

Mother says trustees failed dead daughter

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DID you know that you can approach the pension funds adjudicator if you believe that trustees have not allocated benefits correctly?



NEW ALLOCATION: Muvhango Lukhaimane

The pension funds adjudicator has ordered the Cape Retirement Fund's board of trustees to change the way they allocated funds to dependants who were not nominated by a deceased person.

Deputy pension funds adjudicator Muvhango Lukhaimane says where trustees fail to establish the level of dependency , her office can order them to re-allocate the benefits .

This is shown in the case of Noxolo Sixaxeni, 50, of Mossel Bay in Western Cape who was not happy that trustees allocated money to dependants who should not have received the funds.

Noxolo says her daughter, Thando Sixaxeni, had allocated 50% of her death benefit to her only child, 5% to each of her siblings and 30% to herself.

She says Thando had a death benefit of R706 330, to be paid to her dependants when she died in March 2011.

The board of trustees did not allocate the money as her daughter had wanted, Noxolo says.

They only allocated R49715 to her son and R429658 to her nieces, Noxolo says.

She says she received R159791 and those nominated got nothing .

Lukhaimane investigated and discovered that all the identified dependants fell within the definition of a dependant in Section 1 of the Pensions Fund Act because they were financially dependent on the deceased.

The deceased was a single parent whose son was being taken care of by Noxolo.

The deceased had a 28-year-old sister, Fatima Sixaxeni, who was employed as a volunteer at a community centre where she earned R700 over three months.

Fatima receives a monthly grant of R280 for her two-year-old child.

While Fatima was dependant on Thando, the board gave her nothing, but allocated R104332 to her child.

Thando's 24-year-old sister Phindi Sixaxeni was unemployed and financially dependant on the deceased. She receives a monthly child grant of R810 for her three children. The trustees gave her nothing, but gave R325324 to her children.

The deceased's nominated brother got nothing.

In her determination, Lukhaimane says the trustees failed to exercise their discretion reasonably in allocating the proceeds.

Lukhaimane says Section 37C of the Pension Funds Act places a duty on the trustees to identify beneficiaries.

She says as the board has the discretionary power to effect equitable distributions, it is also required to consider relevant factors and exclude irrelevant ones.

"The board of trustees may not unduly fetter its discretion by following a rigid policy that takes no account of the personal circumstances of each beneficiary and of the prevailing situation," Lukhaimane says.

She has ordered the trustees to re-visit the allocation of the pension fund and to consider all the factors that they did not take into account. She has given the trustees six weeks to redo the allocation.