



**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 87014)**

In the matter between:

M

APPELLANT

AND

**BESTMED SCHEME
REGISTRAR**

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

HEARD ON:

10 JULY 2025

DATE OF RULING:

21 JULY 2025

RULING AND REASONS

THE PARTIES.

1. The Appellant is Ms. M , a member in good standing of Bestmed Medical Aid Scheme.
2. The First respondent is **Best Med Medical Aid Scheme (“BEST MED”)**.
3. Best Med is the Medical Aid scheme duly registered in terms of section 24 of the Medical Schemes Act of 1998.
4. The Second Responded is the Registrar of the Council for Medical Schemes (CMS) who issued the ruling in favour of the first respondent.
5. 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.
6. The member represented herself during the proceedings.

APPLICATION TYPE AND RELIEF SOUGHT

7. This matter concerns an appeal lodged by the member against the scheme’s decision to terminate her membership without due process. The applicant seeks an order declaring the termination unlawful and directing the scheme to reinstate membership retrospectively and reimburse all medical claims incurred since the date of termination.

8. 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.”

9. The Appeals Committee heard the Appeal on 10 July 2025 *via* audio and video conferencing link.

10. The hearing concerns the merits of the appeal filed by the appellant, Ms. M .

11. **The member seek the relief in the following:**

- 11.1 The member seeks relief in the form of reinstatement of her membership, a declaration that the termination of her membership by Bestmed was unlawful and invalid, and an

order directing Bestmed to reimburse all medical claims she was compelled to pay directly as a result of the unlawful termination.

BACKGROUND

12. The appellant, M, lodged an appeal with the Medical Board in relation to the issuance of an authorisation number in November 2024 for a surgical procedure to treat nasal polyps. However, following this authorisation, Bestmed Medical Scheme proceeded to terminate her membership.
13. Bestmed Medical Scheme investigated all benefit authorisation requests submitted within the first 12 months of membership to determine whether there had been any non-disclosure of material information regarding the medical history or health status of any beneficiaries listed on the membership application form.
14. According to the Scheme, the membership application form signed on 25 September 2024, together with the acceptance letter dated 8 October 2024 for an inception date of 1 November 2024, constitutes the contractual basis for membership.
15. Following the inception of membership, the Scheme received a letter from Prof. A.E. Laher along with a chronic condition application, indicating that the member had received treatment advice for asthma. In addition, the Scheme received a 12-month general practitioner statement reflecting multiple consultations, on 22 July 2024 for COVID-19, on 20 August 2024 for cystitis, and on 26 August 2024 for otitis media, all of which occurred within the 12-month period preceding the inception of membership.
16. This information was not disclosed to Bestmed prior to the inception of membership. Kindly refer to the supporting documentation attached to the accompanying email. During the application process, under the Medical Questionnaire section, the member declared that all information provided was true and correct and confirmed her understanding of the contents of the forms.
17. According to the Scheme, it remains the responsibility of the applicant to make full and accurate disclosure of all required information relating to themselves and any listed dependants.

18. The Medical Schemes Act provides for the termination of membership where non-disclosure of material information is established, and the law does not recognise ignorance as a valid excuse. By signing the application form, the member confirms, among other things, that they understand the terms and conditions of membership and that the information provided in the application is true and correct.
19. Having received the above documentation, the Scheme alleges that the member failed to disclose material information concerning her medical history at the time of joining.

APPELLANT'S SUBMISSION

20. The appellant, Ms. M, submits that the termination of her membership by Bestmed Medical Scheme was unjust and procedurally flawed. She states that in November 2024, she was issued an authorisation number for a surgical procedure to treat nasal polyps, which was processed and approved by the Scheme at the time. It was only after this authorisation was granted that her membership was abruptly terminated on the basis of alleged non-disclosure of material medical information.
21. Ms. M contends that at the time of completing her application, she provided all information to the best of her knowledge and did not intentionally withhold any medical history. She maintains that she was not aware that past consultations, such as for minor ailments like otitis media, cystitis, or COVID-19, constituted material information requiring disclosure, nor was she advised that such conditions would affect her eligibility for membership.
22. She further argues that the Scheme had an opportunity to request additional information during the onboarding process but chose instead to accept her application and approve benefits, thereby creating a legitimate expectation of continued cover. She seeks reinstatement of her membership and payment for the authorised procedure, arguing that the termination was disproportionate and not aligned with the principles of fairness and good faith.
23. The appellant submits that the termination of her membership by the Scheme, based on an alleged failure to disclose material medical information, was unjustified. She maintains that all information provided during the application process was, to the best of her knowledge, complete, accurate, and submitted in good faith. She contends that any

omission was unintentional and that she was not aware that previous medical consultations or advice, particularly for conditions such as COVID-19, cystitis, or otitis media, constituted material information requiring explicit disclosure.

24. The appellant further submits that she was hospitalised for a full week, and at no point was she advised that her hospital stay was unauthorised or not covered. She maintains that she does not have any pre-existing conditions that were diagnosed by a medical practitioner prior to joining the Scheme. She now faces numerous substantial medical bills following the Scheme's decision to cancel her membership and decline liability for any claims. The appellant questions whether it is reasonable to suggest that she admitted herself and that the hospital undertook a complex four-hour surgical procedure without obtaining the necessary authorisation from the Scheme.

RESPONDENT'S SUBMISSION

25. The respondent, Bestmed Medical Scheme, submits that the appellant's membership was lawfully terminated on the basis of non-disclosure of material medical information during the application process. The Scheme asserts that, upon review of benefit authorisation requests received within the first 12 months of membership, it identified prior medical consultations and treatment that had not been disclosed in the Medical Questionnaire section of the membership application form.
26. The Scheme contends that it received a chronic condition application from Prof. A. after the inception of membership, indicating that the appellant had received treatment advice for asthma. Additionally, a 12-month general practitioner statement was submitted reflecting multiple consultations prior to the membership inception date, including for COVID-19, cystitis, and otitis media. These consultations, according to the Scheme, constitute material medical information that ought to have been disclosed at the time of application.
27. Bestmed maintains that the duty of full disclosure rests with the applicant, and that the appellant confirmed, through her signature, that all information provided was true, correct, and complete. In accordance with the provisions of the Medical Schemes Act, which allows for the termination of membership where material non-disclosure is proven, the Scheme exercised its right to cancel the membership.

28. The respondent further argues that the approval of a hospital authorisation does not override or nullify its entitlement to retrospectively investigate disclosures made at application stage. It maintains that the authorisation was granted based on the information available at the time, and once the non-disclosure came to light, appropriate steps were taken in terms of the Scheme's rules and the Act.
29. The Scheme confirms that, following the investigation and identification of material non-disclosure, the appellant's membership has been cancelled retrospectively with effect from the original date of inception. The Scheme further confirms that all claims paid during the membership period are being reviewed, and any amounts paid in error will be recovered in accordance with the Scheme rules and applicable provisions of the Medical Schemes Act. Premiums paid by the appellant will be offset against recoverable claims, and any resulting balance, whether due by or refundable to the appellant, will be communicated once the reconciliation process is finalised.
30. It remains the responsibility of the applicant to fully disclose all required information relating to themselves and/or any listed dependants. Should you wish to submit a medical report from your family practitioner, you are welcome to do so. The Medical Schemes Act provides for the termination of membership where non-disclosure of material information is proven, and the law does not recognise ignorance as a valid excuse. By signing the application form, you confirmed, among other things, that you understand the terms and conditions of membership and that the information furnished in the application is true and correct.

CMS RESPONSE ON THE MATTER

31. The Council for Medical Schemes acknowledges receipt of the complaint lodged by Ms. M in terms of Section 47 of the Medical Schemes Act 131 of 1998. The complaint pertains to the retrospective termination of her membership by Bestmed Medical Scheme following the approval of an authorisation for a surgical procedure.
32. In assessing the matter, the CMS considered the documentation submitted by both parties, including the appellant's application form, hospital authorisation records, and the Scheme's reasons for termination. The Scheme has alleged material non-disclosure, citing that prior medical consultations and a chronic condition application were not declared at the time of membership application.

33. According to your complaint and the documents submitted, you provided a copy of your membership application form dated 25 September 2024, as well as a statement from S. and Associates Inc. dated 10 December 2024. For the sake of brevity, we will address the core issue directly.
34. Based on the contents of your application and supporting documentation, it is evident that you did not disclose receiving medical advice, treatment, or care for certain conditions on 22 July 2024, 20 August 2024, and 26 August 2024. These dates fall within the 12-month period preceding the inception of your membership. While you have indicated in your submission that you were unaware that routine consultations needed to be disclosed, we draw your attention to the Medical Questionnaire section of the application form.
35. The questions posed in the medical questionnaire are designed to elicit material information relevant to the Scheme's risk assessment process. The inclusion of specific questions concerning past medical consultations and treatment is a clear indication that such information is deemed material. The onus remains on the applicant to disclose any relevant medical history, as failure to do so may constitute material non-disclosure.
36. Based on the supporting documents the member provided, it is evident that the termination of your membership was affected in accordance with Section 29(2)(e) of the Medical Schemes Act 131 of 1998. In light of this, the Registrar is not in a position to investigate the matter further.

LEGAL FRAMEWORK AND EVALUATION

37. The appeal is considered within the context of the Medical Schemes Act 131 of 1998 ("the Act") and the registered rules of the medical scheme. In terms of **Section 29(2)(e)** of the Act, a medical scheme may cancel a member's membership if it is found that material information was knowingly or fraudulently withheld or disclosed inaccurately at the time of application. The Act also imposes a duty on applicants to disclose all relevant medical history and health-related information, as this forms the basis for the scheme's risk assessment and underwriting decisions.
38. Importantly, Section 32 provides that the rules of a registered medical scheme are binding on the scheme, its members, officers, and any person who claims a benefit under those rules. This legal provision reinforces that the Scheme's decisions must be consistent with

its registered rules and that members are similarly bound to comply. In this context, any failure by a member to disclose material information, particularly in breach of the medical questionnaire requirements, constitutes a contravention of the Scheme's rules and may justifiably result in retrospective cancellation.

39. In this matter, the Scheme has alleged that the appellant failed to disclose treatment and consultations for certain medical conditions (COVID-19, cystitis, and otitis media) which occurred within the 12-month period preceding the start of membership. This information only came to light after a chronic condition application was submitted post-joining, and after a GP history statement was reviewed. The Scheme contends that this non-disclosure directly influenced its underwriting decision and the approval of benefits.

40. The appellant, in response, contends that the omission was not deliberate and that she was unaware that consultations of this nature required disclosure. She maintains that she accurately disclosed all required information to the best of her knowledge, a position she reiterated during the appeals hearing. However, the questions contained in the Medical Questionnaire are specifically designed to elicit detailed information regarding past medical consultations, diagnoses, and treatments. The appellant's signature on the application form, confirming that all information provided was true, complete, and accurate, further reinforces her contractual and statutory obligation to make full disclosure in accordance with the Scheme's rules and the Medical Schemes Act.

41. In conclusion, the evaluation must consider whether the non-disclosure was material, whether it breached the rules of the Scheme, and whether the Scheme acted within the scope of its legal and contractual authority when it terminated the appellant's membership in terms of Section 29(2)(e), read with Section 32 of the Act.

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ANALYSIS

¹ Constitutional Court case, **Swanepoel N.O. v Profmed Medical Scheme**, case number CCT 336/22.

42. The core issue in this matter is whether the appellant's failure to disclose certain medical consultations and treatment prior to the inception of membership constitutes material non-disclosure, justifying the retrospective termination of membership in terms of Section 29(2)(e) of the Medical Schemes Act.
43. The appellant maintains that her omission was not intentional and that she disclosed all relevant information to the best of her knowledge. She further submits that she was not aware that routine consultations, such as those for COVID-19, cystitis, and otitis media, required disclosure, and that her responses on the application form were honest and made in good faith. This position was reiterated during the appeals hearing.
44. However, the medical questionnaire forms part of the membership application and includes explicit questions aimed at determining whether an applicant has received any medical advice, treatment, or diagnosis within a specified period prior to joining. These questions are designed to assess the Scheme's risk at underwriting stage and are regarded as material in nature.
45. The information later submitted to the Scheme, including a chronic condition application from a healthcare provider and a 12-month general practitioner statement, revealed that the appellant had received advice and treatment for multiple conditions during the 12-month pre-membership period. This information was not declared at the time of application.
46. While the appellant argues that her hospital admission and surgery were authorised, the granting of such authorisation does not limit the Scheme's right to conduct a post-claims assessment and take appropriate action where material non-disclosure is subsequently discovered. Moreover, by signing the application form, the appellant confirmed that the information provided was accurate and complete, and that she understood the terms and conditions of membership.
47. In line with Section 32 of the Medical Schemes Act, the rules of the Scheme are binding on both the Scheme and its members. The Scheme's rules, read with the Act, empower it to cancel membership retrospectively where non-disclosure of material information is established. The standard of materiality in this context refers to information that would have influenced the Scheme's decision to accept the applicant or impose underwriting conditions such as waiting periods.

48. Accordingly, the appeals panel must assess whether the failure to disclose this information materially impacted the Scheme's decision-making and whether the cancellation was consistent with both the Scheme's rules and statutory provisions.
49. It may be considered unfair for a medical scheme to terminate membership if the member appears to have disclosed the required material information at the time of application, particularly when assessed under **Section 29(2)(e)** of the Medical Schemes Act 131 of 1998. This section provides that the rules of a scheme must clearly specify the conditions under which membership may be terminated, including instances of non-disclosure or misrepresentation. For termination to be lawful under this provision, there must be clear and objective evidence that the member failed to disclose information that was material and would have influenced the scheme's decision to accept or underwrite the risk.
50. Where a member has made a reasonable and honest effort to provide the necessary information, and there is no indication of intent to mislead or conceal relevant facts, summary termination of membership may be deemed both procedurally and substantively unfair.
51. In light of these principles, unless the non-disclosure is clearly deliberate, materially significant, and in breach of the scheme's rules, the termination of membership under such circumstances may not withstand legal or regulatory scrutiny. The decision to cancel membership must be supported by substantive evidence and aligned with the rules and processes established in both the Medical Schemes Act and the scheme's own governance framework.
52. The Appeals Committee notes that the Scheme did not furnish concrete evidence demonstrating that the member failed to disclose or intentionally withheld material information during the application process. Upon review of the documentation presented, specifically the bundle of documents served before the Committee on pages 22 and 23 respectively, it is evident that the member completed the Medical Questionnaire as required and disclosed the information requested therein.
53. The applicable standard for determining non-disclosure is whether the information allegedly omitted was material, that is, whether it would have reasonably influenced the Scheme's decision to accept the member or to apply underwriting conditions. In this instance, the Committee finds no indication that the member failed to disclose information

that was specifically required by the questionnaire or that there was any deliberate attempt to mislead the Scheme.

54. Accordingly, in the absence of substantiated proof of material non-disclosure, the justification for the retrospective cancellation of membership under Section 29(2)(e) of the Medical Schemes Act is not adequately supported.

55. It is noted that Ms. M applied for membership with Bestmed Medical Scheme by completing and signing the membership application form on 25 September 2024, with an intended inception date of 1 November 2024. This followed a change in her medical scheme cover, the details of which were not disputed during the hearing. The application process included a medical questionnaire requiring disclosure of any consultations, diagnoses, or treatment received in the 12 months preceding the application. Ms. M contends that she fully disclosed the relevant information to the best of her knowledge during the transition, and there is no evidence before the Appeals Committee that this change of membership involved a break in cover or that she sought to conceal her medical history.

ACCEPTABLE GROUNDS FOR TERMINATION OF MEMBERSHIP

56. Acceptable grounds for termination of membership by medical schemes in terms of the Medical Schemes Act of 1998 must be consistent with the scheme's registered rules and must comply with the provisions of the Act, particularly section 29(2), which requires that the rules specify the conditions under which membership may be terminated.

57. The commonly accepted grounds include non-payment of contributions, death of the member, voluntary resignation by the member, fraudulent conduct such as intentional non-disclosure of material information at the time of application, or misrepresentation that affects the underwriting or risk assessment of the scheme.

58. Termination may also occur if the principal member ceases to qualify for membership under the rules, for example, where membership is linked to employment and the employment relationship ends. However, such termination must still observe the member's rights under the Act, including the right to be heard, and must follow due process. Unilateral or retrospective termination based on minor or disputed facts is generally not acceptable unless supported by material evidence and due process. The Registrar of Medical

Schemes retains oversight to ensure that terminations are lawful, procedurally fair, and in line with both the Act and the scheme's rules.

59. The membership should not be terminated solely because a layperson member made a partial or incomplete disclosure of their medical history upon application, especially where the disclosure appears to have been made in good faith and without intent to mislead. The Medical Schemes Act of 1998, read with principles of administrative justice and fairness, does not support punitive measures such as termination where the member's actions were not dishonest, fraudulent, or wilfully misleading.
60. In cases where a member, acting as a layperson without medical expertise, provides partial information or misunderstands the medical relevance of certain facts, schemes are expected to assess the materiality and intent behind the non-disclosure. If the member disclosed what they knew or understood to be relevant, and there is no evidence of intentional misrepresentation, termination may be considered disproportionate and legally challengeable.
61. Schemes must apply a reasonable approach in such cases, ensuring that any action taken aligns with the scheme rules and is procedurally fair. Members should be given an opportunity to explain or supplement the information before a final decision is made. Regulatory and judicial precedent generally favours a fair and contextual evaluation rather than a rigid enforcement that disregards the member's limited knowledge or genuine attempt to disclose.

MS M CHANGE OF MEMBERSHIP

62. According to Section 29A of the Medical Schemes Act 131 of 1998 authorises medical schemes to impose waiting periods on new members under specific circumstances, subject to the limitations set out in the Act. Waiting periods are designed to protect the financial integrity of medical schemes by preventing anti-selection, where individuals join a scheme solely to access benefits for pre-existing or imminent medical conditions.
63. Where there is no break in medical scheme cover, and the member has maintained continuous membership with a registered medical scheme, the new scheme may only

impose a general waiting period of up to three months, and only in accordance with the provisions outlined in the Act. However, condition-specific waiting periods and exclusions may not be imposed in cases where the member previously enjoyed uninterrupted medical scheme cover.

64. When a member changes from one medical scheme to another without any break in membership, and the transition occurs within 90 days, the new scheme is generally not permitted to impose new waiting periods, either general or condition-specific, if the member had already completed those periods under the previous scheme.
65. If the member has completed all applicable waiting periods under the previous scheme, the new scheme must recognize the continuity of cover and cannot reimpose those periods. However, if there was any underwriting still applicable under the prior membership, such as a remaining portion of a condition-specific waiting period, that remainder may still be enforced by the new scheme, but only for the unexpired duration.
66. This protection is particularly relevant in open schemes where the member moves voluntarily or due to changes in employment. The Council for Medical Schemes emphasizes that members should not be prejudiced when there is no lapse in coverage, and schemes are expected to verify prior coverage history before imposing any waiting periods.

PRE-EXISTING CONDITIONS.

67. A member with no diagnosed pre-existing medical conditions prior to joining a medical scheme generally cannot have their membership lawfully terminated solely on the basis of later developing a condition after joining. In terms of the Medical Schemes Act of 1998, particularly section 29, medical schemes may only impose underwriting measures such as waiting periods or exclusions based on *existing* diagnosed conditions at the time of application, not on conditions that arise afterward.
68. Termination of membership is only lawful when based on grounds clearly stated in the scheme's registered rules and compliant with the Act, such as non-payment of contributions, fraud, or wilful misrepresentation. If a member was never diagnosed with or informed of a medical condition prior to joining, and did not deliberately conceal any known risk, then terminating their membership for a condition discovered or diagnosed only after joining would be both unlawful and unfair.

69. In such cases, any attempt to retroactively infer non-disclosure or misrepresentation without proof of intent or prior knowledge would likely be found invalid by the Council for Medical Schemes or a court of law. The burden of proof rests on the scheme to demonstrate that a material misrepresentation occurred and that it was intentional and prejudicial to the scheme.
70. Material misrepresentation occurs when a member fails to disclose relevant medical history prior to joining a medical scheme in a way that is significant enough to influence the scheme's decision to accept the application, impose specific waiting periods, or adjust premiums. For the non-disclosure to qualify as material, the information withheld must relate to a condition that existed prior to joining and would have reasonably affected the scheme's underwriting process if it had been known at the time.
71. The misrepresentation must involve more than an innocent mistake or misunderstanding. It must either be deliberate or grossly negligent, where the member knew or ought reasonably to have known about the condition and the importance of disclosing it. The standard is whether a reasonable person in the member's position would have understood that the information was relevant and should have been disclosed, especially in response to direct questions on the application form.
72. If the failure to disclose was unintentional and the member was unaware of the condition, or if they provided partial information in good faith as a layperson without understanding the medical significance, it may not meet the threshold of material misrepresentation. In all cases, the scheme bears the burden of proving that the non-disclosure was material and that it caused prejudice to the scheme's risk assessment. The test is both objective and contextual, considering the member's knowledge, intent, and the nature of the questions asked at the time of application.
73. The appeals committee assessed the submission by the scheme pertaining to the Swanepoel matter and it hold a view that the scheme version do not meet requirements set out by the constitutional court when defining material misrepresentation. The member disclosed information on the bundle pages 22-23 and answered yes in the questionnaire.
74. In the Constitutional Court case, *Swanepoel N.O. v Profmed Medical Scheme*, case number **CCT 336/22**, in *Swanepoel*, the Court held that a medical scheme bears the

burden of proving that the member's non-disclosure was both material and induced the scheme to accept the risk. Similarly, in Ms. M' case, Bestmed was required to present clear, documented evidence showing that any omitted consultations or advice (e.g. for COVID-19, cystitis, or otitis media) were material to its risk assessment and that disclosure of such would have influenced its decision to admit her or to apply underwriting conditions. In the present matter, no such concrete evidence was furnished by the Scheme to demonstrate that the information allegedly omitted would have resulted in a different underwriting outcome.

75. The Court in *Swanepoel* made a distinction between serious medical conditions and minor or diagnostic procedures that do not result in significant medical findings. In that case, the member underwent a gastroscopy and hip arthroscopy, which were ultimately found not to be material. Ms. M' consultations, relating to COVID-19, cystitis, and otitis media, appear to be of a minor, self-limiting, or routine nature, and no evidence has been produced showing that these conditions were chronic or indicative of serious illness at the time of application. Based on *Swanepoel*, such consultations may not satisfy the threshold of objective materiality.
76. The *Swanepoel* judgment reaffirms the duty of schemes to act fairly and in accordance with administrative justice principles. A member must be given the opportunity to respond to any allegations of non-disclosure before cancellation of membership is affected. In Ms. M' case, she contends that the Scheme failed to engage her meaningfully before cancelling her membership. If true, this may amount to a procedural defect, further undermining the validity of the termination.
77. The Constitutional Court in *Swanepoel N.O. v Profmed Medical Scheme* (CCT 336/22) confirmed the application of a dual test when assessing allegations of non-disclosure. This test requires a determination of (i) whether the undisclosed information was objectively material, and (ii) whether the non-disclosure actually induced the scheme to take on the risk.
78. Applied to the present matter involving Ms. M, the analysis must consider whether the questions posed in the Medical Questionnaire specifically required disclosure of the consultations and treatment she received for conditions such as COVID-19, cystitis, and otitis media. The materiality of such information must be assessed in context, whether, objectively, it was significant to the underwriting risk, and whether its omission resulted in

a misrepresentation that influenced the Scheme's decision to grant membership or approve benefits.

79. In the absence of evidence demonstrating that the omitted information was both material and causative of the Scheme's decision, the requirements of the dual test are not met. Consequently, the retrospective cancellation of membership may not be justified under the standard established in *Swanepoel*.

80. The *Swanepoel* case strongly supports the principle that not all omissions justify termination, only those that are clearly material and causally linked to the Scheme's decision. In the absence of proven inducement, and where the omitted information relates to minor or non-chronic conditions, retrospective cancellation, like in Ms. M' case, may be unlawful and disproportionate.

81. Swanepoel confirms that innocent or partial omissions by lay members, as opposed to deliberate concealment, do not automatically qualify as material misrepresentation. Context is critical, the clarity of the questions asked, the member's understanding, and whether the undisclosed information would realistically have affected the underwriting outcome are all key factors.

82. In summary, under Swanepoel matter, misrepresentation must be both material and made with knowledge or gross negligence; a simple omission by a lay member is not enough to justify termination.

FINDING.

83. Having considered the submissions of both the appellant and the respondent, the Appeals Committee finds that the Scheme has not provided sufficient or concrete evidence to demonstrate that the appellant deliberately withheld or failed to disclose material medical information at the time of application. The documentation before the Committee, including the Medical Questionnaire and the records on pages 22 and 23 of the hearing bundle, supports the appellant's position that the information was disclosed in good faith and to the best of her knowledge.

84. Furthermore, applying the dual test confirmed by the Constitutional Court in *Swanepoel N.O. v Profmed Medical Scheme (CCT 336/22)*, the Committee finds that the Scheme has not established the following grounds:

1. That the consultations and minor treatments for conditions such as COVID-19, cystitis, or otitis media were objectively material to its risk assessment; and
2. That the alleged non-disclosure of such information induced the Scheme to accept the risk and admit the appellant as a member.

85. There is no evidence that the Scheme would have declined membership or imposed different underwriting conditions had this information been disclosed. Moreover, the Scheme authorised the appellant's hospital admission and surgery prior to cancelling her membership, raising concerns about the timing, procedural fairness, and proportionality of its actions.

86. In light of the above, the Committee finds that the retrospective termination of the appellant's membership was not justified in terms of Section 29(2)(e) of the Medical Schemes Act and cannot withstand scrutiny under the principles of materiality, inducement, and administrative fairness.

ORDER

87. In view of the above findings, the Appeals Committee concludes that the termination of Ms. M' membership was procedurally and substantively unjustified.

88. The appeal is upheld.

89. Accordingly, the Appeals Committee instructs Bestmed Medical Scheme to:

88.1 Reinstate the appellant's membership retrospectively to the original date of inception; and

88.2. Reimburse the appellant for all valid medical claims incurred and rejected as a result of the unlawful termination of her membership.

THUS, DONE AND SIGNED AT SANDTON ON THIS THE 4th DAY OF AUGUST 2025.

SIGNED
DR X NGOBESE
Presiding Member

Appeals Committee Members Dr. K Chetty, Ms Beck or Dr Mabeba concurring.