



**IN THE APPEAL BEFORE THE APPEALS COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES
HELD VIA THE MICROSOFT TEAMS VIDEO AND AUDIO CONFERENCING TECHNOLOGY
(Instituted in terms of the Medical Schemes Act No.131 of 1998)**

Case number: **CMS/76188**

In the matter between:

L

APPELLANT

And

BONITAS MEDICAL FUND

RESPONDENT

ORDER AND REASONS

THE PARTIES

1. The Appellant is L (“the member or Leballo”) a member of the scheme in terms of the definition accorded to a “*member*” under the Medical Schemes Act 131 of 1998 (“the Act.”)¹
2. The Respondent is Bonitas Medical Fund, (“the Scheme or Bonitas”) a Medical Scheme duly registered and regulated under the Medical Schemes Act 131 of 1998 (the “MSA or the Act.”)
3. The Appellant was represented by an attorney, Mr. M at the hearing.
4. The Respondent was represented by the legal manager of the scheme, Ms. M duly authorised to represent the scheme at the Appeal hearing.

INTRODUCTION

5. This is an appeal in terms of section 48(1) of the Council for Medical Schemes Act 31 of 1998 (“the Act”) against a decision of the Registrar dated 19 October 2023.²
6. This section provides that:
“(1) Any person who is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to the Council.”
7. The appeal arises out of the Registrar’s ruling that the scheme correctly classified the dependant disabled member as an adult in accordance with the scheme rules.
8. The Appeals Committee heard the Appeal on 7 October 2024 via an audio and video conferencing link.
9. The Appellant seeks an order that *“Bonitas regard my son as the CHILD dependant and cancel the current increase of the premium by taking his illness into consideration.”*³

¹ “member” means a person who has been enrolled or admitted as a member of a medical scheme, or who, in terms of the Rules of a medical scheme, is a member of such medical scheme.

² Page 128 of the Bundle

³ Page 4 of the Bundle.

FACTUAL BACKGROUND

10. The Appellant is registered as the main member on the scheme's Standard Option. There are two (2) dependant members registered with the scheme, one of whom has a mental disability.
11. On 6 April 2020, the disabled dependant member turned 21. The Appellant retained him as an adult dependant on her membership.
12. On 3 January 2020, the scheme sent the Appellant an Age Review Letter and an Age Review Verification Form requesting that the Appellant to confirm her disabled dependant's status. The letter stated that the member is on the Standard option and contributions for child dependants includes students up to the last day of the calendar month that they turn 24 years of age as well as mentally and/or physically disabled dependants up to and including the last day of the calendar month that the dependant member turns 21 years of age.
13. On 12 March 2020, the scheme received the completed form back from the Appellant, together with a doctor's medical report confirming that the dependant member, who turned 21 years of age, is mentally disabled. The Appellant, per the scheme, stated on the form that she applied to extend the dependant's membership as an adult dependant; and agreed to pay any additional contribution which may apply to his extended membership.
14. The Scheme submitted that after considering the information, the dependant member was classified as an adult dependant and the member's total monthly contributions were amended from R6 168.00 to R8 399.00 per month, with effect from 1 May 2020. The Scheme averred that the aforesaid is in line with Note 2 in Annexure A of the scheme rules.
15. On 10 November 2020, the member filed a complaint in terms of section 47 of the Act with the Registrar.
16. The member stated that *"currently I pay monthly premium of R8 399.00 because of the increase on my son's premium due to him being regarded as an adult dependant. The increase has aggravated my financial constraints and I can't cancel medical aid due to his condition. Currently he is a member of the Roger Stephens Workshop for disabled adult. I have to pay the transport*

fee plus the membership fee. Currently I am in arrears of membership fee to the amount of R2000.00....”

17. In a letter dated 18 December 2020, the Registrar dismissed the complaint stating that the scheme acted in accordance with its registered rules.
18. It is against this decision that the Appellant filed an appeal in terms of section 48 of the Act.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

19. The relationship between the member and the scheme is governed by the terms of the contract (“the schemes rules”) that the member concluded with the scheme. The contract in turn is governed by the Act and the regulations (as amended) made in terms of the Act.
20. Section 1 of the Act defines ‘dependant’ as follows-
“(a) The spouse or partner, dependant children or other members of the member’s immediate family in respect of whom the member is liable for family care and support; or (b) any other person who, under the rules of a medical scheme is recognized as a dependant of a member. “
21. Regulation 1 defines the term ‘child dependant’ as meaning ‘a dependant’ who is under the age of 21 or older if he or she is permitted under the rules of a medical scheme to be a dependant.”
22. Regulation 9B stipulates that ‘A medical scheme may in its rules provide that contributions in respect of a child dependant may be less than those determined in respect of other beneficiaries.’
23. Section 31(3)(a) of the Act stipulates as follows- *“On receipt of a written notice from a medical scheme setting out the particulars of any amendment or rescission of its rules, certified by the principal officer, the chairperson and one other member of the board of trustees as having been adopted in accordance with the provisions of the rules of the medical scheme, the Registrar shall—(a) if he or she is satisfied that the amendment or rescission of the rules will not be unfair to members or will not render the rules of the medical scheme inconsistent with this Act, register the amendment or the rescission of the rules and return it to the medical scheme with the date of registration endorsed thereon.”*

24. Section 32 of the Act stipulates as follows: *“Binding force of rules.—The rules of a medical scheme and any amendment thereof shall be binding on the medical scheme concerned, its members, officers and on any person who claims any benefit under the rules or whose claim is derived from a person so claiming.”*

WIDE APPEAL

25. This is a wide appeal. The Appeal Committee may therefore consider the matter afresh and is not restricted to the record of proceedings that were before the Registrar.
26. The burden of proof rests on the Appellant who must prove on a balance of probabilities that the appeal should be upheld.

THE ISSUE IN DISPUTE

27. The issue to be determined is whether the Scheme was justified in its decision to classify the member’s mentally disabled dependant member as an adult upon his turning 21 years of age; and to increase the contribution of the dependant member.
28. The Appeals Committee must decide whether the scheme’s decision is within the ambit of the Medical Schemes Act 131 of 1998 (“the Act”), its Regulations and the Scheme rules read with the member’s benefit options.

THE APPELLANT

29. The main basis of the Appellant’s submission is that everyone has a right to basic health care services. These services extend, per the Appellant, to proper care at a reasonable cost, a right that is entrenched in section 27 of the Constitution.⁴ The Appellant also relies on section 27(2) of the Constitution which stipulates that no-one may be refused emergency medical treatment; and further relies on section 9 of the Constitution⁵ which prohibits discrimination on the basis of age.

⁴ Section 27 of the Constitution, 1996.

⁵ Constitution of the Republic of South Africa, 1996.

30. The Appellant referred to the definition of “*health care*” as defined by the World Health Organisation (“the WHO”) as being the state of complete physical and mental well-being and not merely the absence of disease or infirmity.
31. The Appellant referenced the matters *Soobramoney v Minister of Health Kwazulu Natal*;⁶ and *Government of the Republic of South Africa v Grootboom and Others*⁷ where the court emphasised the right of access to basic health care services for all.
32. The Appellant referenced scheme rule 4.14(a) of the 2020 scheme rules as the main source of contestation which interpretation by the Respondent, the Appellant views as a way for the Respondent to limit the Appellant’s right of access to basic health care services. The Appellant argued that the Respondent wrongly focussed on scheme rule 4.14(a) of the scheme rules therein failing to take into account scheme rule 4.14(b) that the dependant member was under the age of 21 and dependant on the main member.
33. The Appellant submits that this narrow interpretation by the Respondent fails to take into account the disabled dependant member’s Constitutional right to health care as articulated in the *Grootboom* case.
34. The Registrar’s ruling has further breached the interpretation of statutes when the Registrar dismissed the complaint of the Appellant.
35. For these reasons, the Appellant submits, there is a legal basis to compel the scheme to fund the dependant’s member’s health care without an increase in the monthly contribution.
36. Accordingly, the Appellant asks that the Appeals Committee upholds the appeal and dismisses the decision of the Registrar.

⁶ 1998 (1) SA 764CC

⁷ 2001(SA) 46 CC 2000 (11) BCLR 1169 (CC.)

THE RESPONDENT

37. The Respondent submitted that in classifying the dependant member as an adult and imposing the increased contribution when the dependant member turned 21 years of age is in line with the scheme rules as approved by the Registrar of the CMS.

38. The Respondent referred the Appeals Committee to scheme Rule 4.14 of the Scheme's 2020 registered rules wherein a "child dependant" is defined as follows:

"dependent child" or "child dependent" in relation to a child registered as a dependent refers to:

(a) a child under the age of 21 who is not in receipt of regular remuneration of more than the maximum social pension per month or a child;

(b) irrespective of the age of that child provided that child does not receive an income in excess of the Social Pension rate as may be from time to time who, due to mental or physical disability, is dependent on the member; or

(c) a student who is financially dependent on the member who is under the age of 24."

39. In respect of the monthly contribution payable in respect of a "child dependant", the Respondent made reference to note 2 in rule 2 of Annexure A to the scheme rules which reads as follows:

"Note 2 including students at a registered tertiary institution up to and including the last day of the calendar month that the dependant turns 24 years of age, and mentally and physically disabled dependants up to and including the last day of the calendar month that the dependant turns 21 years of age."

40. Adult dependants per the scheme rules therefore includes students up to and including the last day of the calendar month that they turn 24 years of age as well as mentally and/or physically disabled dependants up to and including the last day of the calendar month that they turn 21 years of age.

41. The Respondent submitted that the increased contribution and the classification of the dependant member as an adult is in line with scheme rule 2 read with Note 2 in Annexure A of the scheme rules as approved by the Registrar of the CMS.

42. Thus, considering the above, the dependant member was classified as an adult dependant and the member's total monthly contributions were changed from R6 168.00 to R8 399.00 with effect from 1 May 2020.
43. Accordingly, the scheme has acted in terms of its registered rules by increasing the monthly contributions and the appeal should be dismissed.

DISCUSSION AND ANALYSIS

Common Cause

44. It is common cause that the member is on the scheme's Standard Option; that the dependant member in question turned 21 on 6 April 2020; and that the dependant member has a mental disability.

The dispute

45. At the outset it is important to note that the rules vary from scheme to scheme. Very often schemes take into account that although a person attains the age of majority at the age of 18, this does not automatically mean that such person also attains independence from their parents or guardians at that age. The question is therefore, what informs the rules of a scheme to determine when the offspring of a member is required to register as an adult dependant of the member of the scheme and attract the same contribution as any other adult; and what qualifies a dependant of a member, who is a child of that member, to pay lower contribution rates.
46. The issue therefore to be determined is whether the Scheme was justified in its decision to classify the disabled dependant member as an adult dependent upon the disabled dependant member turning 21 years of age; to increase the contribution of the dependant disabled member; whether to do so was in accordance with the Act and the scheme rules; and whether to do so is in conflict with the dependant member's Constitutional right to access to basic health care at a reasonable cost; and does not amount to age discrimination.
47. A proper consideration of this matter requires a close inspection of the registered scheme rules.

48. In 2006 the Scheme Rules of 2006 with reference to the definition of a “*dependent*” stipulated as follows – “*dependent*” in relation to a child, a child under the age of 21 who is not in receipt of a regular remuneration of more than the maximum social pension per month or a child, due to mental or physical disability is dependent on the main member.
49. The aforementioned rule, when referred to the Benefits Management Unit (“BMU”) of the CMS was deemed not desirable because it would essentially exclude mentally/physically challenged dependants over 21.
50. Subsequently, the registered rules were amended in 2009 with reference to Annexure A paragraph 2.4 Notes 1 & 2 of the scheme rules—to allow a mentally/physically challenged “*child*” dependent to have continued cover irrespective of their age.
51. On 16 October 2019 the scheme’s rules were approved by the Registrar effective as of 1 January 2020. The 2020 approved rules were to the effect that rule 4.14 provides for a definition of a “Child Dependant” as follows:

“dependent child” or “child dependent” in relation to a child registered as a dependent refers to:

- (a) a child under the age of 21 who is not in receipt of regular remuneration of more than the maximum social pension per month or a child;*
 - (b) irrespective of the age of that child provided that child does not receive an income in excess of the Social Pension rate as may be from time to time who, due to mental or physical disability, is dependent on the member; or*
 - (c) a student who is financially dependent on the member who is under the age of 24.”*
52. Rule 4.14 must be read with Note 1 and 2 of Annexure A to the scheme rules. Note 1 and 2 in Annexure A of the Scheme’s rules provides for the monthly contributions payable in respect of, inter alia, the Standard Option:

Note 1- excluding students at a registered tertiary institute up to and including the last day of the calendar month that the dependant turns 24 years of age, and mentally and/or physically disabled dependants up to and including the last day of the calendar month that the dependant turns 21 years of age.

Note 2 -including students at a registered tertiary institute up to and including the last day of the calendar month that the dependant turns 24 years of age, and mentally and/or physically disabled dependants up to and including the last day of the calendar month that the dependant turns 21 years of age – [relied upon by the Respondent.]

53. Accordingly, the 2020 scheme rules provide that dependant members, on the Standard option pay child rates in contributions up to the age of 21 years of age; students up to the last day of the calendar month that they turn 24 years of age; and mentally and /or physically disabled dependants up to and including the last day of the calendar month that they turns 21 years of age.
54. The Appellant argued on the basis of the Constitution, cited case law with the overarching argument of the right to basic health care; and non-discrimination on the basis of age.
55. In this matter, a proper case has not been made out by the Appellant that the dependant member is being denied access to health care and the Appellant's mere "say so" that the increased premium denies the disabled member access to health care is not supported by the evidence.
56. The complaint form outlines the real impediment to the main member which is that affording the increased premium imposed by the scheme based on the 2020 approved scheme rules "*aggravated my financial constraints.*"
57. The definition in the Collin's English dictionary of an adult is "*a mature, fully developed person.*"
58. Turning to the dependant member's disablement, it would be remiss of the Appeals Committee if it did not consider the dependant member's disablement; and whether viewed objectively the desirability of treating a disabled person as an adult based simply on age and imposing an increased premium based on the scheme rules is reasonable and a desirable rule as approved in 2020 by the Registrar. Further whether the scheme rule approved by the Registrar is "*unfair to members*" in non-compliance with section 31(3)(a) of the Act.
59. The Appellant's evidence that the dependant member is a member of the Rodger Stephens Workshop that caters for intellectually disabled persons has not been refuted by the Respondent; nor has the letter of the Specialist Psychiatrist, Dr.Y. wherein it states that the dependant member has a serious psychiatric illness since 2007 been disputed.

60. Indeed, on the scheme rules alone there is discrimination on the basis of age between a dependant at a tertiary institution who per the scheme rules remains a dependant until the age of 24 paying rates as a dependant member; yet a disabled person, who is a member of a protective workshop, who does not receive an income in excess of the Social Pension rate, does not have at the very least the same contribution benefit until the age of 24 as an able bodied adult person.
61. On this set of facts the scheme has through its registered Rules increased the premium of an adult disabled person after the age of 21 and allowed an able bodied adult person a lesser premium until the age of 24 thereby, (we would like to think innocently) discriminated against disabled dependant adult members of the scheme. No evidence has been placed before the appeals committee by the Respondent of the reasons for the aforementioned distinction.
62. Accordingly, on the face of it and considering each case on its own merits, this amounts to unfair discrimination and an unfair rule in conflict with section 31(3) of the Act, even if approved by the Registrar. The effect of the rule is that able bodied adults enjoy benefits of lower premiums until they reach 24 years of age as opposed to a disabled dependant person who pays a higher premium from the age of 21.
63. It cannot further be ignored that there is a glaring disjuncture between scheme rule 4(14)(b) which defines a dependant as *“irrespective of the age of that child (my emphasis) provided that child does not receive an income in excess of the Social Pension rate as may be from time to time who, due to mental or physical disability, is dependent on the member;”* and note 2 of the scheme rules that provides for an increased premium after the age of 21 in the case of a disabled person.
64. It is undisputed by the Respondent that the dependant disabled member is not able to earn an income and that he is dependent on the main member.
65. In terms of Rule 4(14)(b) the dependant member who is disabled meets the definition of a *“child dependant”* as defined in the scheme rules regardless of age. However, the scheme rules seek to limit such definition by introducing Note 2, where age is capped at 21 in the case of a disabled dependant member, in direct conflict with the intention of scheme rule 4(14)(b) referred to above.
66. Surely, the limitation of note 2 is not only unfair and undesirable; but also in conflict with the intention of Rule 4(14)(b.)

67. Section 32 of the Act enshrines the Scheme's rules binding force and without considering the discriminatory aspects of note 2 of the 2020 scheme rules, the Registrar's decision in its narrow assessment is understandable.
68. Section 31(3)(a) of the Act stipulates that amendment's to a scheme's rules must not be unfair to members.
69. In the matter Council for Medical Schemes v Genesis Medical Scheme,⁸ a reportable judgment, Justice Leach enunciated *"In my view these considerations effectively answer Genesis's argument. The relationship between a medical scheme on the one hand and its members on the other, is not governed solely by that scheme's rules but also by the obligations imposed by statute upon medical schemes. These latter obligations cannot be evaded by a medical scheme purporting to contract with its members by prescribing rules having a contrary effect. It is not only, as counsel for the appellants argued, simply a question of legality and the enforcement of an obligation imposed on medical schemes by statute, but the enforcement of public policy that leads to that result. Consequently, DL Pearmain The Law of Medical Schemes in South Africa, correctly observes that **"although the Act states that a scheme is bound by its rules, if one or more of those rules is contrary to law, the law will take precedence."***
70. Recognizing also that discrimination against any person on the basis of disability and affording an able bodied adult dependant a lesser premium than a disabled adult person is surely a violation of the inherent right to dignity and non-discrimination on the basis of age as enshrined in the Constitution.
71. This matter is clearly a matter involving public interest and in respect of which public policy requires non-discrimination by medical schemes, however unintentional by the Respondent.

FINDING

72. Accordingly, the Appeals Committee after considering the evidence is satisfied and finds that:

⁸ The Council for Medical Schemes v Genesis Medical Scheme (20518/2014) [2015] ZASCA 161; 2016 (1) SA 429 (SCA); [2016] 1 All SA 15 (SCA) (16 November 2015)

- 72.1 the dependant member is disabled; not able to earn an income and is a dependant of the main member.
- 72.2 the scheme rules of 2020 were approved by the Registrar of the CMS.
- 72.3 Note 2 of the scheme rules is in conflict with scheme rule 4(14)(b.)
- 72.4 There is unfair discrimination between adult dependant students and disabled adult dependant members in the scheme rules.

ORDER

73. The Appeals Committee makes the following order:

- 73.1. The Appeal is upheld.
- 73.2 The Registrar's decision is set aside.
- 73.3 The matter is remitted back to the Registrar to exercise his powers in terms of section 31 of the Act.
- 74.4 There is no order as to costs.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 4th DAY OF NOVEMBER 2024.

SIGNED
PA BECK
PRESIDING MEMBER

Dr. T Mabeba, Dr. X. Ngobese, Dr. K.S. Chetty and Dr. S Naidoo concur.