

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/WE/90/98/NJ

In the complaint between:

A M Dirkse

Complainant

and

Lifecare Group Holdings Provident Fund

Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF
1956**

1. This is a complaint lodged with the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act of 1956 (hereinafter referred to as “the Act”). The complaint relates to the value of an early retirement benefit, which was contrary to representations made by an official of the respondent.
2. An investigation was conducted by my investigator, Naleen Jeram. Accordingly, in determining this matter I have relied exclusively on the documentary evidence and submissions gathered during the course of Mr Jeram’s investigation.
3. The complainant is, Audrey Maureen Dirkse, a retiree and former member of the respondent, of Beacon Valley, Western Cape.
4. The respondent is Lifecare Group Holdings Provident Fund, a pension fund duly registered under the Act (hereinafter referred to as “the fund”). The fund is a defined contribution fund with the object of providing retirement and other benefits for its members and benefits in the event of their death. The fund is represented by

Mrs Leanne van Wyk of Alexander Forbes, the administrator of the fund.

5. On 1 December 1992, the complainant commenced employment with Kingsbury Hospital as an assistant nurse. However, contributions to the fund only started from 1 June 1993 as there was a 6 month waiting period before member's were allowed to join the fund. During November 1997, the complainant having attained the age of 55 years elected to go on early retirement.
6. The relevant rule applicable to the complainant reads:

5.2 A Member who has reached age 55 may retire at any time before Normal Retirement Date.

The amount of the benefit is regulated by rule 5.1, which reads:

The benefit payable to a Member on his retirement shall be his Fund Credit at the date of retirement. The benefit shall be paid as a lump sum.

Fund credit is defined as the sum of the member's portion (contributions) and employer's portion (contributions) together with interest thereon at a rate declared by the trustees on the advice of the actuary.

7. The complainant's benefit was computed as follows:

Refund of members Provident Fund Contributions	R 7,877.79
Interest and Employer's Contribution	<u>R10,004.91</u>
Gross Benefit	<u>R17,882.70</u>
Amount of enclosed cheque	R17,882.70

Mrs van Wyk provided me with a schedule showing a full breakdown of

R17,882.70 including the monthly member and employer contributions plus interest thereon. The breakdown of the benefit is not necessary for the purposes of this determination.

8. The complainant is dissatisfied with her benefit. In essence, her complaint is that she was given an estimation by an official of the fund (at a pension meeting for employees of Kingsbury Hospital) that her lump sum benefit upon early retirement would be R50,000.00. Thus, her complaint relates to the administration of the fund and alleges maladministration of the fund by the fund.

9. The complainant explained what transpired at the meeting as follows:

...the matron informed all the wards that a man of the Provident Fund will come and explaining the issue of early retirement. The man explained that to qualify for early retirement one must be 55 years old and also be in service for 20 years I stood up and asked to calculate what my benefits for 5 years was(sic). The total amount(ed) to R50,000.

10. Mrs van Wyk argued that she and the principal officer of the fund have been in contact with the matron at the Kingsbury Hospital. According to her, the members attended several presentations where discussions were held on benefits. The matron cannot confirm whether the complainant attended the presentation, but admitted that at these presentations examples were used to explain the benefits to members and the one such example could have been a benefit of R50,000.00. However, she was certain that members who attended the presentation fully understood that these were only examples to explain a principle and did not amount to a benefit illustration for any particular person.

11. Mrs van Wyk further contended that the complainant annually received a benefit statement depicting what her actuarial reserve value in the fund was at that specific point. According to her, these benefit statements should have contributed towards a realistic benefit expectation computation on the complainant's part and at no time

did the fund or the representative of the fund give the complainant any reason to believe that the benefit was greater than her actual entitlement in terms of the rules.

Her benefit calculation represents the accumulation of her contributions and employer contributions to the fund since she joined the fund (together with interest thereon) and the total comprises the complainant's benefit entitlement in terms of the rules. She concludes that the complainant's alleged belief that she was entitled to R50,000.00 is incorrect and unreasonable in light of the contributions made to the fund, the years of membership of the fund and the fund's regular communication with her and if she feels otherwise she should be tasked with backing up her allegations with evidence.

12. In her reply, the complainant submitted that a representation was made to her by an unknown male official of the fund at the meeting. She further stated that the matron at the hospital is unwilling to help her in this regard. She also tried to contact some of the current nursing staff and the domestic workers who attended the meetings, but she alleges that they were reluctant to make any statements out of fear of losing their jobs. She further alleges she did not accept her benefit statements for 1996 and 1997 due to the representations made to her by the pension fund official, which she accepted in good faith. The complainant seeks an order directing the fund to deem her benefit to be R50,000.00.
13. As I have held previously, the determination of any benefit is regulated by the rules of the fund. The complainant's benefit falls under the ambit of rule 5.1 and 5.2. It is common cause that the benefit was correctly computed in terms of these rules.
14. The complaint encompasses a cause of action falling outside the scope of the rules. That is, the complainant is alleging that an official of the fund made a misrepresentation to her, as a result of which she has sustained loss. In order to succeed with this cause of action the complainant needs to prove:

- the fund made a misstatement to the complainant;
- in making the misstatement the person acted negligently and unlawfully;
- the misstatement caused the complainant to sustain loss; and
- damages claimed by the complainant represent proper compensation for such loss.

In this regard see *Hellawell & Others v Boart Longyear Pension Fund* (PFA/GA/198/98).

14. From the evidence presented to me it is quite clear that the complainant is unable to discharge the onus (on a balance of probabilities) of proving the above elements. In the first place, it is unclear whether a misstatement was made. The fund vigorously denies that any such misstatement was made. The complainant has been unable to adduce any other evidence to prove this misrepresentation. Thus, in essence it is her word against that of the fund. Looking at the context in which the statement was made it is most unlikely the official of the fund would have provided a specific benefit for a specific member. The purpose of the meetings was to provide general information of benefits regulated in the rules of the fund. Even if the statement by the official may somehow be construed as a misstatement, it must be seen in the context in which it was made. That is, the fund was merely elaborating on benefits which are set out in the rules of the fund. Had the complainant been informed that her benefit would be R50,000.00, one would reasonably expect her to confirm this in writing especially in light of continually receiving benefit statements (before and after the meeting) showing the correct benefit to be much lower. Accordingly, based on the evidence before me, I find that no misstatement was made.
15. In view of there being no misstatement, it is unnecessary to consider the other requirements. However, it is necessary to add a word of caution. This case highlights the need for complainants when enquiring about their benefits (in order

to make a decision in respect of retirement or transfer) to firstly carefully examine the rules of the fund. Hereafter, if any oral or other representations are made by any official of the fund or administrator, confirmation of such representations must be made in writing (to avoid evidentiary problems). By the same token, the fund also has the duty to provide correct information to any member and this duty is more compelling when the member has to make a decision (based upon the information) which may have adverse consequences for him/her. If all parties can adhere to these pre-cautionary steps, complaints of this nature can be avoided.

16. For the foregoing reasons the complaint is dismissed.

Dated at **CAPE TOWN** this 18th day of January 2000.

John Murphy

Pension Funds Adjudicator