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Please quote our reference: PFA/MP/33116/2009/RM

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Dear Madam

Re: DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 of 1956 (“The Act”): M A MALATJI (“complainant”) v MINEWORKERS PROVIDENT FUND (“respondent”)

1.0. Introduction

1.1. The complaint concerns the payment of a death benefit.

1.2. The complaint was received by this office on 18 March 2009. A letter acknowledging receipt of the complaint was sent to the complainant on 20 April 2009. On 21 April 2009 a letter was dispatched to the respondent, seeking a response to the complaint by 20 May 2009. A response from the respondent, which was also forwarded to the complainant, was received on 21 May 2009. There were no further submissions received from the parties.

1.3. After reviewing the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. This tribunal’s determination and its reasons therefor appear below.

2.0. Factual Background

2.1. The complainant is the mother of Mr. E.S. Malatji (“the deceased”). The deceased was employed by the Consolidated Murchison Mine (“the employer”) from 27

Dr. EM de la Rey (Adjudicator), R Maharaj (Snr Assistant Adjudicator), M Ndaba (Snr Assistant Adjudicator), M Daki (Snr Assistant Adjudicator), S Mothupi (Snr Assistant Adjudicator), T Dooka (Snr Assistant Adjudicator), M Ramabulana (Snr Assistant Adjudicator), C Seabela (Snr Assistant Adjudicator), P Mphephu (Snr Assistant Adjudicator), T Nawane (Snr Assistant Adjudicator), P Myokwana (Assistant Adjudicator), L Nevondwe (Assistant Adjudicator), S Mokgara (Assistant Adjudicator), A Mnqinya (Assistant Adjudicator), B Mahlalela (Assistant Adjudicator), G Mothibe (Assistant Adjudicator), P Mogashoa (Assistant Adjudicator), T Mbhansa (Assistant Adjudicator), T Tlooko (Assistant Adjudicator), R Kikine (Assistant Adjudicator)

Financial Manager: F Mantsho, Accountant: R Soldaat, HR Manager: P Mhlambi

August 2002 until 7 March 2004, when his employment ended due to ill health. The deceased was a member of the respondent by virtue of his employment.

2.2 The respondent became liable to pay the complainant a disability benefit following his exit from employment on 7 March 2004. The respondent duly paid the deceased his net disability benefit of R3 759.41 on 26 July 2004. The deceased passed away on 11 October 2004.

3.0 Complaint

3.1 The complainant alleges that since the deceased passed away on 11 October 2004 the respondent has failed to pay a death benefit to her. She requests that the death benefit payment be finalised.

4.0 Response

4.1 The respondent confirmed the background facts as summarised above.

4.2 The respondent proceeded to aver that it discharged all its obligations to the deceased once it paid his disability benefit on 26 July 2004. When the deceased passed away on 11 October 2004 he was no longer a member of the respondent. Therefore, the respondent is not liable to pay a death benefit to the deceased's beneficiaries.

5.0. Determination and reasons therefor

5.1 The crisp issue for determination in this complaint relates to the alleged delay in payment of a death benefit by the respondent following the passing away of the deceased on 11 October 2004.

5.2 The respondent would only be liable to pay a death benefit following the death of the deceased if the deceased were still a member of the respondent at the time of his death. Therefore, this tribunal needs to establish whether or not the deceased's membership had ceased before 11 October 2004. The relevant rule in this instance is sub-rule 19.2 of the respondent's rules and it reads as follows:

"Subject to the provisions of Rules 30 and 37(1), a Member who leaves the Service for any reason shall cease to be a Member upon termination of his Service."

5.3 Rule 30 deals with deferred fund members and rule 37.1. deals with payments made into trusts, so both these exceptions are inapplicable to the deceased's membership. What remains is to ascertain when the complainant's employment with the employer was terminated. The complainant attached a letter from the employer dated 10 March 2004 to her complaint that confirms, *inter alia*, that the deceased's employment was terminated on medical grounds. The respondent also advised that the deceased's employment was terminated due to ill health on 7 March 2004. Thus, the facts show that the deceased's membership of the respondent ended on 7 March 2004, at which time the respondent became liable to pay him his disability benefit in terms of the rules. The respondent duly paid the

deceased his disability benefit on 26 July 2004, at which time the respondent discharged all its obligations owed to the deceased.

5.4 When the deceased passed away on 11 October 2004 he was no longer a member of the respondent, so the respondent was not liable to pay a death benefit to his beneficiaries.

5.5 For the sake of completeness it is necessary to deal with the provisions of section 30I of the Act. The section reads thus:

“30I. Time limit for lodging of complaints

(1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

(2) The provisions of the [Prescription Act, 1969](#) (Act No. 68 of 1969), relating to a debt apply in respect of the calculation of the three year period referred to in subsection (1).”

5.6 The complaint was lodged on 18 March 2009 while the deceased passed away on 11 October 2004. The Prescription Act, 1969 requires that a complaint be lodged within three years of the complainant reasonably becoming aware of the cause of action. Thus, even if a period of one year is permitted for the resolution of a death benefit payment, the complaint ought to have been lodged within three years of the cause of action having arisen, which would mean that the complaint should have been lodged by 11 October 2008. The complaint was only lodged on 18 March 2009, so it is at least three years and five months out of time. Therefore, the complaint is time-barred for the purposes of section 30I of the Act. However, this tribunal thought it prudent to first consider the merits of the complaint to enable the complainant to get closure on the matter of any death benefit possibly owing by the respondent following the passing away of her son.

6.0. Order

6.1 In the result, the complaint is dismissed.

Dated at Johannesburg on this day of 2010

Yours faithfully

DR. E.M. DE LA REY
Pension Funds Adjudicator

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Section 30M Filing: Magistrate's Court
Parties unrepresented