

THE COUNCIL FOR MEDICAL SCHEMES

APPEAL COMMITTEE

In the matter between:

DJ

Appellant

and

SPECTRAMED

Respondent

APPEAL RULING

1. The Appellant applied for membership with the Respondent in 2005. In completing her membership application form she failed to disclose that she had undergone surgery on her right ear approximately 25 years ago for partial deafness. She had further problems with this ear approximately 9 or 10 years ago at which stage she was given a hearing aid which she chose not to use.
2. In 2006 she experienced further difficulties with her hearing, and the use of a hearing aid was again recommended. When she requested authorisation for this expenditure from the Respondent she was asked whether she had ever previously had hearing difficulties and she disclosed that she had.

3. The response of the Respondent's representative was that as a result of the non-disclosure of this condition at the time of her application for membership, the Respondent would impose a one-year waiting period in respect of this condition. The Appellant accepted the Respondent's decision as being fair.
4. In September 2006 the Appellant applied for, and received, authorisation from the Respondent for bladder surgery. The authorisation was granted on 18 September 2006 and the surgery proceeded on that day.
5. On 4 October 2006 the Appellant received a letter from the Respondent, dated 28 September 2006, terminating her membership with effect from 31 August 2006. On the strength of this termination the Respondent declined to pay the costs associated with the bladder surgery on 18 September 2006.
6. Having regard to this sequence of events the *bona fides* of the Respondent must inevitably be brought into question. It is clear that the Respondent, upon discovering that the Appellant's hearing condition had not been disclosed, took a decision to impose a limitation on her benefits, rather than to terminate her membership.
7. Whether or not the Respondent would, at that stage, have been entitled to terminate the Appellant's membership on the basis of the non-disclosure or a material condition is irrelevant. It chose not to do so. It cannot distance itself from the representation of its representative, made to the Appellant, that the

consequence of this non-disclosure would be the imposition of a twelve-month condition specific waiting period.

8. It was only when the Respondent faced a further, unrelated, claim for expenses from the Appellant that it changed its position. Not only did it decide, at this later stage, that it would terminate the Appellant's membership, but it did so in a manner that left the Appellant liable for costs which the Respondent had previously authorised. There can be no question that the date chosen by the Respondent for the termination of the membership, 31 August 2006, was designed to ensure that the costs for the surgery on 18 September 2006 would not be covered.
9. The Appeal Committee finds that the conduct of the Respondent, as described above, was both unconscionable and unlawful. The Respondent was bound by its initial decision not to terminate the Appellant's membership as a result of the non-disclosure of her pre-existing condition. Its attempt to reverse this decision and to do so in a manner that would avoid liability for costs that it had already authorised is clearly unacceptable.
10. The appeal therefore succeeds and the Respondent is ordered to reinstate the Appellant's membership retrospectively to 31 August 2006.

DATED at JOHANNESBURG this 30th day of MAY 2007

P R JAMMY
Member
For: Appeal Committee