IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case No: 050811/2025

(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED.

[redacted]

04 MAY 2026

....

SIGNATURE **DATE**

In the matter between:

EPIONE HEALTHCARE SOLUTIONS (PTY) LTD Applicant

and

COUNCIL FOR MEDICAL SCHEMES First Respondent

THE APPEAL BOARD OF THE COUNCIL FOR MEDICAL SCHEMES Second Respondent

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JUDGMENT

LABUSCHAGNE J:

[1] The applicant brings a review application seeking an order setting aside a decision of the Council for Medical Schemes (CMS) of 06 September 2023 to

dismiss an application in terms of section 8(h) of the Medical Schemes Act, 1998 for an exemption from its provisions. It also seeks an order setting aside the decision of the Appeal Board for the Council for Medical Schemes (the "Appeal Board") dismissing the applicant's internal appeal against the aforesaid decision. The applicant seeks a declarator that it does not carry on the business of a medical scheme. As an alternative, it seeks a declarator that the applicant is exempt under section 8(h) from the provisions of the Medical Schemes Act.

[2] The first issue in this review application is whether the business of the applicant constitutes the business of a medical scheme. If so, it would require registration as a medical scheme in terms of sec 20(1) of the Medical Schemes Act,1998 (the MSA). The second issue is whether the refusal of the applicant's exemption application in terms of sec 8(h) of the MSA should be reviewed and set aside.

BACKGROUND FACTS

[3] The applicant has developed a product providing for primary healthcare services to be rendered against a monthly payment. It describes its business as follows:

> "25. The healthcare delivery model at Epione intends to flight at the Health Villages as a Direct Primary Care (DPC) product which will incorporate social determinants of health (SDOH) to cater for the complete wellbeing of communities.

26. Those subscribing or prepaying for the DPC product will pay a fixed monthly fee for access to the following defined basket of services:

a) Unlimited consultations with our GP in person or virtually;

b) Full access to [the patient's] medical records via the Epione App – epione.net;

c) Bi-annual full comprehensive primary health exam with a GP (sc. general practitioner);

d) ECGs;

e) Detailed specialist referrals and hospital admission co-ordination;

f) Blood draws and coordination with pathology labs;

g) Chronic disease management or hypertension, diabetes etc.;

h) Mental health counselling with managed referrals if required;

i) Urgent care – same day or next day care for urgent medical issues such as sprains, cuts requiring stiches, fractures etc.;

j) Point of care tests such as blood sugar, HIV screening, urinalysis etc."

[4] The applicant distinguishes its product from the service offering of other medical schemes. The applicant seeks to stress the preventative nature of its offering. Its product includes medical emergencies and mental health counselling, which cannot be described as preventative, but the core focus is preventative.

[5] The applicant's position is that its product offering does not fall within the definition of the business of a medical scheme. It nevertheless applied for an exemption from the Medical Schemes Act, expecting the CMS to confirm its primary position that it does not need an exemption as it does not conduct the business of a medical scheme. The position of the CMS and the Appeal Board is that the applicant does conduct the business of a medical scheme, and the exemption application was refused.

THE EXEMPTION APPLICATION

Section 8(h) of the Medical Schemes Act

[6] The CMS's power to exempt in terms of section 8(h) reads as follows:

"The Council shall, in the exercise of its powers, be entitled to –

…

(h) exempt, in exceptional cases and subject to such terms and conditions and for such periods as the Council may determine, a medical scheme or person upon written application from complying with any provisions of this Act;"

[7] The primary purpose of this power is to deal with exceptional cases requiring special consideration as to terms and conditions and the period for which the exemption may apply.

[8] It is apparent that the applicant regards its product offering as exceptional and seeks a permanent exemption.

[9] Its motivation as to why exceptional circumstances exist is however based on trying to demonstrate that the services of the applicant do not constitute the business of a medical scheme.

Why the applicant says it is not a medical scheme

[10] The applicant distinguishes its DPC model from medical scheme cover by contending that it does not pool risk as a medical scheme does.

[11] Secondly, it states that its care focus is preventative whilst medical scheme's care focus is curative. The applicant contends that the number of visits to a medical practitioner in its offering is unlimited, whereas a medical scheme member's number of visits depends on the type of medical scheme involved. The applicant's clients have twice yearly mandatory health checks, while this does not apply to members of a medical scheme.

[12] Medical schemes are not profit driven. By contrast, the applicant is driven by the goal of deriving profits.

[13] The applicant contends that a medical scheme has no relationship with medical professionals. The applicant distinguishes the position of the applicant. It promotes direct relationships between patients and their primary healthcare providers on the group of clinicians with whom the applicant works. This distinction, however, is that the applicant appoints a pool of clinicians with whom it has a contractual relationship, contrary to a medical scheme.The applicant does not deal with medical schemes appointing designated service providers in respect of prescribed medical benefits.

[14] The third distinction is that there is no third party payment, billing or co-payment associated with the provision of primary healthcare services.

[15] The fourth distinction is that the DPC product contemplates certain mandatory medical expenses and does not cater for unforeseen medical services.

[16] The fifth distinction is that the DPC product costs the same for both rich and poor, while medical schemes have different offerings at varying costs to members.

[17] The applicant motivates an exemption, should the CMS have a different view in the following terms:

> "2.19.3 We submit the following information as demonstration of exemptional (sic) circumstances;

2.19.3.1 As demonstrated in 2.11.3 and expanded upon in annexure B, the pilot was a significant success and demonstrates the need for a value based approach to primary healthcare service provision and reimbursement. The DPC product addressed that need – cost saving benefits for patients, better quality patient/doctor relationships and improved reimbursement models for doctors.

2.19.3.2 The DPC product is not the same as a medical scheme benefit. Neither Epione nor the Health Villages provide financial cover for the medical expenses of patients.

…

2.19.3.5 Patients directly access primary care (in the form of GP consultations or one of the other services listed in paragraph 2.14.1 above) from the Health Villages with the management support of Epione.

2.19.3.6 Epione is a for-profit company, and the business does not belong to any members; and

2.19.3.7 Neither Epione nor the Health Villages collectively pool good and bad risks."

THE CMS DECISION

[18] These contentions were rejected by the CMS. The CMS found:

> "9. The onus is on the applicant, Epione to demonstrate exceptional circumstances in support of the exemption application and based on what was put forward, we regret to inform you that the decision of the Council is to decline the application for the following reasons:
>
> 9.1 Epione does not meet the requirements for an exemption to be granted in terms of section 8(h) of the MS Act as it was found that there are no exceptional circumstances justifying the granting of an exemption.
>
> 9.2 DPC product is a new product and therefore not covered by the Exemption Framework.
>
> 9.3 Epione has alternative options such as bringing an application for registration as a medical scheme in terms of section 24 of the MS Act – subject to compliance with the MS Act which should include the provision of prescribed minimum benefits (PMBs).
>
> 9.4 Previous similar exemption applications where applicants have attempted to launch primary healthcare products that do not meet the requirements

of the MS Act have been declined by the Council on the grounds that no exceptional circumstances exist for such.

9.5 The introduction of an LCDO is a policy issue, one which will be dealt with by the executive authority of the Council and cannot be seen to be circumventing a policy process by granting exemptions. Section 7(b) of the MS Act requires the Council to control and coordinate the functioning of medical schemes in a manner that is complementary to national health policy."

THE APPEAL BOARD DECISION

[19] Dissatisfied with the decision of the CMS, Epione on 06 November 2023 appealed to the Appeal Board. On 15 July 2024 the appeal was heard and on 18 October 2024 the Appeal Board delivered its ruling, dismissing the appeal and confirming the Council's decision.

[20] The Appeal Board also referred to the fact that the applicant, instead of demonstrating exceptional circumstances, sought to distinguish its product from the business of a medical scheme. The Appeal Board found that the service that Epione provides is a service that is regarded as the business of a medical scheme. They consequently need to register as a medical scheme and comply with the regulations, including the provisions of prescribed

minimum benefits, specialist coverage, hospitalisation etc. and all the other regulations that the MSA cover.

GROUNDS OF REVIEW OF THE CMS DECISION

[21] The applicant contends that the CMS was materially influenced by an error of law in terms of section 6(2)(d) of PAJA, in misconstruing the meaning of "the business of a medical scheme".

[22] Secondly, the decision of the CMS was taken for a reason not authorised by section 8(h) of the MSA, as contemplated in section 6(2)(e)(i) of PAJA.

[23] The third ground was that the CMS took a decision by taking into account irrelevant consideration as contemplated by section 6(2)(e)(iii) of PAJA. The first irrelevant consideration was the taking into account of various misapprehensions, namely that Epione had failed to show exceptional circumstances and incorrectly finding that the exemption framework applies to the DPC product, the irrelevant finding that Epione has alternative options.

[24] The applicant contends fourthly that the CMS decision was taken arbitrarily or capriciously as contemplated in section 6(2)(e)(vi) of PAJA. The applicant states the following:

> "The CMS closed its eyes to and ignored arguments mounted strenuously before it. The CMS decision rested on matters that were factually and legally wrong. These misapprehensions covered both

components of both decisions, namely the interpretative leg as well as the exemption leg."

[25] The fifth ground is that the CMS decision is not rationally connected to the purposes for which it was taken (section 6(2)(f)(ii)(aa) to (dd) of PAJA).

[26] The sixth ground of review is that the decision of the CMS was so unreasonable that no reasonable person could have so exercise its decision-making power as contemplated in section 6(2)(h) of PAJA.

GROUNDS OF REVIEW OF THE DECISION OF THE APPEAL BOARD

[27] The applicant contends that the Appeal Board made an error of law in misconstruing the business of a medical scheme in its application to the applicant (section 6(2)(d) of PAJA). The Appeal Board is alleged to have made an error of fact and law by suggesting that the applicant operates in an unregulated market (section 6(2)(d) of PAJA).

[28] A comparison of grounds of review reflects an overlap of reasons. It suffices to state that the grounds of review were the same as the attack on the decision of the CMS.

RUBBER STAMPING

[29] In a supplementary founding affidavit, the applicant focuses on an internal memorandum directed to the CMS containing a recommendation to deny the application. The primary attack on this document is that it does not deal with the applicant's primary contention, that the applicant does not undertake the

business of a medical scheme. The memorandum assumes that it is rendering a service falling within the ambit of the business of a medical scheme. The applicant disputes the contention.

[30] The applicant contends that both the CMS and the Appeal Board made the same mistake, i.e. they blindly accepted that, but for an exemption, the applicant would be conducting the business of a medical scheme.This is discussed in the discussion section below.

THE DEFENCE

[31] In its answering affidavit the CMS explains why its position is that the applicant does conduct the business of a medical scheme. The applicant's product and the business of medical schemes have common factors:

31.1 The applicant proposes to supply healthcare services to its clients in exchange for a contribution which is called "the subscription";

31.2 A medical scheme requires a contribution to pay for the value that the medical scheme offers;

31.3 The medical scheme undertakes liability associated with the provision of related healthcare services in exchange for the payment of money by the member through its contributions;

31.4 The relationship is that of debtor/creditor. The medical scheme receives the contributions as part of its business;

31.5 Contributions are received by the medical scheme as debts the medical scheme owes to the member in return for the services it has yet to render;

31.6 The applicant receives its contribution on the undertaking that the client will receive healthcare services according to the terms of their agreement. The subscription fee is not refundable and is exclusively reserved, like in a medical scheme, for a future occurrence. That occurrence is the provision of a relevant healthcare service. This is a liability to the applicant that dictates an order to defray expenses associated with healthcare services;

31.7 The applicant proposes to pay for service that fall exclusively within the definition of relevant healthcare services.

[32] The CMS's conclusion is that, based on these factors, the applicant is a provider of prepaid healthcare services to the member.

[33] The CMS raises a specific defence, the unreasonable delay in instituting this application (178 days after the decision was taken).

[34] It is contended that the applicant unduly delayed, despite being within the period of 180 days, provided for in section 7 of PAJA.

[35] As the CMS could not point out to any prejudice to it arising from the applicant's failure to launch these proceedings earlier than it did, I do not intend deciding the matter on this ground. The application was brought

timeously and although there may have been some delay, it did not prejudice the respondents.

DISCUSSION

[36] This matter demonstrates the difficulty in creating and lawfully offering new products in the healthcare sector. The sector is highly regulated, and there are circumstances where meritorious new offerings may falter, due to the constraints imposed by statutes such as the MSA. However, absent a challenge to the relevant provisions of the MSA, they need to be complied with.

[37] There has been a dispute whether Epione, in applying for an exemption in terms of sec 8(h) of the MSA, has not implicitly conceded that its business is that of a medical scheme.

[38] Its exemption application sets out in express terms the basis on which it applies for an exemption:

> "1.1 By way of introduction, Epione Healthcare Solutions Proprietary Limited ("EHS" or "Epione") is a private company established with the objective of developing, owning and operating healthcare facilities in Africa. Its mission is to enable access to quality, affordable, sustainable and patient-centric healthcare services.

1.2 EHS is not a medical scheme and does not provide services generally associated with that of a medical scheme. However, given the broad definition of the ‘business of a medical scheme’ in the Medical Schemes Act, 1998 (the ‘MSA’), it is arguable that the services provided by EHS may fall within that definition. Out of an abundance of caution, and to the extent that the Council for Medical Schemes ("the CMS") is of the view that EHS is conducting the ‘business of a medical scheme’, EHS hereby applies for exemption from the provisions of the MSA as provided for in section 8(h) of the MSA.”

[39] The only concession has been that it is arguable that the services provided by the applicant fall within that definition. I decide the issue afresh.

[40] The “business of a medical scheme” is a defined term in the MSA and reads as follows:

> 'business of a medical scheme' means the business of undertaking, in return for a premium or contribution, the liability associated with one or more of the following activities:
>
> (a) Providing for the obtaining of any relevant health service;
> (b) granting assistance in defraying expenditure incurred in connection with the rendering of any relevant health service; or
> (c) rendering a relevant health service, either by the medical scheme itself, or by any supplier or group of suppliers of a

relevant health service or by any person, in association with or in terms of an agreement with a medical scheme."

[41] The definition is put to the test when commercial, financial and insurance products related to healthcare services compete in the healthcare market and impinge on the business of medical schemes, which schemes are highly regulated. The broad ambit of the definition is deliberate as the public interest in oversight of health services by the Registrar of Medical Schemes is triggered.

[42] The applicant asserts that it is profit driven and does not pool risk. It does not wish to be a medical scheme.

[43] In argument counsel for the applicant accepted that the applicant's DPC service does fall within par (c) of the definition. As explained, the DPC services are acquired by means of a monthly payment made by a member to a preselected and incorporated group of medical practitioners that practice at a Health Village, i.e. a medical practice. The practice charges the applicant an administration fee. There is a tripartite contractual relationship between the member, the medical practice and the applicant. The services involved in the basket of offerings are "relevant health services", also a defined term. The assumption of liability for only one of the activities in (a)-(c) is sufficient, in terms of the introductory part of the definition.

[44] The activities as described also fall within par (a) of the definition. By means of the contract concluded between the applicant and the medical practice, a member of the applicant obtains relevant health services from the practice.

[45] The applicant contends that a “premium or contribution” in the context of a medical scheme has overtones and features of an insurance payment in respect of pooled risk. And as the applicant’s DPC services are for- profit services without accepting pooled risk, its payment has a context different to medical schemes.

[46] The applicant’s reliance on the Constitutional Court judgment in **Genesis Medical Aid Scheme v Registrar, Council for Medical Schemes** 2017 (6) SA1 (CC) which considered the definition in the context of whether PMSAs were assets of the medical scheme or of its members, does not assist the applicant.

[47] In **Genesis Medical Aid Scheme v Registrar, Council for Medical Schemes** 2017(6) SA 1 (CC) the definition of the business of a medical scheme was considered in the context of which assets had to be reflected in the annual financial statements of a medical scheme. The payment or contribution was specifically dealt with from par [25] in the majority judgment of Cameron J:

> “[25] Second, the definition posits two contracting parties, and a mutual exchange of value (**quid pro quo**). The parties, obviously, are the scheme and its member. The **quid pro quo** is that the scheme undertakes liability — the kinds spelled out in the definition — in exchange for money. The statute calls this 'a premium or contribution'. The word 'premium' comes from the commercial world of insurance, where it means the amount the

> insured pays to the insurer for undertaking liability for the loss the specified eventuality, should it supervene, would inflict. To 'premium' the statute's definition adds 'or contribution' since this is the synonym it uses for the money the member pays for the value the scheme offers in exchange.
>
> [26] The third, obvious, point, flows from these. It is that, within the confines the statute stipulates, the definition is steeped in the language of a business-based, contractual relationship. It frames two parties dealing with each other in a commercial setting for a statutorily regulated bargain: that of undertaking liability in return for payment of a premium or contribution."

[48] The words "premium or contribution" merely refer to money paid in a **quid pro quo**. The distinguishing features of the applicant's DPC services do not cloud this assessment. This interpretation is consistent with **Genesis**, the grammatical meaning of the words, their context within the definition and the purpose of the definition.

[49] The applicant's acceptance that paragraph (c) is triggered, is correctly made. As paragraph (a) is also triggered, it is clear that the business of the applicant falls within the ambit of the definition of the "business of a medical scheme". The granting of the declarator in prayer 3 of the notice of motion must therefore be declined.

[50] This also means that the prohibition in section 20 of the MSA applies to the applicant: "No person shall carry on the business of a medical scheme unless

it is registered as a medical scheme." The only option, other than registering as a medical scheme, would be an exemption.

[51] The exemption application is based on a circle argument. The applicant's starting point is that it does not require an exemption as it is not a medical scheme as its services fall outside the definition of the "business of a medical scheme". It is in the event that this position is wrong that it seeks an exemption in terms of section 8(h).

[52] However, the exceptional circumstances that need to be established for such an application are based on exactly the same reasons why the applicant contends that it is not a medical scheme.

[53] The First respondent is a specialist body to whose merits assessment of such an application the court would normally defer. In **Bato Star Fishing (Pty) (Ltd) v The Minister of Environmental Affairs and Tourism and Another** 2004 (4) SA 490 (CC) at par [48] Justice O'Regan stated:

> "[48] In treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the executive within the Constitution. In doing so a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a court should give weight to these considerations will depend upon the character of the

> decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a court should pay due respect to the route selected by the decision-maker. This does not mean however that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a court may not review that decision. A court should not rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker."

[54] The applicant has taken the CMS to task for merely rubber stamping an internal memorandum prepared for the CMS for a meeting with an agenda which included the exemption application. If correct, this would be irrational, and therefore the evidence needs to be considered.

[55] The memorandum posits that there is no dispute that the applicant's services fall within the definition of the "business of a medical scheme". The position of the applicant was overstated as it merely conceded that it was arguable. However, as my conclusion is that the applicant's services do fall within the

definition, the overstatement is not material and does not rise to an error of fact or law.

[56] The memorandum further disavows reliance on the Demarcation Regulations that have a cut-off date of 1 April 2017. The CMS did not take these regulations into account as it recognised the applicant's product as a new one – i.e. that arose after the cut-off date of the Demarcation Regulations. There is no irrationality in this regard, and the decision was expressly not tainted consideration of irrelevant regulations.

[57] The fact that the CMS agreed with the recommendation that the exemption application does not establish exceptional circumstances, and does not amount to rubber stamping. The CMS took a decision within its powers. The review of the refusal to grant the exemption application therefore cannot succeed.

[58] I have considered all the grounds of review. Many of them are reformulations of the same fundamental issue, namely disagreement with the conclusion to which the respondents came. None of the grounds as formulated have substance.

[59] In the premises, no grounds of review, within the manifestations thereof in section 6 of PAJA, have been established as against the CMS and the Appeal Board.

CONCLUSION

[60] The applicant has not established a case for setting aside the decisions of the respondents. Its product offering, absent an exemption in terms of sec 8(h) of the MSA cannot be lawfully offered to the public.

[61] In the premises:

1. The application is dismissed with costs, including costs of two counsel, on a party and party scale, Scale C.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

APPEARANCES:

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