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Distribution of death benefits to major children

Major children's entitlement to qualify as dependants of a deceased member

Major children, who were in fact financially dependent on a deceased member in that they received some form of regular financial support from the member, qualify as dependants of such deceased member.

The definition of dependant in the Pension Funds Act however also includes a person in respect of whom the member was not legally liable for maintenance if such person was the "child" of the deceased member. In *D Pretorius v The Pension Funds Adjudicator and Others*, the Financial Services Tribunal found that the word child in the definition of dependant in the Pension Funds Act is not qualified and must be understood in its ordinary meaning, thus it refers to someone's offspring, irrespective of such offspring's age. A person becomes a dependant of a deceased member by the mere fact that such person was the deceased member's child. The Tribunal found that the fund accordingly misdirected itself by finding that the two daughters of the deceased member were not dependants based (solely) on their status as adults.

In *K Wilkinson and A Wilkinson v The Pension Funds Adjudicator and Others*, the fund allocated 50% of the death benefit to the deceased member's wife and 25% each to his two major daughters. The Adjudicator found that there was no basis for the fund to allocate any benefit to the two major daughters as they were financially independent from the deceased member, were employed and never had any relationship with the deceased member. The Financial Services Tribunal found that any child of the deceased member is a legal dependant who has a right to be considered for a death benefit. Therefore, the fact that a deceased member's major children are all self-supporting should not automatically disqualify them from qualifying as dependants of a deceased member.

In *Van den Berg v Durban Pension Fund*, the Adjudicator ruled that children have a reasonable expectation to share in the estate of their parents irrespective of the extent of their dependency on the deceased member. Therefore, the fact that the deceased's five major children were all self-supporting did not automatically disqualify them from sharing in the death benefit distribution.

It is therefore clear that financially independent major children of a deceased member whom the deceased member was not legally required to support fall within the ambit of the definition of a dependant in the Pension Funds Act.

However, it is important to note that the mere fact that a person qualifies as a dependant does not mean that he is automatically entitled to receive a benefit or portion thereof and depending on the amount available for distribution and the needs of the other identified beneficiaries, they might be allocated a nil benefit.

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Equitable distribution of a death benefit

The board of trustees of the FundsAtWork Umbrella Fund always apply their minds to the distribution of a death benefit to ensure it is distributed equitably amongst all the identified beneficiaries of a deceased member. To do this, the trustees ignore irrelevant considerations and consider the following relevant factors:

- **The wishes of the deceased member as expressed in the nomination form and/or Will:** The board of trustees will not place too much emphasis on the wishes of the deceased member and too little on the factual dependency of the deceased member's beneficiaries. Therefore, even if it is clear that the deceased member did not want his major child to benefit from his death, or if on the other hand the deceased member expressed an intention to benefit his major child, the wishes of the deceased member will not be decisive.
- **The financial affairs of the beneficiaries:** This factor probably plays the most important role in the death benefit investigation process – the board of trustees will establish any regular monthly income received by a beneficiary, for example salary, maintenance payments etc; a beneficiary's expenditure per month; and the value of any assets belonging to a beneficiary.
- **Other amounts awarded to a beneficiary due to the member's death:** This could include group life scheme awards or other insurance policies, as well as bequests from the deceased member's estate.
- **The extent of the beneficiary's dependency:** This will be based on the actual amount of financial assistance provided to the beneficiary by the deceased member during the deceased's lifetime.
- **The future earning potential and prospects of the beneficiary:** The board of trustees will establish whether a dependant is employable and capable of working should such dependant wish to supplement his income, having regard to his level of education, age and any disabilities or other conditions which might render him incapable of securing gainful employment.
- **Ages of the beneficiaries:** This factor plays a vital role in the distribution of a death benefit because it indicates to the board of trustees the likely period during which the identified beneficiaries will require financial support before they become self-supporting. For example, the financial needs and status of minor children will in most cases be more pressing and compelling than that of major children. This will mean that if a deceased member has both minor and major children who were dependent on him, the minor children will usually receive higher proportions of the benefit than the major children. In this regard, in *Van den Berg v Durban Pension Fund*, the Adjudicator ruled that it was prudent for the trustees to award a higher portion of the benefits to the minor children as opposed to major children who were financially independent. She found that a decision of awarding major children lesser benefits than minor children would not be deemed unreasonable and that the trustees acted rationally and reasonably in the exercise of their discretion. However, there could be cases where, for example, a major child is disabled with no future earnings prospects, in which case it would be equitable for the board to allocate a greater percentage of the death benefit to such major child.
- **The relationship of the beneficiaries with the deceased member:** When considering this factor, the board of trustees will not allow family problems and a deteriorated relationship between a deceased member and his major child to overshadow their duty to exercise their discretion properly and equitably by taking into account **all** the other listed relevant factors.
- **The amount available for distribution:** The amount available for distribution is another important factor to take into account in determining how many beneficiaries will share in the death benefit and the percentage that can be awarded to each.

For example, if there is only a small amount available and the deceased member has major and minor children, it would be advisable for the board to rather allocate the whole of the benefit to the minor children than to give only a small share to each of the several minor and major children, in which case none of them would benefit meaningfully from such a small amount. In *ZL Magwaza v BB Cereals Provident Fund and Others*, the amount available for distribution was insufficient to cover the needs of the deceased member's minor children, widow and major dependants.

The Adjudicator found that the interests of justice would be served by awarding the entire benefit to the widow and the minor children bearing in mind, *inter alia*, the respective ages of the beneficiaries, especially the minors as opposed to the majors. Thus, where the amount available for distribution is clearly insufficient to cover the needs of all of the deceased member's children, the board would be acting equitably in awarding the entire benefit to the minor children only, subject to having taken into account all the other relevant factors, especially the unique personal and financial circumstances of the major children.

In Summary

Even if a deceased member's major children are all self-supporting, they could still qualify to share in the distribution of the death where there are no or a few minor children and the death benefit amount is large enough, subject to the board always taking into account the personal and financial circumstances of **all** the identified beneficiaries of the deceased member.

If a deceased member has both minor and major children who were dependent on him at the time of death, the minor children will, in most cases, receive higher proportions of the benefit than the major children as the financial need and status of minor children are generally more pressing and compelling than that of the major children.

The board of trustees of the FundsAtWork Umbrella Fund will however **always** ensure that all allocations are done on the merits of each case and will refrain from following a fixed policy or set decision-tree where a minor child is always awarded a greater percentage of the death benefit or where a major child is automatically excluded from the distribution without also considering the unique personal and financial circumstances of a major child.