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Please quote our ref: PFA/MP/9347/2006/PM

DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT NO 24 of 1956 (“the Act”): MAPHUTHUMA R (“the complainant”) v ORION MONEY PURCHASE PROVIDENT FUND: PARTICIPATING EMPLOYER: ADINVALE (PTY) Ltd (“first respondent”); ADINVALE (PTY) Ltd (“second respondent”); OLD MUTUAL CORPORATE (“third respondent”)

1. Introduction

- 1.1 The complaint concerns the non payment of a disability benefit by the first respondent to the complainant upon the complainant claiming that she is disabled and therefore unable to continue with her work.
- 1.2 The complaint was received by this office on 10 July 2006. A letter acknowledging receipt thereof was sent to the complainant on 17 July 2006. On the same date, a letter was sent to the third respondent informing it about the complaint and giving it until 16 August 2006 to respond to the complaint. Another letter was sent to the third respondent on 13 December 2006 informing it about the complaint and giving it until 12 January 2007 to respond to the complaint. On 17 October 2007, a third letter was sent to the third respondent reminding it that it has not responded to the complaint that was sent to it. A response was received from the third respondent on 22 October 2007. A response was received from the first respondent on 31 October 2007.

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 Rey (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

1.3 Subsequent to considering the written submissions before this tribunal, it is unnecessary to hold a hearing in this matter. As the background facts are well known to the parties, only facts which are relevant to the issues raised herein shall be repeated. The determination and reasons therefor follow.

2. Factual background

2.1 The complainant was a member of the first respondent as a result of her employment with the second respondent. The complainant commenced membership with the first respondent on 01 January 1997 until 31 January 2006.

2.2 Upon the complainant leaving the employ of the second respondent, a withdrawal benefit became due and payable to her. On or around June 2006, the complainant submitted a disability claim to the first respondent claiming that she was permanently disabled and therefore in terms of the rules of the first respondent was entitled to a disability benefit. The complainant was advised that she was not entitled to a disability benefit because the medical report that she submitted was not sufficient to warrant payment of a disability benefit.

3. The complaint

3.1 The complainant is aggrieved that she has not been awarded her disability benefit even after submitting a medical report from her own medical practitioner which states that she is unable to work.

4. First respondent's response

4.1 The first respondent submitted that the complainant applied for a withdrawal benefit in February of 2007 and her benefit of R17 865.81 was paid into her bank account on 15 March 2007. Attached to the first respondent's response is a copy of the application for a withdrawal benefit and proof of payment thereof.

5. Third respondent's response

5.1 The third respondent in its capacity as administrator of the first respondent confirmed that the complainant was paid her withdrawal benefit. The third respondent submitted further that on 23 June 2006, its claims department declined the complainant's disability

claim because she was not regarded as totally and permanently disabled in terms of the policy rules. Further, the complainant then supplied it with a medical report from her general practitioner; however, the report was not enough for it to review the claim. The complainant was requested to submit a medical report from a specialist physician but the complainant failed to submit such report. The complainant then claimed her withdrawal benefit, which was paid to her according to her instructions.

6. Determination and reasons therefor

- 6.1 The complainant applied for a disability benefit which was not granted because the medical report that was supplied by the complainant was sufficient to warrant payment. On 12 February 2007, the complainant applied for a withdrawal benefit which was paid to her on April 2007.
- 6.2 When a member elects to withdraw his/her share of fund, he/she is effectively withdrawing from the fund as a member. Upon the withdrawal benefit being paid to the member, the fund cannot be liable for any further benefits to the complainant anymore for the simple reason that he/she is no longer its member. No further benefit is payable to a member by a fund when the member takes out a withdrawal benefit.
- 6.3 In the instant matter, the complainant applied and received her withdrawal benefit. The complainant ceased to be a member of the first respondent when she elected to receive her withdrawal benefit. The complainant cannot claim a disability benefit because she has already been paid a benefit and has exited from the fund. Further, it appears that the complainant only submitted a disability claim five months after she had left employment. No further benefit is due and payable to the complainant.
- 6.4 In the instance the complainant cannot succeed and it is hereby dismissed.

DATED AT JOHANNESBURG ON THIS THE DAY OF 2008

Yours faithfully

Mamodupi Mohlala
Pension Funds Adjudicator