

Disability benefits Pension Lawyers Annual Conference



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Introduction

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Disability benefits can arise in the context of various products and is not limited to occupational pension or provident funds. Other examples are:

- Disability grants payable by the State
- Disability benefits payable by the Road Accident Fund
- Benefits payable in terms of the Compensation for Occupational Injuries and Diseases Act
- Self – standing insurance schemes

Definition of Pension Fund

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- In terms of the definition, the primary purpose of a pension fund is to provide death and retirement benefits.
- No specific mention of disability benefits.
- As pension funds have evolved over the years, disability benefits have formed an important part of this type of fund.



Types of Disability Benefits

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- Lump sum (a multiple of the member's pensionable salary) – risk cover
- A lump sum benefit may also include the member's **fund credit** or **share of fund**



Conditions

- Free cover limit
- Actively at work
- Pre-existing conditions



Disability Income Benefit

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- Normally secured by separate insurance policy outside the fund
- This benefit is paid in the form of monthly income, usually limited to not more than 75% of the member's salary prior to disablement
- The benefit is paid either until the member is able to return to work or reaches a certain age or other fixed period
- Employer waiver benefit





III Health – Early Retirement

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- Member below the age of 55 (who is therefore generally not entitled to an early retirement benefit), provided he/she meets the definition of disability, may receive such a benefit
- This benefit is essentially an early retirement benefit in the form of a pension to the member prior age 55
- Where funds have this benefit and a lump sum disability benefit, the rules will often state that this benefit is only payable if the disability claim within the fund or in terms of an outside scheme is rejected
- In defined benefit funds - as the member is retiring prior to the anticipated retirement age – an early reduction factor may be applied
- Retirement Annuity Funds

Approach to be adopted by the board

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The Supreme Court of Appeal in *Southern Life Association* held that the test for the reviewing Tribunal is whether the Board's opinion was both honestly held and one which a reasonable person could arrive at on the evidence before him/her.



Impairment vs Disability

Important to distinguish between the above 2 concepts

- Impairment is a medical evaluation by a medical practitioner having regard to the injuries (mental or physical) suffered by the member
- Disability is a legal concept examining the effect of the impairment on a person's life in the context of his/her work environment





Reinsurance of Disability Benefits

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- In terms of this agreement, the insurer agrees to cover the disability benefit subject to the conditions outlined in the policy agreement
- Funds have a rule that they only pay in the event of the claim being admitted
- This rule protects the fund but may be problematic for members (privity of contract)
- *Van der Linde (PFA)*
- Benefits reinsured with an insurer who rejected the claim
- Special rule – paid from reserve account where disability benefit declined by insurer

PFA ruled

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- Board to exercise independent discretion
- The Board was directed to re-exercise its discretion
- In such scenarios – important for fund to exercise independent discretion and not rubber stamp original insurer decision



Standard Definition

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Classens (PFA)

“...a condition where a bodily injury or illness is the direct, effective and only cause why the member is prevented permanently, without interruption and totally to follow his normal occupation and to follow an occupation which, with due regard to his education, training or experience, he could reasonably be expected to accept...”



Totally Disabled

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- Most definitions require that the member be **totally** incapable of performing his own or similar occupation
- *Reynolds (PFA)*
- CR77 (LTIO)
- Partially disabled – *Fish (PFA)*



Permanence

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- An important issue that has arisen in several cases is whether a disability can be regarded as **permanent** if there is a probability that it can be removed by surgery or other medical treatment?
- *Hiebner* (PFA)



Own Occupation

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- Very few cases on this issue
- Requires fund to assess current job description of the claimant and thereafter make an assessment
- Combination of definitions



Similar Occupation

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- Resemblance in some relevant aspects
- Establish main requirements current occupation and then compare to proposed job
- Not necessary for similar occupation to be in existence
- *Munnik* (PFA)



Further Training for another Occupation

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- Clauses often require member to undergo further training
- Regard must be had at existing knowledge, training, education, ability and experience
- CR277 (LTIO)



Role of Participating Employers

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- Employers have duty to notify the fund of disability
- *Namane* (PFA)
- *Swanepoel* (PFA)
- Appeal to High Court and SCA





Implications of the Various Rulings

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- Important duty placed on employer to inform the fund of the disability suffered by the member
- The employer must not use or usurp this important discretion
- All insurers require the fund to inform them of the disability event within a certain time period
- The failure to lodge the claim within this time period will result in a claim being rejected on this basis alone
- Employers must inform the fund within the time period set out in the fund rules or insurance policy

National Treasury

Retirement Fund Reform a discussion paper (December 2004)

- Preferred income payment over lump sum payment
- Funds should pay income on temporary and permanent disability directly to the disability pensioners without losing its tax status
- Regulator should establish an actuarial review committee comprising of experts and other relevant stakeholders which will determine the standard to which fund valuers will be required to comply with



National Treasury

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Social Security and Retirement Reforms (2007)

- Establishment of a mandatory National Social Security Fund providing for a basic disability benefit
- Emphasis on income payment as opposed to lump sum payment
- For higher income employees, adequate income replacement due to disability may necessitate supplementary contributions to occupational and individual funds



Department of Social Development 22

Reform of Retirement Provisions (September 2007)

- Mandatory retirement arrangement should incorporate provisions for post retirement medical aid scheme contributions as well as death and disability cover
- The entire retirement framework should without exception be subject to adequate regulation, oversight and governance
- National Social Security Fund will be required to provide a minimum death and disability cover

momentum

Thank you
Ngiyabonga
Dankie

