Fund took the “back door” rather than investigate properly, says PFA

Rather than conducting a proper investigation to trace who should be allocated a death benefit, a retirement fund decided to go “through the back door” and allocate the benefit to the deceased's estate.

Muvhango Lukhaimane, Pension Funds Adjudicator

This was stated by Pension Funds Adjudicator Muvhango Lukhaimane, following the decision of the South African Retirement Annuity Fund, administered by Old Mutual Life Assurance Company (SA) Ltd, to pay a death benefit into the deceased's estate following the death of its member.

Ms Lukhaimane found the decision to allocate the death benefit to the deceased's estate unlawful and set it aside.

The complainant was the spouse of the deceased who was a member of the fund until he passed away on 26 December 2019. Following the death of the deceased, a death benefit of R52 120.53 (before tax) became available to his beneficiaries.

The complainant was aggrieved with the fund's decision to pay the death benefit into the deceased's estate. She submitted that she did not know that the deceased had a policy issued for his benefit under the fund and only got to know of same when she approached her representative for assistance.

The complainant submitted that she was financially dependent on the deceased and was left destitute after the deceased's passing. She relied on the State's social relief grant.

The fund said the deceased did not nominate a beneficiary. The fund submitted that it did not investigate the existence of the deceased's dependants as he passed away on 26 December 2019 and the death claim was only submitted on 28 March 2022.

It submitted that this was after the expiry of the 12-month period since the passing of the deceased. Thus, it applied section 37C(1)(c) of the Act which applied in cases where no beneficiary is nominated, and it does not become aware of the death of its member and consequently does not become aware of the deceased's dependants.

The fund submitted that the sub-section is clear and peremptory as it dictates that if within 12 months of the death of a member, it has not become aware of any dependant, it must pay the death benefit to the estate. The fund submitted that on 18 July 2022, it concluded that section 37C(1)(c) applied in this matter and allocated the death benefit to the deceased estate.

In her determination, Ms Lukhaimane said the rules of a fund are supreme and binding. If the fund, within 12 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 dependants.

Section 37C(1)(c) of the Act deals with the distribution of the death benefit to the deceased estate and provides that if the fund does not become aware of or cannot trace any dependant of the member within 12 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.

“It is common cause that the fund can only know of the death claim if it is notified of same. Upon receipt of the death benefit claim, the board must then investigate in terms of section 37C of the Act.

“In this matter the fund confirmed that it did not trace the deceased's dependants simply because it was notified of his death more than 12 months after his death. Thus, it applied Section 37C(1)(c) of the Act.

“The fund misapplied Section 37C(1)(c) of the Act as it misinterpreted same. The fund missed the first part of the sub-section, that is, 'If the fund does not become aware of or cannot trace any dependant of the member within 12 months of the death of the member'.

“It is clear that the fund will not know if there are dependants or not without conducting an investigation,” said Ms Lukhaimane.

Citing case law, she said the 12-month period does not refer to the general time period of payment, but rather the period to trace beneficiaries. The fund can only trace beneficiaries through an investigation. The 12-month period to trace beneficiaries runs from when the fund learns of the death of the member, not the date of the death itself because the obligation to act cannot be triggered if there is no knowledge of the member's death.

“Thus, the 12-month period within which the fund had to trace the deceased's dependants ran from 28 March 2022 when it was notified of the death.

“The fund's interpretation of section 37C(1)(c) of the Act is clearly an error in law. It has the potential of prejudicing dependants of a deceased member. In terms of section 37C of the Act, the board has 12 months within which to trace and identify the possible beneficiaries that might share in the benefit. However, this is not a hard and fast rule as everything depends on whether or not the board has conducted a proper investigation within a reasonable time. If the board is satisfied that it has taken all reasonable steps to trace and identify the dependants, it does not have to wait for the 12 months to lapse before making payment.

“There is also no duty on the board to pay after the 12 months period has lapsed if it is of the opinion that there is a need for further investigation.

“The fund's submission that the sub-section is clear and that the 12-month period lapses after the death of a member and not after being notified of the death is incorrect. Put simply, the fund had 12 months from 28 March 2022 to conduct a reasonable and proper investigation in terms of section 37C of the Act, that is, the date after it was notified of the deceased's passing.

“Thus, the 12-month period would have lapsed in March 2023, provided it had conducted a proper investigation by then. The fund can only be excused on the fact that it was notified of the deceased's passing late, not on its failure to investigate and apply section 37C(1)(c) incorrectly as in this matter.

“The fund has failed to conduct an investigation in terms of section 37C of the Act and decided to apply sub-section (1)(c) through the back door,” said Ms Lukhaimane.

She was not satisfied that the board had conducted an investigation in terms of section 37C of the Act before deciding on the payment of the death benefit into the deceased's estate.

“Thus, the decision to allocate the death benefit into the deceased's estate is unlawful and is hereby set aside.

“The fund must, therefore, be ordered to conduct an investigation in terms of section 37C of the Act and to pay the death benefit to the deceased's beneficiaries by no later than 31 August 2023,” said Ms Lukhaimane.