June 2004. The deceased was a pensioner member of the first respondent and was in receipt of a monthly pension before he

passed away.

2.2 The pension commenced from 1 May 1993 until he passed away in June 2004. The pension was paid by second respondent on behalf of the first respondent.

2.3 The second respondent continued to pay the deceased's pension for a period of two months after his death because the complainant failed to inform the second respondent that the deceased passed away in June 2004. As a result of this overpayment the second respondent now demands that the complainant repay the overpaid amount, in the sum of R1 941.10.

3 The complaint

3.1 The complainant is dissatisfied with the first respondent's decision not to pay her a spouse's pension, which she became entitled to receive in terms of the rules of the first respondent when the deceased passed away in June 2004.

3.2 The complainant states that the deceased was the sole breadwinner and that they, including their two daughters, lived on his monthly pension. The complainant further alleges that she and her two daughters were unemployed when the deceased passed away. Furthermore, that she approached the deceased's former employer, Abbott Laboratories S.A. (Pty) Ltd, for assistance

but was informed by the employer's human resources officer that the deceased was already on pension for 10 years prior to his death and as such they could not assist her.

3.3 The complainant request that this Tribunal investigate and determine whether she was fairly treated by the first respondent.

4. The response

4.1 *The combined response submitted by the first and second respondents.*

4.1.1 According to the respondents the deceased elected to commute one-third of his pension benefit for a cash amount. The remaining two-thirds was used to purchase a monthly pension from the second respondent in its capacity as insurer. Furthermore, the deceased did not elect that a widow's pension be paid to his spouse in the event of his death.

4.1.2 The respondents further states that the deceased was, in terms of the benefits certificate (voordeelsertifikaat), only entitled to receive a pension for a period of ten years i.e. from 1 May 1993 to 1 April 2003. However, the deceased continued to receive the pension until his death. According to the respondents, the second respondent has sustained damages as a result of the overpayment.

4.2 *The third respondent's response.*

4.2.1 According to the third respondent it commenced administrating the first respondent in 1995 when it took over the function from the second respondent. Furthermore, the third respondent asserts that the rules of the first respondent make provision for the payment of a surviving spouse's pension. The rules further provide that, the surviving spouse's pension should be equal to 50% of the pension payable to the retired member. The third respondent addressed a letter to the second respondent requesting it to pay a surviving spouse's pension to the complainant.

5. Determination and the reasons therefor

5.1 The first respondent is a registered fund in terms of the provisions of the Act and it is bound by its rules in the same way as its members, officials, shareholders and persons claiming under the rules (see section 13 of the Act). By virtue of the binding nature of the rules, the trustees of the first respondent, the members, the participating employer and any service provider such as the administrator of the fund may only do that what is set forth in the rules (see *Tek Corporation Provident Fund & Another v Lorentz* [2000] 3 BPLR 227 (SCA) at 239D-E) ("the *Tek Corporation* case).

5.2 The computation and payment of a spouse's pension is provided for in special rule 3.2 and general rule 6 of the first respondent's rules. Special rule 3.2 provides as follows:

"3.2 DEATH AFTER RETIREMENT

The benefits payable in accordance with General Rule 6 in respect of a PENSIONER shall be as specified in Special Rules 3.3.1., 3.3.2. and 3.3.3.

3.3.1 Balance of pension payments

Where the PENSIONER'S death occurs within 120 months after his date of retirement, the pension payments due for the balance of the 120 months' period.

PLUS

3.3.2 SPOUSE'S Pension

If on his death or, on the expiration of the 120 months' period specified in Special Rule 3.3.1, whichever is the later, the PENSIONER is survived by his SPOUSE (provided such SPOUSE married the MEMBER prior to his date of retirement), a SPOUSE'S pension of 50% of:

- (a) the PENSIONER'S retirement pension payable at the date of his death or, on the expiration of the 120 months' period specified in Special Rule 3.3.2, whichever is the later, or
- (b) if any alternative benefits were elected in terms of General Rule 5.2.3, the retirement benefit that would have been payable had these alternative benefits not been elected.

PLUS

3.3.3 Lump Sum

A cash amount of R1 000.”

5.3 Special rule 3.2 provides in clear and unambiguous terms that a spouse's pension shall be payable to the pensioner's surviving spouse subject to the proviso that the surviving spouse was married to the member prior to his date of retirement. The complainant and the deceased were married on 31 December 1985, which marriage was still in existence at the time of the deceased's retirement in 1993 and his death in 2004. Thus, the complainant qualifies for the payment of a spouse's pension as provided for in special rule 3.3.2.

5.4 According to the respondents the deceased did not elect that a spouse's pension be paid to the complainant in the event of him passing away before her. The rules however do not make provision for a member to make such an election.

Paragraph [5.1] above specifically states that the rules are binding on the members and any other person claiming in terms of it (see section 13 of the Act and the *Tek Corporation* case). Thus, notwithstanding the respondents submission the first respondent is liable to pay the complainant a spouse's pension as provided for in special rule 3.3.2.

5.5 The first respondent is also liable, in terms of special rule 3.3.3, to pay a once off lump sum cash amount of R1000.00 to the dependants and/or nominees of the deceased. This benefit must be distributed in accordance with the provisions of section 37C of the Act, which regulates the distribution of death benefits upon the death of a member.

5.6 In terms of general rule 6, the spouse's pension shall be payable on the first day of the calendar month following the death of the pensioner provided that the death occurs after the guaranteed ten year period. Whereupon the death occurs prior to the expiry of the ten year period the spouse pension payment shall commence on the expiry of the ten year period. The deceased commenced receiving his pension on 1 May 1993 and passed away on 24 June 2004. In the circumstances, the deceased passed away after the expiration of 10 years from the date that he commenced receiving a monthly pension. Thus, the first respondent should have commenced paying the complainant's spouse's pension with effect from 1 July 2004.

6. Relief

6.1 I make the following order:

6.1.1 The first respondent, Abbott Laboratories South Africa (Pty) Limited Pension Fund, is directed to calculate and commence paying the complainant a spouse's pension in terms of special rule 3.3.2 from the first day of the month following the date of this ruling;

6.1.2 The first respondent is further directed to pay the complainant's arrear monthly spouse's pension as a lump sum from 01 July 2004 to date, less any amounts already paid to her and further less any deductions in terms of section 37A and 37D of the Act, together with interest thereon calculated at 15.5% per annum and reckoned from the due date of each monthly pension, until date of final payment, within 4 weeks of the date of this ruling;

6.1.3 The first respondent is further directed to effect distribution as required by section 37C of the Act, within 4 weeks of the date of this ruling, in respect of the lump sum amount of R1000.00 payable in terms of special rule

