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Please quote our ref: PFA/GA/17436/2007/LTN

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24, 1956 ("the Act"): Y E COETZEE ("the complainant") v CENTRAL RETIREMENT ANNUITY FUND ("the first respondent"), SANLAM ("the second respondent")

1. Introduction

- 1.1 The complaint concerns the alleged improper distribution of a death benefit by the first respondent following the death of Mr. Ryciak ("the deceased").
- 1.2 The complaint was received by this office on 27 August 2007. A letter acknowledging receipt thereof was sent to the complainant on 27 August 2007. On the same date a letter was dispatched to the second respondent giving it until 27 September 2007 to file its response to the complaint. This office received a response from the first respondent on 14 September 2007.
- 1.3 Having considered the written submissions filed before this office, it is unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.
- 1.4 As the background facts are well-known to all parties, these shall be repeated only to the extent that they are pertinent to the issues raised herein.

2. Facts in brief

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), S Mothupi (Assistant Adjudicator)

Office Manager: L Manuel

2.1 The deceased was a member of the first respondent and passed away on 13 December 2006. The complainant is the ex-partner of the deceased. An illegitimate child, Teaghan Coetzee was born from this union. The Board of Trustees of the first respondent distributed 50% of the death benefit of R68 814, 00 to the minor child, Teaghan Coetzee and the remaining 50% to Ms. Yvette Grobler, the deceased's life partner at the time of his death.

3. Complaint

3.1 The complainant complains that the total benefit should be paid to her minor child aged seven, Teaghan Coetzee, as she is still young and was financially dependent on the deceased at the time of his death. She submitted that the deceased relationship with Ms. Yvette Grobler was for a shorter period and she does not qualify as a dependant. The complainant proposes that the Board of Trustees alter their decision and award 100% of the benefit to her minor child.

4. Response

4.1 The first respondent submitted that the deceased was its member until his death. It stated that upon his death, a benefit became payable. The death benefit amounted to R68 814, 00. The deceased nominated Mr. Bradley A Ryciak (brother of the deceased's member) on 24 November 1999 to receive the benefit after his death.

4.2 The Board of Trustees of the first respondent conducted its investigation and concluded that Ms Yvette Grobler (life partner of the deceased at the time of his death) and Teaghan Coetzee as dependants of the deceased. They further discovered that Mr. Bradley A Ryciak was a nominee. The Board of Trustees also considered factors for equitable distribution before they can allocate benefits. They also found out that Mr. Bradley A Ryciak, a nominee, was also a beneficiary of policy no. 17811383x3 on the life of the deceased's member and received a total amount of R579 363, 91 of the death and accident benefits. They further found that no will was available and Teaghan Coetzee will be the only heir to the intestate estate. At the time of the decision, no executor had been appointed yet. However, it has been confirmed that the estate will not be a section 18(3) estate and therefore not less than R125 000, 00. The person who completed the 'Form for Dependents' declared the estimated value of the estate as approximately R500 000, 00.

Teaghan Coetzee receives an amount of R1 200, 00 per month for maintenance. Ms Yvette Grobler has two children, Sonelle and Burnadette Grobler from a previous marriage and receives an amount of R600, 00 per child per month for maintenance from her ex-husband. Ms Yvette Grobler confirmed that the two children were part of the family of the deceased's member. It was submitted further that Ms Yvette Grobler is earning a monthly salary of R11 083, 56, whilst the deceased's member earned an income of R23 000, 00 per month. The deceased's member was also a member of the South African Retirement Annuity Fund (SARAF). His interest in SARAF is R40 000, 00. The administrator of SARAF has confirmed telephonically that no payment has been made yet, as they are awaiting information from the dependants.

- 4.3 Upon consideration of the aforementioned facts and circumstances, the Board of Trustees of the first respondent decided to allocate 50% of the benefit to Teaghan Coetzee and Ms Yvette Grobler.

5. Determination and reasons therefor

- 5.1 The payment of death benefits is regulated by section 37C of the Act read in conjunction with the definition of a dependant in section 1. The primary purpose of this section is to protect those who were financially dependent on the deceased during his lifetime. In effect, section 37C overrides the freedom of testation of the deceased. Thus, although the deceased may have expressed an intention to benefit a certain nominated beneficiary in his nomination form, it does not necessarily imply that the whole amount of the benefit will in fact be awarded to him because the deceased's intention as contained in his nomination form is only one of the factors taken into consideration when allocating a death benefit (see *Mashazi v African Products Retirement Benefit Provident Fund* [2002] 8 BPLR 3703 (W) at 3705J-3706C). It is the board's responsibility when dealing with the payment of death benefits to conduct a thorough investigation to determine the beneficiaries, to thereafter decide on an equitable distribution and finally to decide on the most appropriate mode of payment of the benefit payable.
- 5.2 The duties of the board in this regard were cogently summarized in *Sithole v ICS Provident Fund and Another* [2000] 4 BPLR 430 (PFA), at paragraphs 24 and 25, as follows:

“When making an “equitable distribution” amongst dependants the board of management has to consider the following factors:

- the age of the dependants,
- the relationship with the deceased,

- the extent of dependant,
- the wishes of the deceased placed either in the nomination and / or his last will, and
- financial affairs of the dependants including their future earning capacity potential

In making their decision, trustees need to consider all relevant information and ignore irrelevant facts. Further, the trustees must not rigidly adhere to a policy or fetter their discretion in any other way.”

- 5.3 Section 37C(1)(bA) of the Act deals with a situation where there are both dependants and nominees. The apposite portion of section 37C(1)(bA) of the Act reads as follows:

“if a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such portions as the board may deem equitable....”

- 5.4 Section 1 of the Act defines a “dependant” in the following terms:

“dependant” in relation to a member means-

- (a) a person in respect of whom the member is legally liable for maintenance.
- (b) a person in respect of whom the member is not legally liable for maintenance, if such person –
 - (i) was, in the opinion of the board, upon the death of the member in fact dependant on the member for maintenance;
 - (ii) is the spouse of the member, including a party to a customary union according to Black law and custom or to a union recognized as a marriage under the tenets of any Asiatic religion;
- (c) a person in respect of whom the member would have become legally liable for maintenance had the member not died.”

- 5.5 In this matter, the complainant is disputing that Ms. Yvette Grobler qualifies as a dependant. From the facts, Ms. Yvette Grobler qualifies as a dependant (par b(i)), because she was relying on the deceased for maintenance

- 5.6 Having addressed the first issue in *supra* the second issue which falls for determination is whether the trustees exercised their

discretion properly in the distribution of the benefit. In this matter, the Board of Trustees of the first respondent allocated 50% of the benefit to Teaghan Coetzee and Ms Yvette Grobler. The board found that the complainant daughter receives maintenance of R1 200, 00 per month and she is also an intestate heir of the deceased estate. They further found that Ms Yvette Grobler is earning a monthly salary of R11 083, 56 and also receives maintenance of R600, 00 per child per month for her two children from a previous marriage from her ex-husband. The board also found that the deceased's member was also a member of the South African Retirement Annuity Fund (SARAF). His interest in SARAF is R40 000, 00 and payment has not yet been made since the administrator requires information from dependants. Thus, it is clear that both Teaghan Coetzee and Ms Yvette Grobler have adequate source of income.

- 5.7 After considering all the evidence, this office is satisfied that the board has acted reasonably and properly in this case. The board is vested with a discretionary power to decide on an equitable distribution of the death benefit. It is trite law that only in instances where the functionary has exercised its discretionary powers unreasonably and improperly, or has unduly fettered its exercise thereof, that its decision can be reviewed. As discussed in the preceding paragraphs, in the present matter it cannot be said that the opinion of the board was not an honest one, nor can it be said that it was not reasonable in the circumstances. Furthermore, the board has considered relevant factors and discarded irrelevant considerations. Therefore, no legal grounds exist for this office to alter its decision to award 50% of the death benefit to the complainant daughter and Ms Yvette Grobler.

6. Relief

- 6.1 In the result, the complaint cannot succeed.

Yours faithfully

**MAMODUPI MOHLALA
PENSION FUNDS ADJUDICATOR**