IN THE COUNCIL FOR MEDICAL SCHEMES APPEALS COMMITTEE
(CENTURION)

In the matter between:

ASRAI, P Appellant

and

REGISTRAR OF MEDICAL SCHEMES First Respondent
DISCOVERY HEALTH MEDICAL SCHEME Second Respondent

RULING

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1 This is an appeal in terms of section 49(1) of the Medical Schemes Act, 131 of 1998 ("the MSA") against a ruling of the office of the Registrar of Medical Schemes (*"the registrar"*) dated 24 February 2014 but forwarded to the appellant on 25 February 2014.

2 The scheme had terminated the membership of the appellant's dependant for non-disclosure of material information. When he was admitted to hospital for chest pains in July 2012, it was discovered that he had failed to disclose in his application form treatment that he had received in August 2011 for Hypertension and Hyperlipidaemia.

3 The application form, completed in January 2012 (within five months of the treatment) asked, *"Have you or any of your dependants received medical advice or treatment for a symptom not mentioned in questions above from a medical professional in the 12 months before this application?"* The response given is *"no"*.

4 The appellant is aggrieved by the ruling of the registrar's office. She filed this appeal on 25 March 2014 and so within the period prescribed by the section.

5 Her grounds of appeal are

5.1 Hyperlipidaemia and Hypertension only existed for a short period of time and they were not chronic;

5.2 neither she nor her dependant (father) was aware of these medical conditions when completing the application form;

5.3 at no stage was there any intention to withhold information;

5.4 the general practitioner who treated her father was not his regular GP and he was never properly told of any condition;

5.5 he scheme only raised the issue of non-disclosure after her father fell ill in an attempt to find grounds of repudiating the claim;

5.6 these conditions were not the cause for which her father was admitted to hospital.

6 None of these are relevant considerations. The relevant inquiry in cases of non-disclosure of pre-existing conditions is whether the information that has not been disclosed is material for purposes of underwriting the medical risk that the scheme assumes. In practical terms, this translates into an inquiry whether the scheme might (if apprised of the information) impose any condition-specific waiting periods (assuming the other requirements in s 29A of the MSA are present) and an inquiry as regards how to price the contributions to be paid in respect of the dependant member in question. There is no indication in the complaint or appeal that the appellant's father was previously a member of another medical scheme.

7 On these considerations, it should then be clear that the duration of the pre-existing condition is quite irrelevant. So, too, is the fact that the condition was not the reason for the dependant's admission in hospital.

8 While it is true that one cannot disclose that which is not within one's own knowledge, it is clear from the appellant's own version (in submitting that the pre-existing conditions *"only existed for a short period of time"*) that these were known either by her or by her father.

9 Intention does not come into the inquiry. Section 29(2)(e) of the MSA which permits medical schemes to terminate membership on grounds of non-disclosure of material information does not distinguish between intentional or negligent or fraudulent or innocent non-disclosure. The only inquiry is whether the non-disclosure is material to the risk of underwriting. This wide latitude in our view compensates for the fact that medical schemes may not lawfully decline membership application into open-enrolment schemes.

10 The timing of the scheme's investigation is an oft-repeated line of attack against medical schemes. Schemes are often accused (as in this case) of commencing their investigations into non-disclosure only with a view to repudiating claims and not to assess their risk. It is impossible to say this is <u>never</u> the motivation. But if medical schemes were required to do more than rely on the good faith of the applicant (as one should expect in any insurance contract) but perform background checks with every application, then there is every likelihood that commencement of membership from the date of application would be considerably delayed,

much expense would have to be incurred in verifying applicants' answers to every single question, and as a result medical membership is likely to be much more expensive and a luxury of a few. Public policy considerations would baulk at such a regime. It is quite plainly not in the public interest.

11 In the result, the appeal cannot succeed.

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VUYANI NGALWANA SC for Appeal Committee

For the appellant:	*B Harkoo*
For the scheme:	*N Taitz; Dr Padayachee; S Singh*
For the registrar:	*R Smit*
Date of hearing:	*24 February 2015*
Date of Ruling:	*13 March 2015*