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S o.b.o R v Libcare Medical Scheme

Retrospective termination of a dependant

This complaint was lodged by S ("the Complainant") on behalf of Mr. R ("the Member") against Libcare Medical Scheme ("the Respondent") concerning the Respondent's decision to retrospectively terminate the membership of the member's ex-wife, Ms R ("the dependant"), as a dependant following their divorce in 2010.

The Complainant submitted that the member, is a member since 1985, had consistently paid premiums for both him and the dependant.. The Complainant argued that the member had disclosed the divorce to his employer's Human Resources department and sought advice regarding the dependant 's continued membership. Despite this, the Respondent unilaterally terminated her membership with retrospective effect from 30 June 2010, reversed all contributions, and demanded repayment of R417,934.16, which it alleged was the value of benefits improperly paid. The Complainant described the Respondent's actions as unlawful, contradictory, and prejudicial, leaving the dependant without medical aid cover and at risk of waiting periods and penalties.

In its response, the Respondent stated that it first became aware of the divorce on 24 May 2024 when the dependant disclosed it while requesting claims information. The Respondent maintained that its rules, communicated annually through Member Guides, clearly stipulate that ex-spouses are not eligible dependants post-divorce and that members must notify the scheme of such changes within 30 days. It argued that no formal disclosure was made by the member, and consequently, it was compelled to backdate the termination to the date of ineligibility. Contributions made post-divorce were reversed and offset against claims, creating the outstanding debt. The Respondent also noted that the member's reliance on alleged permission from his employer to retain his ex-wife was irrelevant, as employer arrangements cannot override scheme rules.

The Registrar's investigation confirmed that the divorce terminated the dependant's eligibility as a dependant under the Respondent's rules, which define a dependant as a current spouse or partner. Rule 7.2.1 obliges members to disclose any event affecting a dependant's eligibility within 30 days,

while Rule 7.2.2 and Section 29(2)(e) of the Medical Schemes Act 131 of 1998 permit retrospective termination and recovery of benefits in cases of material non-disclosure. Furthermore, Rules 14.2 and 14.3 empower the Respondent to recover benefits paid in error.

The member's argument that the Respondent should have known of the divorce through his employer or loyalty programmes was rejected. The Registrar held that the contractual relationship was directly between the member and the Respondent, and the member bore the duty of disclosure. Continued acceptance of contributions post-divorce did not confer eligibility, as the Respondent was unaware of the change in status. Additionally, the member's obligations under the divorce decree could have been fulfilled through alternative medical aid arrangements and could not compel the Respondent to act contrary to its rules.

The Registrar concluded that the Respondent's actions were legally sound and consistent with Section 32 of the Medical Schemes Act, which makes scheme rules binding on members. The retrospective termination of the dependant's membership and recovery of benefits paid was justified and in line with the statutory framework.

The Registrar found that the member failed to disclose a material change in his dependant's eligibility status for over 13 years. The Respondent was justified in terminating the ex-spouse's membership, reversing claims, and initiating recovery of the outstanding debt. The complaint was dismissed.