

THE COUNCIL FOR MEDICAL SCHEMES
APPEAL COMMITTEE

In the matter between:

GENESIS MEDICAL SCHEME

Appellant

and

AV

Respondent

APPEAL RULING

1. On 24 June 2005 the Respondent applied to be admitted as a member of the Appellant. He completed and signed the Appellant's standard membership application form.

2. Included in the application form was the following:
 - 2.1. A caution, at the beginning of section F of the form, that the medical history must be filled in by the Applicant personally and that failure to fully answer

the questions could have the effect that the scheme could declare the membership void;

- 2.2. Question 8 under section F concerning whether the Applicant or his or her dependants had suffered from any digestive system disorders. This question was answered in the negative by the Applicant;
- 2.3. Question 9 paragraph under section F concerning whether the Respondent or his or her dependants had suffered any gynaecological condition, advice, tests or hospitalisation in the previous 10 years. Once again the Appellant answered a negative;
- 2.4. Question 14 of section F which asked whether the Applicant or his or her dependants had sought medical advice in the previous 6 months for anything that was not routine. Again the Appellant answered in the negative;
- 2.5. The Appellant was also informed that the list of conditions contained in section F was not necessarily complete and was asked whether the Applicant or his or her dependants had any condition or symptom not covered by the specific questions which might be relevant. In response to this question the Appellant

provided a detailed list of treatments that he had previously received including treatment for high cholesterol, an appendectomy, and treatment of a fractured forearm;

2.6. In section G of the application form, the Appellant was asked whether he or any of his dependants had, during the previous twelve months, received any medical advice, taken any medication or been treated for any condition. Again, the Appellant answered in the negative;

2.7. Lastly, by signing the form the Appellant declared that he had answered the questions therein fully and honestly.

3. The information provided by the Appellant was not complete. In fact, his wife (who was his dependant) had received medical treatment in the previous six months for irritable bowel syndrome and dysmenorrhoea. The former is a digestive system complaint, the latter is a gynaecological condition.

4. On 30 June 2006, upon discovery of this information, the Appellant terminated the Respondent's membership on the basis of the non-disclosure of these conditions.
5. The member complained to the Council, and the Registrar ruled that the termination of membership had been unjustified as there had been no non-disclosure of any material information, and that the non-disclosure of which the Appellant complained was of no consequence to it.
6. This Committee has recently held, in numerous rulings, that the statutory regulatory regime in place governing the operation of medical schemes has the effect that they are not free to choose the parties with whom they wish to contract or the terms upon which they are prepared to contract. This is because of the open enrolment provided for in section 29(3) of the Medical Schemes Act, the restrictions on conditions and waiting periods that are provided for in the Act and the prohibition on the exclusion of prescribed minimum benefits..
7. The Committee has held that the disclosure of factual information has an effect beyond the individual relationship

between the Applicant and the Scheme. It is on the basis of the factual information disclosed that schemes are able to determine their overall risk and the benefits that they can consequently offer to members and the contributions that they will levy.

8. The Committee has consequently held that a non-disclosure of information will be material if it will affect the ability of the scheme to assess its overall risk, in the context of these broader considerations.
9. Seen in this context the non-disclosure of which the Appellant complains in this dispute is, in the view of the Appeal Committee, material.
10. Furthermore, with regard to the facts of the particular dispute, the two conditions which the Respondent failed to disclose, namely the irritable bowel syndrome and the dysmenorrhoea, were not prescribed minimum benefit conditions and were in fact conditions in respect of which, had they been disclosed, the Appellant would have been entitled to impose waiting periods. The disclosure of these conditions would thus have had a direct

effect on the basis upon which the specific contract between the Appellant and the Respondent was concluded.

11. In these circumstances the Appeal Committee disagrees with the conclusion by the Registrar that the non-disclosure was not material. The Committee concludes that the non-disclosure of these conditions was, in the circumstances, material, and that this non-disclosure therefore justified the Appellant in cancelling the Respondent's membership of the scheme.
12. In the circumstances the ruling of the Registrar is overturned and the Appeal succeeds.

DATED at JOHANNESBURG on the 13th day of MARCH 2008

P R JAMMY

For: Appeal Committee