

PERSONAL FINANCE

‘Fund erred in paying death benefit’

September 22 2013 at 12:15pm

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The Pension Funds Adjudicator (PFA) has ordered the Momentum Retirement Annuity Fund to pay a woman her late son’s death benefit after finding that the fund had “unreasonably and unfairly delayed” payment.

Mrs A, a 77-year-old widow, lives in an old-age home in Beaufort West. She was the sole nominated beneficiary of her son’s death benefit of R37 500. He died intestate (without a will) in May last year. Her son was married.

Mrs A told the PFA that when her son was admitted to hospital in a diabetic coma in April last year, his Russian wife returned to Russia.

Mrs A said that when she lodged a claim with the fund to be paid her son’s death benefit, she was told the benefit would be paid to his dependants as defined in the Pension Funds Act (see “How the law defines a dependant”, below).

She submitted to the fund that she qualified as a dependant, because her son would have become legally liable for her maintenance had he not died.

Mrs A said that her son had no children and she was not aware of any legal dependants, because her son’s wife had absconded to Russia.

But Momentum said it had an obligation to trace the deceased’s spouse, because she qualified as a dependant in terms of the Act.

On failing to trace the deceased’s spouse, Momentum referred the information it had to hand to its board of trustees for a decision on how to distribute the death benefit.

The board decided that the entire benefit be allocated to Mrs A as a nominated beneficiary, provided that the deceased’s estate was solvent. The Pension Funds Act states that if a member has no dependants, death benefits can be distributed to a nominated beneficiary as long as the estate is solvent.

Momentum then asked Mrs A to furnish it with a letter of executorship, plus written confirmation from the executor that the estate was solvent.

But no executor had been appointed, and Momentum was informed of this.

Mrs A said she had applied to the magistrate’s court in Beaufort West to be appointed as the executor of her son’s estate, but she was told she would have to travel to Pretoria and register at the office of the Master of the High Court, which deals with deceased estates.

Mrs A said that travelling to Pretoria would be expensive and, because she is frail, painful.

She also had little idea of the complexities associated with being an executor and was concerned that if she appointed an attorney as the executor, she would have to pay upfront costs that might exceed the benefit and without any guarantee of success in the matter.

Momentum told the PFA that it was not unduly withholding payment to the complainant. The fund said it had to act within the guidelines of the Act and, therefore, needed proof of potential creditors and the amounts owed to them.

In her determination, the adjudicator, Muvhango Lukhaimane, says it appeared that the fund was incorrectly distributing the death benefit in terms of a section of the Act that governs the distribution of death benefits to a nominee who is not a dependant of the deceased member.

Lukhaimane found that Mrs A fell within the definition of a dependant in terms of the Act.

She says Mrs A is 77 years old, stays in an old-age home and has no future earning capacity. Although there is no evidence that the deceased was financially maintaining Mrs A at the time of his death, there is a likelihood that, had a need arisen, he would have been legally liable to maintain her.

Lukhaimane says the fund had concluded its investigation into the deceased's dependants and possible dependants by October 2012. Therefore, the death benefit should have been paid to Mrs A immediately after the outcome of the investigation had been presented to the board of trustees in October 2012.

"However, it has been delayed by the request of unnecessary documents by the first respondent from the complainant.

"Taking cognisance of all the circumstances, the payment of the death benefit to the complainant has been unreasonably and unfairly delayed," Lukhaimane says.

The PFA ordered the fund to pay Mrs A, within two weeks of her determination, the death benefit of R37 500, together with interest at a rate of 15.5 percent a year from May 31 to the date of payment.

* To ask the PFA to resolve a problem relating to your retirement fund, telephone 012 346 1738; fax 086 693 7472; write to PO Box 580, Menlyn, 0063; or send an email to enquiries-jhb@pfa.org.za. The PFA's website is www.pfa.org.za

HOW THE LAW DEFINES A DEPENDANT

The Pension Funds Act distinguishes between three types of dependants for the purposes of distributing a fund member's death benefit, Pension Funds Adjudicator Muvhango Lukhaimane says.

In terms of section 37C, the three types of dependants are:

- * **Legal dependants**, to whom the deceased owed a legal duty of financial support;
- * **De facto dependants**, to whom the deceased owed no legal duty of financial support but nevertheless depended on him or her financially; and
- * **Future dependants** whom the deceased did not financially maintain at the time of his or her death but would have done so had he or she been alive. Future dependants include the deceased's elderly and indigent parents.

A potential dependant must fall into one of these categories to be entitled to a death benefit.

DEATH BENEFITS AND ESTATES

The payment of death benefits by a retirement fund is regulated by section 37C of the Pension Funds Act. A death benefit does not normally form part of the estate of the deceased, but this section gives the fund's board of trustees the discretion, to be exercised fairly and reasonably, insofar as the distribution of death benefits is concerned.

First, the trustees must identify the dependants as defined in the Act (see "How the law defines a dependant", above). If there are dependants and/or some nominees, the benefits must be distributed equitably to them.

If there are no dependants, the trustees must check if the estate is solvent. If it is solvent, nominees can be paid. If it is not solvent, the trustees must pay what is required to the estate and then pay any nominee.

If there are no beneficiaries and no nominees, and if there is no estate, the benefits must be paid to the Guardian's Fund.