



**BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL
SCHEMES HELD VIA THE MICROSOFT TEAMS VIDEO AND AUDIO
CONFERENCE TECHNOLOGY INSTITUTED IN TERMS OF MEDICAL SCHEMES
ACT NO 131 OF (1998) - CASE NUMBER (CMS 82727)**

In the matter between:

S obo M

APPELLANT

AND

**FEDHEALTH
REGISTRAR**

**1ST RESPONDENT
2^{AND} RESPONDENT**

**HEARD ON:
DATE OF RULING:**

**7 AUGUST 2024
13 SEPTEMBER 2024**

RULING AND REASONS

THE PARTIES.

1. The Appellant is S acting on behalf of the deceased member M of the Fedhealth Medical Scheme.
2. The First Respondent is Fedhealth medical scheme (“FEDHEALTH”). The Medical Schemes duly registered in terms of section 24 of the Medical Schemes Act.
3. The Second Respondent is the Registrar of the Council for Medical Schemes (CMS) who issued the ruling in favour of the first respondent.
4. The Council for Medical Schemes (CMS), sole purpose, is to regulate the Medical Schemes industry with its principal place of business located at the Eco- Park Estate, Centurion.

APPLICATION TYPE AND RELIEF SOUGHT

5. The appellant makes this application in terms of section 48(1) of the Act. This section provides –

“(1) Any person who is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to Council.”

6. The Appeals Committee heard the Appeal on 7 August 2024 *via* audio and video conferencing link.
7. The hearing concerns the merits of the appeal filed by S on behalf of the deceased member Ms M. The appellants were duly represented by N of Baleni Attorneys.

8. According to the appeal papers, N deposed the affidavit in her capacity as the executrix in the estate of the deceased former member of Fedhealth Medical Scheme, M. The executorship letter is attached in the bundle of documents.

9. In the affidavit, filed by executrix on behalf of the deceased member, appellant seek the relief on the following:

8.1 That the Appeals Committee, to set aside the decision of the Registrar and to order the scheme to defray the late members hospitals costs in full.

RELEVANT STATUTORY AND REGULATORY PROVISIONS.

10. The relationship between the member and the scheme is governed by the terms of the contract ('*the scheme rules*") that the member concluded with Fedhealth.

11. The Contract between the member and the Scheme is governed in terms of section 32 of the Medical Schemes Act 1 of 1998.

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WIDE APPEAL

¹ Section 29 (2) (a) the Medical Schemes Act.

12. This is the wide appeal. The Appeals Committee may consider the matter afresh and is not restricted to the record of the proceedings that were before the registrar.

ISSUE IN DISPUTE

13. The issue to be decided by the appeals committee, is whether the Registrar was correct in concurring with the scheme on its decision to refuse to defray deceased member hospital costs in full.

REGISTRARS RULING.

14. According to the Registrars ruling, registrar finds that, Fedhealth complied with the Medical Schemes Act of 1998 and its registered rules. As such, the complaint cannot succeed in its section 47 complaint and dismissed the matter. In the ruling, the registrar stated that, a member is entitled to benefits in as far as contributions are paid in full.

15. In the ruling before the appeals committee, the registrar stated that, once a member fails to pay relevant contributions, any benefits paid by a medical scheme must be reversed. In this case, the scheme is entitled to recover any claims paid to the member and any other service provider since the membership were terminated due to outstanding contributions.

16. Further, it is stated that, inquiry into the termination of medical memberships is legislated in Section 29 (2)(a) of the Act, which stipulates the following grounds amongst others:

“29 (2) A medical scheme shall not cancel or suspended a member’s membership or that of any of his dependants, except on the grounds of –

(a) failure to pay, within the time allowed in the medical scheme’s rules, the membership fees required in such rules.”

17. Therefore, the registrar state further stated that, the member and the scheme are bound by the terms and conditions of their contractual rights and obligations which are subject to the registered Scheme rules.

18. According to the ruling, section 32 of the Act provides the following in respect of the said rules-

“Binding force of the 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”.

19. Furthermore, Rule 11 of the Respondent rules which governs payment of contributions provides *inter alia* that:

“11.2 Contributions shall be due and payable to the Scheme in terms of the provisions of Annexure A. Where contributions or any other debt owing to the Scheme, have not been paid within the due date, the Scheme shall have the right-

11.2.2 to give the member notice that if contributions not paid up to date within 7 days of such notice, membership may be cancelled.”

20. Aggrieved by the decision of the registrar, in the appeal affidavit, executrix acting on behalf of the former member M, stated that, the registrar erred in that, the council failed to obtain contributions statements from Fedhealth Medical Aid scheme which resulted in failure to notice the two payments made by the deceased member of 10 June 2022 and 1 July 2022.

21. According to the appellants, the scheme had no reason to backdate the cancellation to 31 May 2022.

22. Further, the appellants believe that, the scheme delayed the decision to cancel and by accepting two payments made by the former member.

SUBMISSION BY THE APPELLANT

23. The appellant is aggrieved that, the scheme declined to fund in full the medical claims on behalf of the deceased. It was submitted that, the deceased was admitted in hospital, however, the scheme short funded the hospital claim in the amount of R853.42.

24. Furthermore, the deceased was again admitted in hospital and the scheme short funded the account with an amount of R2 113.67.

25. The appellant submitted that, the deceased was admitted in hospital in June 2022, however, the Respondent declined to fund the hospital account in full.

26. The appellants requested the registrar to investigate the matter and to direct the scheme to fund the medical claims in full.

27. Furthermore, the appellants are aggrieved that, the investigation was not fairly conducted, as it failed to consider that, there were two payments made in June and July 2022.

28. The appellants are aggrieved that, the registrar failed to notice that, at the time of cancellation, the member had made the full payment and cancellation was backdated to May 2022 with the member having paid in June and July 2022.

SUBMISSION BY THE RESPONDENT.

29. The scheme submitted that, on 11 June 2022, the scheme's managed care department received an authorisation request for M for treatment of "adult respiratory distress syndrome", which took place between 10 June and 11 July 2022.

30. Furthermore, on 13 June 2022, the scheme approved the authorisation request and communication was sent to the member and Ascot Park hospital with the approved authorisation letters.

31. The scheme submitted that, M's, membership was active at the time the authorisation request was received, however, all claims related to this authorisation was reversed due to the membership being terminated effective 31 May 2022.

32. According to the scheme, on 21 September 2022, the scheme's membership department terminated M's membership effective 31 May 2022 due to non-payment of her monthly contributions.

33. The scheme on 22 September 2022, sent communication to the member with the termination certificate.

34. On 5 October 2022, the scheme received communication with a death certificate confirming that M passed away on 6 July 2022, however the membership was already terminated at this stage due to non-payment, being 31 May 2022.

LEGAL FRAMEWORK AND EVALUATION.

35. According to the regulation of section 32 of the Medical Schemes Act, it provides the following in respect of the scheme rules-

“Binding force of the 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”.

36. The inquiry into the termination of medical memberships is legislated in Section 29 (2)(a) of the Act, which stipulates the following grounds amongst others:

“29 (2) A medical scheme shall not cancel or suspended a member’s membership or that of any of his dependants, except on the grounds of –

(a) failure to pay, within the time allowed in the medical scheme’s rules, the membership fees required in such rules.”

ANALYSIS.

37. In the present case, the scheme during the hearing stated that, the deceased member, elected to do late payments on her contributions and according to papers before the appeals committee, no evidence was presented to support this proposition.

38. The evidence presented during the hearing indicates that, the member last made contributions into her medical aid for the month of June and July 2022 and that, the basis for the appeal is that, at the time of the investigation, the registrar failed to notice the two-payment made in June and July 2022 respectively.

39. During the hearing, the appellant submitted that, it was incorrect for the scheme to backdate the termination of membership to 31 May 2022, with the payments of June and July 2022, having already made by the deceased member.

40. The argument advanced by the appellant was that, the contributions statements ought to have been obtained by the registrar prior to making the ruling and this led to failure to notice that, two payments were made in June and July 2022.

41. The issue which requires adjudication, is whether the schemes decision to decline funding the hospital costs in full is justifiable on grounds that, the backdated termination of 31 May 2022, happened whilst, the deceased membership was still active.
42. The submissions made by the appellant that, the registrars ruling failed to notice that, there were two payments made in June and July 2022 by the deceased member is correct.
43. The scheme further argued that, it reconciled contributions made by the member and cancelled membership upon receipt of the death certificate.

FINDINGS.

44. The appeals panel is satisfied, and finds that, there is no existing contract between the deceased member M and Fedhealth Medical Scheme. The scheme terminated membership after it received the death certificate of the late member.
45. The appeals committee finds that, the scheme backdated the termination of membership to 31 May 2022 and failed to notice that, two payments were received for June and July 2022.
46. The appeals committee panel finds that, the contract between the scheme and the late member is unenforceable and therefore, upholds the registrars ruling.
47. The appeals committee panel finds that, the scheme cannot be ordered to reverse its decision in the cancellation of membership of the deceased member.

48. The appeals panel finds that, the scheme cannot be ordered to defray hospital costs in full as it terminated membership of the deceased member and acknowledged that, upon reconciliation of contributions, there were payments made after the cancellation of membership.
49. The appeals committee finds that, the scheme has to pay back the July contribution made by the member after 31 May 2022 cancellation of membership, which is the amount of R 3858.50.

ORDER

50. Accordingly, the appeals committee makes the following order:
- 50.1 The decision of the registrar is upheld.
- 50.2. The scheme to pay back the amount of R 3858,50 July contribution made after cancellation of membership to the executor of the deceased member.
- 50.3. There is no order for further costs.

DATED AT CENTURION ON THIS 13TH SEPTEMBER 2024.

XK Ngobese

Dr. Xolani Ngobese (on behalf of the appeals committee). **CONCURRING** - Dr T Mabeba, Dr S Naidoo, Miss P Beck and Dr K Chetty.