

THE COUNCIL FOR MEDICAL SCHEMES

APPEAL COMMITTEE

In the matter between:

OXYGEN

Appellant

and

REGISTRAR OF MEDICAL SCHEMES

First Respondent

MIS ENGINEERING (PTY) LIMITED

Second Respondent

APPEAL RULING

1. Prior to December 2005 the Second Respondent belonged to the Appellant medical scheme, and all of its employees were members thereof.
2. The First Respondent restructured its operations in December 2005, as a result of which a portion of its employees joined Spectramed Medical Scheme. The remainder of its employees wished to remain as members of the Appellant.
3. Rule 10.5.1 of the Appellant's rules provides that where an employer belongs to the Appellant as a group, and terminates such membership, the membership of the individual participants will automatically be cancelled. The result of this is that should any individual employee wish to remain as a member of the

Appellant, that individual would have to apply for membership in the ordinary course and the usual underwriting principles would be applied by the scheme.

4. Notwithstanding the provision in its rules, on 9 December 2005 an e-mail was sent from the Appellant's administrators, Old Mutual Healthcare, indicating that those employees of the First Respondent who did not wish to terminate their membership with the Appellant could continue as private members.
5. The Appellant contends that the author of this e-mail was not authorised to make this offer, and that due to technical problems within the Appellant's operations this error was not detected.
6. The Appellant seeks to apply its rules and to require the individuals in question to apply for membership in their own right.
7. There can be no question that the Appellant would, in December 2005, have been entitled to apply the provisions of its rules strictly. By way of the e-mail dated 9 December 2005, however, it conveyed to the affected individuals, that it had taken a decision not to do so. It now seeks to escape the consequences of that representation. In the Appeal Committee's view it cannot do so.
8. The administrator of a medical scheme is, almost invariably, the public interface between the scheme and its members. An individual dealing with a scheme's administrator is entitled to rely on any representation made by the administrator, and is entitled to assume that the administrator is duly

authorised. Whilst the administrator may, in these circumstances, have gone beyond the scope of its mandate, that is an issue between the scheme and the administrator. If the scheme suffered damages as a result thereof, it is to the administrator that it must look for recourse.

9. As a result the appeal fails and the Appellant is ordered to allow the individuals concerned to retain their membership of the Appellant, on an uninterrupted basis, and to meet the costs of services rendered to those individuals for which the scheme would have been liable had it not terminated the membership of these individuals.

DATED at JOHANNESBURG this 30th day of MAY 2007

P R JAMMY
Member
For: Appeal Committee