



**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/86486**

In the matter between:

BONITAS MEDICAL FUND

APPELLANT

And

M O B O N

RESPONDENT

Date of hearing 8 October 2025

ORDER AND REASONS

THE PARTIES

1. The Appellant is Bonitas Medical Fund (“Bonitas, the Scheme or the Appellant”) a Medical Scheme duly registered and regulated under the Medical Schemes Act 131 of 1998 (the “MSA.”)
2. The Appellant was represented by Mr. S duly authorised by the Appellant.
3. The Respondent is Mr M acting on behalf of Ms N (“the member or the Appellant) a member of the scheme in terms of the definition accorded to a “*member*” under the Medical Schemes Act 131 of 1998 (“the Act.
4. The member was represented by Mr M, duly authorised to represent the member.

INTRODUCTION

5. This is an appeal in terms of section 48(1) of the Council for Medical Schemes Act 31 of 1998 (“the Act”) pertaining to a decision of the Registrar dated 12 September 2024.¹
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 Appeals Committee heard the Appeal on 8 October 2025 via an audio and video conferencing link.

BACKGROUND

8. Pursuant to Rule 28.6 of the scheme rules, the member declared a dispute with Bonitas.
9. The member required that the declared dispute be referred to the Dispute Committee (DC) of Bonitas.

¹ Page 273 of the Bundle.

10. Bonitas declined to convene the dispute committee.
11. The matter was referred to the Office of the Registrar by Mr M (“the Complainant”) on behalf of the member in terms of section 47 of the Act.
12. The Registrar found that the scheme had contravened its registered rule by declining to refer the declared disputes to its disputes committee for adjudication.
13. It is against this decision of the Registrar that the Appellant filed the appeal in terms of section 48 of the Act.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

14. 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.
15. 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.”*
16. Rule 28.6 of the scheme rules stipulates as follows -*“Any dispute, which may arise between a member, prospective member, former member of a person claiming by virtue of such member and the Scheme, shall be referred by the principal officer to the disputes committee for adjudication.”*

WIDE APPEAL

17. This is a wide appeal. The Appeals Committee may therefore consider the matter afresh and is not restricted to the record of proceedings that were before the Registrar.

18. 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

19. The issue to be determined is whether the scheme must be directed to comply with the dispute resolution mechanisms prescribed in its rules and convene a DC to hear the declared dispute.

THE APPELLANT

20. The Appellant submitted in response to the complaint that there is no dispute for the purposes of Rule 28.6 of its rules before it to convene a DC based on the following –

- 20.1 Rule 28.6 of the Rules provides that: *“Any dispute, which may arise between a member, prospective member, former member of a person claiming by virtue of such member and the Scheme, shall be referred by the principal officer to the disputes committee for adjudication.”*

- 20.2 The above rule echoes the provisions of Section 32 of the MSA which provides that: *“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”.*

- 20.3 Thus, for a DC to be convened the member’s right to receive or enforce a benefit must be in dispute.

- 20.4 The issue which is the subject matter of such a dispute must be between a member on the one hand, and the Scheme on the other, in respect of a claim by that member and that member alone.

- 20.5 The matter which the DC is asked to adjudicate upon relates to the manner in which the trustees are conducting the business of a medical scheme with respect to the provision of donations and sponsorships. There is thus no benefit in dispute for a DC to adjudicate.

21. The Appellant argued that the nature of the dispute which the member declared is not capable of been resolved by the DC. The Appellant further explained that, convening the DC would be

a superfluous step, as the DC does not have the powers of investigation of the Regulator and cannot make a ruling on the intricacies relating to the financials of the Scheme.

22. The Appellant submits for the afore-mentioned reasons stated above that the Appellant is justified in declining to convene the DC and the appeal should succeed.

THE RESPONDENT

23. The Respondent submitted that he declared dispute against the Appellant on behalf of the member as provided for in terms of the scheme's registered rules.
24. The Respondent argued that these registered rules enjoin the Appellant to constitute a Dispute Committee once a dispute is declared by a member.
25. For the purposes of his complaint, he is seeking to exhaust all the internal dispute mechanism process of the Appellant before approaching the office of the Registrar.
26. The Respondent asks that the Registrar's decision is confirmed.

CONSIDERATION OF THE MERITS

27. The Appeals Committee considered the submissions of both parties.
28. It is common cause that the Respondent approached the Appellant with a complaint on behalf of the member.
29. The issue in dispute is whether the Appellant acted in accordance with its fiduciary duties as provided for in its registered rules when it declined to convene the DC.
30. The Respondent submitted that the Appellant contravened its registered rules by failing to convene a DC as provided for in Rule 28.6 of its registered Rules. In its response, the Appellant mentioned that there is no right or benefit in dispute and therefore it is not bound to convene a DC.

31. The provisions of the Rule upon which the Respondent's case is founded is Rule 28.6 of the scheme's Rules which provides that: *"Any dispute, which may arise between a member, prospective member, former member of a person claiming by virtue of such member and the Scheme, shall be referred by the principal officer to the disputes committee for adjudication."*
32. The above registered rule clearly stipulates "**Any dispute**" between a member and the scheme shall be referred by the principal officer to the disputes committee for adjudication. The above rules reference the word "**shall**" refer any dispute leaving no room for the scheme to exercise a discretion whether or not to make such referral to a DC.
33. Whilst the Appeals Committee acknowledges that CMS is the final arbiter of complaints related to medical schemes, it cannot condone the Appellant's failure to comply with its own registered rules.
34. It is important for the Appeals Committee to place on record that the duties of the board of trustees is to ensure that the rules, the operations and administration of a medical scheme complies with the provisions of the Act and all other applicable laws, as provided for in Section 57(4) (h) of the Act. Therefore, the Appellant must ensure compliance with its own registered rules, and it must take cognisance of the fact that the registered rules are binding as envisaged in Section 32 of the Act.
35. It is further noted by the Appeals Committee that medical schemes are encouraged to ensure that members' disputes and/or complaints are resolved internally prior to escalating same to CMS.

FINDING

36. The Appeals Committee, having considered the merits of the complaint, the submissions of both parties, the registered rules as well the provisions of the Act, hereby finds that, the Appellant has contravened its own registered rule 28.6 by declining to refer the declared dispute to its disputes committee for adjudication.
37. For the Appeals Committee to find otherwise would be tantamount to the Appeals Committee condoning a contravention of the Act and a contravention of the registered Rule of the scheme.

ORDER

38. The Appeals Committee makes the following order:

38.1 The Registrar's Ruling is confirmed.

38.2. The Appellant is ordered to refer the declared disputes to its disputes committee for adjudication as provided for in terms of Rule 28.6 of its registered rules within 90 days of the date of the issuing of this Order.

38.3 There is no order as to costs.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 24th DAY OF OCTOBER 2025

SIGNED
PA BECK
PRESIDING MEMBER

Dr. X. Ngobese, Dr. K. Chetty and Ms Ramagaga Concur.