

## Death benefits must be paid promptly – adjudicator

October 13 2013 at 12:20pm

By Laura du Preez

<http://www.iol.co.za/business/personal-finance>

---

The inability of trustees to quickly discharge their duties when distributing a death benefit is cause for concern, Muvhango Lukhaimane, the Pension Funds Adjudicator, says in her annual report, which was released this week.

This is especially because the death of a breadwinner has the potential to plunge a number of dependants into abject poverty, which may be irreversible, she says.

The Pension Funds Act gives trustees a year to trace a deceased members' dependants and to determine how to distribute the death benefits equitably.

In the report, the adjudicator highlights important cases that came before her office over the past financial year, including one in which she held that any delay in distributing benefits must be reasonable and justifiable.

### **Death benefits cannot be delayed**

The Municipal Employees Pension Fund was ordered to pay out a death benefit that it had “unreasonably and unjustifiably” delayed paying to the dependants of a deceased member.

The daughter of a member of the fund who died in September 2007 complained to the adjudicator last year that she and her six siblings were mostly students who needed financial support.

The children had contested the appointment of her late father's girlfriend as the executor of the estate. After being appointed executor in 2011, the daughter had applied for the death benefits, but to no avail. She was informed that the assurer had repudiated the claim.

The fund and its administrator did not respond to the adjudicator's requests for comment and she held that the delay was not justified.

Lukhaimane ordered the fund to pay out the death benefit with interest from a year after the fund member's death.

She said the matter had not prescribed for being more than three years old, as prescription only begins against a minor when the minor reaches majority.

### **Termination of child's pension reversed**

The adjudicator set aside a decision by the South African Local Authorities Pension Fund to terminate a pension it was paying a deceased member's child after the fund took the view that the child was not a full-time student.

When the deceased member's daughter enrolled with the University of South Africa, the fund said that because she was not a full-time student she was no longer a dependant in terms of the fund's rules.

However, the adjudicator found that the daughter was solely committed to her studies, and her lifestyle and commitment could not be distinguished from that of students who register with tertiary institutions that hold regular classes.

### **Benefits withheld pending judgment**

A pension fund's decision to withhold a withdrawal benefit because a member's employment was terminated pending the outcome of a civil action, was upheld by the adjudicator.

Lukhaimane found the employer, Phumelela Gaming and Leisure, had asked the Phumelela Provident Fund to withhold the benefit pending the outcome of a civil claim against the member for losses of R21 000 it alleged it suffered as a result of theft, which the member was not defending.

Lukhaimane says the Pension Funds Act provides for funds to deduct compensation for damages suffered by an employer as result of theft, dishonesty, fraud or misconduct by the member.

The adjudicator says that before such a deduction can be made, the member must admit liability or the employer must obtain a judgment.

### **Cost deduction must be repaid**

The adjudicator ordered an administrator, Mcubed Employee Benefits, to repay costs it deducted from the savings of members of the Outsources Solutions Provident Fund after the members' employer, Capitec Bank, gave notice that it planned to move the members to a new fund.

While an application for the transfer of members savings to the new fund was under way, Mcubed deducted some R2.1 million in administration fees from the members' fund values rather than the fund's reserve account, which was no longer supported by contributions.

The adjudicator said the rules of the fund did not provide for the costs to be deducted from the members' fund values and ordered Mcubed to refund the money.