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Please quote our reference: PFA/NC/5457/2005/NVC

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 of 1956 (“the Act”): D J Cloete v Reinforced Provident Fund (formerly the Total Care Strategy Provident Fund) (“the fund”) and Clanwilliam Hospital (“the employer”)

Introduction

[1] Your complaint concerns the fund’s refusal to accept your disability claim. The complaint was received on 14 September 2005 and a letter acknowledging receipt thereof was sent to you on 20 September 2005. On the same date letters were dispatched to the respondents requesting them to submit responses to your complaint by 11 October 2005. The employer’s response was received on 11 October 2005 and the fund’s on 21 November 2005. A response was also received from Sanlam Umbrella Fund Administrators (Pty) Limited (“Sanlam”) on behalf of the fund on 22 November 2006. The employer copied you with its response. On 7 December 2006 the response was sent to you for a reply by 5 January 2007. 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 commenced service with your employer in 2000 (having previously been employed there from 1975 to 1997), and became a member of the pension fund to which your employer contributed. You do not specify the name of the fund. However, in September 2003 you were invited to apply for membership of the new fund in which your employer was now

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Office Manager: L Manuel

participating, which is the respondent fund in the present complaint.

- [3] You claim that you joined the fund with effect from 2 September 2003. According to the fund, it was in March 2004, and according to the employer, it was in February 2004. You assert that upon inception of membership, no medical details were requested from you, the hospital staff having been accepted as a whole on the fund, with effect from 1 September 2003. In June 2004 you were diagnosed with osteoporosis, and were declared medically unfit by the provincial department, but because there was a shortage of staff, you continued to work until 30 September 2004. When you applied for disability benefits from the fund administrator, your claim was rejected based on pre-existing conditions, the administrator contending that your date of disablement was 23 November 2003, while your membership only commenced from March 2004.
- [4] Your complaint is that no pension benefits have been paid to you, and you want this tribunal to assist you in this regard.

Response by Clanwilliam Hospital

- [5] The Clanwilliam Hospital states that the bulk of the staff joined the fund on 1 October 2003 (1 September 2003 according to the rules) but you joined it in February 2004. In June 2004 you were found medically disabled and were unable to continue with your normal duties and took sick leave. The employer attached a copy of your sick leave record showing that you were absent from work for 334 days from 22 March 2001 up to 24 June 2004.

Response by the fund

- [6] The fund asserts that you were paid a withdrawal benefit of R7 860.88 on 23 December 2005, due to termination of your services because of ill-health. In a telephonic discussion with my assistant on 23 November 2006, the fund advised that exiting the fund due to "ill-health" does not mean the member qualifies for a disability benefit.
- [7] Further, Sanlam also advised my assistant that if the participating employer opts for capital disability benefits, the Special Rules, established especially for the participating employer, would provide for such benefits. In the case of the Clanwilliam Hospital, however, a disability income or income replacement benefit was elected and a separate group policy provides for such benefits.

Response by TCS Retirement Fund Administrators (previous administrator of the fund) ("TCS")

- [8] TCS states that no official response from it is necessary, but this administrator enclosed several documents pertaining to your disability claim. Among these is a letter dated 26 July 2005 from Capital Alliance Life Limited (“Capital Alliance”), the risk benefit assessors, addressed to TCS, in which it states that it had re-assessed your disability claim and confirmed that it could not succeed on the basis of pre-existing conditions. In Capital Alliance’s letter of 29 April 2005 it contends that you were suffering from the condition in March 2004 when you applied to become a member of the fund. It adds that you are not entitled to disability insurance for any disability contracted by you and directly or indirectly due to or caused, occasioned, accelerated or aggravated following any injury or illness from which you suffered during the six month period prior to becoming a member or on the date that you became a member.
- [9] TCS has also submitted a copy of a letter dated 6 April 2005 from Capital Alliance, addressed to it, in which it states that as notice of your disability was not given to it within three months of the date of the disability, 23 November 2003, the application was rejected. According to Capital Alliance it received notice of your disability on 11 November 2004.

Determination and reasons therefor

- [10] I have examined the rules of the fund. Rule 6.4(1) reads as follows:
- “On Permanent Total Disablement a member shall be entitled to the Permanent Total Disablement benefit set out in the Special Rules, and, in the case of a Member in respect of whom an Individual Policy exists, the claim and/or surrender value of the policy, as applicable, shall be applied by the Trustees to purchase a pension for the member mutatis mutandis in accordance with the same terms and conditions that apply to a pension purchased in terms of rule 5.3.”
- [11] However, I have also examined the Special Rules, and they do not provide for disability. There is therefore no entitlement to a disability benefit from the pension fund itself. This accords with the information furnished in the responses that the employer had elected to set up a separate income continuation scheme for its employees.
- [12] I have had sight of the rules of the Group Scheme underwritten by Capital Alliance, and it appears that it is completely independent of the pension fund, albeit that the membership of each is the same.
- [13] 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. The group benefit scheme, whose terms and conditions govern the granting of the income replacement benefit, does not have as its main objective the provision of retirement benefits. Your grievance relates to the contract of insurance between the employer and the insurer and does not relate to a

pension fund. Therefore I do not have jurisdiction to consider your complaint. You may approach the Ombudsman for Long-Term Insurance, whose contact details appear at the foot of the letter.

- [14] The rules of the fund do, however, provide for a withdrawal benefit on exit from the fund prior to retirement. This was paid to you in an amount of R7 860.88 on 23 December 2005. Since you have not responded to our invitation to comment on this payment subsequent to the lodging of your complaint, I must assume that this aspect of your complaint is resolved.
- [15] I wish to point out that my finding in this determination is confined to the Reinforced Provident Fund and the separate income continuation scheme operated by the employer. The issue of whether your previous fund offered disability benefits, or whether you qualified for such at the time of membership of that fund was not pertinently raised in the complaint lodged. If that is indeed the case, it might well form the subject of a new complaint.

Relief

- [16] The complaint is dismissed.

Dated at Cape Town on this the day of 2007.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator