

THE COUNCIL FOR MEDICAL SCHEMES APPEAL COMMITTEE

In the matter between:

JWV

Appellant

and

DISCOVERY HEALTH MEDICAL SCHEME

Respondent

APPEAL RULING

1. The appellant appeals against a ruling of the Registrar dated 28 September 2005, in terms of which the Registrar decided that the complaint laid by the appellant against the respondent concerning the waiting periods imposed upon him by the respondent was an invalid complaint.
2. The appellant's complaint concerns the imposition on him of a 3-month general waiting period and a 12-month condition-specific exclusion by the respondent upon his acceptance as a member of the respondent. The reason that these conditions were imposed on his membership was as a

result of the fact that he had not belonged to a medical scheme for more than 90 days prior to joining the respondent.

3. Upon receipt of the appellant's complaint, the Registrar wrote to the appellant and informed him that the scheme, in imposing the conditions in question, had acted within their rights in terms of section 29 of the Act, and that his complaint was therefore invalid. The Registrar did not call on the scheme to respond to the complaint, and did not take the matter any further.
4. The powers of the Registrar upon receipt of a complaint from a member of a scheme are prescribed by section 47 of the Act. Section 47(1) provides as follows:

"The Registrar shall, where a written complaint in relation to any matter provided for in this Act has been lodged with the Council, furnish the party complained against with full particulars of the complaint and request such party to furnish the Registrar with his or her written comments thereon within 30 days or such further period as the Registrar may allow."

5. Section 47(1) contains provisions that are peremptory. The Registrar is obliged, where a complaint is received, to furnish it to the respondent for its response. The Registrar is not given the power, either in the Act or in Regulations, to deal with the complaint on his own terms and to decide whether the complaint has validity.

6. The action taken by the Registrar in the current matter, in declaring the complaint to be invalid, is therefore not authorised by the Act and is invalid.
7. On this basis the appeal against the Registrar against the registrar's decision must succeed.
8. The effect of the foregoing is that the complaint raised by the member must be furnished to the scheme for the latter's response.
9. The Appeal Committee has, in reaching this conclusion, made no comment on the merits of the complaint. To do so before the scheme has had an opportunity to respond thereto would be inappropriate.
10. In the circumstances the appeal succeeds and the ruling of the Registrar to the effect that the complaint is invalid is set aside. The Registrar is directed to submit the complaint to the respondent for its response.

DATED AT SANDTON THIS

DAY OF DECEMBER 2005

P R JAMMY
Member, Appeal Committee