

A broker can help, but check before you sign

The Council for Medical Schemes has made it clear that you, and not your healthcare broker, are responsible for the information about your medical history that is disclosed on your membership application form.

August 9, 2008

By Laura du Preez

Don't rely on a broker to supply your medical scheme with accurate details of your medical history. Schemes have the right to terminate your membership for non-disclosure even when a broker has misinformed you about what to fill in or has failed to declare something you told him or her.

A qualified and trustworthy healthcare broker can be a big help in guiding you through the process of finding a suitable scheme and option and through the application process, including the completion of the form. But when it comes to the medical questions, make sure you answer these yourself.

The Council for Medical Schemes appeal committee has in at least two recent cases upheld the right of a medical scheme to terminate membership despite the fact that members were assisted by brokers.

Although you may still be able to complain to the Ombud for Financial Services Providers or sue your broker, medical bills can be very high and compensation from the ombud is limited to R800 000. Lodging a civil claim could involve legal costs and delays, and, in the meantime, hospitals and other healthcare providers could be sending debt collectors after you.

In the case of AA and Oxygen Medical Scheme (see "Families face massive bills after schemes end benefits" in related story below), the appeal committee noted that AA and his father, OA, may have a claim against their adviser, an Old Mutual employee, identified as S.

The adviser assisted AA to complete the medical scheme application form and, according to both AA and OA, misinformed them that they did not need to disclose AA's daughter's heart condition because she had not been hospitalised for the condition in the 12 months before they applied for membership.

If the allegation is true, the information given was incorrect. This is because you should disclose any condition that has been diagnosed or for which you have received treatment in the past 12 months, as well as any information about significant health events or those for which you need ongoing treatment and that are material to the scheme's assessment of the risks it faces in signing you up (see below "What you need to declare").

In the case involving AA, the child was still taking medication for the heart condition.

The appeal committee that heard the father's appeal said it had in many such cases "had occasion to level criticism at the conduct of brokers" and this case "provides a further example of unacceptable conduct on behalf of such brokers".

James van Vught, Oxygen's principal officer, says the matter was referred to Old Mutual's internal ombudsman, but the ombudsman has advised OA that unless he can provide new evidence, the matter cannot be taken further.

Old Mutual has confirmed that it has investigated OA's claims, but the adviser maintains he was not informed of the child's heart condition. The Pretoria-based adviser is still employed by Old Mutual.

Bad advice is no defence

Despite the appeal committee's comments about the broker who assisted OA and his son, the committee found against OA. It said it had "consistently held that the shortcomings in the conduct of brokers who assist applicants for membership of medical schemes cannot be used as a defence for the non-disclosure of material information in the membership application forms.

"Regardless of who fills the form in, ultimately it is the applicant for membership who signs the form, who confirms that he or she has read the form, and who warrants that the information therein is correct."

The appeal committee made similar comments in a case involving a Spectramed member, identified as EEB, who used the services of a broker and who failed to disclose that she suffered from high blood pressure and that her dependent husband had high cholesterol.

In this case, the committee said EEB had signed the form completed by a broker "without checking its

completeness. She cannot shift the responsibility for this omission to the broker, regardless of how careless he may have been."

In this case, the committee also commented on "a disturbing pattern of brokers completing forms on behalf of members either inaccurately or in an incomplete manner".

The committee urged schemes to ensure their accredited brokers are more diligent.

OA also complained to the office of the Ombud for Financial Services Providers, but the ombud did not rule on the case.

The ombud's office said testing the shortcomings of the adviser's advice would be better suited to a court of law because witnesses needed to be called and their evidence interrogated.

It pointed out that OA had informed the ombud's office that AA had recently been in hospital for a bi-polar mood disorder, but there was no indication of this on the documents lodged with the ombud's office even though the condition had been disclosed and Oxygen had imposed a waiting period on AA for this condition.

Although this case was dismissed, Charles Pillai, the ombud, outlined in a 2005 ruling what your medical broker should do for you.

In that case Pillai found against another Old Mutual adviser who filled in Oxygen membership application forms on behalf of a man and his premature baby son.

Although the broker admitted the man had told him about the premature birth, he said the man did not tell him about the baby's medical condition.

The fact that the baby was born prematurely was not conveyed to the scheme, and no heart, respiratory, eye and ear problems were recorded in respect of the baby despite the fact that he had all of these.

Pillai ruled that it is the broker's duty to recognise which matters are material and to make sure these are disclosed to an insurer.

He said the broker should at the very least have informed the scheme that the baby was premature, enabling the scheme to ask further questions about the baby's condition.

Pillai ordered the broker to pay the man's outstanding medical bills of R31 204 plus interest.

Jacky Mathekga, the principal officer of Discovery Health Medical Scheme, says schemes need to do more to ensure that brokers communicate to members the importance of making full disclosure about their medical conditions. He says schemes are not doing enough to educate members on this issue.

What you need to declare

Fill in your membership application form honestly and as comprehensively as you can, Stephen Harrison, the head of strategy at the Council for Medical Schemes, says.

The risks of non-disclosure are greater than any consequences of disclosing your health status, he says.

James van Vught, Oxygen's principal officer, says you and your dependants are legally obliged to disclose all conditions for which medical advice, diagnosis, care or treatment was recommended or received within the 12 months up to on the date on which you apply for membership. This will enable a scheme to impose a waiting period on you, where applicable (see "Don't be afraid to declare" in related story below).

He says, however, that you should declare your medical history that predates the 12 months before you apply to join a scheme.

It is in your interest to do this, Van Vught says, because this information could be used to help you by getting you on to a disease management programme, such as one for HIV/Aids.

The application form usually poses questions such as "Have you had any disorders of the heart, blood vessels or circulatory system?" and specifies the time period in which you might have had such a condition - ever, in the past 10 years, in the past 12 months and so on.

It is safest to supply this information, because the law obliges you to disclose "material information" and there are different views on what is and isn't material to your scheme, as cases before the Council for Medical Schemes appeal committee reveal.

Material information

Patrick Masobe, the Registrar of Medical Schemes, has argued that if a medical scheme would not have been able to impose a waiting period as a result of what you failed to disclose, it was not material. However, the council's appeal committee has taken another view.

The 12-month, condition-specific waiting period can be imposed on you only if you were diagnosed or treated for the condition within the 12 months immediately preceding your application. And it does not apply to prescribed minimum benefit (PMB) conditions if you leave one scheme and join another within 90 days.

This was the case for a member of Spectramed, identified in an appeal committee ruling as EEB. EEB and her husband failed to disclose that they suffered from high blood pressure and high cholesterol, both of which are PMB conditions.

Waiting periods could therefore not have been applied to EEB and her husband even if they had disclosed their conditions. The registrar therefore ruled that EEB's non-disclosure was not material.

In an appeal heard in June last year, Spectramed argued that it was material to the scheme's ability to assess its exposure to risk and to determine the benefits it offers and the contribution rates it charges.

The appeal committee accepted this argument and upheld the scheme's right to terminate the membership of EEB and her husband.

This issue, however, remains unresolved as a similar appeal committee decision has been taken to the appeal board.

Tips

If you read nothing else on your medical scheme application form, make sure you read through the medical questions, Quincy Beukes, the principal officer of Spectramed, says.

Old Mutual Healthcare's David Bombal says if an adviser fills in your application form, give him or her a written list of your medical conditions and those of your family so that you have a record of what you disclosed to your adviser.