



Before: Judge Goolam Meeran

Registry: New York

Registrar: Nerea Suero Fontecha

YOHANNES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Katrina Waiters, UNFPA

Introduction

1. On 25 December 2018, the Applicant, a staff member with the United Nations Population Fund (“UNFPA”), filed an application contesting the decision by the Health and Life Insurance Committee to deny her request for exceptional reimbursement of costs incurred in connection with treatment provided to her dependent child. The Applicant claims that the decision violated her right to a standard of living adequate for the health and well-being of her family, including medical care and necessary social services which she said were protected under the Universal Declaration of Human Rights as well as her right to receive appropriate advice from the Health and Life Insurance Section (“HLIS”) for her child’s medical need.

2. The Respondent replied that the Applicant’s request for exceptional reimbursement was lawfully denied under the applicable procedures and the terms of her health insurance plan. She was responsible for familiarizing herself with the provisions of the insurance plans, and she was provided with appropriate information.

3. The case was assigned to the undersigned Judge on 14 June 2019.

4. The Tribunal considered the file and decided that no further information was required and that a hearing was not necessary to determine the merits of the case.

Facts

5. In February 2017, Aetna, an insurance company administering the Applicant’s health insurance plan, denied her request, and subsequent appeal, for pre-approval for a particular medical procedure for her child.

6. In March 2017, the Applicant contacted the Chief of HLIS, who advised her that the Aetna plan does not cover the medical procedure in question and that she

could appeal to the Health and Life Insurance Committee. A copy of the procedure to submit a request for exceptional reimbursement was attached.

7. The Applicant did not submit an appeal to the Health and life Insurance Committee as advised. However, in May 2017, the Applicant's child underwent the medical procedure.

8. On 16 August 2017, the Applicant submitted to the Chief of HLIS a request for exceptional reimbursement.

9. On 26 December 2017, the Chief of HLIS advised the Applicant that the Health and Life Insurance Committee reviewed and denied her request since the requested medical procedure was not covered under the Aetna plan. In response, the Applicant wrote that she would like to appeal to the Committee for reimbursement of the costs incurred for surgery which she considered was medically necessary. She asked the Chief of HLIS what other steps she could take to get assistance for the financial hardship.

10. In response to the Applicant's follow-up email, the Chief of HLIS advised the Applicant by email dated 13 February 2018 that her case would be resubmitted to the Committee.

11. On 31 May 2018, the Chief of HLIS advised the Applicant that the Health and Life Insurance Committee reviewed and denied her case on the ground that the requested medical procedure is not covered by the Aetna plan. The Committee also expressed concern that the procedure was still carried out despite the fact that the preauthorization request was denied by Aetna. The Chief of HLIS advised the Applicant that the requested medical procedure was covered under the Empire Blue Cross plan and that she may want to consider changing plans if she expected her child to undergo additional procedures beginning July 2018. It is to be noted that there is an annual campaign in May-June each year during which staff members have the option

of switching insurance coverage to another provider that would take effect in July of the same year.

12. On 28 July 2018, the Applicant requested management evaluation.

13. On 26 September 2018, the Applicant received a management evaluation decision upholding the contested decision.

Considerations

Scope of the review

14. This Judgment is concerned with the question whether the Health and Life Insurance Committee's decision to deny the Applicant's request for exceptional reimbursement communicated to her on 26 December 2017 and 31 May 2018 was lawful.

15. The first issue to consider is whether the decision notified to the Applicant on 31 May 2018 was a new decision or a reiteration of the previous decision communicated to her on 26 December 2017 in which event it would not have the effect of resetting the clock for purposes of the request for management evaluation. It is well established that the reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines (see *Staedtler* 2015-UNAT-546, para. 46). However, an unambiguous re-examination by the Administration of an earlier decision would give rise to a new and separate administrative decision (see *Fiala* 2015-UNAT-516, para. 40; *Abu Malluh et al.* 2016-UNAT-690, para. 47).

16. The Tribunal finds that the impugned decision is not a mere reiteration of a prior decision as the Chief of HLIS indicated, in response to the Applicant's request for reconsideration, that the Applicant's case was resubmitted to the Committee. Thus, the Committee's decision notified to the Applicant on 31 May 2018 is subject to this Tribunal's review.

17. The Tribunal notes that the Applicant also complains that the staff members of HLIS failed to provide proper advice relating to her child's medical need and health insurance coverage. Article 2(1) of the Dispute Tribunal's Statute provides that the Tribunal shall be competent to hear and pass judgment on an application against "an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment". HLIS's advice or failure to give proper advice is not an administrative decision subject to judicial review. The Tribunal will not review this allegation. However, the Tribunal notes that information about each health insurance plan is readily available to staff members who, upon reviewing the benefits offered by the various providers, have the option of switching insurance plan during an annual campaign period.

Whether the decision to deny the Applicant's request for exceptional reimbursement was lawful

18. Staff rule 6.6 provides that "staff members may be required to participate in a United Nations medical insurance scheme *under conditions established by the Secretary-General*" (emphasis added). The conditions of the United Nations Headquarters-administered health insurance schemes are set forth in information circulars from the Controller. These are updated annually. The Tribunal notes that in the applicable information circulars there is no reference to a procedure governing the request for exceptional reimbursement, although this procedure was subsequently incorporated in the information circular ST/IC/2019/14 dated 24 June 2019. Nevertheless, the Administration provided to the Applicant, by email, a copy of additional procedures related to exceptional reimbursements, which provide in relevant part (emphasis added):

As is the case for most health insurance plans, the United Nations (UN) plans have annual maximums or other limitations in coverage for several medical conditions. Claims within those maximums/limits are handled routinely. Claims beyond the maximums/limits or claims for covered services and treatments denied can be referred to the UN for additional consideration and must then follow a set protocol for review

and recommendation for exceptional approval. In all cases, however, coverage under the programme is based on the underlying principle that the medical services must be medically necessary and provide restorative care. *Claims for services and treatments not covered under the insurance programme are not covered under this process.*

19. The above paragraph clearly provides that “claims for services and treatments not covered under the insurance programme are not covered under this process”. The Health and Life Insurance Committee accordingly denied the Applicant’s request on the ground that the requested medical procedure is not covered under the plan provided by Aetna.

20. The decision to deny the Applicant’s request for exceptional reimbursement was made in accordance with the established procedures and there are no grounds to set it aside.

Judgment

21. The application is dismissed.

(Signed)

Judge Goolam Meeran

Dated this 24th day of June 2019

Entered in the Register on this 24th day of June 2019

(Signed)

Nerea Suero Fontecha, Registrar, New York