Dear Sir,


[1] INTRODUCTION

1.1 This complaint concerns non-payment of a death benefit.

1.2 The matter was received by this office on 21 August 2006. A letter acknowledging receipt thereof was sent to the complainant on 3 October 2006. On the same date the complaint was dispatched to the

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act No. 24 of 1956

-The service offered by the Pension Funds Adjudicator is free to members of the public-
respondents giving them until 6 November 2006 to file their responses to the complaint. A follow up letter was sent to the second respondent on 25 June 2008, giving them until 9 July 2008 to file their responses to the complaint. A response was received from the first respondent on 6 November 2006.

1.3 After reviewing the written submissions before this tribunal, it is considered unnecessary to hold a hearing in this matter. As the background facts are well known to all the parties, only those facts that are pertinent to the issues raised herein shall be repeated. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

2.1 The complainant is the son of Mr Moiloa Tsoeu Ernest (the deceased). The deceased was employed by the second respondent and by virtue of his employment, he became a member of the fund.

2.2 The deceased died on 12 September 2004, whilst still working for the second respondent and a member of the fund.

[3] COMPLAINT

3.1 The complaint is that the respondents have not paid out a death benefit after the deceased had died.

3.2 The complainant submits that the deceased was contributing towards the first respondent and was a member of the respondent when he died. He submits that the second respondent did not transmit the deceased’s monthly contributions to the first respondent. He submitted all the required documents but he is still to receive payment of the death benefit.
3.3 The complainant requests that this tribunal assists him.

[4] RESPONSE

First Respondent’s response

4.1 The first respondent submitted its response and submitted that the deceased is Tsoeu Ernest Moiloa, who was a member of the fund at the time of his death.

4.2 It submits that it has not been established whether the applicant is indeed entitled to any benefits due to the deceased.

4.3 It submits that the deceased passed away on 12 September 2004 and the claim was received by the fund administrator on the 27 February 2006.

4.4 The first respondent submits that, at the time of the member’s death, the first respondent had a reassurance policy with Momentum Group Limited to pay all death and disability benefits incurred and reported.

4.5 It submits that in terms of the rules of the fund (rule 6.4.1), death benefits shall not be paid unless the claim is admitted by the insurer.

4.6 It submits that according to clause 3.6.1 of the insurance policy between the first respondent and the third respondent; it specifies that the first respondent shall notify the third respondent in writing immediately if the claim is likely to arise in case of the policy.

4.7 It submits that it could only notify the third respondent of the claim once the second respondent had notified it of the member’s death.
4.8 The first respondent submitted that, clause 6.3.2 of the policy document specifies that notification of a death claim shall be lodged within six months of the date of death, failing which the claim shall not be admitted. The second respondent failed to notify the first respondent of the death of the deceased as provided for by the policy document and the claim was regarded as a late submission by the third respondent.

4.9 It submits that the complaint against the fund should be dismissed and directed to the second respondent.

4.10 Despite the complaint having being sent to the second respondent, it did not file a response.

[5] DETERMINATION AND REASONS THEREFOR

5.1 The complainant is aggrieved by the first and second respondent’s failure to pay him a death benefit resulting from his father’s death. The complaint concerns the failure by the second respondent to timeously lodge a written claim with the first respondent.

5.2 The first respondent submitted that the second respondent failed to notify the first respondent of the death of the deceased as provided for by the policy document and the claim was regarded as a late submission by the third respondent. This submission remains uncontested as the second respondent has failed to provide its response.

5.3 Section 37C of the Act governs the disposition of death benefits. It places a duty on the board of trustees to identify the beneficiaries of a deceased member and also vests the board with discretionary powers on the proportions and manner of distributing the proceeds of a death benefit. As with the exercise of any discretionary power, in effecting an
equitable distribution the board is required to give proper consideration to relevant factors and exclude irrelevant ones from consideration. The board of trustees may not unduly fetter its discretion by following a rigid policy that takes no account of the personal circumstances of each beneficiary and of the prevailing situation.

5.4 Rule 6.1 of the first respondent's rules deals with the payment of a death benefit and it reads thus:

"6. DEATH BENEFITS

6.1 Death in SERVICE

6.1.1 On the death of a MEMBER in SERVICE prior to the first day of the month following his seventieth birthday, the following benefits shall be payable, subject to the provisions of Rules 6.3, 6.4 and 11.6:

(a) the pre-retirement death RISK BENEFIT specified in the SCHEDULE; and
(b) the MEMBER’S SHARE as at date of death."

5.5 Rule 6.4 reads as follows:

"6.4 Restrictions and Exclusions

6.4.1 The pre-retirement lump sum death RISK BENEFIT specified in the SCHEDULE shall be insured with an INSURER and the benefit shall not be paid unless the claim for the benefit has been admitted by the INSURER.

6.4.2 The pre-retirement lump sum death RISK BENEFIT shall be subject to any restrictions and exclusions that may apply in terms of the POLICY."

5.6 It is common cause that the deceased was a contributing member of the first respondent and that a claim for payment of the death benefit
was repudiated by Momentum due to late notification by the second respondent. Clause 3.6.1 of the policy document specifies that the first respondent shall notify the insurer (“Momentum”) in writing immediately, if a claim is likely to arise. The second respondent breached this clause by failing to notify the first respondent about the death of the deceased. As a result, no payment of the death benefit was made to the complainant. Further, by failing to notify the first respondent about the deceased’s death, the second respondent breached its duty of good faith derived from common law that it owes to its employees (See Crone v Southern Life Association Ltd and Others [1999] 9 BPLR 1 (PFA)).

5.7 As mentioned before, this Tribunal sent a copy of the complaint to the second respondent on 3 October 2006 and gave it an opportunity to respond to the complaint before 6 November 2006. The second respondent was therefore afforded the opportunity to respond to the allegations contained in the complaint in terms of section 30F of the Act. In the circumstances, the matter has to be dealt with and determined on the basis of the available facts and evidence.

5.8 Taking all these factors into consideration, it is clear that there was fault on the part of the second respondent, which resulted in the complainant’s claim for payment of a death benefit repudiated by Momentum. This Tribunal takes the view that the complainant ought to be placed in a position he would have been, had the second respondent notified the first respondent about the death of the deceased timeously.

[6] ORDER

6.1 In the result, the order of this Tribunal is as follows:

6.1.1 The first respondent is ordered to calculate the amount of the death benefit, that would have been payable to the complainant
had the first respondent been notified about the deceased’s death timeously, together with interest thereto at the rate of 15.5% *per annum* from 12 September 2005 to date of determination.

6.1.2 The first respondent is directed to conduct an investigation in terms of section 37C of the Act, determine the beneficiaries and their benefit entitlement and inform the second respondent thereof within six weeks of the date of this determination.

6.1.3 The second respondent is directed to pay the identified beneficiaries within seven days of receipt of the information in paragraph 6.1.2 *supra*.

**DATED AT JOHANNESBURG ON THIS 25th DAY OF FEBRUARY 2011**

___________________________________

DR. EM DE LA REY

ACTING PENSION FUNDS ADJUDICATOR

**Cc:** Themba Mfeka  
Principal Officer  
SAMWU National Provident Fund  
P.O. Box 137  
ATHLONE  
7760

Fax: 021 659 1171  
Email: themba.mfeka@snpfund.org.za
Cc: Lebogang Moletsane
    Municipal Manager
    Kopanong Municipality
    P.O. Box 23
    TROMPSBURG
    9913

    Fax: 051 713 0335
    Email: mmsecr@kopanong.gov.za

    Registered office of fund: Mr Price Building
    Stone Fountain Terrace
    3rd Floor
    95 Klipfontein Road
    RONDEBOSCH
    7700

Cc: Momentum
    P.O. Box 7400
    CENTURION
    0046

    Fax: (012) 673 7739

Section 30M filing: Magistrate’s Court

Parties Unrepresented