

PFA FINDS FUND HAD FAILED TO PROPERLY INVESTIGATE FINANCIAL DEPENDENCY

3 July 2025

The Pension Funds Adjudicator Muvhango Lukhaimane has set aside the allocation of a death benefit and ordered the pension fund to consider the financial dependency of the complainant and her children on the deceased.

The complainant claimed she was the life partner of the deceased who was a member of the Private Security Sector Provident Fund under the participation of the employer, Night Guard CC.

Following the deceased's passing, a death benefit of R254 609.51 became payable to his beneficiaries. The fund allocated the death benefit as follows: 10% to the life partner who is unemployed; 23% to the deceased's son who is employed; 25% to his minor daughter who is a scholar, 14% to a stepson who is a scholar, 14% to a toddler stepdaughter and 14% to a toddler stepson.

The complainant objected to the fund's allocation of the death benefit. She claimed the deceased had made her 100% beneficiary of his pension fund benefit and submitted that she had documents to prove same.

She submitted that an amount was paid out to the deceased's adult son who is 24 years old, employed, and was not financially dependent on his father at the time of his death. The complainant said she receives R2 800 monthly from the beneficiary fund as per the allocation by the board. She submitted that the deceased contributed to raising and supporting her four children, which support is now not available. This puts her under severe financial pressure. The amount of R2 800 per month only covers school fees.

The fund stated that at the time of death, the deceased was staying with the complainant and all four of her children. He was providing for them as his own. The fund further submitted that in allocating the death benefit, it was guided primarily by the extent of legal and/or factual dependency on the deceased at the time of death.

In her determination, Ms Lukhaimane said the fact that a person qualifies as a legal or factual dependant does not automatically give them the right to receive a portion of a death benefit. The deciding factor is financial dependency.

She said the submissions showed that at the time of death, the deceased was staying with the complainant and all four of her children. There was no dispute that he was providing for them as his own and consequently they qualified for the allocation of the death benefit. Thus, they had a right to be considered for a death benefit.

Ms Lukhaimane said the deceased and the complainant were living together as husband and wife, and the deceased looked after her four children. There was no dispute that she was the deceased's life partner at the time of his death. Thus, the complainant qualified as a factual dependant.

However, she said, financial dependency must still be established. This is in light of the fact that the complainant was no longer married to the deceased at the time of his death. The facts indicate that they divorced and never remarried. The complainant was married to somebody else at the time of the deceased's passing and they had three children together, and then they separated. The complainant moved back with all her children to stay with the deceased.

Ms Lukhaimane said it is the board's responsibility when dealing with the payment of death benefits to conduct a thorough investigation to determine the beneficiaries, and thereafter, decide on an equitable distribution.

"In the present matter, the marital circumstances of the complainant are not clear. It is not clear how long the deceased was living with the complainant prior to his death. Since the complainant was still married to someone else, he would ordinarily be responsible for her maintenance and maintenance of their children together.

"Without proof of the extent of her and her children's dependency on the deceased, the fund must err on the side of caution and assume that those with the legal responsibility to maintain the complainant and her children are taking care of that and not necessarily the deceased.

"Further, the investigation report does not indicate the financial circumstances of the complainant and the extent of her dependency on the deceased, nor the extent of dependency of her children on the deceased. The mere fact that they resided with the deceased under circumstances where she was still legally married to someone else, which marriage meant that they owed each other a reciprocal duty of maintenance, meant that the fund has to investigate all circumstances thoroughly," said Ms Lukhaimane.

She said the fund had failed to conduct a thorough investigation to determine the dependency of the complainant and her children on the deceased, and thereafter, decide on an equitable allocation.

The allocation of the death benefit was set aside and the fund was ordered to consider the financial circumstances and extent of dependency of the complainant and the children on the deceased.

ABOUT THE PENSION FUNDS ADJUDICATOR

The Office of the Pension Funds Adjudicator (OPFA) is a statutory body established to resolve disputes in a procedurally fair, economical, and expeditious manner. The adjudicator's office investigates and determines complaints of abuse of power, maladministration, disputes of fact or law and employer dereliction of duty in respect of pension funds. For general enquiries or to lodge a complaint visit www.pfa.org.za, call 012 748 4000 or email Enquiries@pfa.org.za

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