

Is this curator overcharging?

I HAVE A SON WHO IS SERIOUSLY INCAPACITATED as a result of a brain injury when he was struck by a taxi. He received a payment from the Road Accident Fund, and he has a curator to oversee his financial affairs. The curator receives a fee based on the income received by my son from his investments.

In reading the curator's annual reports to the Master of the High Court, I find it is not clear what qualifies as "income" in the context of the amount the curator should be paid as a proportion of my son's income. Here are some examples:

■ In the reports submitted to the Master, the curator has claimed six percent of income tax refunds. I am of the opinion that the curator has already received six percent of the income earned in that tax year; therefore, he is taking six percent for a second time.

■ The curator has also claimed six percent of the appreciation on the investments in that year. I do not understand how he can claim six percent of what is, in effect, a theoretical figure until the unit trusts are actually turned into cash. The curator has stated that if the investments depreciate in value, he does not have to refund six percent of the negative value to my son.

■ The curator claims six percent of all interest and dividends received from the investment account. I am quite happy to accept that this is allowable. He also claims six percent of any money withdrawn from the investments for living expenses. In my opinion, the money gained from interest and dividends is included in the amount withdrawn for living expenses. The six percent claimed is once again being repeated and is quite possibly not an allowable claim.

Please inform me how "income" is defined in the case of a curator calculating his fee. Is there an ombudsman who may be approached with a request for advice and assistance where the curator's calculations (which I perceive as being incorrect) are accepted by the Master's office as being correct?

Name withheld on request

PERSONAL FINANCE asked **Kobus van Schalkwyk, the senior manager: legal at Standard Trust and a member of the Fiduciary Institute of Southern Africa, and Richard Sparg, a chartered accountant and an investment planner at Netto Invest, to respond.**

Van Schalkwyk: A curator is entitled to receive out of the income derived from the property or assets that are subject to the curatorship a remuneration assessed according to a prescribed tariff and to be taxed by the Master of the High Court. The tariff is:

■ On income collected during the existence of the curatorship: six percent; and

■ On the value of capital assets on distribution, delivery or payment on termination of the curatorship: two percent.

The Master may, if there are in any particular case special reasons for doing so, reduce or increase such remuneration. If the curator has failed to discharge his or her duties, or has discharged them in a unsatisfactory manner, the Master may disallow such remuneration, either wholly or in part.

A guardian is therefore entitled to raise his or her concerns with the Master who has jurisdiction over the curatorship and who will investigate and provide guidance on the particular situation. If satisfactory answers are not received from that office, the issue could be escalated to the office of the Chief Master of the High Court.

Sparg: I agree with the writer that the curator may be stretching the definition of income, and that some "double dipping" is going on. If it were me, I would take the matter further.

The Income Tax Act defines income only as a receipt or an accrual (in cash or otherwise), not of a capital nature. The Act also does not attempt to define the term "not of a capital nature", and in cases of uncertainty it is left to the courts to decide. Case law has therefore built up over time, and this can provide guidance.