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Dear Madam,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT
NO. 24 OF 1956 (“the Act”): H SATTAR (“complainant”) v ABSA GROUP
PENSION FUND (“respondent”)**

[1] INTRODUCTION

1.1 This complaint concerns the non-payment of the underwritten portion of a death benefit by the respondent following the death of Mr MY Abdool (“the deceased”).

1.2 The complaint was received by this Tribunal on 6 August 2012. A letter acknowledging receipt thereof was sent to the complainant on 27 August 2012. On 28 August 2012, the complaint was dispatched to

the respondent giving it until 28 September 2012 to file its response to the complaint. On 1 October 2012, a response was received from the respondent. On 6 February 2013, a reply letter was sent to the complainant to submit a reply by 20 February 2013. No further submission was received.

The Office of the Pension Funds Adjudicator was established in terms of Section 30B of the Pension Funds Act, 24 of 1956. The service offered is free to members of the public.

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- 1.3 Having considered the written submissions before this Tribunal, it is considered unnecessary to hold a hearing in this matter. The determination and reasons therefor appear below.

[2] FACTUAL BACKGROUND

- 2.1 The deceased became a member of the respondent on 1 March 2011 until his death on 22 November 2011. The complainant is the wife of the deceased.
- 2.2 Following the death of the deceased a death benefit became payable, the complaint concerns the quantum of the death benefit.

[3] COMPLAINT

- 3.1 The complainant submits that the respondent has declined to pay out the death benefit on the grounds that the deceased had epilepsy. The complainant submits that the grounds relied upon by the respondent that he had signed a personal declaration on health (the declaration) form which excludes death resultant from epileptic condition should not be accepted as the individual clauses in the declaration were not signed by the deceased. In support of her submissions she attached a copy of the declaration signed by the deceased on 18 February 2011.
- 3.2 She accordingly requests this Tribunal to compel the respondent to pay the deceased's full death benefit.

[4] RESPONSE

- 4.1 The respondent submitted that the deceased before joining the fund was required in terms in terms of Rule 4.4 of its rules to submit evidence of health by completing a personal declaration. It submits that

on 18 February 2011, the deceased duly completed his pre-benefit screening declaration on the form, which provides as follows:

“I Mohammed Yousuf Abdool, id 8211065107083, the undersigned, hereby confirm that the pre-screening process that should be followed in this regard to the entitlement of benefits under the Absa Group Pension Fund and the Absa Group Disability Protection Policy was brought to my attention prior to acceptance of the offer.”

4.2 It submits further that on 25 February 2011, it informed the deceased by letter that he will not enjoy death and disability cover resulting from epilepsy and neuro-psychiatric conditions, for a period of five years. It submits that following the receipt of the death claim it conducted a death claim investigation and confirmed the following:

4.2.1 The death certificate indicates that the member died on 22 November 2011 due to natural causes;

4.2.2 The deceased died following an epileptic seizure which is confirmed by a note received by the administrator from the attending medical practitioner Dr Moosajee; and

4.2.3 Telephonic confirmation was also obtained from Dr Moosajee and Dr Bawa who completed the medical note, that the deceased suffered an epileptic seizure on 22 November 2011.

4.3 It submits that based on the above information it concluded that the deceased's cause of death is as a result of epilepsy, and in keeping with the pre-benefit screening exclusion, he is not entitled to the underwritten portion of the death benefit. His benefit is limited to his equitable share only.

4.4 It submits further that the deceased was fully aware from his employment contract, the personal declaration form which he signed

and the subsequent letter of 25 February 2011 sent to him, that there was a limitation on his benefit as a result of the epilepsy.

- 4.5 The respondent contends that there is no requirement that a member must agree to each of the terms stipulated in the rules and as a result the deceased is also bound by the provision for the pre-screening process. It submits that it has therefore acted in terms of its rules and the law in declining the payment of the underwritten portion of the death benefit to the complainant.

[5] DETERMINATION AND REASON THEREFOR

- 5.1 The issue for determination is whether or not the respondent's refusal to pay the underwritten portion of the deceased's death benefit is lawful.
- 5.2 The complaint although not phrased in legal terms is particularly clear in that the complainant is challenging the legality of the personal declaration form purportedly signed by the deceased. She submits that due to the defects that she highlights, the declaration is invalid and therefore the epilepsy exclusionary clause should not apply and as a result the full underwritten benefit should be paid; whereas, the respondent is affirming the legality of the declaration form and consequently confirming the validity of the epilepsy exclusionary clause.
- 5.3 It appears from the complaint and the response that most of the facts are common cause and shall for this purpose not be repeated. The bone of contention is the personal declaration form which each party has attached to their submissions. This declaration form is a three page questionnaire in which the declarer is required to fill-in the missing information next to a typed question or instruction. Of particular relevance is the information provided under clause 2, titled Medical

History which raises the question do you suffer from any of the following? Sub-clause 2.6 therein, states the following conditions;

“Psychiatric, nervous or mental complaint, e.g. epilepsy, blackouts, paralysis, anxiety state or depression or suicide attempts.”

- 5.4 The declarer responded to the question by completing ‘yes’ in the provided space for yes or no. The declarer goes further to provide details in clause 3, 4 and 5 relating to the ailment that he suffers which he has identified as ‘controlled epilepsy’. At the bottom of the second page there is provision for the declarer to indicate by appending his signature (applicant) and date, and for the witness. This was all completed by the deceased except for the space left for the witness. At the top of the last page there is confirmation of the pre- benefit screening as stated by the respondent in its submissions, with the deceased’s signature at the designated place.
- 5.5 Something peculiar from the rest of the document appears in clause 4, which raises the question, have you during the past 5 years, and it provides at the end, state yes or no. three sub-clauses follow underneath and sub-clause 4.3 raises the question; (have you) consulted any doctor or specialist, including regular check-ups? The declarer had responded yes and then it was subsequently cancelled with a stroke and a no is written in front and a signature is appended in front of the no.
- 5.6 The complainant indicates that the document is invalid and puts her submission by way of a question and asks, ‘doesn’t his signature need to be made to every change made in the document?’ The complainant appears to be challenging why in the rest the document where information was filled in, no signature was appended in front as was the case in sub-clause 4.3. She concludes that therefore, this failure to sign in front of each clause invalidates the document.

- 5.7 The complainant appears to be labouring under the incorrect impression that the personal declaration in question is similar to standard-term contracts typed by one party and presented to the other party to sign. In these types of contracts it is typical for the party accepting the typed contract to sign each and every clause or the bottom of each page to confirm that they have read and understood each clause and page, and they are in agreement. Even in this type of contracts, the party who has signed will still have to contend with the *caveat subscriptor* rule, the common law principle that says that a party who signs a document is presumed to have read and agreed to its terms (see Nortje 2012 SALJ at 132). The difference between that type of contract and the current document is that although the questions are typed-in, the answers are written by the declarer, which already indicates that they have read and understood, and agree or disagree with the questions by providing the answers. In this situation, it is not necessary to append a signature to one's responses. The anomaly of the signature in front of sub-clause 4.3 (which the complainant appears to be relying upon) indicates something different, the person had written yes and subsequently changed it to a no. The purpose of the signature in this instance is to authenticate that the information was altered by the person whose signature appears next to the altered information.
- 5.8 The complainant does not dispute that the hand writing that completed the document or the signatures in the document are by the deceased. Furthermore, she is neither challenging the correctness of the information contained therein nor is she raising misrepresentation or error (see *Brink v Humphries & Jewell (Pty) Ltd* 2005 (2) SA 419 (SCA)). In any event, if there were any misunderstandings about what the deceased had accepted in completing the document, the letter of 25 February 2011 will have clarified that. In the event, this Tribunal can find no legal basis to support the complainant's conclusion that the personal declaration signed by the deceased is invalid.

[6] **ORDER**

1. In the result, the complaint cannot succeed and is dismissed.

DATED AT PRETORIA ON THIS 15TH DAY OF APRIL 2013

**MA LUKHAIMANE
DEPUTY PENSION FUNDS ADJUDICATOR**