



CENTRIQ INSURANCE COMPANY (PTY) LTD

APPELLANT

v

THE COUNCIL FOR MEDICAL SCHEMES

1st RESPONDENT

DISCHEM PHARMACIES LIMITED

2nd RESPONDENT

MEMBERS OF THE APPEAL BOARD

Judge Thokozile Masipa - Chairperson

Dr Dimakatso Ramagole - Member

Professor Solomon Rataemane - Member

OFFICE OF THE APPEAL BOARD

Pelonomi Mpolokeng

LEGAL REPRESENTATION

The Appellant was represented by F Synckers SC and K Magan.

The 1st Respondent was represented by JJ Brett SC and U AHIR.

The 2nd Respondent was not represented.

DECISION

INTRODUCTION

[1] The appeal was brought under section 50(3) of the Council for Medical Schemes No.131 of 1998 (MSA).

[2] The Appellant sought to overturn the decision of the CMS, handed down on 12 March 2024.

[3] The decision of the CMS effectively directed the Appellant to cease a commercial relationship with the 2nd Respondent with retrospective effect.

THE PARTIES

[4] The Appellant is Centriq Insurance Limited, a licensed non-life cell captive insurer.

[5] The First Respondent is the Council for Medical Schemes established under the Medical Schemes Act.

[6] The Second Respondent is Dischem Pharmacies Limited, a company incorporated under South African company laws.

[7] Kaelo Risk Pty Ltd is appointed as the administrator and underwriting manager for CENTRIQ's MyHealth Product and the Plus, Core, and Vital insurance policy options.

THE APPEAL

[8] The appeal was brought against the decisions of the Council for Medical Schemes, (CMS) which directed CENTRIQ to cease a commercial relationship with Dischem with retrospective effect.

[9] The appeal is against that ruling, and more specifically against the finding:

9.1 that the "white labelling" agreement between Centriq and Dischem contravenes the Medical Schemes Act, the Demarcation Regulations, and the Exemption Framework.

9.2 that the exemption granted to Centriq excludes any marketing of the exempted options under the “white labelling” agreement with Dischem.

[10] The finding above, by the CMS, is referred to as the “impugned decision”.

[11] The proposed remedial action to cure the alleged noncompliance with the MSA is referred to as “the impugned directive.”

[12] Collectively, the findings are referred to as impugned decisions. The CMS’s decision was communicated to Centriq on 12 March 2024.

GROUNDS OF APPEAL

[13] The Appellant raised three grounds of appeal:

13.1 The impugned directive by the CMS, is not empowered by section 8(k) of the MSA and is, therefore, ultra vires.

13.2 The CMS erred in finding that the “white labelling” agreement concluded between the Appellant and the Second Respondent contravenes the provisions of the MSA, the Demarcation Regulations, and the Exemption Framework.

13.3 The CMS erred in reaching the conclusion that the exempted options of the MyHealth Product marketed under Second Respondent’s branding are separate products or options from the exempted product and option for which the Appellant holds an exemption in terms of section 8(h) of the MSA

[13] The appeal is opposed by the CMS.

THE BACKGROUND

[14] Circumstances which led to the lodging of this appeal are set out hereunder.

[15] On 4 March 2022, CENTRIQ, Kaelo, and Dischem entered into a white labelling agreement to market CENTRIQ's insurance products. These included MyHealth's products under Dischem's branding .

[16] As a result, the marketing material for several products underwritten by Centriq (including the MyHealth Product and two of its Options) would contain the branding marks of Centriq, Kaelo and Dischem.

[17] According to the Appellant, the intention behind the white labelling agreement was to expand the reach of CENTRIQ's existing products to Dischem's client base.

[18] Dischem's limited role was that of marketing and for branding purposes. That is so because Dischem is not authorised to underwrite, distribute or administer financial products. Its only role, therefore, was that its name was to appear on the branding of certain insurance products underwritten by Centriq.

[19] In terms of paragraph 4.2 of the white labelling agreement, Dischem agreed to associate its goodwill, reputation and brand with CENTRIQ's insurance products.

THE SEQUEL

[20] On 9 March 2022, in an article in the Business Tech publication, reference was made, inter alia, to the white labelling agreement with Dischem.

[21] Following the publication of the article above, the CMS conducted a section 45 Inquiry.

[22] As a result, the CMS directed correspondence to the Second Respondent requesting certain information/documentation.

CONCERNS RAISED BY THE CMS

[23] Some of the concerns raised by the CMS were as follows:

23.1 The article published triggered the suspicion that the Second Respondent was conducting the business of a medical scheme.

23.2 There was no application from the Appellant or Kaelo to exempt the Dischem MyHealth products.

23.3 There was no exemption granted to the Appellant or Kaelo for the "Dischem MyHealth" products.

23.4 There was noncompliance with the conditions imposed on the exemption granted to the Appellant for the products/offering.)

[I pause to state that it is common cause that the Appellant had applied for and was granted an exemption in respect of MyHealth products. One of the conditions imposed was that should there be any name change, the Appellant was to notify the CMS].

[24] On or about 22 March 2022, the Second Respondent responded to the section 45 request from the CMS. In its response, it explained that certain critical information relating to the relationship between the Appellant, Kaelo and the Appellant had been omitted. A request was made for the republication of the article. However, republication never took place.

The Outcome Of The Section 45 Inquiry

[25] On or about the 22 November 2022, the outcome of the section 45 Inquiry was communicated to all the parties. In essence the following finding was made and communicated:

25.1 While the Second Respondent was not conducting the business of a medical scheme, the CMS did not grant an exemption to the Second Respondent to provide the Dischem MyHealth products. The only exemption was granted to the Appellant.

25.2 There was no application made to the CMS to exempt the offering of the "Dischem MyHealth" products. There was also no application made to the CMS to conclude a white labelling agreement for the exempted products.

[26] Following the responses received from the parties in terms of the section 45 inquiry on or about 12 March 2024, the CMS directed correspondence to the parties contained its decision regarding the offering of the products by the Second Respondent.

DISCUSSION AND ANALYSIS

[27] One of the notable statements by the CMS was that the white labelling agreement was, *inter alia*, a contravention of the MSA,

[28] That finding by the CMS that the white labelling agreement is unlawful is not correct.

[29] In fact, white labelling is expressly contemplated and permitted in terms of the regulatory framework that governs the exempted Products and Options.

[30] The term “white labelling” is defined in the PPRs under Rule 2 of the Short Term Insurance Act.

“White labelling refers to the marketing or offering of a specific policy of an insurer under the brand of another person who is not the insurer in terms of an arrangement between the insurer and that other person.”

[31] It is clear from this definition, therefore, that a white labelling agreement is not unlawful. That much was conceded by the CMS.

[32] However, the CMS has a legal obligation to protect the interests of the members of a medical scheme. It is this legal obligation that triggered the section 45 inquiry and the final decision of the CMS on the matter.

[33] There is, therefore, no merit in the submission by the Appellant that the CMS acted outside the provisions of the MSA.

Was There a Name Change to the MyHealth Products?

[34] The main question is whether there was a name change to the products that were exempted.

[35] The answer is to be found in the name of the products before and after Dischem came into the picture.

[36] Prior to the branding exercise, the names of the products were "MyHealth Core" and "MyHealth Vital".

With the marketing of the products, the brand names became "Dischem MyHealth Core" and Dischem MyHealth Vital".

[37] The Appellant submitted that the nature of the products did not change as the only adjustment was brought about by branding.

[38] That may be so. The question, however, is not how the change came about. It is, rather about the perception of the end user when looking at the product.

[39] To the Dischem customer, those products are Dischem products named "Dischem MyHealth Core" and "Dischem MyHealth Vital".

[40] The fact that the Appellant did not intend any name change to the products is not relevant. And, how the name change came about is not an issue. The fact is that there was a name change.

[41] I say this because the customer is not privy to the white labelling agreement. From the point of view of the customer, therefore, the name of the product is Dischem MyHealth Core and Dischem MyHealth Vital, respectively.

[42] The Appellant, should therefore, have notified the CMS of the resultant name change. It failed to do so.

The failure to notify the CMS of any name change and apply for an exemption was noncompliance with the conditions imposed at the time the exemption was granted in respect of the products.

[43] It follows, therefore, that the appeal cannot succeed.

[39] Accordingly,

39.1 The Appeal is dismissed.

Judge Thokozile Masipa

Chairperson of the Appeal Board