

The Verdict



January 2017

"It is not the role of this Tribunal to decide what the fairest or most generous distribution is. Rather, the test in law is to determine whether or not the Board acted rationally and arrived at a proper and lawful decision."

MA Lukhaimane
Pension Funds
Adjudicator

SECTION 37C DEATH BENEFIT – ALLOCATION TO NEWBORN CHILD

In *Malinga v EJoburg Retirement Fund and Others*, the Adjudicator confirmed the decision taken by a Fund Board to allocate and pay a greater portion of the death benefit to a minor child born just before the member's death.

In this case, the member of the Fund had passed away and a death benefit became payable. The death benefit amount was R473 549. The Board of the Fund decided to allocate R200 000 to the deceased's mother who he lived with. The deceased's mother was working and earned more than the deceased, but they shared the household expenses. The balance of the benefit was allocated to a minor daughter born out of a relationship between the deceased and a work colleague. The deceased did not leave a beneficiary nomination form.

The mother of the deceased was dissatisfied with the Fund's decision to not allocate the full benefit to her and she complained to the Adjudicator. She contended that the deceased was not married and did not have any children. The Adjudicator had to determine whether or not the Board carried out its duties in terms of section 37C and arrived at a rational, proper and lawful decision.

The Adjudicator held that the law recognizes three categories of dependants, namely, legal dependants, factual dependants and future dependants. The Complainant was confronted about the existence of the child and asked by the Board to present herself to conduct a paternity test, but refused to do so even though the Fund was willing to pay the costs thereof. The Board concluded that the minor child qualified as a dependant as at the date of death. The child was born two days before the member's death. The Adjudicator confirmed that a biological relationship was not a determining factor in a section 37C allocation consideration.

The Adjudicator agreed with the Board's decision to deem that the minor child was the deceased's biological child based on the facts, as there was no opportunity for the deceased to maintain the minor child and to thereby establish factual dependency. The Adjudicator found that it was correct to allocate a bigger portion of the benefit to the minor child, who would need a longer period of financial support and the complaint was dismissed.

Lessons to be learnt from this case:

- ▶ Trustees should apply their minds to all relevant factors when making death claim allocations and the age of a child will be one of the factors to take into account.

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