

IN THE COUNCIL FOR MEDICAL SCHEMES APPEALS COMMITTEE
(PRETORIA)

In the matter between:

OPTIVEST HEALTH SERVICES (PTY) LTD

Appellant

and

REGISTRAR OF MEDICAL SCHEMES

First Respondent

SANLAM LIFE INSURANCE LTD

Second Respondent

COMPLETEMED HEALTHCARE CONSULTANTS
(PTY) LTD

Third Respondent

RULING

1 This is an appeal in terms of section 49 of the Medical Schemes Act, 131 of 1998 (“the MSA”) against a decision of an official of the office of the registrar of medical schemes (“the registrar”) in which he found that the termination by Sanlam of Optivest’s services as broker to Sanlam employees was not inconsistent with the MSA and directives promulgated thereunder. The basis for the decision is that Optivest was appointed by Sanlam and not individually by each employee of Sanlam.

2 Optivest balks at this decision and contends that Sanlam has no right to terminate its services because it did not appoint Optivest. It says Optivest was

appointed by employees of Sanlam individually and that only they may terminate its services.

3 This dispute arises in the wake of Sanlam having terminated Optinvest's brokerage services to appoint Completemed in its stead. Optinvest says this is not in the best interests of members.

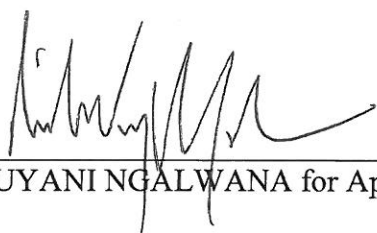
4 The appeals committee dismissed the appeal on jurisdictional grounds, reasons to follow. We provide those reasons briefly.

5 The issue between the parties is one of contract. We are satisfied that Optinvest was appointed in September 2003 by Sanlam to provide intermediary services to its staff for medical aid purposes. This is confirmed by the co-operation agreement dated 18 September 2003 which provides that the appointment is effective from 1 October 2003 and may be terminated by either party giving the other 1 month's written notice. Optinvest indicated its acquiescence by signing the agreement. Having so appointed Optinvest, Sanlam has a right to terminate that appointment in terms of the agreement. Whether Sanlam has done so within the requirements of the agreement is not a matter that we can decide. There are courts and perhaps even arbitration or mediation services for that. The MSA is not implicated here.

6 The intervention of Sanlam and Completemed was not strenuously objected to. In any event they have a direct and substantial interest in this appeal.

7 While counsel for the intervening parties hinted at a costs order, he did not pursue an invitation to file heads of argument in that respect. Counsel for the appellant filed heads resisting a costs order against Optivest. In the circumstances we make no order as to costs. In any event such orders are not customary in this forum.

8 In the result, the appeal committee resisted the temptation to launch itself into the merits of the case.



12 DECEMBER 2012

VUYANI NGALWANA for Appeal Committee

For the appellant: JJM ; M ; W
For the intervening parties: AM Breitenbach SC; A Heyns
For the registrar: No appearance
Date of hearing: 16 November 2012
Date of Ruling: 10 December 2012