



## PRESS RELEASE

Reference : Medical schemes must exhaust internal remedies at the CMS  
Date : 12 December 2013

### **Press release 19 of 2013: Medical schemes must exhaust internal remedies at the CMS**

Medical schemes must exhaust all internal remedies available at the Council for Medical Schemes (CMS) before they approach the courts. Decisions of the Registrar can be appealed to the Appeals Committee of Council, and its rulings can in turn be challenged with the independent Appeal Board.

The North Gauteng High Court in Pretoria clarified this principle in law on 27 November 2013 when it dismissed an application from Genesis Medical Scheme to set aside the ruling of the Appeals Committee and to refer the matter back to a differently constituted Appeals Committee for a rehearing. The scheme's exemption application from the requirement to exhaust internal remedies was also dismissed. The court found that the scheme should have taken its appeal to the Appeal Board, clarifying that the Appeal Board has the power to correct any procedural irregularities of the Appeals Committee.

The exhaustion of internal remedies is required by the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

"This is a very useful ruling," said Dr Monwabisi Gantsho, Chief Executive of the CMS and Registrar of Medical Schemes. "It confirms and clarifies the processes prescribed by the Medical Schemes Act, and specifically how appeals should be conducted. Only exceptional circumstances allow deviation from prescribed processes, and when deviation is in the interest of justice."

The CMS is the regulator of the medical schemes industry, responsible for enforcing compliance with the Medical Schemes Act 131 of 1998 to ensure that the interests of beneficiaries are protected and prioritised at all times.

Genesis is an open medical scheme that had about 20 000 beneficiaries at the end of 2012, and a solvency (reserves expressed as a percentage of contributions) of 123.4% – well above the 25.0% required by the Medical Schemes Act. The scheme is financially stable and sustainable in the long run, and it is able to honour its claims-paying responsibility.

#### **Why Genesis appealed**

In August 2007 a member of Genesis underwent spinal surgery. The day before the operation she sought pre-authorisation for the procedure. The scheme advised her to seek a second opinion but by the time the scheme had responded the member was already in surgery. Genesis then refused to fund the medical bills, arguing that the member had failed to comply with its spinal surgery protocol. When the member took the matter to the CMS, the Registrar ruled in her favour.

Genesis (procedurally correctly) appealed this decision to the Appeals Committee of Council; the Committee agreed with the Registrar and instructed the scheme to cover the costs of the surgery. Genesis then approached the High Court in Pretoria; it should have appealed to the Appeal Board, as prescribed by the Medical Schemes Act.

Now that the court has dismissed the scheme's application, the ruling of the Appeals Committee stands until it is overturned by a higher administrative body or court. Genesis lodged a "provisional appeal" to the Appeal Board in September 2010 pending the outcome of its review application to the High Court. If the scheme confirms that it now wishes to proceed with the appeal before the Appeal Board, the matter will merely have to be set down for hearing.

### **How the appeals process works**

If you are unhappy with the conduct of your scheme, try to resolve the matter with your scheme first, before coming to the CMS and lodging a formal complaint against your scheme in terms of Section 47(1) of the Medical Schemes Act.

The Medical Schemes Act – and accordingly the rules of every registered medical scheme in the country – prescribes that schemes must provide for the settlement of any complaint or dispute.

If your scheme deals with the matter and the Principal Officer or an Executive Committee makes a decision, you can lodge an appeal against such a decision to Council – and you should do so within three months. This is according to Section 48 of the Medical Schemes Act.

If you lodge a complaint with us and wish to appeal our decision (made by the Registrar), then you should also appeal to Council – but you should do so within 30 days. This is according to Section 49 of the Medical Schemes Act.

In both Section 48 and Section 49 appeals, Council is represented by one of its sub-committees, namely the Appeals Committee.

Section 50 of the Medical Schemes Act gives you 60 days to appeal a decision of the Appeals Committee to the Appeal Board.

### **Where to find the Genesis judgement**

The judgement in the Genesis matter (case number 2639/2011) is available on the CMS website: [http://www.medicalschemes.com/files/Judgements%20on%20Appeals/Genesis\\_%20HCJM2013.pdf](http://www.medicalschemes.com/files/Judgements%20on%20Appeals/Genesis_%20HCJM2013.pdf).

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