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Our reference:PFA/WE/3658/2005/SG

RE: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT 24 OF 1956 (“the Act”) – G Mqalo v Southern Staff Pension Fund

Introduction

[1] The matter relates to the delay on the part of the fund in paying out a death benefit. Your complaint was received by this office on 4 May 2005, and a letter acknowledging receipt thereof was sent on 30 June 2005. 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.

Factual Background

[2] You are the widow of Mr Edmund Mqalo (“the deceased”) who passed away on 2 February 2004. During his life time, the deceased was a member of Southern Staff Pension Fund (“the fund”). As a result of his death the following benefit from the fund became payable to his dependants in terms of the rules of the fund: a spouse’s pension, lump sum death benefit and child’s pension. The fund has started paying you the spouse’s pension of R496,20, but has not yet paid out the lump sum benefit and the child’s pension.

Complaint

[3] Your complaint relates to the delay on the part of the fund in paying the lump

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

sum death benefit and child's pension. You are contending that the fund should pay out the child's pension to your son, Mawethu, a 26 year old full time student, as he qualifies therefor in terms of Rule A7.1.0.

Response

[4] The fund contends that the delay in paying the benefits is occasioned by the difficulty it experiences in procuring information from various dependants. It submits that in November 2004, it was made aware of the existence of a certain dependant, Tamara Nomaphelo Ntsume, and it still awaits the information that it requested in respect of this dependant.

[5] The fund further contends that you have no entitlement to the lump sum death benefit for the reason that the allocation of the death benefit lies entirely in the discretion of the board. The board has not yet taken a decision regarding the distribution of the death benefit for the reasons aforementioned.

Determination and reasons therefor

- [6] The distribution of a death benefit is governed by section 37C of the Act. Section 37C gives the board an unfettered discretion to distribute a death benefit among the dependants of the deceased in a manner and proportion that is just and equitable. In exercising its discretion, the board must take into account a number of relevant factors, including the ages of the parties, the relationship with the deceased, extent of dependency, financial affairs of the beneficiaries, the wishes of the deceased. (See *Moir v Reef Group Pension Plan & Others* [2000] 6 BPLR 629 (PFA) at 629F – H).
- [7] Further, section 37C affords the board a period of one year to conduct its investigation and distribute a death benefit. However, the peculiar circumstances of a case may necessitate the board to conduct its investigation beyond the prescribed time period of one year. It is almost two and a half years since the deceased's death and the distribution of the death benefit is not finalised. I am not persuaded by the reasons submitted by the fund which occasion the delay in the finalisation of the distribution of the death benefit. In my view, the circumstances of this matter do not merit an investigation of more than two years. A period of more than two years in the circumstances of this matter is, in my view, inordinately long.

Relief

- [8] In the result, the order of this Tribunal is as follows:

The Board is ordered to conclude its investigation and allocate the death benefit to the dependants of the deceased within 6 weeks of the date of this determination.

DATED AT CAPE TOWN THIS THE DAY OF 2006.

Yours faithfully

Vuyani Ngalwana
Pension Funds Adjudicator