



**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/86495**

In the matter between:

**FEDHEALTH MEDICAL SCHEME**

**APPELLANT**

**And**

**X OBO Y**

**RESPONDENT**

Date of Hearing 10 October 2025

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**ORDER AND REASONS**

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## THE PARTIES

1. The Appellant is Fedhealth Medical Scheme (“Fedhealth, 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 Ms. Z and Mr. T, duly authorised to represent the Appellant.
3. The Respondent is Mr X acting on behalf of Mr Y (“the member or the Respondent) 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. X, 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 13 February 2024.<sup>1</sup>
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 10 October 2025 via an audio and video conferencing link.

## BACKGROUND

8. Pursuant to Rule 27 of the scheme rules, the member declared a dispute with Fedhealth.
9. The member required that the declared dispute be referred to the Dispute Resolution Committee (“DC”) of Fedhealth to adjudicate the dispute referred by the member.

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<sup>1</sup> Page 31-26 of the Bundle.

10. The member submitted that Fedhealth declined to convene the DC.
11. The matter was referred to the Office of the Registrar by Mr X (“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 dispute to its DC 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 27 of the Respondent’s registered rules governs the complaints and dispute and provides as follows:*
  - “27.1 Members may lodge their complaints, in writing, to the Scheme. The Scheme or its administrator should also provide a dedicated toll-free telephone number which may be used for dealing with telephonic complaints.*
  - 27.2....*
  - 27.3....*
  - 27.4 Any dispute, which may arise between a member, prospective member, former member or*
  - 27.5 any person claiming by virtue of such member and the Scheme, shall be referred by the principal officer to the dispute 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 which falls for determination herein is whether the Appellant failed to comply with its registered rules.

## THE APPELLANT

20. The Appellant submitted at the hearing that at no point did it refuse to convene the DC.
21. The Appellant pointed out that it was in the final stages of preparations to convene the DC when the Respondent escalated the matter to the Registrar. Convening of the DC was delayed by the Respondent's continual movement of the "*proverbial goal post*"<sup>2</sup> which actions ensured that the preparation to convene the DC was delayed.
22. The Appellant submitted that convening a DC requires -
  - 22.1 panel members with appropriate skills and expertise;
  - 22.2 the availability of the selected panellist; and
  - 22.3 internal resource deployment for case preparation and presentation.
23. The Appellant submitted that the process outlined above and the actions, in this regard, were neither disingenuous nor an attempt to delay the resolution of the complainant's

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<sup>2</sup> Page 33 of the Bundle.

grievances. Rather, the Respondent demonstrated impatience, despite their best efforts to expedite the process to the best of their ability.

24. The Appellant submitted that in terms of Section 32 of the Act, members are bound by the rules of their respective medical scheme and must adhere to all instructions and communications provided by the scheme in respect thereof. This responsibility is particularly critical when these instructions and communications relate to authorisation requests for medical procedures and treatment.
25. According to the Appellant the member had ample opportunity to contact it and seek clarity on the conditions and limitations associated with the authorisation of a surgery. Compliance with these requirements is essential to ensure a clear understanding of the coverage and terms under which authorisation is granted.
26. The Appellant maintained that it had the intention of honouring the Respondent's request to convene a DC. Any contrary assertion is emphatically denied. The DC further must be convened within the bounds of administrative and financial reasonableness.
27. The Appellant submits for the afore-mentioned reasons stated above there is no merit in or justification for the accusations and or allegations of the Respondent. At all times, the Appellant submitted it acted correctly, professionally and most importantly, in accordance with their duties as a medical scheme as outlined in the Act. The Appellant further acknowledged that the CMS is the regulatory body which is charged with overseeing the business of all medical schemes, its authority supersedes that of any internal scheme dispute resolution mechanism, including its disputes committee.
28. The Appellant concluded that it has always acted appropriately in all respects, whilst discharging its duties as a medical scheme.
29. Therefore, the Appellant requests that its submissions are accepted; the ruling of the Registrar is set aside; that the Appeals Committee finds that there has been no breach of the Act or Rule 27 by the Appellant; and direct the Respondent to submit a detailed and adequately defined complaint for the DC to adjudicate.

## **THE RESPONDENT**

30. The Respondent submitted that on 3 July 2024, he declared a dispute against the Appellant on behalf of the member as provided for in terms of the Scheme's registered rules. The Respondent argued that these registered rules enjoin the Appellant to constitute a DC once a dispute is declared by a member.
31. The Respondent submitted that despite numerous requests, the Appellant failed to convene the DC. Since 3 July 2024, because no discernible progress was made to convene the DC. This failure triggered the complaint to the Registrar to protect the position of an elderly scheme member suffering from cancer. To date the DC has not been convened.
32. For the purposes of his complaint, the Respondent submitted that he sought to exhaust the internal dispute mechanism processes of the Appellant before approaching the office of the Registrar.
33. The Respondent therefore leaves it up to the Appeals Committee to judge whether the allegation of impatience made by the Appellant is reasonable in this context.
34. The Respondent asks that the Registrar's decision is confirmed.

## **CONSIDERATION OF THE MERITS**

35. The Appeals Committee considered the submissions of both parties.
36. It is common cause that the Respondent approached the Appellant with a complaint on behalf of the member. In its response, the Appellant confirmed that it received various grievances from the Respondent.
37. The issue which is in dispute is whether the Appellant acted in accordance with its fiduciary duties as provided for in its registered rules.
38. The Respondent submitted that the Appellant contravened its registered rules by failing to convene a DC as provided for in Rule 27.4 of its registered Rules. In its response, the Appellant mentioned that it was in the final stages of preparation to convene the DC when the

Respondent escalated the matter to the Registrar. Furthermore, that convening a disputes committee with an appropriate and qualified panel requires considerable time and resources; and to escalate the matter to the Registrar in the circumstances, the Respondent is therefore acting out of impatience by referring the matter to the Registrar.

39. The Respondent is not in agreement with the Appellant's submissions. He is of the view that ample time was afforded to the Appellant to convene the DC. As a result, the Appellant's conduct prevented him from exhausting all internal remedies prior to him lodging a complaint with Registrar.
40. The Appeals Committee has taken note of the submissions raised by Appellant, wherein it mentioned that the CMS authority supersedes that of its internal dispute resolution mechanism, including its dispute committee.
41. Whilst the Appeals Committee acknowledges that the 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.
42. 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 Respondent 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. The Respondent is further responsible for proper communication with its members.
43. 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 the CMS.

## **FINDING**

44. The Appeals Committee, having considered the merits of the complaint, the submissions of both parties, the registered rules of the scheme as well the provisions of the Act, hereby finds

that, the Appellant has contravened its own registered rule 27 by failing to convene the DC to adjudicate the dispute.

45. 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 Rules of the scheme.

## **ORDER**

46. Accordingly, the Appeals Committee makes the following order:

- 46.1 The Registrar's decision is confirmed.
- 46.2 The Appellant is ordered to refer the declared disputes to its DC for adjudication as provided for in terms of Rule 27 of its registered rules within 90 days of the date of the issuing of this Order.
- 46.3 There is no order as to costs.

THUS DONE AND SIGNED AT JOHANNESBURG ON THIS THE 25<sup>th</sup> DAY OF OCTOBER 2025

*SIGNED*  
**PA BECK**  
**PRESIDING MEMBER**

Dr. S. Naidoo and Dr. H Mukhari Concur.