



Tuvalu

**PROVIDENT FUND (DETERMINATION OF
CLAIMS AND QUESTIONS)
REGULATIONS**

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PROVIDENT FUND (DETERMINATION OF CLAIMS AND QUESTIONS) REGULATIONS

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PROVIDENT FUND (DETERMINATION OF CLAIMS AND QUESTIONS) REGULATIONS ¹

MADE UNDER SECTION 26 OF THE PROVIDENT FUND ACT

1 Citation and interpretation

- (1) These Regulations may be cited as the Provident Fund (Determination of Claims and Questions) Regulations.
- (2) In these Regulations, unless the context otherwise requires “**adjudicating authority**” means the authority determining a question, including the Manager, the Board and the Medical Board, and “**question**” includes a claim for benefit.

2 Determination of contributions questions

- (1) Subject to these Regulations, any question as to —
 - (a) whether this Act is or was applicable to a place where a person is or was employed;
 - (b) who is or was liable for the payment of contributions as the employer of an employed person;
 - (c) the rate at which contributions are or were payable by or in respect of an employed person; or
 - (d) whether a person is or was employed under a contract of service as an employed person or is to be treated as so employed for the purposes of this Act,

shall be decided by the Manager.

- (2) A person who is dissatisfied with a decision of the Manager under sub-regulation (1) may appeal against that decision to the Board whose decision shall, subject to regulations 5 and 12, be final

3 Determination of benefit questions

- (1) Subject to these Regulations, any question as to —
 - (a) whether the employment, retirement, age, emigration, nomination, or other circumstantial conditions for entitlement to a benefit are or were satisfied; and
 - (b) the quality or quantity of any benefit paid,shall be decided by the Manager
- (2) A person who is dissatisfied with a decision of the Manager under sub-regulation (1) may appeal against that decision to the Board whose decision shall, subject to regulations 5 and 12, be final.

4 Determination of medical questions

- (1) The Manager or the Board may refer for advice by the Medical Board any question concerning the medical condition of a claimant or any person whose physical or mental condition has a bearing on entitlement to or payment of benefit except where, under section 22(3)(a), a question is specified for determination by the Medical Board.
- (2) A person who is dissatisfied with the decision of the Board on a question which is not referred for determination or advice under sub-regulation (1) may apply to be examined by the Medical Board which shall report its findings to the Board if the question had been referred by the Board.
- (3) The decision of the Medical Board on any question shall, subject to regulations 5 and 12, be final.

5 References and appeals on a point of law

- (1) The Board may refer for determination by the senior magistrate any question of law arising in connection with the determination of any question under the foregoing regulations.
- (2) A person who is dissatisfied with the decision of the Board or Medical Board on a question of law which is not referred under sub-regulation (1) may appeal against the decision to the Senior Magistrate.
- (3) The Board, or a party to an appeal to the Senior Magistrate under this regulation, may appeal on any point of law to the High Court whose decision shall be final.

6 Time limit for appeals

The time allowed for making an appeal, questioning any decision or producing any evidence shall be 30 days from the date of the decision or requirement to produce evidence, as the case may be, or a longer period which the adjudicating authority or the court may deem reasonable having regard to the circumstances of the question.

7 Method of application for determination of a question

- (1) A person wishing to obtain the decision of the Board, Medical Board, Senior Magistrate or High Court on any question under regulations 2 to 5 shall deliver or send to the Fund an application for the determination of that question in writing on the form supplied for the purpose by the Fund and shall furnish any particulars or evidence that the adjudicating authority concerned may require for the purpose of consideration and determination of that question.
- (2) The Manager shall take steps to bring any application and particulars to the notice of any person appearing to him to be interested therein and to obtain from that person any further particulars as he may consider necessary for the proper determination of the question.

8 Preliminary inquiry

The Board may, before determining the question, hold an inquiry into the matter and may require persons to attend that inquiry to give evidence or produce documents reasonably required for the purpose of the inquiry and may take evidence on oath and for that purpose may administer oaths.

9 Notice of and attendance at hearings

- (1) Reasonable notice of the date and place of the hearing or inquiry shall be given to the applicant and to persons notified of the application under regulation 7(2).
- (2) The applicant and any person notified under regulation 7(2) shall be entitled to attend and to be heard at the hearing or inquiry, and to be represented by another person, whether or not that other person has a legal qualification.
- (3) The procedure at the hearing or inquiry shall, subject to these Regulations, be such as the person or persons holding the hearing or inquiry shall determine.

10 Promulgation of decisions and references

- (1) The Board, Medical Board, Senior Magistrate or High Court, as the case may be, shall give notice in writing of their decision to the applicant and to any

person appearing to them to be interested therein and may publish the decision in such a manner as they may think fit.

- (2) Where the Board refers a question of law under regulation 5(1), notice in writing of the intention so to do shall be sent to the applicant and to any person appearing to the Board to be interested therein.
- (3) Where the applicant or other interested party is dissatisfied with a decision given under regulations 2 to 5 and so requests, he shall be furnished with a statement of the grounds for the decision sufficient to enable him to decide whether a question of law or any matter on which he may wish to appeal has arisen.

11 Representation at court hearings

The Board or Medical Board, as the case may be, shall be entitled to be represented and to be heard on any reference or appeal to which regulation 10 applies.

12 Review of decisions

- (1) Where new facts are brought to the notice of an adjudicating authority after it has determined a question and it is satisfied that a decision on that question was made in ignorance of, or was based on a mistake as to some material fact, the adjudicating authority may review that decision.
- (2) A decision of the adjudicating authority shall not be reviewed under sub-regulation (1) except with the concurrence of the Senior Magistrate or High Court, as the case may be, if an appeal against a decision on a question of law is under consideration

13 Questions raised in proceedings

Where in any court proceedings under the Act a question for determination under these Regulations is raised, that question shall, if necessary for the conclusion of the proceedings, be referred to the Board, or, in the event of an appeal on a question of law, to the senior magistrate, and, subject to regulation 5, the decision given shall be conclusive for the purposes of those proceedings.

14 Different entitlement on review

- (1) Where on review a decision is revised and as a result a person previously entitled to one benefit is awarded some other benefit in lieu thereof, the decision given on review shall direct that any payment already made on account of the benefit originally awarded shall be treated as having been paid on account of the benefit awarded on review.

- (2) Where on review benefit previously awarded is held not to be payable or to be payable at a reduced rate, the decision given on review shall require repayment to the Fund of the benefit paid in excess unless sub-regulation (1) applies or the Board is satisfied that the person concerned acted in good faith in all respects as to the obtaining and receipt of the benefit.

ENDNOTES

¹ LN 15/1985