

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO: PFA/GA/1197/00

In the complaint between:

J M Mahlambi

Complainant

and

Chubb Group Pension 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 the payment of a death benefit in terms of section 37C of the Act, in particular, whether Miss N Msibi qualified as a dependant as defined in the Act.
2. No hearing was held in this matter. An investigation under my supervision was conducted by my investigator, Naleen Jeram. In determining this matter I have relied exclusively on the documentary evidence and written submissions gathered during the course of our investigation.
3. The complainant is Jeffrey Mulamuli Mahlambi, an adult male, residing at Tembisa, Gauteng. It is not entirely clear whether the complainant is bringing this action in his personal capacity as he has also cited himself as the executor of the estate of the late Mr Samuele Thulane Mahlambi, his brother. In these proceedings, the complainant is represented by Mr M M Dikotla of Dikotla-Mogodi & Associates (labour law practitioners).

4. The respondent is the Chubb Group Pension Fund, a pension fund duly registered under the Act (“**the fund**”). The fund is represented by its principal officer and trustee, Mr R T J Lloyd.
5. Mr S T Mahlambi was a member of the fund at the time of his death. Upon his death a benefit of R84 551.67 became available for distribution. The trustees of the fund after conducting a thorough investigation determined that the deceased had three dependants in terms of the Act. They decided to award 45% (R38 048.25) to Ms M S M Mahlambi (the deceased’s mother), 45% (R38 048.25) to Carol Shabangu (the deceased’s daughter) and 10% (R8 455.17) to Ms Nomsa Masibi (the deceased’s girlfriend). For reasons which appear below, it is unnecessary to examine the factors considered by the trustees in determining the circle of beneficiaries and making an equitable distribution amongst them.
6. Mr Dikotla acting on behalf of the complainant contended that the deceased had only nominated Ms Maggie Mahlambi and Ms Carol Shabangu and failed to nominate Ms Nomsa Masibi as a beneficiary. Furthermore, the deceased died, without a will. Therefore, he concluded that Ms Masibi is not entitled to share in the death benefit distribution and the entire benefit ought to have been awarded to the nominated beneficiaries.
7. Mr Lloyd acting on behalf of the fund submitted that Ms Masibi was financially dependant on the deceased at the time of his death, and therefore qualified as a dependant as defined in the Act. Furthermore, the trustees considered *inter alia* the respective ages of the dependants, their financial needs and future earning capacities before making a decision. Therefore, he requested the complaint to be dismissed.
8. The payment of any death benefit arising out of a registered pension fund organization as defined in section 1 of the Act, is regulated by section 37C of the Act, which in part

reads:

- (1) Notwithstanding anything to the contrary contained in any law or in the rules of a registered fund, any benefit payable by such a fund upon the death of a member, shall, subject to a pledge in accordance with section 19(5)(b)(i) and subject to the provisions of section 37A (3) and 37D, not form part of the assets in the estate of such a member, but shall be dealt with in the following manner:
 - (a) If the fund within twelve months of the death of the member becomes aware of or traces a dependant or dependants of the member, the benefit shall be paid to such dependant or, as may be deemed equitable by the board, to one of such dependants or in proportions to some of or all such dependants.
 - (b) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member, and the member has designated in writing to the fund a nominee who is not a dependant of the member, to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the benefit or such portion of the benefit shall be paid to such nominee: Provided that where the aggregate amount of the debts in the estate of the member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the member in writing to the fund shall be paid to the nominee.
 - (bA) If a member has a dependant and the member has also designated in writing to the fund a nominee to receive the benefit or such portion of the benefit as is specified by the member in writing to the fund, the fund shall within twelve months of the death of such member pay the benefit or such portion thereof to such dependant or nominee in such proportions as the board may deem equitable: Provided that this paragraph shall only apply to the designation of a nominee made on or after 30 June 1989: Provided further that, in respect of a designation made on or after the said date, this paragraph shall not prohibit a fund from paying the benefit, either to a dependant or nominee contemplated in this paragraph or, if there is more

than one such dependant or nominee, in proportions to any or all of those dependants and nominees; and

- (c) If the fund does not become aware of or cannot trace any dependant of the member within twelve months of the death of the member and if the member has not designated a nominee or if the member has designated a nominee to receive a portion of the benefit in writing to the fund, the benefit or the remaining portion of the benefit after payment to the designated nominee, shall be paid into the estate of the member or, if no inventory in respect of the member has been received by the Master of the Supreme Court in terms of section 9 of the Estates Act, 1965 (Act No. 66 of 1965), into the Guardian's Fund.

9. Section 37C establishes a mandatory scheme, in terms of which the death benefit has to be distributed. The scheme is compulsory and overrides the deceased member's freedom of testation in respect of his death benefit. Similarly, where a member dies without leaving a will, the provisions of the Interstate Succession Act of 1987 regulating the distribution of the assets is inapplicable. The complainant's argument in essence is that since the deceased did not nominate Ms Masibi as a beneficiary nor make a last will and include her as one of the beneficiaries, she is not entitled to share in the death benefit distribution. As I have held previously (*see Moir v Reef Group Pension Fund and another- PFA/WE/50/98/NJ*), the wishes of the deceased is not a decisive factor in determining the circle of beneficiaries or their respective entitlements to the benefit. At the very best, it is only one of the relevant factors to be considered by the trustees in making an equitable distribution amongst the beneficiaries. However, *in casu* it is unnecessary for me to make a definitive ruling on the merits for reasons which appear below.

10. An important issue ignored by the parties is whether I have jurisdiction to determine this matter. Section 30D of the Act requires me to dispose of complaints lodged in terms of section 30A(3) in a procedurally fair, economical and expeditious manner. Complaint in turn is defined in section 1 as "...a complaint of a complainant relating to...". Complainant in turn is defined in section 1 as:

- a) any person who is, or who claims to be-
(i) a member or former member of a fund;
(ii) a beneficiary or former beneficiary of a fund;
(iii) an employer who participates in a fund;
- b) any group of persons referred to in paragraph (a)(i), (ii) and (iii);
- c) a board of a fund or member thereof; or
- d) any person who has an interest in a complaint.

11. As stated it is not entirely clear whether the complainant lodged the complaint in his personal capacity or in his capacity as executor of the estate. Nevertheless, the complainant by virtue of not being a dependant as defined in the Act or a nominated beneficiary does not fall within the ambit of paragraphs (a), (b) and (c) of the definition. In terms of section 37C, a death benefit may only be paid to the deceased's estate where there are no dependants and nominees (section 37C(1)(c)) or where there are no dependants but the member has nominated a nominee and the aggregate amount of the debts of the estate exceeds the aggregate amount of the assets in his estate then so much of the benefit as is equal to the difference between such aggregate amounts of debts and assets shall be paid into the estate and the balance to the nominee (section 37C (1)(b)).
12. In the instant matter, since there are dependants and no nominees, the distribution is regulated by section 37C(1)(a) and no payment is due to the estate. Therefore, the complainant in his capacity as executor of the deceased's estate is not entitled to any benefits from the fund and therefore he does not fall within paragraph (a)(ii) of the definition of complainant.
13. Ms M Mahlambi and Ms Carol Shabangu, the dependants of the deceased, fall within paragraph b(ii) of the definition. Therefore, they would qualify as complainants. However, even though the relief sought by the complainant indirectly benefits these two dependants, the fact that the complainant has made no allegation that he is acting on their behalf or submitted any proof of a mandate given to him by these beneficiaries, effectively precludes him from falling within the parameters of

paragraphs (a), (b) and (c) of the ⁶ definition.

14. The next question is whether the complainant falls within paragraph (d) of the definition in terms of which “any person who has an interest in a complaint” is entitled to lodge a complaint. Whilst the complainant may have an indirect interest in the distribution of the benefit in that he was the executor of the estate, I am of the view that his interest (if any at all) in the distribution of the benefit as regulated by 37C(1)(a) is too remote and find that he has no direct and substantial interest in the distribution itself. Accordingly, he does not fall within the definition of complainant and therefore not entitled to lodge a complaint against the fund. Therefore, the complaint is dismissed.

Dated at **CAPE TOWN** this 22nd day of January 2001.

John Murphy

Pension Funds Adjudicator