



**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-84370)**

In the matter between:

FEDHEALTH MEDICAL SCHEME

APPELLANT

AND

B obo X

RESPONDENT

HEARD ON:

21 NOVEMBER 2025

DATE OF RULING:

25 NOVEMBER 2025

CONDONATION RULING AND REASONS

THE PARTIES.

1. The Appellant in this matter is Fedhealth Medical Scheme, which lodged an appeal in terms of section 48 of the Medical Schemes Act 131 of 1998 against a ruling issued by the Registrar. The Respondent is Mr X, who is represented in these proceedings by Ms B.. The ruling forming the subject of the appeal is the decision handed down by the Registrar of the Council for Medical Schemes in terms of section 47 of the Act. For purposes of this appeal, the Appellant was legally represented by its attorney of record, Mr Z.

BACKGROUND

2. This matter concerns a section 48 appeal lodged by Fedhealth Medical Scheme against a ruling issued by the Registrar of the Council for Medical Schemes. The Registrar's ruling was issued following a complaint lodged by the Respondent, Mr X, represented by Ms B. Fedhealth did not file its appeal within the prescribed three-month period set out in section 48 of the Medical Schemes Act. After realising that the appeal had been filed out of time, the Appellant requested an extension of time in which to submit the appeal.
3. In order to ensure procedural fairness, the Appeals Committee afforded the Appellant an opportunity to apply for condonation and expressly directed that such application must be supported by a sworn affidavit explaining the lateness and addressing prospects of success and prejudice. Despite being provided this opportunity, and despite clear instruction, the Appellant did not file an affidavit or provide admissible evidence explaining the delay. As a result, before any consideration of the substantive merits of the appeal could arise, the Appeals Committee was required to determine whether condonation for the late filing could be granted.

APPELLANT'S SUBMISSION

4. The Appellant requested that the Appeals Committee grant condonation for the late filing of the appeal. In its written correspondence, the Appellant submitted that the delay in filing the appeal should not result in the matter being dismissed on procedural grounds, and contended that the interests of justice would be better served by allowing the appeal to be considered on its merits. The Appellant indicated that it wished to exercise its statutory right to challenge the Registrar's decision and requested that the Committee afford it an opportunity to do so despite the expiration of the three-month period prescribed under section 48 of the Medical Schemes Act.
5. However, the Appellant did not place before the Committee a sworn affidavit or any factual material explaining the reason for the lateness, the circumstances leading to the delay,

whether the delay was unavoidable, or when the Appellant became aware that the prescribed filing period had passed. No information was advanced regarding the steps taken to act promptly once the delay was identified, nor was evidence provided addressing prospects of success or potential prejudice.

6. The Appellant's submissions therefore consisted primarily of a general request to be permitted to proceed with the appeal, but without any substantive evidentiary foundation upon which the Committee could assess whether condonation was justified in the circumstances.

LEGAL FRAMEWORK AND EVALUATION.

7. Section 48 of the Medical Schemes Act 131 of 1998 provides that a party aggrieved by a ruling of the Registrar may lodge an appeal with the Appeals Committee within three (3) months of the date of the ruling. The statutory time bar reflects the legislative intention that disputes concerning access to healthcare funding must be resolved expeditiously, with procedural certainty for both beneficiaries and schemes.
8. Furthermore, Section 48 of the Medical Schemes Act 131 of 1998 establishes the appellate mechanism available to parties dissatisfied with a ruling of the Registrar. The statute is drafted to balance the right of an aggrieved party to challenge a decision with the need to resolve funding disputes in a manner that is both efficient and time-sensitive. For this reason, section 48 requires that an appeal must be lodged within three months of the date of the Registrar's ruling. The intention is to promote finality, procedural certainty and continuity of access to healthcare, given that most disputes before the Appeals Committee concern the funding of medical treatment and therefore implicate time-critical clinical needs.
9. Where a party fails to lodge an appeal within the prescribed timeframe, that party may apply for condonation. Although the Act does not prescribe a rigid format for such an application, it is well-established that condonation must be sought on affidavit because the Committee is required to consider factual matters relating to time, causation, diligence, prospects of success and potential prejudice.
10. A condonation affidavit must therefore provide sufficient information to enable the Committee to understand when the ruling was communicated to the appellant, why the filing deadline was not met, whether the delay was unavoidable or within the appellant's control, whether steps were taken to comply with the timeframe once the delay became apparent, what prospects of success exist if condonation is granted, and whether granting or refusing condonation would be fair in the circumstances. The burden to demonstrate good cause for non-compliance rests squarely on the party seeking condonation; the

Committee is not permitted to infer reasons or assume justification where none is provided. Without sworn factual material, condonation cannot be properly motivated nor responsibly considered.

11. The guiding test for condonation is whether granting it would be in the interests of justice. The Labour Court in *De Gita v CCMA and Others (JR557/21) [2025] ZALCJHB 65 (18 February 2025)* confirmed that this assessment is holistic and considers multiple factors including:

1. length of the delay,
2. adequacy and reasonableness of the explanation,
3. prospects of success,
4. importance of the matter,
5. prejudice, and
6. impact on the administration of justice.

12. The Court emphasised that no single factor is individually decisive. However, where the delay is substantial and the explanation is absent or wholly deficient, condonation must be refused without it being necessary to evaluate prospects of success. Similarly, the existence of prima facie prospects cannot salvage a condonation application where the explanation is non-existent; the enquiry begins with the reasons for the delay. The Appeals Committee is guided by these principles in determining whether condonation advances or undermines the interests of justice.

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EVALUATION OF FACTS.

13. It is common cause that the appeal was not filed within the three-month period required by section 48. In an effort to ensure fairness and procedural justice, the Appellant was

¹ *De Gita v CCMA and Others (JR557/21) [2025] ZALCJHB 65 (18 February 2025) para 10-11.*

afforded an opportunity to apply for condonation and expressly directed that such application must be supported by a sworn affidavit explaining the reason for the lateness and addressing prospects of success and prejudice. Despite this clear direction and the time afforded, the Appellant did not file the required affidavit, nor did it provide any evidence capable of explaining the circumstances leading to the delay. As a result, the Committee was left with no factual basis upon which to evaluate whether the delay was justified, whether the Appellant acted diligently upon becoming aware of the Registrar's ruling, whether circumstances beyond the Appellant's control affected the filing process, or whether the Appellant took reasonable steps to avoid further delay.

14. Although the duration of the delay may not necessarily be excessive when viewed in isolation, the absence of any sworn explanation renders the delay unexplained in law. The condonation enquiry begins with the explanation for lateness; without it, the Committee cannot meaningfully assess prospects of success or the prejudice that may flow from granting or refusing condonation.
15. The Appeals Committee is not permitted to speculate in favour of the Appellant or fill evidentiary gaps on its behalf. In contrast to the absence of any explanation on the Appellant's part, the Respondent is a patient who experienced a serious medical episode and is entitled to finality and clarity concerning the funding of essential healthcare. Granting condonation without justification would postpone certainty in circumstances where time is clinically consequential and would unfairly prejudice the Respondent.
16. Allowing condonation in the absence of an evidentiary foundation would undermine the statutory requirement of timely dispute resolution and would erode the integrity and fairness of the appeals process. The Committee is obliged to uphold the objectives of the Act and ensure that parties who are dissatisfied with the Registrar's rulings pursue their remedies diligently and with due regard to the procedural safeguards designed to protect both beneficiaries and schemes.

COMPARATIVE ANALYSIS

17. In assessing the Appellant's request for condonation, the Appeals Committee considered the statutory and jurisprudential requirements governing late appeals and compared them with what the Appellant actually placed before the Committee. In terms of section 48 of the Medical Schemes Act, an appeal filed outside the prescribed three-month period may not be accepted unless the late-filing party requests condonation and provides a sworn explanation capable of demonstrating good cause for non-compliance.
18. The principles, as reflected in binding authority such as *De Gita v CCMA and Others (JR557/21) [2025] ZALCJHB 65*, require that the factual basis for condonation be clearly

set out so that the tribunal can evaluate the reason for the delay, whether the delay was reasonable or unavoidable, whether the party acted diligently once aware of the default, the existence of prospects of success, and the prejudice that may result from granting or refusing the indulgence.

19. When measured against these requirements, the Appellant's conduct in the present matter falls materially short. Although the Appellant sought condonation and expressed a desire for the appeal to be heard on its merits, it did not file the sworn affidavit that the Committee expressly directed it to file. No factual narrative was placed before the Committee explaining when the Appellant became aware of the Registrar's ruling, what prevented the Appellant from filing timeously, what internal or external obstacles were encountered, what steps were taken to rectify the delay, or whether the delay was due to reasons beyond the Appellant's control. There was equally no attempt to demonstrate prospects of success on appeal or to address the prejudice that the Respondent, a patient requiring certainty regarding healthcare funding, would face should the matter remain unresolved.
20. A comparison between what the legal framework requires and what the Appellant actually did therefore demonstrates a complete evidentiary deficit. Condonation cannot be granted on the basis of a request alone; it must be grounded in facts that satisfy the condonation criteria. In contrast to the total absence of an explanation from the Appellant, the prejudice to the Respondent is readily inferable from the circumstances, as any further delay prolongs uncertainty regarding access to treatment funding and undermines the purpose of time-bound dispute resolution in healthcare matters. To condone the delay despite the lack of any evidentiary justification would reverse the burden of proof, reward non-compliance and dilute the statutory intention that appeals under section 48 be prosecuted diligently and within defined procedural safeguards.
21. Accordingly, the comparative analysis demonstrates that there is no basis upon which condonation could lawfully or fairly be granted. The mandatory evidentiary threshold for deviation from the statutory three-month filing requirement has not been met, and the interests of justice favour upholding the Registrar's ruling and finalising the matter without permitting the appeal to proceed.

APPEALS COMMITTEE PERSPECTIVE

22. The Appeals Committee approached the matter mindful of its statutory mandate under section 48 of the Medical Schemes Act and the obligation to ensure that disputes

concerning access to healthcare funding are resolved fairly, lawfully and without undue delay. The Committee accepts that an appeal, if properly before it, triggers a reassessment of the Registrar's ruling on both the legal and clinical merits. However, an appeal may only be entertained where it has been instituted in accordance with the timeframes and procedural safeguards required by the Act. The Committee is therefore required to first satisfy itself that the appeal is properly before it before assessing the substantive merits.

23. In considering the legal framework, the Committee reiterates that section 48 requires an appeal to be lodged within a period of three months from the date of the Registrar's ruling. This time limit is not a technicality but a deliberate statutory mechanism designed to protect both beneficiaries and schemes by ensuring procedural certainty and the timely resolution of funding disputes. Where the timeframe is not met, the appellant must seek condonation, supported by sworn evidence, so that the Committee can determine whether the delay was justified, whether prospects of success exist, and whether the interests of justice support the late acceptance of the matter.
24. The legal principles governing condonation are well established. The Appeals Committee is guided by the same jurisprudential approach described in *De Gita v CCMA and Others (JR557/21) [2025] ZALCJHB 65*. Condonation is not a mere formality nor an automatic remedy; it is an equitable discretion exercised only when the delay is properly explained and when the interests of justice favour granting the indulgence. The starting point is always the explanation for the lateness. Where there is no explanation, or where the explanation is so sparse that it cannot be evaluated, the interests of justice do not permit condonation, and it becomes unnecessary, and in fact impossible, to proceed to an assessment of prospects of success.
25. Applying these principles to the facts of the present matter, the Committee notes that the Appellant did not lodge its appeal within the prescribed statutory timeframe and thereafter requested an extension of time. In the interests of fairness, the Committee afforded the Appellant a generous opportunity to cure the non-compliance and expressly directed that a sworn affidavit be filed to explain the lateness and address prospects of success. The Appellant did not comply with this requirement and did not file an affidavit. Consequently, there is no factual record explaining why the deadline was missed, what circumstances caused the delay, whether the Appellant acted promptly once aware of the delay, or whether the Appellant took reasonable steps to ensure compliance. Without sworn evidence, the Committee is unable to evaluate whether the delay is reasonable or whether condonation would be in the interests of justice.
26. The Committee further notes that the Respondent is a patient who suffered a serious medical event and who requires timely certainty in respect of entitlement to healthcare funding. Any prolonged delay in the finalisation of the matter has direct implications for

treatment security and, consequently, for the Respondent's health and wellbeing. Granting condonation where no justification has been provided would therefore result in unfair prejudice to the Respondent, undermine the purpose of section 48, and compromise public confidence in the efficiency and fairness of the appeals process.

27. In the absence of an affidavit explaining the lateness, the Committee is left with no lawful basis to depart from the statutory three-month time limit. The interests of justice do not support condonation where the delay is wholly unexplained. Accordingly, the appeal cannot be accepted for adjudication on its merits. Because condonation has failed, the Committee lacks jurisdiction to interfere with the Registrar's ruling. The Registrar's findings, made after full consideration of the Clinical Review Committee's conclusions and the applicable legal framework, remain operative and binding. For these reasons, the Appeals Committee upholds the Registrar's ruling and dismisses the condonation application.

FINDINGS

28. Having considered the matter in its entirety, the Appeals Committee finds that the Appellant has failed to meet the statutory and evidentiary threshold required for condonation. It is undisputed that the appeal was not filed within the three-month timeframe prescribed by section 48 of the Medical Schemes Act. While the Appellant was afforded an opportunity to apply formally for condonation and clearly directed that such application must be supported by a sworn affidavit explaining the lateness and addressing prospects of success and prejudice, no affidavit was filed. The Committee was therefore left with no admissible evidence capable of establishing a factual basis for the delay.

29. The Committee regards the absence of an affidavit not merely as a technical omission but as a substantive failure that renders the explanation for the delay non-existent in law. Without an affidavit, the Committee is unable to determine whether the delay was caused by unavoidable circumstances, whether the Appellant acted diligently or promptly once aware of the missed deadline, whether internal processes prevented timeous filing, or whether the Appellant took any steps to mitigate the delay. In the absence of such information, the Committee cannot proceed to evaluate the remaining factors in the condonation enquiry because the jurisprudence establishes that the explanation is the point of departure. If the explanation does not exist or is incapable of assessment, the interests of justice do not favour condonation.

30. The Committee's findings further take into account that the Respondent is a patient who suffered a serious medical condition and who requires certainty regarding access to healthcare funding. Delaying finality by allowing an appeal to proceed without evidentiary

justification would disproportionately prejudice the Respondent, who bears the risk of interrupted treatment or financial uncertainty should the matter remain unresolved. To grant condonation in such circumstances, where no reasons for the delay have been placed before the Committee, would undermine both procedural fairness and the statutory objective of expeditious resolution of healthcare funding disputes.

31. The Committee also notes that condonation cannot be granted on the basis of speculation about possible prospects of success. In accordance with the principles articulated in *De Gita v CCMA and Others (JR557/21) [2025] ZALCJHB 65*, prospects of success, even if potentially present, cannot substitute for or cure an absent explanation. The Committee is not permitted to infer justification where none has been advanced, nor can it overlook non-compliance with the Act where no factual basis exists on which to exercise discretion in favour of the late-filing party. The Appellant has therefore not demonstrated good cause, either procedurally or substantively, for the failure to comply with the statutory filing deadline.
32. Accordingly, the Appeals Committee finds that it would not be in the interests of justice to grant condonation. The failure to comply with the statutory timeframe, coupled with the complete absence of any sworn explanation, deprives the Committee of jurisdiction to consider the merits of the appeal. The Registrar's ruling, having been made pursuant to a proper clinical and legal assessment, remains operative and binding. The condonation application is therefore dismissed, and the appeal cannot proceed.

ORDER

33. Having considered the application for condonation and the submissions placed before it, and having determined that the Appellant has failed to provide a sworn explanation for the late filing of the appeal as required in terms of section 48 of the Medical Schemes Act, the

Appeals Committee makes the following order:

34. The application for condonation is refused.
35. As condonation has not been granted, the Appeals Committee has no jurisdiction to consider the merits of the appeal.
36. The decision of the Registrar issued in terms of section 47 of the Medical Schemes Act remains final and binding.

THUS, DONE AND SIGNED AT CENTURION ON THIS THE 25th DAY OF NOVEMBER 2025.

SIGNED
DR X NGOBESE
Presiding Member

Dr T Mabeba, Advocate T Maphike and Dr H Mukhari, members of the appeal panel concurring.