BEFORE THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES (SECTION 48 APPEAL)

HELD VIA MICROSOFT TEAMS VIDEO AND AUDIO-CONFERENCING TECHNOLOGY.

(Instituted in terms of the Medical Schemes Act No 131 of 1998)

In the matter between	**Ref number: CMS 84345**
E	**Appellant**
And	
BONITAS Medical Fund	**Respondent**

Panel: Dr K.S. Chetty; Dr T. Mabeba; Ms P. Beck; Dr S. Naidoo.

Date of hearing: 9 May 2025.

Date of ruling: 10 June, 2025.

RULING AND REASONS

THE PARTIES

1. The Appellant is Mr E (The “Appellant”).
2. The Respondent is Bonitas Medical Aid (The “Respondent” or “the Scheme”) registered and regulated under the Medical Schemes Act, Act 131 of 1998 (the “MSA” or “Act”).
3. The Respondent was represented by Ms D, Senior Legal Advisor for Medscheme.

BACKGROUND

4. The Appellant Mr. E. is disputing the late joiner penalty imposed by Bonitas Medical Fund.
5. Mr. E joined Bonitas on January 1, 2023, and disclosed his previous medical cover on the application form but did not attach membership certificates as required.
6. Bonitas imposed a fifty percent (50%) late joiner penalty based on the absence of proof of prior coverage.
7. On October 2, 2023, Mr. E provided membership certificates from Sizwe Medical Fund and Discovery Health, proving 13 years and 5 months of prior coverage.
8. Bonitas recalculated the late joiner penalty, reducing it to 5% effective October 1, 2023.
9. Mr. E demanded a refund of late joiner penalty charges from January 1, 2023, to September 30, 2023.
10. The Council for Medical Schemes reviewed the case and found that Bonitas acted in accordance with Regulation 13(4) of the Medical Schemes Act, which requires recalculating penalties from the time evidence of prior coverage is provided.
11. Mr E is appealing the decision of the Registrar.

THE REGISTRAR'S RULING

12. The Registrar's Ruling was issued on 07 June, 2024 and made the following findings:
    a. Having considered the merits of this complaint, the Fund's response, and the prescripts of the Act and its Regulations as cited above, the Office finds that Bonitas Medical Fund did not contravene the Registered Scheme Rules, the Act, when applying a late joinder penalty on the membership of the complainant since no proof of previous coverage was provided.
    b. This complaint is hereby dismissed
13. The Appellant is now appealing this decision of the Registrar in terms of the Section 48 Appeal submitted.

APPLICATION TYPE AND RELIEF SOUGHT

14. This is an appeal under section 48(1) of the Medical Schemes Act (the "MSA or the Act").[1] This section provides that:
    a. "(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".
15. This hearing concerns the merits of the appeal filed.
16. The Relief sought from the Scheme is that the Registrar's decision be reviewed and set aside and that the Scheme be ordered to refund the late joiner penalty charges from January 1, 2023, to September 30, 2023.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

17. The relationship between the Scheme and the Appellant is governed by the terms of the contract ("the Schemes rules") the Scheme concluded with the First Respondent. The contract in turn is governed by the "MSA" and the regulations (as amended) made in terms of the Act.
18. **Regulation 13 of the Act: Premium penalties for persons joining late in life**.

[1] Medical Schemes Act 131 of 1998 as amended by Act 55 of 2001; Section 48(1); Proc 13/GG 19725/19990129

(1) A medical scheme may apply premium penalties to a late joiner and such penalties must be applied only to the portion of the contribution related to the member or any adult dependant who qualifies for late joiner penalties.

(2) The premium penalties referred to in subregulation (1) shall not exceed the following bands:

Penalty Bands	**Maximum Penalty**
1 - 4 years	0.05 x contribution
5 - 14 years	0.25 x contribution
15 - 24 years	0.5 x contribution
25+ years	0.75 x contribution

(3) To determine the applicable penalty band to be applied to a late joiner in terms of the first column of the table in subregulation (2), the following formula shall be applied:

A = B minus (35 + C)

where:

"A" means the number of years referred to in the first column of the table in subregulation (2), for purposes of determining the appropriate penalty band;

"B" means the age of the late joiner at the time of his or her application for membership or admission as a dependant; and

"C" means the number of years of creditable coverage which can be demonstrated by the late joiner.

(4) Where an applicant or his or her dependant produces evidence of creditable coverage after late joiner penalty has been imposed, the scheme must recalculate the penalty and apply such revised penalty from the time such evidence is provided.

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

(19) The burden of proof rests on the Appellant who must prove on a balance of probabilities that the appeal should succeed.

THE ISSUE IN DISPUTE

(20) The issue which falls for determination is whether the Scheme is correct in terms of its rules and the Act to refuse to refund the late joiner fees for the period before the proof of membership was provided.

APPELLANTS SUBMISSION

(21) The Appellant, Mr. E, states that in December 2022, he applied for membership with Bonitas Medical Fund to commence effective 1st January 2023.

(22) The E family consists of four members:

a. Principal member: E,

b. Spouse: E,

c. Adult Dependant: S, . Not included as a dependant.

d. Child Dependant: S

(23) The Appellant states that on the application form he provided all the required details on his previous medical covers, as shown below:

(24) The Appellant stated that the fund acknowledged that the late joiner penalty was imposed erroneously hence it was stopped from 1st October 2023. On this basis he demands to be refunded the late joiner penalty charges from 1st January 2023 to 30th October 2023.

(25) In his oral submission the Appellant acknowledged that the certificates of membership were given to the Bonitas Medical Fund in October 2023.

(26) The Appellant further submitted in his oral submission the that he has belonged to medical schemes all his employed life and not just from 35 years of age. He stated that whilst he worked at the mine he belonged to Ingwe Medical Scheme.

The Appellant stated that he will get an affidavit from the mining company to show that he was a member of a medical scheme as per Regulation 13(6)[2]

RESPONDENTS SUBMISSION

(27) The Respondent stated that Mr. E, a 59 year old male joined the Bonitas primary option together with his spouse and two children on 1st January, 2017. An online application was received from the member's broker on 15th December, 2022.

(28) The Respondent stated that no information was provided about the members previous medical cover and no documents were submitted with this application.

(29) The Respondent stated that according to the online application the member was 58 years old when he joined Bonitas and he had been without medical cover for a period of 23 years after turning 35 years of age. His wife Ms. M was 50 years old when she joined Bonitas and she had been without medical cover for a period of 15 years after turning 35 years of age.

(30) The Scheme imposed a 50% late joiner fee for the member and his wife for the number of years they had been without medical cover after turning 35 years of age in accordance with the Fund rules.

(31) On 2nd October 2023, Bonitas received membership certificates from the member's broker for Sizwe Medical Fund and Discovery Medical Scheme. The certificates showed that the member and his wife were beneficiaries of the Sizwe Medical Fund for two years, five months, and for Discovery Medical Scheme for 11 years.

(32) The Scheme then reduced the late joiner penalty to 5% for the member and wavered the late joiner penalty for his wife, effective 30th September 2023 in line with Fund rule 5.4.

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[2] 13(6) For purposes of subregulations (3) and (4), it shall be sufficient proof of creditable coverage if the applicant produces a sworn affidavit in which he or she declares -

a. the relevant periods in which he or she was a member or dependant and the name or names of the relevant medical schemes or other relevant entities corresponding with such period or periods; and

b. that reasonable efforts have been made to obtain documentary evidence of such periods of creditable coverage, but have been unsuccessful.

(33) The Scheme stated that the late joiner penalty should have been reduced to 25% for the member as the membership certificates provided only proved previous medical cover for 13 years five months after turning 35 years of age. This means that the member was without medical cover for eight years five months after turning 35 years of age.

(34) The Scheme concludes that "*No proof of credible medical cover was provided with the application for membership received from the member's broker at the onset. The late joiner penalty on this membership was therefore correctly applied in line with Fund rule 5. According to this rule the late joiner penalty could only be adjusted effective from the 30th September, 2023 upon receipt of proof of medical cover on 2nd October 2023.*[3]

(35) In its oral submission the Scheme indicated that following the Appellant's submission that he had been a member of Ingwe Medical Scheme, and provides proof of this cover, the Scheme will review the late joiner penalty according to their Rules.

DISCUSSION AND ANALYSES

The Appeals Committee considered papers filed in this appeal; the further submissions the parties made; the relevant provisions of the Medical Schemes Act; and the Rules of the Scheme.

(36) It is common cause that

a. The Appellant has been a Member of the Bonitas Medical Fund and covered on the Bonitas Prime benefit option.
b. Bonitas initially imposed a fifty percent (50%) late joiner penalty based on the absence of proof of prior coverage.
c. On October 2, 2023, Mr.E provided membership certificates from Sizwe Medical Fund and Discovery Health, proving 13 years and 5 months of prior coverage.
d. Following this proof, Bonitas recalculated the late joiner penalty, reducing it to 5% effective October 1, 2023 for Mr E, and waived the late joiner penalty for the wife.

[3] Page 41 of the bundle.

(37) The Appellant demanded a refund of late joiner penalty charges from 1st January, 2023, to 30th September 30, 2023, as he believes the Scheme was erroneous in applying this penalty.

(38) The original complaint related to the refund of the late joiner fee for the period January to September 2023.

(39) During the hearings, which is a wide appeal, the Appellant presented oral evidence that during his employments he was always a member of a medical scheme, and that he was also a member of Ingwe Medical Scheme.

(40) I will deal firstly with the original complaint. No membership certificates were provided with the application for membership received from the member's broker at the onset. The application form clearly states "*and attach membership certificates for these schemes."*

(41) The member had also used the services of a broker. The definition of a broker according to the Act[4]:

"***broker**" means a person whose business, or art thereof, entails providing broker services…*

*"**broker services"** means –*

(a) the provision of service or advice in respect of the introduction or admission of members to a medical scheme; or

(b) the ongoing provision of service or advice in respect of access to, or benefits or services offered by, a medical scheme.

(42) The broker, whose business is the introduction or admission of members to medical schemes, should have been aware that certificates should have been attached that proves previous membership.

(43) Regulation 13(4) of the Act states: "*when applicant or his or her dependant produces evidence of creditable coverage after a late joiner penalty has been imposed, the scheme must recalculate the penalty and apply such revised penalty from the time such evidence is provided." (my emphasis)*

[4] Medical Schemes Act 131 of 1998. Chapter 1. Section 1 Definitions.

(44) The Scheme Rule 5.4 also reflects this[5].

> 5.4 Where an applicant or his or her dependant produces evidence of creditable coverage after a late joiner penalty has been imposed, the Fund shall recalculate the penalty and apply such revised penalty from the time such evidence is provided.

(45) The Scheme was therefore correct in revising the late joiner penalty from the time that certificates of membership was provided which was October 2023.

(46) I now turn to the oral submission from the Appellant who stated that he was a member of a medical scheme during all his employment/s, that he was a member of Ingwe Medical Scheme. He was requested to provide proof of this membership and the Scheme indicated it will review this.

(47) The scheme in its submission indicated that "*The certificate from Sizwe Medical Fund proves that the member and his wife were registered as beneficiaries for a period of 2 years 5 months, from 1st July 2008 to 31st December 2010.*"[6]

(48) The certificate of membership from Sechaba shows that Mr E was a member of Sizwe Medical Fund for the following periods[7]:

(49) In summary, the certificate shows that Mr E was a member of of the Sizwe Medical Scheme from the age of 22 years. His wife was covered for a similar period. His pay point was Ingwe Collieries.

(50) The Scheme incorrectly calculated the number of years he was a member of Sizwe, as only the first entry was used.

(51) Therefore, the issue of the late joiner fee is not applicable as the certificate was not correctly interpreted.

(52) The request for proof of membership or an affidavit is also not necessary as this is part of the bundle.

[5] Page 41 of the bundle
[6] Page 41 of the bundle
[7] Page 13 of the bundle

FINDINGS

(53) The Appeal Committee finds that Bonitas Medical Fund did not contravene the Act and its Regulations, and the Registered Scheme Rules, when applying a late joiner penalty on the membership of the Appellant since no proof of previous coverage was provided at the time of application.

(54) The Scheme has acted in accordance with the Act and Regulation 13(4) and the Scheme Rules in recalculating the penalty and applying the revised penalty from the time the evidence was provided.

(55) The late joiner penalty for the period 1st January, 2023, to 30th September, 2023 is not refundable according to the Act and Rules.

(56) The scheme has incorrectly calculated the revised penalty, as the certificate of membership shows that the Appellant was a member of the Sizwe Medical Fund from the age of 22 years.

(57) No late joiner penalty is applicable to the Appellant and his dependants.

(58) The Scheme must refund the Member the late joiner penalties that were deducted from 30th September, 2023 to date.

ORDER

(59) Having considered the matter the Appeals Committee orders that:

a. The decision of the Registrar is upheld in so far as the refund of the late joiner penalty for the period 1st January, 2023, to 30th September, 2023.
b. The Scheme must not apply a late joiner penalty from 30th September, 2023.
c. The Scheme must refund the Member the late joiner penalties that were deducted from 30th September, 2023 to date.

Dated at Johannesburg on 10th June 2025

Dr KS Chetty (For and on behalf of the Appeals Committee)

Concurring:

Dr T. Mabeba, Ms P. Beck, Dr S Naidoo.