



**Before:** Judge Alessandra Greceanu

**Registry:** New York

**Registrar:** Nerea Suero Fontecha

MARCHETTI

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Alister Cumming, ALS/OHRM, UN Secretariat

## **Introduction**

1. The Applicant, a former staff member with the Department of Economic and Social Affairs (“DESA”), contests the decision of the Health and Life Insurance Section (“HLIS”) not to retroactively cancel her health insurance and refund the insurance fees discounted from her salary from 1 July 2016 to 30 June 2017. The Applicant requests the reimbursement of the 2016-2017 insurance fees discounted from her salary given that she did not benefit from any insurance coverage for that period of time. The Applicant further requests “any additional measure the Tribunal deems fair” in compensation for the damages and loss incurred, including the costs of the flight tickets she paid to obtain medical attention abroad.

2. The Respondent claims that the application is without merit and that the Administration correctly decided not to retroactively cancel the Applicant’s health insurance and refund her premiums. The Applicant was fully covered during the period of her enrolment and even though she is no longer a member of the insurance programme, she may still submit claims for reimbursement of her expenses incurred during the period of her coverage.

## **Factual and procedural background**

3. On 1 July 2016, the Applicant enrolled in the United Nations Headquarters-administered insurance programme. On 11 October 2016, she notified the HLIS that she had not yet received her insurance identification cards. HLIS replied the next day, advising the Applicant to verify her mailing address in the United Nations system of record (“Umoja”). HLIS provided the identification card information (card and group numbers).

4. On 2 November 2016, the Applicant contacted HLIS again, as she had not yet received her identification cards. HLIS responded on the same day, stating that HLIS does not issue identification cards but can make a request to the insurance carrier

which usually takes “2-3 weeks”. Meanwhile, HLIS had requested the insurance carrier to send new cards to the Applicant’s New York address. Again, the Applicant was advised to update her mailing address in Umoja, which at the time showed an address in Boston.

5. The Applicant sent several follow-up emails to HLIS stating that she was yet to receive the cards. On 5 December 2016, HLIS reminded the Applicant that the HLIS does not issue the insurance cards and that the insurance carrier was had been requested to reissue the Applicant’s insurance cards and mail them to her New York address. On that same day, the insurance carrier informed HLIS that the Applicant’s Boston address still showed in the system as her mailing address.

6. Later on 5 December 2016, the Applicant emailed HLIS to inform them that she would keep her Boston address as mailing address but that this address should not be used for insurance purposes. HLIS explained that the mailing address in Umoja is the address for insurance purposes. The Applicant was advised to contact the insurance carrier directly to obtain her temporary cards. HLIS clarified that the insurance carrier could not be reached by email and could only be contacted by telephone or through its online portal. The Applicant was provided with the insurance carrier’s contact information.

7. On 9 December 2016, the Applicant emailed HLIS stating that she was having trouble logging into the insurance carrier online portal. On 19 December, the HLIS provided the Applicant with the insurance carrier’s telephone number and the Applicant’s insurance identification card and group number.

8. On 19 December 2016, the Applicant attempted to contact the insurance carrier by email, obtaining no response. She informed HLIS accordingly. The Insurance Unit responded on the same day restating the advice previously provided.

9. On 19 December 2016, the Applicant wrote to HLIS stating that she was unable to contact the insurance carrier to obtain her cards. She then requested that her

dental insurance be cancelled and asked for the reimbursement of the premiums she had paid since her enrolment in July 2016.

10. On 20 December 2016, HLIS replied that the insurance premiums could not be reimbursed because termination of coverage could only be requested once a year during the annual campaign, namely in June. HLIS restated that the dental insurance carrier could only be reached by telephone or by logging on its online portal.

11. On 17 February 2017, HLIS informed the Applicant that her Boston address still showed as her mailing address in Umoja. The Applicant replied on the same day that she would not change that address for personal reasons.

12. On 31 May 2017, during the annual campaign, the Applicant requested the termination of her enrolment in the United Nations Headquarters-administered insurance programme and the refund of the premiums paid since July 2016.

13. On 1 June 2017, HLIS responded that the Applicant had been advised multiple times to update her mailing address in Umoja in order to receive her insurance cards. HLIS further advised that the premiums could not be reimbursed because the Applicant's insurance had been active since January 2016. HLIS provided a copy of the Applicant's temporary insurance cards.

14. On 2 June 2017, the Applicant restated her request for cancellation of her enrolment in the insurance scheme and reimbursement of the paid premiums.

15. On 4 June 2017, the Officer-in-Charge ("OiC") of HLIS confirmed the decision not to reimburse the premiums.

16. On 25 June 2017, the Applicant requested management evaluation of the contested decision. On 22 September 2017, the Under-Secretary-General for Management ("USG/DM") notified the Applicant that, on the recommendation of the Management Evaluation Unit ("MEU"), she had decided to uphold the contested decision.

17. On 1 July 2017, the Applicant separated from service upon expiry of her temporary appointment. Her medical insurance terminated as a result of this separation.

**Applicant's submissions**

18. The Applicant's principal contentions may be summarized as follows:

a. For six months, the Applicant contacted regularly to report that she had not received her insurance identification cards and claimed to be unable to prove her insurance coverage to health providers;

b. The Applicant provided both HLIS and the insurance carrier with her address in New York where the cards should have been delivered. Both HLIS and the insurance carrier failed in ensuring that the cards be sent to the appropriate address;

c. The insurance coverage and the fees paid by the Applicant for are without any justification and she should be entitled to request cancellation of a service that was not provided and thus, reimbursement of fees;

d. Since cancellation and reimbursement [can only be granted] during the [annual campaign], following HLIS advice, on 31 May 2017, the Applicant requested the cancelation and reimbursement of insurance fees paid since 1 July 2016. This request was denied by HLIS.

**Respondent's submissions**

19. The Respondent's principal contentions may be summarized as follows:

a. The Applicant enrolled in the health insurance programme effective 1 July 2016;

b. Termination of health insurance is only possible during the annual campaign, as set out in sec. 17 of ST/IC/2017/18. There is no provision in

ST/IC/2017/18 for retroactive termination of coverage, or the refund of premiums already paid;

c. It is the responsibility of staff members to be acquainted with relevant administrative issuances, and to know and understand their provisions and implications;

d. The fact that the Applicant had difficulties in obtaining her insurance identification cards does not provide a basis for HLIS to retroactively cancel her insurance and refund her premiums.

### **Considerations**

#### *Applicable law*

20. Staff rule 6.6 on medical insurance states as follows:

Staff members may be required to participate in a United Nations medical insurance scheme under conditions established by the Secretary-General.

21. ST/IC/2016/13 (Renewal of the United Nations Headquarters-administered health insurance programme), effective as of 1 July 2016, provided, in relevant part, that:

#### **Annual campaign**

16. A staff member enrolled in the Cigna US Dental plan must continue such coverage for at least 12 months before elections for discontinuation of coverage during the annual campaign will be accepted.

17. Aetna, Empire Blue Cross and UN Worldwide Plan insurance coverage must also be maintained for at least 12 months before elections for discontinuation of coverage during the annual campaign will be accepted. Staff members on the UN Worldwide Plan who transfer to the Aetna or Empire Blue Cross plan as a result of covered family members residing in the United States must remain in the new plan for at least 12 months before elections to return to the UN Worldwide Plan will be accepted.

18. Individuals enrolled in the United Nations Headquarters-administered after-service health insurance are allowed to make a change between either United States-based plan once every two years only, in accordance with section 8.2 of administrative instruction ST/AI/2007/3 on after-service health insurance.

19. The effective date of insurance coverage for all campaign applications, whether for enrolment, change of plan or change of family coverage, is 1 July 2016.

### **Eligibility and enrolment rules and procedures**

24. All staff members holding appointments of three months or longer may enrol themselves and eligible family members in the United Nations insurance programme. In addition, staff members holding temporary appointments with one or more extensions that, when taken cumulatively, will amount to three months or more of continuous service can enrol themselves and eligible family members from the beginning of the contract that will meet the three-month minimum threshold.

### **Enrolment between annual campaigns**

35. Between annual campaigns, staff members and their eligible family members may be allowed to enrol in the Headquarters-administered medical and dental insurance plans only if at least one of the following qualifying events occurs and enrolment is completed within 31 days of such occurrence through the Umoja employee self-service portal, for United Nations staff, or through the submission of a completed application form, for staff of the United Nations agencies participating in the United Nations health insurance programme:

(a) In respect of medical insurance coverage, upon receipt of an initial fixed-term or temporary appointment of at least three months' duration at Headquarters and, in the case of temporary appointees, upon achieving a threshold duration of continuous active employment at a minimum of half-time for at least three months;

(b) In respect of dental insurance coverage, upon receipt of an initial fixed-term or temporary appointment of at least three months' duration at Headquarters;

(c) Upon transfer or assignment of the staff member to a new duty station, even if of a temporary nature;<sup>2</sup> however, if the staff member is already enrolled in a United Nations insurance programme and wants to change plans because of the transfer, he or she may do so without

changing the eligible family member(s) already covered under his or her existing plan.

36. Staff members and their eligible dependants may terminate their coverage under the medical and dental plans between annual campaigns only if one of the following qualifying events occurs and application for termination is made within 31 days of such occurrence:

- (a) Upon divorce, in the case of a spouse;
- (b) Upon the death of a covered dependent;
- (c) Upon marriage or full-time employment of a covered child;
- (d) Upon employment of a spouse with the United Nations Secretariat or a United Nations system organization on a non-temporary appointment at a higher grade and level and eligibility for medical insurance coverage. Employment of a spouse with any other employer will not be considered a qualifying event for termination from a United Nations plan.

#### **Participant's address for insurance purposes**

45. It is the responsibility of each staff member to ensure that his or her correct, complete and up-to-date mailing address is stored in the system of record of his or her organization (i.e. Umoja for the United Nations, [...]). As addresses are a part of a staff member's personnel profile, United Nations staff members should update their address in the Umoja employee self-service portal, [...]. Please be aware that the insurance carriers recognize only the addresses that are electronically transmitted to them by the United Nations from the above - mentioned systems.

22. ST/IC/2017/18 (Renewal of the United Nations Headquarters-administered health insurance programme), effective as of 1 July 2017 stated, in relevant part:

#### **Annual campaign**

17. The annual campaign for 2017 is being held from 31 May to 30 June 2017 and is open to active staff members only. Staff members may log on to the Umoja employee self-service portal to make changes to their coverage, which may include changing health insurance plan, adding a family member who was not previously covered or terminating coverage for a currently covered family member. Such action should be completed by 30 June, as the system will automatically end the campaign period on that date. After 30 June, no further actions can be completed without a qualifying work or life event.



18. The 2017 annual campaign is the only opportunity until the next annual campaign, in May 2018, to: (a) enroll or terminate enrolment in the United Nations Headquarters-administered insurance programme; (b) change to another plan; and/or (c) add or terminate coverage for eligible dependents from their plan, aside from the specific qualifying events, such as marriage, divorce, death, birth or adoption of a child and transfer within the United Nations system, for which special provisions for enrolment between campaigns are established.

### **Annual campaign**

19. A staff member enrolled in any of the health insurance plans must continue such coverage for at least 12 months before elections for discontinuation of coverage during the annual campaign will be accepted. Staff members enrolled in the UN Worldwide Plan who transfer to the Aetna or Empire Blue Cross plan as a result of covered family members residing in the United States must remain in the new plan for at least 12 months before elections to return to the UN Worldwide Plan will be accepted.

### **Eligibility and enrolment rules and procedures**

26. All staff members holding appointments of three months or longer may enrol themselves and eligible family members in the United Nations insurance programme. In addition, staff members holding temporary appointments with one or more extensions that, when taken cumulatively, will amount to three months or more of continuous service can enrol themselves and eligible family members from the beginning of the contract that will meet the three-month minimum threshold

### **Enrolment between annual campaigns**

38. Staff members and their eligible dependents may terminate their coverage under the medical and dental plans between annual campaigns only if one of the following qualifying events occurs and application for termination is made within 31 days of such occurrence: (a) Upon divorce, in the case of a spouse; (b) Upon the death of a covered dependent; (c) Upon the marriage or full-time employment of a covered child; (d) Upon employment of a spouse with the Secretariat or a United Nations system organization on a non-temporary appointment at a higher grade and level and eligibility for medical insurance coverage. Employment of a spouse with any other employer

will not be considered a qualifying event for termination from a United Nations health insurance plan.

*Receivability*

23. The Tribunal notes that the contested administrative decision was notified to the Applicant, on 1 June 2017 and she requested a management evaluation of the decision on 25 June 2017, within 60 days of the date of notification. The present application was filed on 14 December 2017, within 90 days of the date when the Applicant, a former staff member at the time of the application received the management evaluation decision—22 September 2017. Therefore, the Tribunal concludes that the application is receivable in accordance with art. 8.1(c) and (d) – (i) of the Dispute Tribunal’s Statute and art. 7.1(a) of the Dispute Tribunal’s Rules of Procedure.

*On the merits*

24. As results from the parties submissions and from the records, it is uncontested that the Applicant was effectively enrolled in the United Nations Headquarters-administered health and dental insurance programmes in contention in the present case from 1 July 2016 to 30 June 2017.

25. On 11 October 2016, the Applicant alerted HLIS that she was yet to receive her insurance identification cards. From 12 October 2016 to June 2017, HLIS advised the Applicant: (a) that the insurance identification cards are issued by the insurance carrier and mailed to the mailing address indicated by the staff member in Umoja; (b) that, in order to receive her cards, the Applicant had to update her mailing address in Umoja; (c) that the Applicant should contact the insurance carrier directly if she had difficulties obtaining her cards.

26. Additionally, HLIS confirmed the Applicant’s enrollment in the insurance programme since 1 July 2016; assisted the Applicant in obtaining provisional insurance identification cards from the insurance carriers; and provided the Applicant

with all the details of her enrollment in the insurance plan (insurance identification card number, group number and date of enrollment).

27. The Administration has a duty to act fairly, justly and transparently in dealing with its staff members (*Obdeijn* 2012-UNAT-201). As the abundant correspondence between HLIS and the Applicant shows, HLIS provided timely and adequate responses to the Applicant's queries informing her that the cards were sent to her mailing address in Boston and that no other mailing address in New York was provided in Umoja. It appears that the Applicant, who stated that she did not wish to provide a mailing address in New York, did not timely update and/or provide a different mailing address in Umoja, except the one in Boston. Accordingly, the Tribunal finds that HLIS acted fairly and transparently in advising the Applicant on this matter and did not act in a negligent manner.

28. The Tribunal notes that neither ST/IC/2016/13 nor ST/IC/2017/18, applicable at the relevant time, allowed for a retroactive termination of the enrollment in the United Nations Headquarters-administered insurance programme outside of the annual campaign (31 May -30 June) as requested by the Applicant on December 2016 and February 2017.

29. Furthermore, the record shows that the Applicant was enrolled in the health and dental insurance plans in contention since 1 July 2016 until 30 June 2017. She submitted a request for termination of her insurance plans on 31 May 2017, at the beginning of the 2017 annual campaign, but for such a request to be accepted, the staff member should have had a continuous coverage plan for at least 12 months. It results that the Applicant, who had only 11 months of insurance coverage at the date of the request, did not fulfill this mandatory requirement for her request for termination/discontinuation of her coverage to be accepted. The Applicant's insurance was terminated as a result of her separation on 1 July 2017, which coincided with the date when her insurance reached 12 months.

30. The Tribunal concludes that, there is no legal basis for the retroactive cancellation of the Applicant's enrollment in the United Nations Headquarters-administered insurance programme and reimbursement of the premiums paid over the period from 1 July 2016 to 30 June 2017. Consequently, there is no legal basis for any other compensation, including the reimbursement of the costs for the Applicant's flight tickets and the application is to be rejected in its entirety.

### **Conclusion**

31. In light of the foregoing, the Tribunal DECIDES:

32. The Applicant's request for the retroactive cancellation of her enrollment in the United Nations Headquarters-administered insurance programme and reimbursement of the premiums paid from 1 July 2016 to 30 June 2017 and for any additional compensatory measure, including the costs of the flight tickets she paid to have medical attention abroad, is rejected.

*(Signed)*

Judge Alessandra Greceanu

Dated this 7<sup>th</sup> day of September 2018

Entered in the Register on this 7<sup>th</sup> day of September 2018

*(Signed)*

Nerea Suero Fontecha, Registrar, New York