

**THE COUNCIL FOR MEDICAL SCHEMES
APPEAL COMMITTEE**

In the matter between:

HM

Appellant

and

KWA-ZULU NATAL MEDICAL SCHEME

Respondent

APPEAL RULING

1. On 24 October 2005 the Board of Trustees of Omni Health Medical Scheme held a meeting and concluded that the financial situation of the scheme was so dire that it was impossible for the scheme to continue to function.
2. In response to this the Registrar of Medical Schemes brought an urgent application to the High Court to have Mr Boysie Phehlukwayo appointed as a curator to Omni Health Medical Scheme.
3. The curator's first action was to negotiate an agreement with Kwa-Zulu Natal Medical Scheme to transfer all of the Omni Health members to the Kwa-Zulu Natal Medical Scheme with effect from 1 November 2005. On

31 October 2005 the curator addressed a letter to all of the members of the scheme informing them of this development. The transfer to Kwa-Zulu Natal Medical Scheme was on essentially the same terms, conditions and benefits as applied to their membership of Omni Health.

4. The Appellant was one of the members of Omni Health Medical Scheme who was automatically transferred to Kwa-Zulu Natal Medical Scheme as a result of this agreement.
5. It appears that the Appellant became aware of this development only on 4 November 2005, when he received the aforesaid notice.
6. The Appellant had no desire to belong to the Kwa-Zulu Natal Medical Scheme. On 14 November 2005 he informed the schemes administrators of his resignation. However, the resignation was subject to a notice period, and was effective only at the end of December 2006.
7. The Appellant's complaint is twofold. Firstly, he claims he was not reimbursed for any of his medical expenses during the months of November and December 2006. Secondly, he complains that he was compelled to belong to the Kwa-Zulu Natal Medical Scheme for that period, despite never having elected to join, and that contributions were taken from him for this period without his consent or approval.

8. The Appellant asks the appeal committee to rule that the Kwa-Zulu Natal Medical Scheme be obliged to refund his contributions for November and December 2006.
9. The Appellant's complaint that he was deprived of his freedom of choice prior to the transfer of his membership from Omni Health to Kwa-Zulu Natal Medical Scheme has some merit. In the ordinary course members of the public have complete freedom to choose which organisations, associations or commercial entities they wish to belong.
10. However, the particular circumstances of this dispute need to be considered. The curator appointed to look after the affairs of Omni Health Medical Scheme and its members was faced with a financial crisis. The scheme could not continue to operate and there was a threat that the members of the scheme would be left without any medical cover.
11. In the circumstances the curator negotiated a commercial arrangement with another scheme in terms of which the medical benefits to which the members of Omni Health had been entitled continued uninterrupted. That meant that those members were transferred to another scheme, and in the circumstances and the urgency of the crisis required that this be done without first obtaining the consent of each individual or member.

12. No member was, however, compelled to remain a member of the Kwa-Zulu Natal Medical Scheme. Any member could, as the Appellant did, resign from such membership. The effect of that resignation was the same as it would have been had the member still been a member of Omni Health. The resignation required one calendar month's notice, which meant that a resignation given in November 2006 would be effective only at the end of December 2006. That would have been the case had the Appellant resigned from Omni Health on the same date.
13. In the circumstances the Appellant's freedom of choice, whilst it was circumscribed by the necessity of the situation, was not all together extinguished. The limitation on his freedom of choice needs to be balanced against the interests of all of the members of Omni Health, and in the circumstances it cannot be said that the curator acted unreasonably.
14. The appeal committee thus concludes that there is no basis upon which the Appellant can claim back his contributions for November and December 2006. Of course, the Kwa-Zulu Natal Medical Scheme must pay all of the benefits to which the Appellant was entitled to in that period, and it has indicated that it is more than willing to do so.
15. The result of the foregoing is that the appeal must fail.

DATED AT JOHANNESBURG THIS DAY OF MARCH 2007

P R JAMMY
FOR: APPEAL COMMITTEE