

**IN THE APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL
SCHEMES**

In the matter between:

OXYGEN MEDICAL SCHEME

Appellant

and

REGISTRAR OF MEDICAL SCHEMES

Respondent

RULING

- [1] This is an appeal against the decision of the Registrar in which he required the Oxygen Medical Scheme to amend two of its rules within 30 days so that they complied with section 29(3) of the Medical Schemes Act, 131 of 1998 (“the MSA”).
- [2] Section 29(3) of the MSA prohibits the exclusion of persons from membership of a medical scheme except where the scheme concerned is a restricted membership scheme as defined in the MSA, and the person concerned does not meet the criteria for membership of such a scheme. Ms Le Roux, who appeared for Oxygen, did not argue that Oxygen is a

restricted membership scheme and that the provisions of section 29(2) of the MSA constitute the scheme's membership criteria. Such an argument would in any event not have availed the scheme because the criteria for restricted membership schemes are exhaustively laid down in the definition section of the MSA and do not extend to other criteria not contained therein.

[3] Section 29(3) must be read together with section 29(2). The two sections provide as follows:

“(2) A medical scheme shall not cancel or suspend a member's membership or that of any of his or her dependants, except on the grounds of-

- (a) failure to pay, within the time allowed in the medical scheme's rules, the membership fees required in such rules;
- (b) failure to repay any debt due to the medical scheme;
- (c) submission of fraudulent claims;
- (d) committing any fraudulent act; or
- (e) the non-disclosure of material information.

(3) A medical scheme shall not provide in its rules-

- (a) for the exclusion of any applicant or a dependant of an applicant, subject to the conditions as may be prescribed, from membership except for a restricted membership scheme as provided for in this Act;
- (b) for the exclusion of any applicant or a dependant of an applicant who would otherwise be eligible for

membership to a restricted membership scheme;
and

- (c) for the imposition of waiting periods other than as provided for in section 29 (A).”

- [4] What the scheme in this case seeks to do is exclude persons from membership who have in the past fallen foul of the provisions of section 29(2). It argues, in effect, that if membership can be suspended or cancelled on those grounds, it must also be competent to exclude persons whose membership has been cancelled or suspended on those grounds. This, in the appeal committee’s view, is precisely the sort of thing that section 29(3) seeks to prevent.
- [5] In any event, the appellant has an insurmountable problem by which this appeal can be disposed of. The appellant lodged this appeal on 19 September 2007 against a decision of the Registrar dated 29 August 2007 which the appellant received on 10 September 2007. Section 49(1) of the MSA pursuant to which this appeal has been lodged requires that appeals be lodged within 30 days after the date on which the Registrar’s decision was given. This appeal was lodged on 19 November 2007 while the Registrar’s decision was given on 29 August 2007 but received on 10 September 2007. The appeal is thus out of time.

[6] Ms Le Roux sought to meet this point by submitting that the operative date is 19 October 2007 when the Registrar re-iterated his reasons for objecting to the rules in question. We cannot accept that argument because ex facie the notice of appeal the decision sought to be appealed against is that conveyed in September 2007 and not its re-iteration in October 2007.

[7] Unlike appeals lodged in terms of section 48, the appeal committee does not have discretion to condone late filing of appeals. In any event, one of the factors that would have to be taken into account in the assessment of whether or not to condone such late filing would have been the prospects of success on the merits. We are satisfied that prima facie the appellant has poor prospects of succeeding on the merits.

[8] In the result, the appeal cannot succeed.

V NGALWANA for the appeal committee

Date of Hearing: 12 August 2008
Date of Ruling: 8 September 2008

For Oxygen: Ms Le Roux
For Registrar: Mr Leech instructed by Mokhatla Attorneys