

APPEAL COMMITTEE OF THE COUNCIL FOR MEDICAL SCHEMES

In the matter between:

T [REDACTED]

Appellant

and

REGISTRAR OF MEDICAL SCHEMES

First Respondent

FEDHEALTH

Second Respondent

RULING

Introduction

- 1 This is an appeal against a decision of the office of the registrar in which it found that the scheme had correctly declined to fund treatment for the appellant's Spinal Stenosis on grounds of non-disclosure of treatment or advice or diagnosis for the medical condition in question.
- 2 In reaching this decision the registrar's office invoked section 29(2)(e) of the Medical Schemes Act, 131 of 1998 ("the MSA"). That section provides that a member's membership cannot be cancelled or suspended except for, among other things, non-disclosure of material information.

3 The registrar's office relies also on the answer given by the appellant to a question under section 5 of the application form. He answered "no" to the question *"Have you or any of your dependants sought any advice, been diagnosed with or been treated for any condition in the last 12 months? If yes, please provide details."* Having answered in the negative, there were no details of any diagnosis, treatment or advice for the appellant to provide.

4 Elsewhere in the application form (under section 8) the appellant made the following declaration:

"I accept any penalties/waiting periods that may be applied in accordance with the Medical Schemes Act of 1998. I understand that these waiting periods may include a 3 month general waiting period, a 12 month waiting period for pre-existing conditions and, if applicable, a late joiner penalty fee.

5 A 3 months general waiting period was imposed when his application was accepted by the scheme.

6 Having perused and considered the written submissions and supporting documents placed before the appeals committee, and listened to the recordings of the hearing, I make the following ruling on behalf of the committee.

Process

7 This committee has previously clarified the correct process as regards appeals against the registrar's decision. That process is confirmed by the Appeals

Board. Appeals against the registrar's decision fall to be dealt with under section 49 of the MSA. They must be lodged within 30 days after the date of the decision. There is no requirement that they be on affidavit. An appeal against any other decision must be lodged under section 48 of the MSA. These must be brought within 90 days and on affidavit. The directions given by the registrar's office in this matter are therefore incorrect. This appeal should have been lodged within 30 days of the registrar's decision and simply by way of a letter. We urge the legal officers of the registrar's office who deal with these matters to correct their practice in this regard.

Ruling

- 8 The appellant conveyed his disappointment at receiving a decision that goes against him in the circumstances of this case. His incredulity is not without substance.
- 9 In the application form the appellant is never asked to disclose medical information dating back more than 12 months prior to the date of his application. The scheme did not allege otherwise.
- 10 In any event, the scheme does not contend that the appellant sought advice or was treated for or was diagnosed with spinal stenosis in the 12 months prior to the date of his application.

11 At the hearing of the appeal the scheme advanced two bases for refusing to fund the treatment in question. The first is a letter dated 10 January 2009 from Dr RL Melvill of Constantiaberg Medi-Clinic in Cape Town. The second is a letter dated 9 March 2009 from Dr Robert Dunn, a Consulting Spinal and Orthopaedic Surgeon, also from Cape Town.

12 The excerpt on which the scheme relies in Dr Melvill's letter reads

"When first I saw the patient for this condition towards the end of 2008, it was decided that he would delay the investigation until March 2009 when a new cycle for his medical aid payments is opened."

13 The excerpt on which it relies in Dr Dunn's letter is this

"He has been overseas for the last few years and in August 2008 he did heavy manual work at his son's house. He developed increasing backpain. This has just progressively worse and he is now debilitated unable to play bowls, unable to work in his handyman capacity [sic]."

14 Neither excerpt assists the scheme to establish that the appellant failed to disclose that he has sought advice, or has been diagnosed with or has been treated for spinal stenosis in the 12 months immediately preceding his application for membership of the scheme.

15 The application form appears to have been signed on 19 November 2008 and membership took effect from 1 December 2008. All that Dr Melvill says is that he "saw" the appellant "*towards the end of 2008*". That could have been either before or after 19 November 2009 when the appellant completed the application form or 1 December 2008 when his membership came into effect.

It was for the scheme to prove this since it relies on the letter to allege non-disclosure of a material fact that arose within 12 months prior to date of application or membership.

16 The scheme sought to have the appellant make its case in this regard at the hearing of the appeal. It did not get very far, as is to be expected. But the parties agreed that if it can be proven that Dr Melvill had seen the appellant after commencement of his membership, then the scheme would be liable to pay. A letter was then later received confirming that Dr Melvill saw the appellant on 11 December 2008. That is after the appellant's membership took effect on 1 December 2008.

17 When asked by a member of the panel, the appellant said his visit to the doctors about his spine was in December 2008. That was after the date of his application. The scheme did not dispute this. What it disputes is that he did not know about the condition when he completed his application form on 19 November 2008. But this is an irrelevant consideration. What is relevant is whether the appellant failed to disclose to the scheme that he was treated for, or received advice on or was diagnosed with a spinal stenosis within 12 months of his application.

18 The excerpt from Dr Dunn's letter also does not establish non-disclosure of a pre-existing spinal problem. All it does is point out that the appellant has developed increasing back pain that has become progressively worse. More

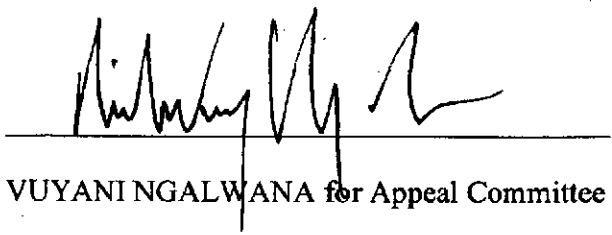
than that, it says nothing. More is required to prove the allegation that the scheme makes. It has failed to do so.

19 Thus, on the scheme's own evidence, the appeal must succeed. There is no evidence that the appellant has failed to disclose material information in relation to pre-existing medical conditions within 12 months of his application for membership, or that he has failed to inform the scheme of any advice, treatment for or diagnosis with a spinal condition within 12 months of his application or membership.

20 In any event, (and solely for the sake of completeness because nothing turns on this for purposes of this ruling since there is no evidence that the appellant was ever asked about a pre-existing condition dating back more than 12 months prior to his application) there is a radiology report that states that the canal in the region of the previous surgery (done some 30 years ago) was "capacious", indicating that there was no stenosis at that level. So it would be reasonable for Mr T [REDACTED] to believe a) that his original back problem had been cured, and b) that the back problems occurring some three decades later were the result of a fall and not a consequence of his previous problem.

21 Even on this score, therefore, the problem that has now arisen has no relation to the problem that the appellant had 30 years ago. In fact the radiology report clearly indicates that the appellant's problems relate to high lumbar whereas the earlier problem of 30 years ago was low lumbar and sacral.

22 The appeal succeeds.



VUYANI NGALWANA for Appeal Committee

For the Appellant: Mr T [REDACTED]

For the 2nd respondent: D Lategan; P Jordaan

Date of hearing: 11 February 2010

Date of Ruling: 17 June 2010