

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA29/2024

In the matter between:

SETH IMRAAN BOUAH

APPLICANT

and

SANLAM UMBRELLA PROVIDENT FUND

FIRST RESPONDENT

PENSION FUNDS ADJUDICATOR

SECOND RESPONDENT

SUN INTERNATIONAL SA T/A BOARDWALK

THIRD RESPONDENT

SANLAM EMPLOYEE BENEFITS

FOURTH RESPONDENT

DECISION

1. The applicant applies for a reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 ('the FSR Act') relating to the decision of the second respondent ("the PFA") regarding the non-payment of a disability benefit.
2. The parties have agreed that the Tribunal decide the application on the papers filed of record.

3. The applicant's complaint before the PFA related to a non-payment of a disability benefit underwritten by Old Mutual ("the insurer").
4. The applicant was employed with the third respondent, Sun International ("the Employer") and he became a member of the first respondent ("the Fund") on 01 July 2019. The applicant made monthly contributions from 01 July 2019 until 30 June 2023 and these contributions were invested on his behalf.
5. The Employer has an Income Disability Policy which pays an income disability for 22 months after a 3-month waiting period. This Income Disability is an unapproved benefit, and the policy is in the name of the Employer. The Fund cannot submit a disability claim to the insurer on behalf of the Employer as only the Employer can submit this to the insurer.
6. Accordingly, Sanlam, acting as an administrator and the Fund cannot provide assistance to the applicant regarding the disability claim as such a claim did not fall within the jurisdiction of the PFA. The matter was therefore referred by the PFA to the Employer as it fell out of the jurisdiction of the PFA as it related to a disability claim as opposed to a pension fund matter.
7. The applicant seeks a reconsideration of this decision and that the Employer be compelled to support his claim for a disability cover.
8. The registered rules of the Fund make provision for two types of disability benefits:
 - 8.1. An unapproved disability benefit, provided through a policy effected by the Employer for its employees; and
 - 8.2. An approved disability benefit, provided through a policy effected by the Fund for its members.

9. In terms of the unapproved disability benefit, a member is paid a disability income for a specific period. The risk premiums relating to the unapproved disability benefit are payable to the Fund by the Employer as part of the monthly contributions to the Fund. The special rules state the following regarding the monthly contributions:

“A MEMBER who is a part-time EMPLOYEE must contribute to the FUND 6.5% of his/her PENSIONABLE SALARY, which contribution will be allocated to the INDIVIDUAL MEMBER ACCOUNT. The other MEMBERS are not required to contribute to the FUND.

The EMPLOYER must contribute monthly, the following percentages of the MEMBER's monthly PENSIONABLE SALARY:

- 11.5% in respect of a MEMBER who is a part-time EMPLOYEE; and*
- 18% in respect of any other MEMBER*

The EMPLOYER contributions in terms of this RULE include -

- the cost of the RISK BENEFIT; and*
- the premium of the UNAPPROVED RISK BENEFITS; and*
- the administrative, advisory and FUND fees pertaining to the EMPLOYER'S participation in the FUND.*

subject to the following:

(a)...

(b)....

(c) A Maximum amount equal to 3.5% of the MEMBER's monthly PENSIONABLE SALARY to be applied towards the premiums for RISK BENEFITS, as well as the cost for UNAPPROVED RISK BENEFITS the EMPLOYER effected for the MEMBERS outside the FUND provided that

(i).....”

10. The contributions payable to the Fund include costs for both approved and unapproved risk benefits.
11. In terms of the approved disability benefit, the special rules pertaining to disability provide as follows:

“If a MEMBER qualifies for the disability benefit in terms of the RULES of the FUND the MEMBER will be entitled to an annuity purchased with his/her disability benefit. The MEMBER may take as much of his/her disability benefit in cash as is allowed by the INCOME TAX ACT, and the balance will be used to purchase an annuity.

The disability benefit is equal to a multiple of the MEMBER's PENSIONABLE SALARY according to the table below, subject to the provisions of paragraph (c)(ii) under Monthly contributions.”

12. Rule 8.1 regarding a disability benefit state:

"8.1 Provisos

8.1.(1) The disability benefit in terms of this part is only payable if it is provided in terms of the SPECIAL RULES.

8.1 (2) The disability benefit must be based on an accelerated payment of RISK DEATH IN SERVICE BENEFIT, and it must be fully insured with an INSURER.

8.1 (3) *The disability benefit applicable in respect of a MEMBER in terms of the SPECIAL RULES is paid, provided that if the FUND's insurance of the benefit with the INSURER in respect of the MEMBER is limited to any condition for payment of the insurance has not been met. the payment of the benefit will be limited accordingly.*

8.5 *Limitations and other conditions relating the disability benefit*

8.5 (1) *The FUND will insure the disability benefit in respect of the MEMBER who are EMPLOYEES of a particular participating EMPLOYER with an INSURER selected by the FUND in accordance with its participating requirements.*

8.5.(2)

8.5. (3)..."

13. The special rules further provide as follows regarding the "Waiting period":

"The disability benefit is only payable at the end of the period starting at the date that the MEMBER becomes disabled to the extent required for the temporary income disability benefit to become payable in terms of temporary income disability insurance affected by the EMPLOYER for its EMPLOYEES and ending at the later of-

- the end of the twenty-four-month period during which the INSURER deems the MEMBER to be totally disabled in terms of the temporary income disability insurance affected by the EMPLOYER; and*
- the date the INSURER is satisfied that the MEMBER is disabled to the extent required for the disability benefit to become payable."*

14. According to the rules of the Fund, payment of the approved disability benefit is only made after the insurer deems the member permanently disabled following the end of the twenty-four-month period during which the insurer considers the member disabled under the temporary income disability insurance effected by the Employer. Therefore, payment of the approved disability benefit cannot be made until the temporary income disability benefit is initiated by the employer in terms of its policy.

15. In terms of the Pension Funds Act 24 of 1956, a complaint is defined as:

*“**complaint** means a complaint of a complainant relating to the administration of a fund, the investment of its funds or the interpretation and application of its rules, and alleging-*

(a) that a decision of the fund or any person purportedly taken in terms of the rules was in excess of the powers of that fund or person, or an improper exercise of its powers;

(b) that the complainant has sustained or may sustain prejudice in consequence of the maladministration of the fund by the fund or any person, whether by act or omission;

(c) that a dispute of fact or law has arisen in relation to a fund between the fund or any person and the complainant; or

(d) that an employer who participates in a fund has not fulfilled its duties in terms of the rules of the fund; but shall not include a complaint which does not relate to a specific complainant.”

16. The PFA found that the applicant's complaint does not fall within the definition of a "complaint" in terms of the Act. This Tribunal cannot find otherwise. Based on the definition above it is clear that the PFA was correct in finding that she does not have jurisdiction to deal with the non-payment of disability benefit claims underwritten by the insurer.
17. Furthermore, it is clear from the record that the applicant and the Employer have come to an *inter partes* agreement, which settled all disputes between them. Accordingly, there was no basis for the applicant to approach the PFA as the complaint does not relate to a pension/provident fund and accordingly falls outside the jurisdiction of the PFA.
18. For all the above reasons, the application for reconsideration must be dismissed.
We grant the following order:

18.1. The application for reconsideration is dismissed.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS THE 28th DAY OF OCTOBER 2024.

A Saldulker

Adv A Saldulker

For self and on behalf of LTC Harms (Chair)