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Please quote our reference: PFA/WE/6720/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 ("the Act"): E Leoschut v National Health Laboratory Services Retirement Fund ("the fund") and National Health Laboratory Services ("the employer")

Introduction

[1] Your complaint concerns the fund's failure to pay you a withdrawal benefit while you are in receipt of a disability income. The complaint was received on 9 December 2005 and a letter acknowledging receipt thereof was sent to you on 15 December 2005. On the same date letters were dispatched to the respondents requesting them to submit responses to your complaint by 5 January 2006. After requesting an extension on 19 December 2005, to 31 January 2006, the fund's response was received on 13 January 2006. The fund copied you with its response. On 9 May 2006 the response was sent to you for a reply by 31 May 2006. No reply has been received from you. After considering the written submissions before me, I consider it unnecessary to hold a hearing in this matter. My determination and reasons therefor appear below.

Complaint

[2] You have been in receipt of a disability income benefit equal to 70% of your salary since September 2005, but you do not know for how long you will still be paid this benefit. You want your employer to terminate your service with it so that you will become entitled to a withdrawal benefit as you contend that you will not be returning to work. You state that you would also like to receive your disability benefit in a lump sum.

The response

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

[3] Alexander Forbes Group (Pty) Limited ("Alexander Forbes"), the fund administrator, states that the fund is a hybrid fund consisting of both a provident and a pension plan, and you are a member of both these plans. While you are in receipt of the disability income, both you and your employer are contributing to the fund and in terms of the rule, you will remain a member until your recovery, retirement or death, at which time the disability benefit will cease. This will ensure that you will have an income when you reach retirement.

[4] Alexander Forbes further states that your disability income benefit is being paid to you in terms of an insurance policy issued by Momentum Life Assurers Limited to the employer, is not fund owned, and is not paid in terms of the fund rules. It states that the main objective of this policy is not the provision of benefits upon retirement and is thus not a pension fund organization as defined in the Act. Alexander Forbes concludes that I do not have jurisdiction to consider any aspect of your complaint relating to the disability arrangement.

Determination and reasons therefor

[5] The evidence shows that the disability income that you are receiving is paid in terms of the Group Permanent Health Insurance Policy issued to the South African Institute for Medical Research, in which your employer apparently participates. The purpose of this office is to dispose of complaints as defined in the Act. The complaint must relate to the administration of a pension fund.

[6] Your complaint that the full disability benefit be paid to you instead of a monthly income, and any other concern in respect of this benefit, relates to a benefit paid by a group scheme in terms of a contract between the employer, or a body that represents the employer, as in this case, and the insurer. The group scheme is a separate legal entity to the provident/pension fund, and does not have as its main objective the provision of retirement benefits. It is therefore not a "pension fund organization" as defined in the Act. For this reason this aspect of your grievance does not amount to a "complaint" as defined in the Act, and I therefore do not have jurisdiction to investigate it. You may approach the Ombudsman for Long-Term Insurance, whose contact details appear at the foot of the letter.

[7] The payment of your benefit from the fund is governed by the rules of the fund. In terms of the rules, you are deemed to be a member of the fund, and are obliged to continue contributing to it, until such time as your disability benefit ceases. Since the fund is only empowered to act in terms of its rules (see *Tek Corporation Provident Fund and Others v Lorentz*

[2000] 3 BPLR 227 (SCA) at paragraph [28]), it may not pay you a withdrawal benefit at this sage. I am furthermore unable to direct the fund to act contrary to its rules. There is therefore no basis on which I can order relief.

Relief

[8] Your complaint is dismissed.

Dated at Cape Town on this the day of 2007.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator