IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

Reportable

CASE NO: 15418/2013

In the matter between:

GENESIS MEDICAL SCHEME	**Applicant**
And	
THE CHAIRPERSON OF THE APPEAL BOARD OF THE COUNCIL FOR MEDICAL SCHEMES	**First Respondent**
THE COUNCIL FOR MEDICAL SCHEMES	**Second Respondent**
THE REGISTRAR OF MEDICAL SCHEMES	**Third Respondent**
CHRISTIA WOLLNER	**Fourth Respondent**
DONNA LESLIE LE ROUX	**Fifth Respondent**
WILLEM JOHANNES SMIT	**Sixth Respondent**

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JUDGMENT: 21 November 2014

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DAVIS J

Introduction

[1] This appeal concerns whether the applicant was entitled to rely on the provisions of s 48 of the Medical Schemes Act 131 of 1998 ('the Act') when it lodged three separate appeals against decisions of the third respondent which were taken in terms of s 47 (2) of the Act in favour of the fourth, fifth and sixth respondents.

[2] The application concerns one crisp point. It is common cause, that if this court finds in favour of the applicant, the decision of the Appeal Board of the

Council for Medical Schemes ('the Appeal Board') decision was materially influenced by an error of law. It would then follow that the applicant would be entitled to have the merits of the appeals determined by the Appeal Committee of the Council for Medical Schemes ('the Appeal Committee') in terms of s 48 of the Act.

The background

[3] The fourth, fifth and sixth respondents lodged separate complaints against the applicant in terms of s 47 (1) of the Act. The fourth and sixth respondents complained that applicant had refused to pay the costs of doctors in private practice for the treatment of multiple sclerosis, a prescribed minimum benefit condition included in the diagnosis and treatment pairs listed in Annexure A to the General Regulations made under the Act (See GN R1262 in GG 20556 of 20 October 1999 as amended). Fifth respondent complained that applicant refused to pay for certain medication prescribed by a doctor in private practice for a treatment of her dependent's Crohn's Disease which is also a prescribed minimum benefit condition.

[4] The Registrar acted in terms of s 47 (1) of the Act and requested the applicant to furnish written comments on these complaints within 30 days. On 19 January 2011, in the case of fourth respondent, 24 December 2010 in the case of fifth respondent and 27 January 2011 in the case of sixth respondent, the Registrar, acting in terms of s 47(2), determined the complaints in favour of fourth, fifth and sixth respondent. The Registrar's ruling in each case contained the following final paragraph: 'This decision is binding… within 30 days of the date of the decision hereof'.

[5] Applicant then appealed against these decisions of the Registrar in terms of s 48 of the Act. It did so on 18 April 2011, in the case of fourth respondent, on 10 March 2011 in the case of fifth respondent and 07 March 2011 in the case of sixth respondent, that is more than 30 days but less than three months after the rulings had been made by the Registrar. At the hearing before the Appeal Committee, a preliminary point was raised that the appeal should have been lodged in terms of s 49 of the Act; that is within 30 days from the date of the Registrar's ruling in terms of s 49 (1) of the Act. The Appeal Committee upheld this objection and therefore dismissed the appeals. On a further appeal to the Appeal Board, the decision of the Appeal Committee was upheld, albeit for different reasons.

The applicant's case

[6] In order to understand the case brought by the applicant, it is necessary to reproduce the key provisions of the Act. Section 47 reads as follows:

> 'Complaints
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> (1) The Registrar shall, where a written complaint in relation to any matter provided for in this Act has been lodged with the Council, furnish the party complained against with full particulars of the complaint and request such party to furnish the Registrar with his or her written comments thereon within 30 days or such further period as the Registrar may allow.
>
> (2) The Registrar shall, as soon as possible after receipt of any comments furnished to him or her as contemplated in subsection (1), either resolve the matter or submit the complaint together with such comments, if any, to the Council, and the Council shall thereupon take all such steps as it may deem necessary to resolve the complaint.

Complaint is defined in section 1 to mean:

'a complaint against any person required to be registered or accredited in terms of this Act, or any person whose professional activities are regulated by this Act, and alleging that such person has-

(a) acted, or failed to act, in contravention of this Act; or

(b) acted improperly in relation to any matter which falls within the jurisdiction of the Council'.'

Section 48 reads thus:

'48 Appeal to Council

(1) Any person who is aggrieved by any decision relating to the settlement of a complaint or dispute may appeal against such decision to the Council.

(3) An appeal contemplated in subsection (1) shall be in the form of an affidavit directed to the Council and shall be furnished to the Registrar not later than three months, or such further period as the Council may, for good cause shown, allow, after the date on which the decision concerned was made.'

[7] Mr Fagan, on behalf of the applicant, submitted that s 47 clearly dealt with the resolution of complaints as defined in section 1 of the Act. The Shorter Oxford English dictionary (6 ed) includes amongst the definition of resolve 'solve (a problem)' and 'decide, to determine (a doubtful point)'. If the Registrar, acting in terms of s 47 (2), determined the complaint, a person aggrieved by his resolution of the complaint, could appeal against it in terms of s 48 (1).

[8] To the extent that there was any ambiguity with regard to the word 'settlement' as employed in s 48 (1) of the Act, this was clarified by Schutz JA in

Consolidated Employees Medical Aid Society and others v Leveton 1999 (2) SA 32 (SCA) at 39 I:

> 'Quite apart from the express provision for finality in the rules, I consider that the expression "the settlement" in the Act indicates an intention that a decision of a disputes committee shall be final as between a member and the scheme and its members.'

As s 48 (1) referred to persons who are aggrieved by any decision relating to a 'settlement of a complaint', it followed, in Mr Fagan's view, that in this case, the applicant, aggrieved by the decision of the Registrar, had recourse to a right of appeal pursuant to s 48 (1) of the Act.

[9] To the extent that the appeal board had relied on s 49 of the Act, it is necessary to refer to the wording thereof:

> 'Appeal against decision of Registrar
>
> (1) Any person who is aggrieved by any decision of the Registrar under a power conferred or a duty imposed upon him or her by or under this Act, excluding a decision that has been made with the concurrence of the Council, may within 30 days after the date on which such decision was given, appeal against such decision to the Council and the Council may make such order on the appeal as it may deem just.
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> (2) The operation of any decision which is the subject of an appeal under subsection (1) shall be suspended pending the decision of the Council on such appeal.
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> (3) The Registrar or any other person who lodges an appeal in terms of subsection (1) may in person or through a representative appear before the Council and tender evidence or submit any argument or explanation to the Council in support of the decision which is the subject of the appeal.'

[10] Mr Fagan contended that s 49 dealt with appeals against decisions of the Registrar, other than those which had been taken by the Registrar in terms of s 47. As an example he cited the refusal by the Registrar of a proposed rule amendment by a medical scheme in terms of s 31 of the Act. Mr Fagan also referred to s 49 (3) which provides that only the Registrar and the person lodging the appeal might appear before the Council. It would mean that, as in the present appeal, the applicant would not have been permitted to so appear. This interpretation would be incongruent with the principles of natural justice. By contrast, s 49 (3) would make sense where a dispute about a rule amendment was raised, which is purely a matter between the Registrar and the medical aid scheme in question. No breach of natural justice would then exist.

Second and third respondent's case

[11] Mr Breitenbach, who appeared together with Ms Lapan on behalf of the second and third respondents, contended that s 49 was the operative section in dealing with appeals of this nature. In the first place, s 49 (1) provide for appeals by any person who is aggrieved by any decision of the Registrar under a power conferred or a duty imposed upon him or her under the Act. This meant that any decision by the Registrar, including one taken pursuant to s 47 (2), fell within the plain meaning of 49 under this particular dispensation.

[12] In his view, s 47 contemplated two forms of dispute resolution mechanisms, namely where the Registrar took it upon himself or herself to resolve the complaint and where the Registrar decided to submit the complaint together with comments to

the Council whereby the latter body would resolve the complaint. Where appeals are concerned, s 48 (1) referred to the 'what'; that is the matter against which the appeal was lodged. By contrast, s 49 (1) referred to the 'who', that is the identity of the body against whose decision the appeal was lodged. As the appeal was against the decisions of the Registrar in the present case, s 49 (1) covered the appeal. In other words, s 49 provides for appeals against decisions of the Registrar aggrieved by this decision, and the appeal mechanism is set out in s 49.

[13] Mr Breitenbach referred further to s 29 (1) (j) of the Act which provides as follows:

> '(1) The Registrar shall not register a medical scheme under s 24, and no medical scheme shall carry on any business, unless provision is made in its rules for the following matters:
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> …
>
> (j) The settlement of any complaint or dispute.'

[14] In terms of this section, Mr Breitenbach argued that medical schemes were obliged to include in their rules a mechanism for the settlement of any complaint or dispute. In the event that an aggrieved party complained to the appropriate mechanism within the medical scheme and was aggrieved by a decision which followed, the aggrieved party had a right to appeal to the Council in terms of s 48(1). In other words, s 48 (1) catered expressly for appeals which flowed by way of a decision through the internal processes of the medical scheme pursuant to the mechanism that had been set up in terms of s 29 (1) (j) of the Act. That was its primary purpose, whereas s 49 catered for appeals which were based on the Registrars decision.

Evaluation

[15] This case turns on the interpretation of three provisions of the Act in particular s 47, 48 and 49. It therefore raises the question of the role of statutory interpretation. Du Plessis Interpretation of Statutes at 57 has said about interpretation:

> 'Language allows access to the meaning of the enactment, but is a means not a goal in itself and should never be identified as the said meaning of the enactment as such. The real meaning of an enactment may in fact remain hidden to an interpreter who adheres merely to "clear language" or who qualifies this language – if it happens not to be so clear – without due cognisance of all the other coequal structural elements which constitutes the overall context of meaning in which the enactment prevails'.

[16] This approach is not dissimilar from what Wallis JA appeared to have in mind in his exposition of the interpretation of statutes in **Natal Joint Municipal Pension Fund v Endumeni Municipality** 2012 (4) SA 593 (SCA) at para 26. In respect of ambiguous language he said:

> 'In resolving the problem, the apparent purposes of the provision and the context in which it occurs will be important guides to the correct interpretation. An interpretation will not be given that leads to impractical, unbusinesslike or oppressive consequences or that will stultify the broader operation of the legislation or contract under consideration.'

[17] It is precisely because language does not inextricably contain a fixed or definitive meaning that lawyers seek to persuade courts to adopt a particular meaning of words to be borne by way of a particular interpretation of the choice of

the words employed in a particular provision of an applicable statute. Notwithstanding the contested nature of language, the expression employed by the legislature is interpreted by way of the provision read in context. This exercise then produces an appropriate meaning to the language so used. See **Natal Joint Municipal Pension Fund** *supra* at para 25.

[18] While at a preliminary stage of interpretation, recourse to a dictionary may prove of assistance in ascertaining the 'ordinary' meaning of the words so employed, the complex structure of language may require a more nuanced analysis. In a case such as the present, the nuance does need to extend into teleological terrain. Rather, an interpretation which better makes sense of the architecture of the complaint and appeal procedures adopted by the legislature must be preferred over one which generates greater anomalies, is less congruent with the basic principles of our legal system, albeit that the plain words can carry this advocated meaning.

[19] Section 47 is designed to deal with complaints as defined. It introduced a new procedure which was never contained in the earlier Act, that is the Medical Schemes Act 72 of 1967. The Act introduced this mechanism for complaints to be processed either by the Registrar or the Council. Section 48, on the plain language employed by the legislature, informs the reader of its consequences. Any person who is aggrieved by a decision and who seeks to settle a complaint or a dispute may appeal against this decision to the Council. The plain language indicates that, where a decision is made pursuant to s 47 (2), the aggrieved party has recourse to an appeal to the Council in terms of s 48.

[20] Mr Breitenbach concedes that s 48 would apply to any decision relating to a settlement of the complaint taken by a mechanism set up in terms s 29 (1) (j) of the Act. Absent this mechanism, s 48 would be redundant. It would be redundant because, if the Council sought to settle the compliant pursuant to a referral by the Registrar in s 47 (2), the appeal against this decision of the Council would be lodged under s 50, which provides for an appeal from the decision of the Council to an Appeal Board.

[21] Expressed differently, where the Registrar chooses not to settle the complaint but refers it to the Council, an appeal against the decision of the latter body does not fall within the scope of s 48 but rather falls to be disposed of in terms of s 50. If Mr Breitenbach is correct, it would mean that the only appeal which would fall within the scope of s 48 would be those which are heard by the Council from the internal mechanism which is set up by the medical aid pursuant to s 29 (1) (j).

[22] This interpretation conflicts with the definition of ‘complaint’. An internal body which seeks to settle a complaint is a body which forms part of a particular medical scheme. The complaint is lodged, in effect, against a medical scheme. This means that when a party complains to the internal mechanism and is dissatisfied with the decision taken by this internal body, the complaint must now be processed in terms of s 47 by the Registrar. In the event that the Registrar takes upon himself or herself to resolve this complaint, an appeal from the attempt by the Registrar to resolve the complaint falls within the scope of s 48. This conclusion must follow from the very idea of s 47, which envisages an external body, whether the Council

or the Registrar, which must hear and resolve the complaints which had been lodged against the medical scheme, whether taken by the scheme or pursuant to a decision of the latter's internal mechanism as set up in terms of s 29 (1)(j).

[23] This is not to say that the words employed by the legislature may not be sufficient to carry the weight of Mr Breitenbach's interpretation. However, Mr Fagan's interpretation gives full meaning to the entire structure of s 48, which is to the effect that all parties affected by the resolution of a complaint are entitled to appear before the Council. This consequence is not provided for in terms of s 49.

[24] This interpretation gains further credence when the various decisions taken by the Registrar, all of which are subject to s 49 appeal are considered, including a s 21 appeal relates to the designation of medical schemes, s 22 relating to the registration of medical schemes, s 33 relating to the approval and withdrawal of benefit options, s 36 (1) relating to the approval of an audit or an audit committees, s 36 (9) which empowers a Registrar to appoint an audit or, s 37 which requires a trustee of the scheme to furnish financial statements on a quarterly basis, s 39 involving the rejection of returns by the Registrar, s 42, a requirement of further particulars and s 43 dealing with inspections and reports, whereby the Registrar can make various decisions, including some that hold fairly drastic consequences for the scheme.

[25] All of these decisions do not require the attendance of any other party, other than the Registrar, if for example, a decision is made which is adverse to the

Registrar. Viewed accordingly, this would explain why only an affected party, such as the Registrar, would be entitled to participate in an appeal in terms of s 49.

[26] Further support for this interpretation is to be found by reference to the earlier Act, of 1967. As I indicated earlier, the 1967 Act does not contain any similar provisions to s 47 of the Act. It however provided for an appeal against decisions of the Registrar in terms of s 37. The 1967 Act contained no provision which empowered the Registrar to resolve a complaint. But section 49 of the Act is reproduced exactly in the same format as s 37 of the 1967 Act. It provides for appeals from a range of decisions similar to those which I have set out earlier in this judgment. It was only when the mechanism contained in s 47 became law, that there was a necessity for a resolution of disputes which flowed from s 47, by way of a specific appeal process pursuant to s 48.

[27] It is linguistically possible to argue that s 49 applies to all decisions taken by the Registrar, including those which resolve a complaint as defined. The better and more coherent meaning, as I have set out earlier, is however to be found by way of recourse to the various structural elements of the Act; that is the overall context in which the meaning of the individual provisions is to be understood.

[28] The interpretation which I have given to ss 48 to 50 of the Act make it clear that a complaint made by a member of the medical scheme concerning a decision of a functionary not to pay a certain benefit, which is lodged with the internal complaints resolution committee of the scheme, does not constitute a complaint against the scheme itself. This internal complaints resolution committee forms part

of the scheme itself. Only when a decision is taken by this complaints resolution committee which is adverse to the member can the member lodge a complaint against the scheme, as opposed to a complaint within the scheme itself; until then the procedures involves an appeal against a decision of one section of the scheme to another, similarly situated; that is to the internal mechanism created in terms of s 29 (1) (j) of the Act.

[29] Once an analysis is undertaken of all of the relevant sections, it becomes clear that s 47 empowers the Registrar to resolve a complaint. That complaint is a complaint against the medical scheme as opposed to its internal institutions. The appeal against this complaint must now be lodged in terms of s 48. Similarly, where the Registrar refers the complaint to the Council, which, in turn, resolves the complaint, an appeal is lodged to the Appeal Board against the decision of the Council in terms of s 50 of the Act.

[30] This interpretation gives a meaning and a coherence to all of the relevant sections of the Act. By contrast, were Mr Breitenbach's interpretation to be correct, the only complaint which would be the subject of the appeal in terms of s 48 would be an appeal against the decision of an internal body of a medical scheme. But this appeal does not trigger off an automatic application of s 48. It triggers a complaints procedure pursuant to s 47. In the manner in which I have sought to interpret the relevant provisions, s 48, 49 and 50, all are given a meaning which promotes the integrity of the entire complaints design of the Act.

Conclusion

[31] For these reasons the application is upheld. The following order is made.

1. The ruling of the Appeal Board of the Council for Medical Schemes (the Appeal Board) handed down on 26 July 2013 in which the Appeal Board dismissed the applicant's appeal against the ruling of the Appeal Committee of the Council for Medical Schemes handed down on 20 September 2001 is reviewed and set aside.
2. The ruling of the appeal body is substituted by way of the following decision:

   "The appeal is upheld."
3. The matter is referred back to the Appeal Committee for consideration and determination of the merits of the appeals of the applicant regarding the merits of the complaints of fourth, fifth and sixth respondents.
4. The costs of this application are to be borne by second and third respondents jointly and severally.

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DAVIS J

I agree

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ENGERS AJ