

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/1304/00/NJ

In the complaint between:

B Marais

Complainant

and

SAA Flight Deck Crew Provident Fund

Respondent

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

1. This is a complaint lodged with the Office of the Pension Funds Adjudicator in terms of section 30A(3) of the Pension Funds Act 24 of 1956 (“**the Act**”). The complaint relates to a payment of a death benefit, in terms of section 37C of the Act, in particular, whether the respondent made an equitable distribution.
2. No hearing was held in this matter. An investigation under my supervision was conducted by my investigator, Naleen Jeram. In handing down this determination, I have relied exclusively on the documentary evidence and written submissions gathered during the course of our investigation.
3. The complainant is Brigitte Marais, in her capacity as guardian and mother of Claudine Erika Marais (born on 19 December 1983). The complainant and Claudine are currently living together in Rivonia, Gauteng. The complainant is unrepresented in this matter.
4. The respondent is South African Airways Flight Deck Crew Provident Fund, a

pension fund duly registered under the Act (“**the fund**”). The fund is represented by Mr Dale Nussey, the administrators and financial advisors to the fund.

5. The late Albert Jacobus Marais during his life time was a member of the fund as well as the Transnet Pension Fund. On 17 October 1981 Mr Marais was married to the complainant in community of property and one child was born from this union, namely, Claudine. In 1986, the parties were divorced by virtue of a court order issued by the then Supreme Court (Transvaal Provincial Division). The court incorporated a settlement agreement reached between the parties as part of its order. The relevant clauses of the divorce order (insofar as relevant for the purposes of this determination) read as follows:

...

2. Die Verweerder (**Mr J. Marais**) sal onderhoud ten aansien van die minderjarige kind (**Claudine Marais**) betaal, in the bedrag van R250.00 (TWEË HONDERD EN VYFTIG RAND) per maand, betaalbaar aan die einde van die kalendermaand waarin die egskeidingsbevel toegestaan word. Sodra die Eiseres (**Ms B.Marais**) 'n vaste diensbetreking aanvaar het, en die kind dan in 'n voorskoolseinrigting geplaas word, sal die Eiseres R100.00 van sodanige voorskoolse kostes betaal, en the Verweerder die balans bykomende tot die onderhoud wat hy reeds betaal van R250.00 per maand.
3. Die Verweerder sal ook alle redelike mediese, aptekers, tandheekkundige en oogkundige uitgawes van die kind betaal. Wat na-skool se opleiding betref, sal die Eiser ook die redelike klas en boekgelde betaal tot die eerste naskoolse kwalifikasie verwerf is, en mits die kind elke jaar voldoen het, aan sodanige inrigting se vereistes vir die verwerwing van sodanige kwalifikasie.
4. Die Verweerder sal die een lewenspolis wat op sy lewe uitgeneem is, en wel die voordele van die polis wat inwerking tree by die dood van die Verweerder aan die minderjarige kind sedeer binne twee weke na ondertekening van hierdie ooreenkoms. Die Verweerder onderneem voorts om die een annuïteit waar hy die begunstigde is te probeer oordra of die voordele te probeer oordra van 'n annuïteit van soortgelyke waarde wat die Eiseres sal uitneem. ... (my emphasis added).

As at May 1998, Mr Marais was paying R1,600.00 per month, in respect of maintenance for Claudine.

6. On 8 May 1993 Mr Marais married Ms Martha Johanna Maria. From our investigation, it appears as if the parties were living together for four years prior to their marriage. On 12 October 1999, Mr Marais passed away after a lengthy illness. It is common cause that he was survived by two dependants, namely Ms M Marais (widow) and Claudine Marais (daughter). A death benefit of R484,856.66 (after tax) payable by the respondent became available for distribution. In making an equitable distribution between Ms M Marais and Claudine, the fund considered the following information:

6.1. The deceased was also a member of the Transnet Pension Fund and upon his death, a lump sum of R381,332.00 (after tax), a spouse's pension and a child's pension became available for distribution. The trustees of this fund decided to award Claudine Marais and Ms M Marais 50% (R190,666.00) each of the lump sum. In addition, Claudine commenced receiving a child's pension of R1,600.00 per month escalating at 5% per annum. This pension shall cease when Claudine completes her tertiary education. Ms Marais commenced receiving a spouse's pension of R6,236.00 per month (payable until her death) escalating at 2 % for the first two years and 5% per annum thereafter. Furthermore, Ms M Marais continued to remain on Transmed Medical Aid scheme, of which her late husband was a member.

6.2. Claudine Marais received R65,000.00 in terms of a life policy taken out by the deceased, ceded to her in terms of the divorce agreement.

6.3. In terms of the last will of the deceased, Ms M Marais was nominated as the sole heiress. She inherited to common household in which the parties were living, which was valued at approximately R400,000.00.

- 6.4. A detailed monthly income expenditure account submitted by Ms M Marais, which indicated that her monthly expenses amounted to approximately R12,000.00.
 - 6.5. A series of letters from the complainant, in which she indicated that Claudine wished to study medicine at the University of Stellenbosch from next year onwards. Several school reports were attached showing Claudine to be an “A aggregate” student.
 - 6.6. A letter from Ms M Marais, wherein she stated that the deceased’s relationship with Claudine and her mother had been very limited during the last 10 years.
7. After collecting the aforesaid information, the trustees of the fund decided to refer this matter to an independent actuary, to assess the financial needs of the respective beneficiaries. Mr Vivian Cohen provided an actuarial assessment of the dependants’ financial needs. It is unnecessary to repeat all the findings made by him other than the following. The estimated current capital costs of a degree in medicine at the University of Stellenbosch (assuming an investment return of 12% and a university escalation fee of 12%) amounted to approximately R157,000.00. Therefore, he concluded that bearing in mind the various sources of income received by Claudine Marais, no further monies were required to fund the university education. On the other hand, assuming that Mrs M Marais required R12,000 per month to meet her financial expenditure and bearing in mind her age (and employability), she would need an estimated current capital of R1,015,000.00 to meet her expenses.
 8. Hereafter, the fund referred the matter to an attorney for an independent opinion with regards to an equitable distribution (for the purposes of this determination it is unnecessary to examine this opinion). Based on all the evidence before the trustees, the respondent fund decided to award the entire death benefit of R484,856.66 to Ms M Marais. However, the benefit was placed in trust, with the condition that on the death

of Ms M Marais, the remaining capital shall revert to Claudine Marais. The trustees also ensured that the trust will initially generate a monthly income of approximately R6,000.00 to ensure that Ms M Marais has a monthly income of at least R12,000.00.

9. The complainant was dissatisfied with the aforesaid decision. She essentially contended that in terms of the divorce order, the deceased was in law responsible for paying the tertiary education costs of Claudine. Therefore, she seeks an order to the effect that the amount representing the cost of tertiary education should have been awarded to Claudine. She also contended that there is no reason why the trustees of the fund could not have adopted a similar decision as that adopted by the Transnet Pension Fund, in terms of which, the lump sum benefit was equally awarded amongst the beneficiaries.

10. Mr Dale Nussey acting on behalf of the fund submitted that a thorough and comprehensive investigation had been conducted by the fund. After the factual circumstances of each party had been carefully evaluated, the matter was referred to an independent actuary and an attorney for an opinion. Thereafter, bearing in mind the ages of the dependants, their respective incomes from various sources and benefits received by virtue of the death of the deceased, and especially bearing in mind the grave financial difficulties of Ms M Marais (in accordance with her current life style), the fund decided to award the entire benefit to her. He concluded that in the light of all the evidence before the trustees, the decision reached by them was an equitable one as required by the Act and therefore requested that the complaint be dismissed.

11. The payment of the death benefit was regulated by section 37C(1)(a) of the Act, in terms of which the fund was required to make an equitable distribution between the two dependants. In making an equitable distribution, the board of management of a pension fund needs to consider the wishes of the deceased, the ages and financial status of the beneficiaries, the future earning capacity of each beneficiary, the amount available for distribution and the deceased's relationship with the beneficiaries.

12. Assuming that the complainant is correct that the divorce agreement created a right in favour of her daughter, in terms of which, the deceased was liable for all tertiary education costs, this would not necessarily assist the complainant. The liability of the deceased in respect of education costs does not *ipso facto* entitle the complainant to a benefit. At the very best, it is only one of the relevant factors to be considered by the fund in making an equitable distribution. Any claim for maintenance is a claim against the estate. From the papers before me, it is unclear whether a claim was lodged against the estate. Be that as it may, the deceased's liability is only one of the relevant considerations to be considered by the trustees.

13. The trustees of the fund considered a series of relevant factors and ignored irrelevant considerations. From the investigation conducted by the trustees and the reasons for the distribution, it is evident that the trustees were concerned about the financial circumstances of each dependant. The deceased immediately prior to his death was paying maintenance for Claudine in the amount of R1,600.00 per month. Initially the High Court made an order for payment of maintenance, which was subsequently amended by the Maintenance Courts. Hence, the reasonable maintenance needs of Claudine had been independently evaluated by a court of law. By virtue of receiving R1,600.00 per month from the Transnet Pension Fund, the trustees were satisfied that this aspect of Claudine's maintenance was catered for. As regards to her tertiary educational needs, the trustees were further satisfied that the lump sum benefits (R255,666.00) accruing to her from the Sanlam life policy and the Transnet Pension Fund sufficiently catered for these costs. Hence, in my view the trustees correctly concluded that all the maintenance needs of Claudine had been well provided for. It needs also to be borne in mind that Claudine shall also benefit from the capital on the death of Ms Marais. Accordingly, I am satisfied that the trustees effected an equitable distribution as required by the Act, and the financial needs of Claudine Marais have been catered for and that she is not entitled to any further benefits.

14. Thus, for the foregoing reasons, the complaint is dismissed.

DATED at Cape Town this 24th day of May 2001.

John Murphy

Pension Funds Adjudicator