

APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES

In the matter between:

J

Appellant

and

DISCOVERY HEALTH MEDICAL SCHEME

Respondent

RULING

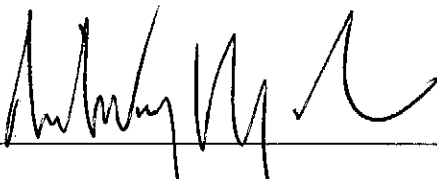
- 1 This is an appeal against the ruling of the scheme's disputes committee in which it affirmed the scheme's decision to terminate the member's infant baby's dependent membership owing to the member's failure to disclose the infant baby's pre-existing medical conditions in the application form.
- 2 The infant baby has since passed away and the member is facing a medical bill of about R450 000.
- 3 He says as he neither lived with nor had contact with the infant baby he was not aware of these medical conditions. He says since the baby had been born out of wedlock, he could according to custom only have access to the baby upon

paying lobola. It did not occur to him to ask the mother of the baby about the baby's past medical conditions.

- 4 The member (who had joined the scheme in January 2009) completed an application form for the admission of his infant baby as a dependent in March 2010. He did not disclose the baby's medical conditions as he says he was not aware of them. The dependency membership became effective on 1 April 2010. On 13 April 2010 authorisation was sought for the baby's admission at Carstenhof clinic for cardiomegaly. This was granted.
- 5 Six days later the baby was transferred to the Sunninghill Hospital for arrhythmia. Tests that were done showed that the baby had pneumonia and heart problems. An emergency heart operation was done without authorisation. Ordinarily this would have constituted a prescribed minimum benefit both as regards the condition and the emergency of the procedure.
- 6 While sympathetic to the member and his spouse for the loss of their baby, it is difficult to fault the scheme in the circumstances of this case. The importance of making a full disclosure of pre-existing medical conditions of which one is aware cannot be over-emphasised. Such information enables the scheme to assess its underwriting risk. Apprised of such information, it may in its discretion decide to impose a condition-specific waiting period (section 29A(1)(b) of the Medical Schemes Act, 131 of 1998).

- 7 In the circumstances of this case even if we accepted that the member was not aware of the baby's medical conditions, his obligation reasonably to have made enquiries of her mother is inescapable. If he was not aware of the baby's medical conditions, then the appropriate thing to do in answering questions to which he did not know the answer was not to give categorical answers denying previous medical conditions but rather to ask someone who is most likely to have those answers. It is not as if the application form had to be completed urgently and on that day (16 March 2010) for compliance purposes. In fact, the urgency with which the form was seemingly completed seems to point to an intention to submit it in time for membership to commence as soon as possible so that the known medical conditions could be attended to at the expense of the scheme before it was too late.
- 8 The Medical Schemes Act gives the scheme the right to terminate membership for non-disclosure of material information (section 29(2)(d)). There can be no doubt that the infant baby's medical conditions fit that description.
- 9 As we understand it, the member's own membership has not been terminated. This is an indication that the scheme does not consider the non-disclosure to have been deliberate. For purposes of section 29(2)(d) it is not necessary to prove an intention to mislead or to withhold material information. Negligent non-disclosure seems to us to suffice. In the circumstances it would be harsh to terminate the member's membership where intention to mislead has not been established.

10 In the result, the appeal cannot succeed.

 18 March 2011

VUYANI NGALWANA for Appeal Committee

For the scheme: Mr K Mayet; Dr D Padayachee
For the member: Mr J. R.; Ms F.

Date of hearing: 10 February 2011
Date of Ruling: 07 March 2011