



PRESS RELEASE

Reference : Government Employees Medical Scheme cannot pick and choose
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Press release 6 of 2012: Government Employees Medical Scheme cannot pick and choose

Last month an independent appeal board ruled that the Government Employees Medical Scheme (GEMS) must comply with legislation and accept any and all individuals or groups who wish to join the scheme, the only condition being that the individuals or groups be previous or current employees of the South African government or a public entity created by statute.

This came after GEMS had relentlessly tried for more than two years to change one of its rules to render certain applicants ineligible for its membership. The Council for Medical Schemes (CMS) had consistently rejected the scheme's attempts to limit its accessibility – and finally came out victorious when the independent Appeal Board made its ruling last month.

The CMS is the regulator of the medical schemes industry tasked with enforcing the Medical Schemes Act 131 of 1998, which makes provision for registering medical schemes and their rules.

GEMS is the largest restricted medical scheme in the country, covering almost 1.5 million lives at the end of December 2010. It is also the fastest-growing medical scheme in South Africa.

“This ruling confirms that medical schemes are not allowed to unfairly discriminate against applicants on the basis of any arbitrary grounds,” said Dr Monwabisi Gantsho, the Registrar of Medical Schemes and Chief Executive of the CMS. “Restricted medical schemes may apply eligibility criteria, but those must also comply with existing legislation and be fair.”

“This ruling is a milestone in the medical schemes regulatory environment,” Dr Gantsho added. “It further protects the vulnerable former employees of government and public entities who may wish to be members of a medical scheme in terms of the Medical Schemes Act.”

The Appeal Board's ruling effectively defends and clarifies the open enrolment provision contained in the Medical Schemes Act which says that the only way in which a medical scheme can limit its membership is by registering as a restricted medical scheme which applies eligibility criteria to its applicants. And even

once you are registered as a restricted medical scheme, the eligibility criteria which you apply must be legally sound and, by implication, fair.

Some history

The Medical Schemes Act allows for two types of medical schemes: open and restricted.

GEMS registered as a restricted medical scheme on 1 January 2005; it started operating on 1 January 2006. Unlike open medical schemes, restricted medical schemes are allowed to limit their membership in accordance with specific eligibility criteria specified in the Medical Schemes Act.

In the case of GEMS, membership is limited to employees or employee groups previously or currently employed by the state or a public entity which derives its existence from statute.

The Medical Schemes Act defines a restricted medical scheme as a “restricted membership scheme [...], the rules of which restrict the eligibility for membership by reference to:

- (a) employment or former employment or both employment or former employment in a profession, trade, industry or calling;
- (b) employment or former employment or both employment or former employment by a particular employer, or by an employer included in a particular class of employers;
- (c) membership or former membership or both membership or former membership of a particular profession, professional association or union; or
- (d) any other prescribed matter”.

But in September 2009, GEMS approached the CMS to try and amend its eligibility requirements to exclude “major public entities and employees of municipalities or other local government departments, administrations, organi[s]ational components and agencies”, to quote a part of the Appeal Board’s ruling.

The CMS refused to register this rule amendment because it was deemed inconsistent with the Medical Schemes Act and specifically Sections 29(3)(a) and 29(3)(b), which state that the only instance where applicants can be turned away from a medical scheme is if the scheme is a restricted scheme whose eligibility criteria comply with the Medical Schemes Act. This decision was later upheld by the Appeals Committee of the CMS when GEMS appealed the decision.

GEMS then approached the independent Appeal Board, who dismissed its appeal.

The full ruling of the Appeal Board can be found on the CMS website: http://www.medicalschemes.com/files/Judgements%20on%20Appeals/GemsVsRegistrar_n_CMS.pdf.

For more information

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