

**THE COUNCIL FOR MEDICAL SCHEMES
APPEAL COMMITTEE**

In the matter between:

GENESIS MEDICAL SCHEME

Appellant

and

WB

Respondent

APPEAL RULING

1. The Respondent is a member of the Appellant medical scheme and his wife is a dependant on such scheme.

2. On 6 July 2005, having first invited representations from the Respondent, the Appellant took a decision to permanently exclude the Respondent's wife from benefits with respect to Dorsalgic and Gynaecological conditions. The permanent exclusion with regard to Dorsalgic conditions was imposed because the Appellant believed that the Respondent's wife had been diagnosed with a disc lesion in her lower back (L5/S1) on 23 December 2004, which the Respondent had failed to disclose in his application for membership, dated 3 February 2005.

3. The exclusion with regard to gynaecological conditions was imposed because the Appellant believed that in the middle of February 2005 the Respondent's wife began experiencing gynaecological problems, and thus should have informed the Appellant of such problems, in circumstances where the Respondent was only admitted as a member of the Appellant on 2 March 2005.
4. Section F of the Applicant's Membership Application form, which requests a medical history of the applicant and dependants, asks whether any of these persons has, in the last ten years, experienced *'conditions of the joints or spine, including rheumatism, arthritis, neck or back disorders or any physical disability'*. According to the Respondent, his wife had been examined by Doctor X in 2004 because of lower back pain, but that Doctor X had made no diagnosis and had merely recommended the use of Voltaren.
5. If this is correct, this would not indicate the diagnosis of a back disorder, such as would be required to be disclosed in completing question 4 of section F of the application form.
6. The Appellant, however, has acted on the belief that what was in fact diagnosed in December 2004 was a disc lesion. A disc lesion would, indeed, be a back disorder of the type that would require disclosure.

7. The Respondent's contention that no such diagnosis was made in December 2004 is supported by the fact that no x-ray or MRI scan of his wife's back was taken at that date, during Doctor X's examination. In the absence of such an x-ray or scan it would have been impossible for Doctor X to diagnose a disc lesion, and in particular to identify the particular vertebrae affected by such a condition.

8. Whilst the records before the appeal committee (pg 10) contain a record of consultations in which, against the date 23 December 2004 is recorded the words '*disc lesion L5/S1*', there was no evidence before the committee as to whether this was a contemporaneous note and as to whom the author of the note was. The note therefore, cannot be used to contradict the evidence of the Respondent with regard to what took place in December 2004.

9. In the circumstances there was no basis for the Appellant to conclude that there had been a non-disclosure by the Respondent with regards to his wife's back condition.

10. The situation regarding the Respondent's wife's gynaecological problems is somewhat different. It was admitted during the appeal hearing, and had previously been conceded by the Respondent, that his wife began experiencing gynaecological problems in the middle of February 2005.

11. Section J of the Membership Application form contains the following paragraph:

'I undertake to advise the scheme of any change in my state of health or that of my dependants which occurs prior to my receiving acceptance of this application.'

12. The gynaecological problems experienced by the Respondent's wife in February 2005 constituted a change in the state of her health. There was an obligation upon her to draw this change to the attention of the scheme, and she did not do so. Her failure in this regard constitutes a non-disclosure of a material fact and the Appellant has thus entitled to oppose a sanction on her as a result thereof.
13. The sanction that the Appellant chose to impose was the permanent exclusion of any benefits related to the affected conditions.
14. In its initial ruling in this complaint, the Registrar's office ruled that a sanction of the nature was impermissible, and to the extent that it was provided for in Rule 13(4) of the Appellant's rules, such rule was *ultra vires*.
15. It is trite, and is common cause, that a scheme is entitled to terminate membership of a member upon discovery that there has been a material non-disclosure of fact in the application for membership. The same would apply with regard to the non-disclosure of a change in condition

during the period between the application of the membership and the commencement of membership.

16. The indefinite exclusion of a particular benefit is a lesser sanction than the termination of membership. This must be so, because the member subject to such exclusion is still entitled to normal benefits of membership with regard to all other conditions. Of course, a member may be dissatisfied with the imposition of such a sanction, and it is then open to such member to resign from the scheme.

17. Whilst it is unusual, the imposition of a permanent exclusion of benefits in respect of a particular condition would not appear to the appeal committee to be in contravention of section 29 (2) of the Act. That section provides that the cancellation or suspension of membership is permissible where there has been a non-disclosure of material information. The effect of section 29 (2) is to prescribe the only circumstances in which a cancellation or suspension of membership is permissible. Section 29 (2) does not purport to set out exhaustively the range of sanctions available to a scheme in response to a non-disclosure of material information. It merely states that suspension or cancellation of membership in such circumstances is permissible.

18. As has been argued by the Appellant, the model rules published by the council include a rule which envisages an exclusion from benefits, as an alternative to the termination of membership, as a sanction for the non-

disclosure of factual information. The Appellant can hardly be blamed for structuring its own rules in the manner suggested by the model rules.

19. Whilst the appeal committee is not bound by the content of the model rules, and whilst a provision in the model rules that is inconsistent with the Act would not justify the inclusion of such provision in the rules of any particular scheme, the appeal committee is of the view that neither the model rules nor the rules of the scheme contain such a provision.
20. In the circumstances the sanction imposed by the Appellant is not, in the view of the appeal committee impermissible *per se*.
21. The result of the foregoing is that the appeal committee finds that the exclusion of benefits with regard to dorsalgic conditions was unjustified and must be reversed. The appeal committee finds that the exclusion of benefits with regard to gynaecological conditions was justified, and may be enforced by the Appellant.

DATED AT JOHANNESBURG THIS DAY OF MARCH 2007

P R JAMMY
FOR: APPEAL COMMITTEE